IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

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

BENCH-DB

COURT –IV

S.No.	Case No	Impugned Order Detail's	Passed By	Appellant	Respondent
1	E/542/2011-DB	OIA- 28/D-I/2010 dated 03/12/2010	Commissioner of Central Excise-DELHI - I	DECO INDUTRIES,(INDIA)	-C.C.E. DELHI I
2	E/525/2011-DB	OIA- 28/D-I/2010 dated 03/12/2010	Commissioner of Central Excise-DELHI - I	CABCOM INDIA,	-C.C.E. DELHI I
3	E/577/2011-DB	OIA- 28/D-I/2010 dated 02/12/2010	Commissioner of Central Excise-DELHI - I	KASHISH PRODUCTS IMPEX (P) LTD.	-C.C.E. DELHI I
4	E/578/2011-DB	OIA- 28/D-I/2010 dated 02/12/2010	Commissioner of Central Excise-DELHI - I	SH. NARESH GULERIA, DIRECTOR OF	-C.C.E. DELHI I
5	E/579/2011-DB	OIA- 28/D-I/2010 dated 03/12/2010	Commissioner of Central Excise-DELHI - I	GANPATI ENTERPRISES,	-C.C.E. DELHI I
6	E/648/2011-DB	OIA- 28/D-I/2010 dated 02/12/2010	Commissioner of Central Excise-DELHI - I	VIKAS CABLE COMPANY,	-C.C.E. DELHI I
7	E/649/2011-DB	OIA- 28/D-I/2010 dated 02/12/2010	Commissioner of Central Excise-DELHI - I	SH. R.K. GUPTA, PARTNER OF	-C.C.E. DELHI I
8	E/650/2011-DB	OIA- 28/D-I/2010 dated 03/12/2010	Commissioner of Central Excise-DELHI - I	AMARDEEP CABLES PVT. LTD.	-C.C.E. DELHI I
9	E/651/2011-DB	OIA- 28/D-I/2010 dated 03/12/2010	Commissioner of Central Excise-DELHI - I	SH. SUKHMAL JAIN, DIRECTOR OF	-C.C.E. DELHI I
10	E/652/2011-DB	OIA- 28/D-I/2010 dated 03/12/2010	Commissioner of Central Excise-DELHI - I	FORTUNE CABLES PVT. LTD.	-C.C.E. DELHI I
11	E/653/2011-DB	OIA- 28/D-I/2010 dated 03/12/2010	Commissioner of Central Excise-DELHI - I	SH. JAIKANT JAIN, DIRECTOR OF	-C.C.E. DELHI I
12	E/654/2011-DB	OIA- 28/D-I/2010 dated 02/12/2010	Commissioner of Central Excise-DELHI - I	HITESH INDUSTRIES,	-C.C.E. DELHI I
13	E/655/2011-DB	OIA- 28/D-I/2010	Commissioner of Central	S.B. INDUSTRIES,	-C.C.E. DELHI I

		dated 03/12/2010	Excise-DELHI - I		
14	E/656/2011-DB	OIA- 28/D-I/2010 dated 03/12/2010	Commissioner of Central Excise-DELHI - I	BHARAT SALES CORPORATION, ,	-C.C.E. DELHI I
15	E/657/2011-DB	OIA- 28/D-I/2010 dated 03/12/2010	Commissioner of Central Excise-DELHI - I	KALINGA CABLE CO.,	-C.C.E. DELHI I
16	E/689/2011-DB	OIA- 28/D-I/2010 dated 03/12/2010	Commissioner of Central Excise-DELHI - I	SH. RAJIV SETHI, PARTNER OF,	-C.C.E. DELHI I
17	E/690/2011-DB	OIA- 28/D-I/2010 dated 03/12/2010	Commissioner of Central Excise-DELHI - I	AUREOLE RUBBERS PVT. LTD.,	-C.C.E. DELHI I

Present for the Appellant : Mr Bipin Garg, Mr. Naveen Mullick, Mr. V.K. Gupta & Mr. Kumar Vikram (Advocates)
Present for the Respondent: Mr. R.K. Mishra, D.R.

Coram: HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)
HON'BLE MR. V. Padmanabhan, MEMBER (TECHNICAL)

Date of Hearing: 04.08.2017
Pronounced on:_02.02.2018

FINAL ORDER NOs. __ 50465-50481 / 2018 ____

PER: S.K. MOHANTY

Brief facts of the case are that M/s. Kashish Products Impex Private Limited (for short, the main appellant) is a registered Central Excise assessee and is engaged in the manufacture of PVC Compound and Master Batches, classifiable under Chapter 39 of the Schedule to the Central Excise Tariff Act, 1985 at its factory situated at Village : Rithala, Delhi. The main appellant avails Cenvat Credit of Central Excise duty paid on the Inputs and Capital Goods and Service Tax on the Input Services under the provisions of the Cenvat Credit Rules, 2004. The Central Excise officers gathered an intelligence that one M/s. Chemplast Sanmar Limited (for short, M/s. Chemplast) a Chennai based company, having its depot at Delhi manufactures different grade of PVC Resins, one of which is Battery Separator grade resin. It is also gathered information that certain PVC Compound manufacturers are buying Battery Separator Grade Resin just to avail more Cenvat Credit as the said resin is costlier than the ordinary grade at least by 60%. The PVC Compound manufacturers are showing the use of the resin in the manufacture of PVC Compound and then showing the supply of the compound so manufactured out of the said resin to the wire and cable industries and it is a mere paper transaction. On the basis of the said information, on 26.05.2006 the Central Excise Officers visited the factory and office premises of the main appellant and conducted thorough search and seized several records and documents. It has also recorded the statements of the buyers, transporters etc. of the main appellants. A Show Cause Notice dated 12.02.2007 was issued to 36 Noticees including the appellants herein.

2. By the impugned Order, the Adjudicating authority confirmed the demand of Cenvat Credit of Rs. 9,73,52,981/- along with interest and also imposed penalty of equal amount of Cenvat Credit on the main appellant. It has appropriated the amount of Rs. 15 Lacs as deposited by the main appellant. It has further imposed penalty of Rs. 1 Crore upon Shri Naresh Guleria, Director of the main appellant under Rule 26 of the Central Excise Rules, 2002. It has also confirmed the demand

of Cenvat Credit along with interest and imposed penalties on the manufactures of Wires and Cables, who have availed Cenvat Credit on the basis of the invoices issued by the main appellant. It has also imposed penalties on the dealers who had supplied the duty paid inputs to the main appellant. Hence the appellants have filed these appeals before the Tribunal.

3. The Learned Advocates on behalf of the main appellant and its Director argued the matter at length and submitted a written submission along with Case Laws. The submissions of the Learned Counsel, in brief, are as under:

(a) The period involved in this case is July 2002 to February 2006. The Central Excise Officers earlier investigated on the same issue as revealed from the Panchnama dated 30.07.2004 and the proceedings were initiated. The Commissioner (Appeals) by Order dated 05.02.2009 set aside the Adjudication Order.

(b) Cenvat Credit availed prior to July 2004 cannot be sustained as the department already investigated into the matter and no discrepancy was found.

(c) The Adjudicating authority observed that the main appellant had returned the money in cash after deducting 1% to 3% against the cheque received from the customers, which cannot be sustained as no prudent business man would do so after payment of CST, DVAT etc.

(d) Transporters statements are not corroborating with the evidences as the transport documents are affixed with the stamp of the Sales Tax Check Post, Consignment Note etc.

(e) The main appellant had purchased raw materials from 66 parties and the enquiry was conducted only from 22 petty parties, from whom only 10% of raw materials were purchased.

(f) Even during the course of investigation, out of 12 parties, 8 parties admitted in their statement that they have supplied the raw materials under the cover of invoices.

(g) The Adjudicating authority erroneously observed that CP 172 SG Grade Resin is costlier than K 6701 Resin which was not used in the final products and was purchased from M/s. Chemplast for availing higher amount of Cenvat Credit. The Learned Counsel elaborated the manufacturing process to establish that the said grade was used in the manufacture of final products.

(h) The Test Results nowhere indicate that CP 172 SG Resin cannot be used for manufacture of PVC Compound.

(i) As per Panchnama dated 14/15.02.2006, the representative samples of PVC Compound/ Master Batches were drawn and did not send the same for test to ascertain whether CP 172 SG Resin was contained and/or used therein or not.

(j) The scrap generated during the process of manufacture of finished products was available in the factory as evident from the Panchnama dated 30.07.2004 and 14.02.2006, which would establish that the PVC compound were manufactured at their factory.

(k) The Adjudicating authority proceeded on the basis of power consumption. It is admitted fact on record that the appellant having three generators, two of them was 125 KVA each in running condition installed in their factory.

(l) During the material period, the main appellant had supplied PVC Compound/Master Batches to 86 buyers, out of which 25 buyers are located in Delhi-I Commissionerate and remaining 61 buyers are located in the jurisdiction of other commissionerate, outside Delhi-I. The present Show Cause Notice relates to 25 buyers located in Delhi-I Commissionerate. There are 16 buyers to whom Show Cause Notices were issued outside Delhi-I and out of which notices have been dropped for 14 parties. That no Show Cause Notices were issued against 45 buyers, outside Delhi-I Commissionerate, which would show that the main appellant was undertaking the manufacture of the subject goods.

(m) The duty amount of Rs. 9,37,52,981/- is demanded thrice in so far as the supplier of the inputs, buyers and the main appellant herein are concerned.

(n) It is significant to note that on 26.05.2006, the Director of the main appellant was arrested. The statements recorded prior to 26.05.2006 of various persons including the Director of the Noticees are in favour of the main appellant. The statements recorded after 26.05.2006 of the buyers, dealers, transporters, etc. are mostly against the main appellants which are un-corroborative in nature. It may be construed that the entire statement recorded after 26.05.2006 are under fear psychosis of the arrest and such statements cannot be sustained in the eye of law.

(o) There are other submissions made by the Learned Counsel elaborately in its written submission.

4. The Learned Counsel on behalf of the other appellants, who purchased and supplied the goods from/to the main appellant have reiterated the submission of the Learned Counsel of the main appellant. It is further submitted that the Adjudicating authority had not given the opportunity of cross examination as requested by the appellants. It is also submitted that the appellants received the inputs accompanied with Central Excise Invoices issued by the main appellant and availed credit thereof used in the manufacture of final products. The final product namely Wires and Cables supplied to the Government Sectors and Public Sector Undertakings are invariably inspected for their quality. Thus, the appellants purchased the quality material from the main appellant. Further, with regard to sale of finished goods to the main appellant, it was submitted by the Learned Counsel that the goods in question were actually supplied by them on issuance of proper invoices. The Learned Counsel submitted Written Submissions along with case laws.

5. The Learned A.R. on behalf of the Revenue reiterates the findings of the Adjudicating authority. He has filed a Written Submission along with Case Laws. The Learned A.R. mainly submitted that the Director and the other employees of the main appellant in their statement had admitted that they have

not manufactured the goods and issued invoices through the buyers to facilitate availment of inadmissible Cenvat Credit. It is further submitted that the main appellant used to purchase the resin costlier from M/s. Chemplast to avail more Cenvat Credit, after which the same was diverted to Battery Separator manufacturers working under SSI exemption. It is submitted that statements of the various transporters would reveal that there was no movement of the goods and the buyers availed credit only on the basis of the cenvatable invoices. The Learned A.R. highlighted relevant portion of the statement in its written submission. It is also submitted that 25 parties located in Delhi had accepted and deposited the amount in respect of Cenvat Credit on the basis of the invoices issued by the main appellant. There are other 22 parties, who had approached settlement commission and had admitted their duty liability in respect of Cenvat Credit demand on the basis of the invoices issued by the main appellant.

6. Heard both the sides and examined the case records.

7. We find that the case of the Revenue is that the main appellant stated to be manufacturing PVC Compound and Master Batches showing more production of PVC Compound and Master Batches, whereas study of consumption of power supplied by NDPL and Generators installed in their factory would reveal that the main appellant actually manufactured less quantity of PVC Compound and Master Batches. The main

appellant issued only Invoices for the excess quantity to various buyers/manufactures of Wires and Cables, Co-Noticees herein, without supplying the corresponding materials mentioned in those Invoices. The other allegation is that the main appellant showed Rasin CP 172 SG used in the manufacture of PVC Compound / Master Batches, which is actually used in the manufacture of Battery Separator. Thus, the main appellant had not used the said resin in their final product and diverted to the manufacturer of Battery Separator, who are SSI Units and the main appellant availed Cenvat Credit thereon. The Supplier of raw materials / inputs and buyers of finished goods, the co-noticees are connived with the main appellant and its Director to avail inadmissible Cenvat Credit.

8. We find that on 30.07.2004, the Central Excise Officers had visited the factory of the main appellant and examined the books of accounts and also conducted stock verification. A Show Cause Notice dated 27.01.2005 was issued, proposing demand of duty, which was confirmed by the Adjudicating authority. By Order dated 05.02.2009, the Commissioner (Appeals) set aside the said Adjudication Order. It is contended by the appellant that after the visit of the Central Excise Officers on 30.07.2004, the Central Excise Officers investigated the matter in detail and sample was drawn. In the Show Cause Notice dated 27.01.2005, there was no allegation that the appellant was not manufacturing PVC

Compound / Master Batches out of C.P. 172 SG Resin as supplied by M/s. Chemplast. Hence, it may be construed that Cenvat Credit of Rs. 6,89,05,552/- involved in the goods admitted to be manufactured during the period July 2002 to July 2004. The Adjudicating authority confirmed the demand of Cenvat Credit of Rs. 9,73,52,981/- after adjustment of 1,07,11,757/- against total demand of Rs. 10,79,64,737/- taken by the main appellant. It is seen from the records that the amount of Rs. 2,60,54,730/- was recovered from the buyers in Delhi-I Commissionerate and the same amount cannot be recovered from the main appellant.

9. The Adjudicating authority observed that the main appellant had issued Cenvatable invoices without delivery of the goods to facilitate the Cenvat Credit benefit to the buyers. The buyers had issued the cheques to the main appellant, who returned money in cash after deducting 1 -3% against the cheque received from the customers. These facts are based on the statement of the various persons recorded by the Central Excise Officers. On the other hand, the Learned Counsel submitted that the said statements are contrary to the records in so far as there is no evidence that the appellant had encashed such big amount from the Bank, except for meeting their day to day work. We find that the Factory premises and the residence of the main appellant were searched and not a single discrepancy was found in the Accounts. The Investigating officers had not examined the Bank Account.

Thus, we find force in the submission of the learned Counsel that money has not been returned by the buyers.

10. The other aspects of this matter as contended by the Learned Counsel that such transaction of cash against cheque would cost heavy loss, is worked out hereunder –

a.	Total sale of buyers during July 2002 to Feb. 2006	66.72 crore (net of CE duty, CST & DVAT
b.	As against 1% to 3%, average commission alleged to be taken as	= 2%
c.	Total Commission comes to	= Rs. 1,33,44,494/-
d.	DVAT paid	= Rs. 42,44,608/-
e.	CST paid	= Rs. 1,00,78,349/-
f.	Total (DVAT+CST)	= Rs. 1,43,22,957/-

11. The above table would show that the 2% commission would be paid against 4% CST @ applicable rate of DVAT paid to the Government and other expenses. Thus, either from the Bank Account or the calculation as mentioned above, it is difficult to accept the findings of the adjudicating authority in this regard.

12. The Adjudicating authority heavily relied upon the statements of the Transporter. The Learned Counsel submitted that the department relied upon the statement of 39 Transporters, but allowed cross examinations of only two Transporters. It is contended that the statements of the

Transporters are contrary to the records as available. Such as Shri Amritlal, owner of the Vehicle No. DL -1C 7878 in his statement stated that he never transported the goods from the factory of the main appellant. During the course of examination, he could not produce the accounts to show the name of the parties, to whom goods are transported during the material period. Shri Rakesh Kumar, owner of the Vehicle No. DL-1LB -1031, during the course of cross examination, stated that he does not know how to read. The Statement of Shri Ashok Kumar of Gupta Tempo Transporter Company are not corroborating with the evidences. The statement of Shri Anil Kumar of Gupta Transport Company is also contrary to the evidences, in so far as Invoices/G.R are affixed with stamp of Sales Tax Check Post at Haryana – Rajasthan border. Hence, the statement of M/s Gupta Transport Company cannot be relied upon. It is clearly evident that the main appellants delivered the materials through the Transporter. Shri Rajiv Gupta in his statement stated that he had not transported the goods from the main appellant to Bhiwadi, but the Invoices as well as G.R. are affixed with the stamp of Rajasthan Government Check Post. It appears that the goods were delivered under the cover of Invoice, Consignment Note and Sales Tax declaration. The Check Post authorities put the stamp on the documents on some cases. In other cases, the goods were weighed on Dharmkanta before entering into the Inward Register of the factory. In such situation, the statement of the transporter cannot be relied upon, by ignoring the evidences available on record.

13. The Adjudicating authority observed that CP 172 SG grade Resin is costlier than the other resin which cannot be used in the manufacture of the final products as purchased from M/s. Chemplast. It is presumed that the main appellant purchased the said resin for claiming more Cenvat Credit. The Adjudicating authority relied upon the statement of the employees of the main appellant. In this context, the Adjudicating authority had discussed the different technical aspects of the use of the said resin. On the contrary, the Learned Counsel submitted that during the material period, the average consumption of the said resin with total consumption of other resin was 10.94% only and this was confirmed by the Director of the main appellant in his statement dated 14.02.2006. It is contended that insulation resistance, tensil strength, elongation, capacitance and thermal stability are higher with the use of the said resin. It is seen that the test result does not speak that the C.P. 172 SG Resin cannot be used for the manufacture of PVC Compound used in the Wire and Cable Industry. In our considered view, if the credit availed on the inputs and utilized in the final product is not within the normal limit with regard to the nature of finished products, the books of accounts of the manufacturer could have been examined by the expert in the field, namely Cost Accountants or Chartered Accountants under the provisions of

the Central Excise Act, 1944, which has admittedly not been done in the present case. Therefore, we are unable to accept the findings of the Adjudicating authority in respect of costing of the final products on the basis of mere presumption and assumption. Further, with regard to the issue whether PVC resin of CP 172 SG grade can be used for manufacture of PVC compound for use in wires and cable industry, the Addl. Commissioner of Central Excise, Noida vide order dated 26.04.2011, in the case of N.C. Cables Ltd., has dropped the show cause proceedings for the reason that it is not established that CP-172SG resin cannot be used in the manufacture of wires and cables. It appears that no appeal has been filed by Revenue against such decision. Since this decision is in a case connected with the main appellant herein, Department cannot take a contrary stand in this case and argue otherwise. Thus, we do not find any merit in this stand of Revenue.

14. It is contended by the main appellant that the major Suppliers of raw materials are Reliance, IPCL, Phenolex, DCM, DCW, Chemplast etc. All the Co-Noticees before the Commissioner stated that they have supplied the goods to the main appellant. Eight parties out of twelve parties admitted in their statement that they have supplied the materials under the cover of Invoices and received the payment by Cheques. The parties at Serial No. 9,10 11 and 12 of the Annexures to the Show Cause Notice stated that in some cases they have

supplied Invoice but the said parties had not clarified the details of transaction to substantiate the veracity of their statement. In any event, the said parties had received the payment by cheque and during investigation did not deny the transaction with any material evidence.

15. The Adjudicating authority observed that the total production of PVC Compound / Master Batches and scrap as shown in the records and monthly returns cannot be possible on the basis of power consumption; thus, the main appellant diverted the inputs in the local market. It is noticed that on 30.07.2004 and on 14/15.02.2006, when the officers conducted the stock verification, there was no shortage in the stock of finished goods. The investigating officer did not find out any raw materials from the premises of the supplier or from the market. The Learned Counsel submitted that the gross purchase of the main appellant during the material period was 14,415.572 M.T and 5,000 Tempo and Track were required to dispatch the materials. There is no evidence of transportation of such goods, except some statements. The Learned Counsel submitted that the Adjudicating authority had overlooked the purchase of diesels during the material period. We find that there is no dispute that three generators, two of them were of 125 KVA, in running condition installed in their factory. There is no corroborative evidence of diversion of the raw materials and therefore, such stand of Revenue cannot be accepted.

16. The Learned Counsel for the main appellant submitted that during the relevant period, they had supplied PVC Compound/ Master Batch to 86 nos. of buyers, out of which 25 buyers are located in Delhi-I Commissionerate and the rest of the 61 buyers are in the jurisdiction of the other Commissionerates. In the present case, the purported Show Cause Notice was issued to the 25 nos. of buyers within the jurisdiction of Delhi-I Commissionerate. Similar proceedings were initiated to the other buyers outside Delhi-I Commissionerate. It is submitted that Show Cause Notice was issued to 16 buyers outside Delhi –I, out of which notice was dropped against 14 parties and the other cases are pending. No Show Cause Notice was issued against 45 customers outside Delhi-I. In context with availment of Cenvat Credit on the basis of invoices issued by the main appellant herein, the learned Counsel has referred to the Final Order No. 55931-55935/2016 dated 20.12.2016 of this Tribunal, in the case of M/s UKB Electronics Pvt. Ltd. & Ors. VS. CCE, Delhi-II, wherein the Adjudication Order was set aside, holding as under :-

> *"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."

17. We find that on the identical situation, this Tribunal already decided the case in respect of other customer, namely M/s Paramount Communication Ltd., located outside Delhi-I jurisdiction, where the main appellant issued the invoices. In that case, the Tribunal vide Final Order No. 58053/2017 dated 23.11.2017 has taken a consistent view that Cenvat Credit cannot be denied merely on the basis of statements, which are un-corroborative in nature. The learned A.R. for the Revenue in

his written submission filed before this Tribunal had quoted the statements of various persons to substantiate that the main appellant had issued the fake invoices. We find that the case of the Revenue is that the buyers made payment of the cheques and the main appellant returned cash after deducting 2-3% commission. The Investigating officer had not made any attempt to examine the Bank Account. No cash was recovered at any place, as the matter involved huge amount of cash. The Tribunal in the case of Aum Aluminium Private Limited Vs. Commissioner of Central Excise, Vadodara 2014 (311) ELT 354 (Tri.- Ahmd.) observed that un-accounted sales proceeds in substantial cash from factory or office premises or anywhere else in direct control of the assessee are not recovered and therefore, the charge of clandestine removal of goods cannot be sustained. There is no further investigation on the recovery of the cash as alleged. At this stage, the investigating officers 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."*

18. The Adjudicating authority strongly relied upon the statements of the Director of the main appellant. The Learned Counsels on behalf of the appellants pointed out that on 26.05.2006, the Director of the main appellant was arrested. There is a contradiction in the statements of the various persons prior to 26.05.2006 and after the said date. The Learned Counsel submitted that statements given by the various persons against the main appellant after 26.05.2006 under the threat of arrest. In any event, the demand of Cenvat Credit cannot be denied merely on the basis of un-corroborative statements. The Hon'ble Gujarat High Court in the case of Suntrek Aluminium Private Limited Vs. Commissioner of Central Excise, Rajkot – 2013 (288) ELT 500 (Guj,) had observed that the demand of duty cannot be confirmed merely on the basis of statement of Director of the assessee, which are not corroborating with any material evidences.

19. The Learned A.R. for the Revenue submitted that in some cases, the buyers had settled their case before the Settlement Commission, which may be taken as admission of the offence. The identical dispute was raised before the Larger Bench of the Tribunal in the case of Bosch Chesis Systems India Private Limited Vs. C.C. Gurgaon - 2008 (232) 622 (Tri-LB). The issue involved in that case was that whether filing of application under Section 32E of the Central Excise Act, 1944 before the Settlement Commission, would amount to admission of fraud, willful misstatement, suppression of facts etc., on the part of the assessee. The Larger Bench of the Tribunal, by following the decision of the Hon'ble Supreme Court in the case of Sir Sodhi Lal Sagar & General Mills Vs. C.I.T [1997 (31) ELT 325 (SC)] held that non-payment of duty could be bonafide and there may be reason for the assessee to opt for settlement and not contest the Show Cause Notice. The Larger Bench of the Tribunal held that mere filing of application before the Settlement Commission under Section 32E of the Act for waiver of interest and penalty and immune from prosecution may not necessarily be construed as admission of the allegation. The relevant portion of the said decision of the Larger Bench in the case of Bosch Chesis Systems India Private Limited (Supra) is extracted herein below:-

> "13. In the above view of the matter, Issue Nos. 2 and 3 are answered in the negative, that is, in favour of the assessee and against the Revenue, and it is held that the mere filing of application before Settlement Commission under Section 32E of

> the Act for waiver of interest, penalty and immunity from prosecution and *suo motu* payment of duty as per show cause notice may not necessarily *per se* construed as admission of the allegations in the show cause notice as regards the fraud, collusion etc. Inference in this regard may be drawn from the contents of the application, that is, pleadings of the applicant and finding of the Settlement Commission, if any. Issue No. 1 pertains to the merits of the case and parties generally agreed that the same may be decided by the Division Bench at the stage of final disposal of the appeal."

20. Therefore, we do not find any force in the submission of the Learned A.R. that some of the buyers have settled the case before the Settlement Commission and hence, the present demand should be upheld. We find that the appellant cleared the goods on payment of Central Excise duty and also paid VAT/CST. The entire transaction is duly recorded in the books of accounts which were duly audited. Such documents and records cannot be brushed aside merely on the basis of various statements of the transporter, some buyers etc., unless such statements are based on records. In the present case, we find that there is no verification of records maintained by the main appellant and the others. Thus, in our considered view, the denial of credit and imposition of penalties cannot be sustained. In a similar situation, since the Tribunal had already decided in favour of the buyer M/s Paramount Communication Ltd. (supra), situated outside the Delhi-I Commissionerate, we are of the considered opinion that the same treatment should be extended to the main appellant and others involved in these appeals.

21. In view of the above discussions and analysis, we do not find any merits in the impugned order. Accordingly, after

setting aside the same, the appeals filed by the appellants are allowed. We make it clear that the present Order would not be extended to the other person(s), who have already settled their cases before the Settlement Commission and otherwise.

[Pronounced in the open Court on___02.02.2018_]

(V. Padmanabhan)
MEMBER (TECHNICAL)

(S.K. MOHANTY)
MEMBER (JUDICIAL)

Sakshi