# CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

West Block No.2, R.K.Puram, New Delhi

**COURT-I**

**Date of hearing: 20.07.2017**
**Date of Pronouncement: 26.10.2017**

**Appeal No. E/1450, 1768/2010 & E/1597/2012-EX[DB]**

[Arising out of the Order-in-Appeal No. 11/2009-10 dated 29.10.2009 & Order-in-Appeal No. 25/2006-07 dated 26.03.2007, passed by the Commissioner of Central Excise, Delhi]

M/s. Genius Electrical & Electronics Pvt Ltd.
M/s. Sattvik Industries,
M/s. Asha Chemicals … Appellant

Vs.

C.C.E. New Delhi-II ...
Respondent

Appearance:

Present Shri Abhas Mishra, Advocate for the appellant
Present Shri R.K. Mishra, DR for the respondent

**Coram: Hon'ble Mr. Justice (Dr.) Satish Chandra, President**
**Hon'ble Mr. V. Padmanabhan, Technical Member**

**FINAL ORDER No. 57369-57371 /2017**

Per V. Padmanabhan:

These appeals are filed against the OIO no. 25/2009-10 dated 26.03.2007 (in respect of the appeal filed by M/s. Asha Chemicals) and OIA no. 11/2009 dated 29.10.2009 (in respect of M/s. Genius Electrical & Electronics Pvt Ltd. and M/s. Sattvik Industries.)

2. The brief facts of the case are that M/s. Satvik Industries, were engaged in manufacture of PVC insulated wire, winding

wire of copper and non-adhesive tape falling under Chapter Heading 8544.90 and 3920.12 of the Central Excise Tariff Act, 1985. Their factory was visited by the Central Excise Officers on 07.02.2003 who conducted various checks and verifications. As a result, it came to the notice of the officers, that the appellant has been showing the purchase of PVC compound from one M/s. Aggarwal Plastic (India) and were availing the benefit of modvat credit paid thereon. However, it came to light that M/s. Aggarwal Plastic stopped their manufacturing activities since January 2002, and were issuing fake invoices of PVC compound and were passing on non admissible credit to M/s. Satvik Industries. As a result, on further investigation, the statements of various persons were recorded. The department found that the machines installed in the factory premises of M/s. Satvik Industries and the number of employees were insufficient to manufacture the PVC insulated wire and winding wire of copper that is their final product. Accordingly, the lower authorities held that the said appellant was procuring invoices of the raw material only without actually receiving the raw materials and were issuing invoices of their final products showing the sale of the same, without actually manufacturing the final products. The said final products were being cleared by the appellant on payment of duty by reversing the credit illegally availed by them. The said modus operandi was adopted by M/s. Satvik Industries so as to facilitate their buyers to avail credit.

3. Proceedings were initiated against some of the buyers including M/s. Genius Electricals and Kumar Industries and appeals have been filed by M/s. Genius Electricals. M/s. Asha Chemicals is a registered dealer who has received invoices from M/s. Aggarwal Plastics, availed Cenvat Credit and passed on such credit to various persons including M/s. Satvik Industries. The case was originally adjudicated vide the OIO dated 26.03.2007. A part of the above OIO was set aside by the Hon'ble High Court and the matter remanded to the Adjudicating Authority for passing de novo orders in respect of M/s. Genius Electricals and M/s. Satvik. The de novo proceedings were finalised vide the impugned order dated 29.10.2009.

4. Vide the impugned order dated 29.10.2009, the duty amounting to Rs. 1,06,01,497/- stands confirmed against M/s. Satvik Industries along with imposition of penalty of identical amount. Likewise the duty of Rs.16,07,133/- stands confirmed against M/s. Genius Electrical along with equal penalty. Vide the earlier impugned order dated 26.03.2007 (which is applicable against M/s. Asha Chemicals) duty amounting to Rs.9,61,504/- and 4,53,529/- stands confirmed against M/s. Asha Chemicals along with applicable penalties.

5. With the above background, we have heard Shri Abhas Mishra representing M/s. Satvik Industries and M/s. Asha Chemicals. None present for M/s. Genius Electrical. Shri R.K. Mishra, Ld. DR appeared for Revenue.

6. Ld. Advocate appearing for the appellant submits that even if the allegations and findings of the Revenue are accepted to be correct, the illegal credit so availed by them stands debited for payment of duty on the final products. As such, he submits that inasmuch as the credit denied to them already stands reversed, any further direction to deposit the same would amount to double payment. He also clarifies that while clearing their final products on payment of duty, they have also paid duty from PLA to the extent of Rs. 1.40 lakhs, apart from using the credit.

7. As against the above contention of the Ld. Advocate, Ld. DR submits that by adopting the above modus operandi M/s. Satvik Industries indulged in fraudulent activity of passing on non available credit to the buyers of their final products. As such, he submits that inasmuch as the credit was availed by the appellant on the basis of invoices of closed unit, the said credit was not available to them and has been rightly demanded from them.

8. After hearing both the sides and perusal of record, we find that the case originated from M/s. Agarwal Plastics, a manufacturer of PVC compound who had stopped production in January 2002 but continued issuing invoices for passing on ineligible cenvat credit. It was noticed by the Department that such Cenvat Credit to the tune of Rs.2,07,66,410/- has been passed on by issuing fraudulent invoices. Shri Rajeev Aggarwal, authorised signatory of M/s. Aggarwal Plastics in his various statements have admitted these facts. He admitted that the

receivers used to take Cenvat Credit mentioned in the invoices, make payment by cheque out of which he used to return the amount in cash after retaining commission to the extent of 1% to 2.5% of the invoice value. He further admitted that he had only sold "sales invoices" without supplying the raw materials. Such invoices stand issued to M/s. Satvik Industries, who was a manufacturer of PVC insulated wire. Such invoices have also been issued to M/s. Asha Chemicals a registered dealer who in turn passed on such credit after retaining their commission to the tune of Rs. 20-25 Paise per KG of weight of the goods mentioned in the dealers invoice.

9. The statement of Shri Rajeev Aggarwal has been corroborated by the statements given by Shri Rajesh Jain of M/s. Satvik Industries. Shri Jain admitted receipt of invoices from M/s. Aggarwal Plastics as well as M/s. Asha Chemicals without receipt of the accompanying raw material. He further admitted that M/s. Satvik Industries had also issued invoices for PVC wire for passing on the credit to M/s. Genius Electricals without supply of material. He further admitted that he received commission at the rate of 2.5 percent on invoice value for this transaction to facilitate fraudulent transfer of Cenvat Credit.

10. The statements of Shri Rajiv Aggarwal of M/s. Aggarwal Plastics as well as Rajesh Jain of M/s. Satvik Industries were also admitted and corroborated by Shri NC Jain of M/s. Asha Chemicals.

11. The investigation by Revenue established conclusively that M/s. Aggarwal Plastics has closed down the factory in January 2002 and further it was established that M/s. Satvik Industries also did not have the infrastructure to manufacture the declared goods to the extent covered by invoices. The non receipt of goods accompanying invoices stand admitted by all the three parties – M/s. Genius Electrical & Electronics Pvt Ltd., M/s. Satvik Industries and M/s. Asha Chemicals. In this background the question for decision is whether the Cenvat Credits availed on the basis of such invoices are admissible.

12. The main argument advanced on behalf of the appellants is that whatever credit was availed, even if fraudulently, stands reversed at the time of issue of invoices for passing of such credit. M/s. Satvik Industries has further claimed that they have also paid some additional duty in cash. Accordingly, it has been submitted that the entire credit stands reversed by them.

13. We are not in agreement with the arguments advanced on behalf of the appellant.

14. The expression "reversal of credit" is normally used when wrong credit is reversed by debit in the cenvat credit account without issue of any invoice. The expression is also used when any inputs on which credit is taken is cleared as such (without use in further manufacturing) by covering the inputs so cleared by invoice on which duty reversal is shown. These situations are inherently different from the situation where credit is taken fraudulently and then used for issuing invoices showing

utilization of cenvat credit because the person issuing the invoices enables the person receiving the invoice to take credit of duty so shown as paid. Here the fraudulent credit is passed on to the person receiving the invoice which credit causes a loss to the revenue in the hands of the person receiving the invoice, if such person is a manufacturer who claims credit of duty shown to be paid in the invoice, for paying his duty liability. There is hardly any comparison among the three situations, namely:-

i) Reversal of credit by making debit entries in the credit account without issue of any invoice showing utilization of the debited amount;

ii) Reversal of credit by issue of invoice when input received in a factory is removed as such without using the input in further manufacture; and

iii) Where an invoice is issued debiting the duty payable as per the invoice, either to cover excisable goods or just to create a phony document to enable the person receiving the invoice to take credit.

The situation in this case is that mentioned in (iii) above and this is not a situation where no harm is caused to Revenue.

15. The Cenvat credit rules provide for availing cenvat credit on inputs subject to the condition that an invoice is issued with all necessary details of the goods and duty paid in favour of the recipient. It is further a necessary condition that the goods should accompany the invoice. In the present case it stands admitted by all concerned persons that only invoices have been

issued for transfer of credit and no goods have accompanied such invoices. In addition to such inculpatory statements, the investigations undertaken by revenue has conclusively established that the registration number of various vehicles shown in the invoices are vehicles such as private cars, auto rikshaw, etc. which are incapable of transporting the goods said to be covered by the invoice. Verifications have been undertaken with the RTO authorities with reference to the specific registration numbers of vehicles found in the invoices. This evidence conclusively establishes that the invoice indicating the duty amount has covered only paper transactions and cannot be a valid document for transfer of credit.

16. In view of the above discussions we uphold both the impugned orders. In the result all the appeals are dismissed.

[Order Pronounced in the open court on **26.10.2017**]

(Justice Dr. Satish Chandra)
President

(V. Padmanabhan)
Technical Member

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