IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.

Date of Hearing/Order: 5.2.2018

Appeal No. E/2077/2010-SM

(Arising out of Order-in-Original No. 06/D-I/2010 dated 12.4.2010 passed by Commissioner of Central Excise, New Delhi)

M/s Manu Plastics Appellant

Vs.

CCE, Delhi-I Respondent

Appearance

Shri Naveen Mullick, Advocate - for the appellant

Shri K. Poddar, D.R. - for the respondent

CORAM: Hon'ble Mr. Ashok Jindal, Member (Judicial)

Final Order No. 50545/2018

Per Ashok Jindal:

The appellant is in appeal against the impugned order wherein Cenvat credit availed on the invoices issued by one M/s Sulabh Impex Incorporation, Delhi was denied on the premise that M/s Sulabh Impex Incorporation has not supplied the goods to the appellant.

2. The facts of the case are that the appellant imported input viz. Nickel from M/s Sulab Impex Incorporation, Rohini, Delhi. The appellant is located in Naraina. The mode of transportation is not

coming out from the invoices and quantity shown in the invoices is about 500 Kg. During the course of investigation, at the end of M/s Sulabh Impex Incorporation, it came to the notice of the department that they neither imported nor supplied the goods and have only issued Cenvatable invoices to avail inadmissible Cenvat credit by the appellant. An investigation was also conducted at the end of the appellant wherein statement of the authorized signatory of the appellant was recorded who stated that they have received the goods and used those goods in manufacturing of their final product which has been cleared on payment of duty. But after investigation, a show cause notice was issued to the appellant to deny Cenvat credit on the invoices issued by M/s Sulabh Impex Incorporation on the premise that the goods were not received by the appellant. The matter was adjudicated and it resulted in denial of Cenvat credit to the appellant. Consequently, the duty was demanded along with interest and penalty equivalent duty was also imposed. Against the said order, the appellant is before me.

3. The ld. Counsel for the appellant submits that they had made a categorical statement that they have received the goods and made payment through account payee cheque. The said goods have been used in manufacture of final goods which has been cleared on payment of duty, therefore, they are entitled to avail Cenvat credit. It is also contended that in the same investigation, one of the purchaser

of goods from M/s Sulabh Impex Incorporation was M/s Luxmi Metal Industries and Cenvat credit sought to be denied to them. In their case also, this Tribunal reported in – 2013 (287) ELT 487 (Tri.-Del.), allowed the Cenvat credit. Therefore, Cenvat credit can be allowed.

4. On the other hand, ld. AR oppose the contention of the ld. Counsel and submits that as the supplier of the goods have admitted that the bill of entry mentioned in the invoices is fake and no goods has been travelled from them and they have issued only fake invoices to avail inadmissible Cenvat credit. This fact has not been disputed. Therefore, the appellant is not entitled to avail Cenvat credit. He also submitted that in one of the recipient of the goods, M/s India Terminal Connector System Ltd. have admitted non receipt of the goods and went to the Settlement Commission and paid the duty, therefore, Cenvat credit is rightly denied.

5. Heard the parties. Considered the submissions.

6. On consideration of the facts in hand, I find that in this case, no investigation was conducted at the end of the appellant to verify the stocks. Moreover, Revenue failed to establish the fact that from where the raw material were purchased by the appellant if the goods in question has not been received by the appellant. Further, the appellant was due diligent while receiving the goods as there was no

discrepancy in the invoice and the same has not been alleged by the Revenue. In that case, a prudent buyer is required to see the contents of the invoices and physically receipt of the goods. During the course of investigation, the appellant themselves has made a statement that they have received the goods and same has been used in manufacture of final product. Thereafter, no further investigation was conducted by the Revenue to establish the fact the appellant has not received the goods. In that circumstances, benefit of doubt goes in favour of the appellant. Further, in similar investigation in the case of ***Luxmi Metal Industries*** (supra), this Tribunal allowed the Cenvat credit. Further, the ld. AR relied on the fact that one of the noticee viz. M/s India Terminal Connector Systems Ltd., they have gone to the Settlement Commission. May be in the case of M/s India Terminal Connector Systems Ltd., they have not received the goods, but same analogy cannot be applied to the appellant in the absence of any positive evidence against the appellant. Therefore, I hold that the appellant has correctly availed the Cenvat credit.

7. In view of the above analysis, the impugned order is set aside and appeal is allowed with consequential relief, if any.

(Dictated & pronounced in open Court)

(Ashok Jindal)
Member (Judicial)

RM