CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

WEST BLOCK NO.2, R.K. PURAM, NEW DELHI-110066

BENCH-DB

COURT –IV

Excise Appeal No. E/101/2010-Ex [DB]

[Arising out of Order-in-Appeal No. 35/2009 (CE)/Commr dated 16.09.2009 passed by the Commissioner of CE, Jaipur-I.]

M/s. Paramount Communication Ltd. …Appellant

Vs.

C.C.E., Jaipur. … Respondent

Appearance:
Mr. Rajesh Rawal, (Advocate) for the Appellant
Mr. R.K. Mishra, DR for the Respondent

CORAM:
Hon'ble Mr. S.K. Mohanty, Member (Judicial)
Hon'ble Mr. V. Padmanabhan, Member (Technical)

Date of Hearing.04.08.2017
Date of Decision._23.11.2017

Final Order No. 58053/2017

Per S.K. Mohanty:

Brief facts of the case are that the appellant is engaged in the manufacture of P.V.C Insulated wires and cables, armoured and un-armoured cables, control cables etc., classifiable under Chapter 39 of the CETA. On 09.06.2006, the Central Excise officers of Anti Evasion, Jaipur-I Commissionerate visited the appellant's factory premises. The said officers recorded the statement of Shri. Ravi Prakash Gupta, General Manager (Commercial), Shri. K.K. Saxena, Manager (Commercial) and Shri

Sandeep Agarwal, Managing Director of the appellant company on different dates. The said officers visited the factory of The appellant company on the basis of the information that the appellant availed the Cenvat Credit on the basis of invoices of input PVC Resin, issued by M/s. Kashish Products Impex Pvt. Ltd., Delhi (i.e. KPIPL), without receipt of the goods. A SCN dated 03.10.2017 was issued, proposing recovery of cenvat credit of Rs. 1,39,94,593/-wrongly availed and utilized by the appellant during the period from September 2002 to May' 2005. By the impugned order dated 16.09.2009, the ld. Commissioner confirmed the demand of Cenvat Credit of Rs. 1,39,71,806/-, including Ed. Cess alongwith interest and also imposed penalty equal to the amount of cenvat. The imposition of penalty on Shri. Sandeep Agarwal, M.D of the appellant company was dropped. Hence, the appellant has filed this appeal.

2. The ld. Advocate appearing for the appellant submitted that the SCN was issued on the basis of investigation of the input manufacturer M/s. KPIPL and statement of transporters. It is submitted that in earlier occasion, an investigation was conducted on 30.07.2004 and during the stock taking, excess stock of PVC compound was found. The Assistant Commissioner confiscated the excess goods and imposed penalty vide Original Order dated 12.03.2007, which was set aside by the Commissioner (Appeals) vide Order-in-Appeal dated 05.02.2009. The ld. Advocate strongly submitted that there is no such allegation during the investigation in 2004. Further, the appellant received the goods from M/s. KPIPL under the cover of Central Excise invoices and

paid the Central Excise duty, sales tax. The ld. Advocate drew the attention of the Bench to various documents, evidencing the fact that the goods were received by it. It is further submitted that the Tribunal in an identical set of facts, in a recent decision, in the case of M/s. UKB Electronics Pvt. Ltd. & Ors. VS. CCE, Delhi-II, vide Order No. 55931-55935/2016 dated 20.12.2016, has allowed the appeal of the assessee. The ld. Advocate submitted written note of submissions alongwith case laws.

3. The ld. DR appearing for the Revenue reiterated the findings recorded in the impugned order. He further submitted that the Director of the Supplier Company has denied manufacture of the impugned goods. The transporters have denied having transported the said material. It is submitted that the Revenue had made thorough investigation on M/s. KPIPL and it was found that the supplier had issued the invoices for availing cenvat credit, without supplying the goods. The ld. DR also submitted the written note of submissions alongwith the case laws.

4. Heard both sides and examined the case records.

5. On perusal of the impugned order, we find that one M/s. Chemplast Sanmar Ltd., a Chennai based Company, engaged in the manufacture of different grades of PVC Resins, one of which is “Battery Separator Grade Resin”. It has been alleged that M/s. KPIPL for manufacture of PVC compound and Master Batches, was purchasing CP172SG Resin i.e. Battery Separator Resin from M/s. Chemplast Sanmar Ltd. and availing cenvat credit on them. it is seen from the impugned order that on 14.02.2006, the Central Excise Officers of Anti Evasion unit, Delhi-I visited and searched

the premises of M/s. KPIPL. According to the Revenue, M/s. KPIPL did not receive PVC Resin from M/s. Chemplast Sanmer, and only received invoices to avail cenvat credit. Further, M/s. KPIPL did not manufacture the final product and issued cenvatable invoices to various manufacturers and dealers to avail cenvat credit, including the appellant herein.

6. The ld. Advocate for the appellant submitted that the entire case was made out on the basis of the statement of the Director and other employees of M/s. KPIPL and the transporters. The Department had ignored the various statutory records and documents, which would establish that the appellant had received the goods and used in the manufacture of final product cleared on payment of duty and duty recorded in the statutory records. It is contended that the invoices would show necessary stampings by check post at the time of crossing of the vehicles carrying the goods from Delhi to Rajasthan. We find that the appellant produced the evidences in support of the contentions that they purchased the inputs and used it in the manufacture of the final products. The ld. Adjudicating authority observed that the appellant purchased only bills of virgin PVC compound from M/s KPIPL and the goods produced by the manufacturers of re-processed PVC, which is otherwise exempted from duty. It is further observed that a manufacturer for profitability and viability would go for non-duty paid inputs available in the market. It is further observed that it was possible that the appellant has also gone for such material.

7. We are unable to accept such findings of the adjudicating authority for the reason that there is no material available on record to support the argument that the appellant procured the non-duty paid material from the market for manufacturing the goods. Further the investigation has not unearthed any evidence to substantiate the allegation that appellant has not received the goods covered by the invoices of M/s KPIPL based on which the Cenvat Credits have been availed. Thus, the above findings of the adjudicating authority is merely on the basis of assumptions and presumptions. In our considered view, the records and documents placed on record by the appellant cannot be brushed aside, merely on the basis of statement of the third party, i.e. transporter which are un-corroborative in nature. In any event, if the adjudication authority is of the opinion that the appellant had availed the alleged irregular credit for more profitability, which would be reflected from their accounts. The Commissioner of Central Excise has reason to belief that the cenvat credit availed and utilized is not within the normal limits, having regard to the nature of excisable goods manufactured, he could have directed to examine the accounts and records, as provided under the Central Excise statue.

8. It is noted that in similar situation, the Tribunal in the case of M/s. UKB Electronics Pvt. Ltd. (supra) set aside the order of the original authority in which, cenvat credit was denied on the basis of investigation at M/s. KPIPL. The relevant paragraphs of the said order are reproduced below:-

"6. The impugned order disallowed the cenvat credit only on the ground that KPIPL were engaged in issuance of cenvatable invoices for PVC compounds and master batches without actually dispatching the said goods. It was recorded that integrity of the supplier (KPIPL) is found to be unreliable and doubtful. In fact, we note that there is no detailed analysis of the defence made by the main appellant before the Original Authority. The findings are very cryptic. We note that it is necessary to have corroborative evidence with reference to the allegation that the main appellant not receiving physically the inputs. Apparently, the case is based on the role of KPIPL as a manufacturer and supplier of inputs. While denying the cenvat credit to the manufacturer of final products, it is necessary to show that the cenvatable inputs were never received by the manufacturer and the credits have been taken simply on the basis of paper invoices without actual goods. In the present case, we note that the appellants produced chart with vehicle nos. for the receipt of the inputs from KPIPL. They have maintained statutory records regarding receipt of inputs, credit availed thereon, manufacture of final products and duty paid clearance of final products. None of these records have been put to question with any evidence. Further, we also note that the payments towards purchase of raw materials have been made by crossed cheques by the main appellant. They have also produced ledger accounts to this effect. There is no evidence regarding any flow back of cash from KPIPL to the main appellant or any arrangement to that effect. We note that while examining the lack of evidence regarding flow back of money, the Original Authority records that the event happened more than 3-4 years and hence, no evidence could be left behind. However, while examining the admissibility of certain statements of truck drivers recovered 3-4 years back, it is noted that the same is

admissible and some of them have stated that they have not delivered any goods to the main appellant from KPIPL. Such divergent approach in appreciating the evidence is not tenable. Further, we note that there is no discussion regarding how could the main appellant manufacture such quantity of final products in the absence of inputs as recorded in their statutory records. Admittedly, during the impugned period, the main appellant did manufacture final products and cleared them on payment of duty. No examination of this aspect has been made either in the investigation or by the Adjudicating Authority.

7. We also note that based on the same set of investigations, the invoices issued to various other manufacturer, who were dealing with KPIPL in producing PVC compounds and master batches were questioned. In many cases, the proceedings were concluded by denying credits availed in such transactions. On appeal, we find that the Tribunal had upheld the appellant's plea regarding correctness of the credit availed. We take note of these decisions as recorded below:-

1. Tirupati Plastomatics Vs. CCE, Jaipur – 2016(335) ELT 482 (T-D)

2. M/s.Cords Cable Ind. Vs. CCE-Final Order dt.26.2.2015(T-D)

3. M/s.KEI Ind. Ltd. Vs.CCE-Final Order dt.1.6.2015(T-D)

4. M/s.Rajan Engg. Vs.CCE-Final Order dt.14.07.2011 (T-D)

5. M/s.Positive Plastic Vs.CCE-Final Order dt.23.8.2010(T-D)

6. M/s.Positive Plastic Vs. CCE-Order dt.30.03.2011.

8. On careful consideration of the impugned order and the submissions made by the appellant, we note that the denial of credit in the present case cannot be sustained *on the basis of reasoning adopted by the Original Authority. Regarding credit of Rs.1,89,789/- availed on imported inputs, the appellants are not contesting the same. They have only submitted that they had imported 32,000 kg. of DOP through Kandla port. When one tanker carrying 16,000 kg. arrived at in the factory, they have mistakenly taken credit for the full quantity mentioned in the bill of entry. However, when the mistake was noticed, the same was reversed and the credit was re-taken only on receipt of the balance quantity of 16 MTS on 25.06.2016."*

9. It is noted that the present proceeding was initated on the basis of the same investigation against M/s. KPIPL and the transporter. The ld. DR for the Revenue in his written submission had narrated the various statements of the Director of M/s. KPIPL and the other suppliers of inputs of M/s. KPIPL and their transporters. The appellant requested for cross examination of the concerned persons, which was not allowed. It appears that the Central Excise officers recorded the statements of two employees and Director of the appellant company, who stated that they received the goods in their factory. At this stage, the investigating officer should have examined the records and documents including Cenvat accounts and not merely relied on the statement of the third party. The Tribunal in the case of Tejwal Dyestuff Vs. CC, Ahemdabd 2007(216) E.L.T 310 (Tri. Ahmd.) observed as under:-

"The receipt of these inputs in the factory premises of the assessee having been established, coupled with the fact that, as per the declarations and returns and other statutory record, the inputs were in fact used in the final

products by the assessee, the lethargy of the Revenue Officers in not verifying the relevant statutory records and invoices, as to what exact quantity of raw material was used in the final products, and that in how many final products such inputs could have been used, existence of the particulars in the RG-23 Register reflecting the invoices and the existence of octroi receipts as also the expert opinion in respect of LAB having been used in the final product, altogether create a doubt as to the correctness of the contents of the statements of Naresh, Hitesh and Ilesh. The pre-ponderance of probabilities in the context of all other evidence vis-a-vis the confessional statements does not lead to the conclusion of inadmissibility of Modvat/Cenvat credit as reached by the Commissioner."

10. After analyzing the above factual matrix and the judicial pronouncements, we are of the considered view that denial of cenvat credit and imposition of penalty are not justified. Accordingly, the impugned order cannot be sustained and the same is set aside. The appeal filed by the appellant is allowed.

(Pronounced in the open court on 23.11.2017)

(**V. Padmanabhan**)	(**S. K. Mohanty**)
Member(Technical)	Member (Judicial)

Sakshi