

**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL  
REGIONAL BENCH AT HYDERABAD  
Single Member Bench  
Court - I**

<u>Appeal No.</u>	<u>Appellant</u>	<u>Respondent</u>	<u>Orders-in-Appeal Nos.</u>
E/30708/2018	Arch Pharmalabs Ltd	CCT, Medchal - GST	HYD-EXCUS-MD-AP2-268-270- 17-18 dated 28.02.2018 passed by CGST & CE (Appeals-II), Hyderabad
E/30709/2018	Benzo Petro International Ltd		
E/30710/2018	Manoj Tejraj Jain		

**Appearance:**

Shri Prasannan S. Namboodiri, Advocate for the Appellant.

Shri V.R. Pavan Kumar, Superintendent/AR for the Respondent.

**Coram:**

Hon'ble Mr. M.V. RAVINDRAN, MEMBER (JUDICIAL)

Date of Hearing: 03.12.2018

Date of Decision: 06.12.2018

**FINAL ORDER No. A/31497-31499/2018**

**[Order per: M.V. Ravindran]**

1. These three appeals are directed against Orders-in-Appeal No. HYD-EXCUS-MD-AP2-268-270-17-18 dated 28.02.2018.

2. Relevant facts that arise, in brief are the main appellant Arch Pharma is a manufacturer of fine chemicals, availing CENVAT credit of duty paid on inputs, utilizing the same for discharge of duty liability on finished goods cleared. During the course of investigation of manufacturing unit M/s Benzo, officers of DCGEI noticed that Benzo manufacturing unit had put up a dealer and had passed on ineligible CENVAT credit to Benzo dealer and Benzo dealer has in turn passed on the CENVAT credit to main appellant by only issuing the invoices and materials were not supplied. It is the case in the show cause notice dated 30.12.2015 that main appellant during May, 2013 availed CENVAT credit of Rs.4,45,499/- without receipt of material and hence they issue show cause notice for reversing of the same along with

interest and also sought to impose penalties on individual who is the Director of main appellant and M/s Benzo Petro International Ltd for such activity. Appellants contested the show cause notice on merits and also on limitation. Appellant produced before the lower authorities the purchase orders placed by them, the consignment note issued by transporters i.e., Padmashri Road Lines, the goods receipt note and the material issued notes as also filing monthly returns filed with the authorities indicating the receipt of the material. It is also the case of the appellants before the adjudicating authority that they have received the material, manufactured the finished goods and removed the same on payment of duty which could not have been possible if the materials were not received. On limitation, was the case that they have informed the department about the receipt of the material, recorded the same and made payments to the dealer who had supplied the material. The adjudicating authority after following due process of law, confirmed the demands raised along with interest, imposed penalties on the individual and the dealer. Appeals preferred before the first appellate authority resulted in upholding of the Order-in-Original. Hence, these appeals.

3. Learned counsel appearing for all the three appellant after giving overall picture of the issue involved draws my attention to the facts of the case and more specifically the documents. It is his submission that the entire case of the revenue is dependent on the statements given by the individuals of the appellants and the director of the main appellant and dealers wherein it is stated that they have not received the materials but he has produced documents indicating the receipt of the materials and the consumption thereof. On limitation, it is his submission that they have always kept the department informed about the receipt of the material and

also to buttress his argument that they have received the raw material, he would state that they would not have manufactured and cleared the finished goods on payment of duty in the absence of any raw material.

4. Learned department representative, on the other hand, submits that there was a DGCEI enquiry which revealed that Benzo dealers had no facility or procured any materials or processed any materials but only issued Central Excise invoices clearing waste and useless materials through the dealer. He would rely upon the statement of the Executive Director of Benzo dealer, General Manager of Arch Pharma (main appellant) and Shri Manoj Jain (Director of the main appellant) wherein they have admitted that they have not received the material.

5. On careful consideration of the submission made by both sides, on merits, I find that the dealer had issued invoices on 1<sup>st</sup> May, 2013 and the said invoices are seen by me. In the said invoices the dealer has specifically mentioned the transporter as Padmashri Road Lines and vehicle registration number is also mentioned along with LR/ Consignment note No.70262 dated 01.05.2013. The said invoices are annexed at Page 95 & 96 of appeal memoranda. I perused the consignment note (truck copy) of the said LR annexed at Page 110 of the appeal memoranda. The said annexure does indicate the consignment note as number being 70262 dated 01.05.2013 and also indicates truck numbers which has been mentioned on the documents. It is seen further from the documents available on record that the appellant had shown the receipt of this material in the stock records maintained by them as inputs and the said materials were sampled for analysis. It is also seen that main appellant had indicated the receipt of the material in form RG-23 Part-I to the authorities during the relevant period. It is also seen from the records that main appellant while filing monthly

returns has shown the clearances of the finished goods manufactured out of goods received from the dealers. On this overwhelming evidences which are on record, the lower authorities have relied upon the statements of the individuals and has also on the Executive Director of Benzo dealers to hold against the appellant that they have availed ineligible CENVAT credit.

6. On specific query from the Bench, both sides agreed that the investigation did not take place at the end of the transporters, no statement was recorded of any individual from Padmashri Road Lines, and it is seen from the impugned orders that the adjudicating authority as well as the first appellate authority are not disputing the existence of such consignment note nor it is alleged that this consignment note is a fake. In the absence of anything to discredit consignment note of Padmashri Road Lines which carried the material from Vadodara to Hyderabad, it is difficult to accept the revenue's view point that the main appellant had availed CENVAT credit only on documents.

7. I find that my this view is fortified by the decision of the Tribunal in the case of Dhakad Metal Corporation [2015 (330) ELT 561]. This view is also further fortified by the judgment of the Tribunal in the case of GS Alloy Castings Ltd [2016 (331) ELT 310] wherein similar issue cropped up. I find that the Tribunal in the case of Chaudhary Steel Traders [2015 (329) ELT 934] on a similar issue has held that in the absence of any investigation made at the end of transporter, as to the transportation of the goods being incorrect, demands are not sustainable.

8. In view of the facts and circumstances in the case in hand, I find that the ratio of the above decisions would cover the issue in favour of the appellant herein. Accordingly, I hold that the demands are not sustainable

(5)

against the main appellant. Consequently, the interest liability and the penalty are set aside. Since, I have held on merits itself in favour of the main appellant consequential penalties imposed on other two appellants also are unwarranted and are set aside.

9. In sum, appeals are allowed and impugned orders are set aside.

(Pronounced in the Open Court on 06.12.2018)

**(M.V. RAVINDRAN)**  
**MEMBER (JUDICIAL)**

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