IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL,
EAST REGIONAL BENCH : KOLKATA

Ex.Appeal No.75753/18

Arising out of O/A No.105/Kol-V/2017 dated 27.11.2017 passed by Commr. (Appeals I) of CGST & Excise, Kolkata

M/s Kaizen Industries

...APPELLANT(S)

VERSUS

CGST & C.Excise, Howrah

RESPONDENT (S)

APPEARANCE

Shri Ved Prakash Sha, Consultant for the Appellant (s)
Shri S. Mukhopadhyay, Supdt. (A.R.) for the Revenue

CORAM:

SHRI P. K. CHOUDHARY, HON'BLE JUDICIAL MEMBER

DATE OF HEARING/DATE OF DECISION : 03. 09. 2018

ORDER NO.FO/76550/2018

Per Shri P. K. Choudhary :

This appeal has been filed by the Appellant against Order-in-Appeal No.105/Kol-V/2017 dated 27.11.2017 passed by Commr. (Appeals I) of CGST & C.Excise, Kolkata.

2. Briefly stated the facts of the case are that the show-cause notice dated 21.09.2011 was issued alleging that the appellants have taken Cenvat Credit irregularly on the inputs procured from M/s Sita Ram Castings, SIDCO Industrial Complex, Bari Brahmana, Jammu and utilized the credit towards payment of duty of Excise on their final products. Thus, they have contravened the provisions of Rule 4(1) of the of Cenvat Credit Rules,2004. Copper ingot weighing 15,136.51

kgs vide Invoice No.5 dated 18.09.2006 during the month of September, 2006, was sent to their job worker, M/s Bhawani Steel Pvt. Ltd., Delhi for conversion to wire rods/wire and subsequently another job worker, M/s Shree Balaji Company at Delhi for drawing the wire of the required diameter on job work basis. Subsequently, the partly processed inputs were brought to the appellant's factory in three consignments on 19.12.2006, 21.12.2006 and 14.02.2007 respectfully. It is the case of the Department that the appellant-assessee without having received the inputs in their factory, have availed the credit for payment of Central Excise duty on their final product.

3. The ld.Consultant appearing on behalf of the Appellant Company, submits that since the inputs were purchased from Jammu and the job worker was situated at Delhi, there was no occasion to bring the inputs to Kolkata i.e. the appellant's factory and then sent it back to Delhi to the various job workers for processing and accordingly, the input stands directly sent to the job worker and thereafter, after processing, the inputs were received by the Appellant Company. He further contends that this fact was declared to the Department and they were aware of this fact. He submits that the purchased inputs were sent directly to the job worker to avoid unnecessary time in the transport and also to avoid hefty transport cost since the appellant is a small scale industrial unit. It is his submission that the Cenvat Credit could not have been denied to the appellant as there was no dispute about the fact that the converted copper ingots were ultimately received in

the appellant's factory and were used in the manufacture of final product.

4. The ld.D.R. appearing on behalf of the Revenue, reiterates the orders of the lower authorities.

5. Heard both sides and perused the appeal records.

6. I find that the present issue is no more *res-integra* in view of the various decisions of the Hon'ble Supreme Court, the Hon'ble High Courts and the Tribunal. I also observe that the Co-ordinate Bench of the Tribunal in the case of AIR PAC Filters & Systems Pvt. Ltd. Vs. Commr. of Central Excise, Mumbai : 2015 (329) ELT 437 (Tri.-Mumbai), has held as under :

> ***"4.*** *On the other hand, Shri Sanjay Hasija, learned Superintendent (AR) appearing on behalf of the Revenue, reiterates the findings of the impugned order. He further submits that this fact is not under dispute that the input was not received by the appellant in their factory and the same was directly sent to the job worker. For availing the Cenvat credit, it is mandatory that the input should be received in the factory of the manufacturer. Therefore, under the admitted fact, the Cenvat credit cannot be allowed to the appellant. He prays for dismissal of the appeal.*
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> ***5.*** *I have carefully considered the submissions made by both the sides. I find that when the final product of the appellant was decided to be manufactured on job work basis by the job worker, the input need not come to the factory of the appellant and in any case it has to be supplied to the job worker. There is no dispute that the*

input used in the manufacture of final product by the job worker was purchased by the appellant. The final product manufactured on behalf of the appellant and the said goods were exported by the appellant. Under this undisputed fact, I am very clear in my mind that the appellant is legally entitled for the Cenvat credit. The movement of input for job work is governed by Rule 4(5)(a) of the Cenvat Credit Rules, 2002. Under this provision, no statutory procedure was prescribed. However, on the basis of documents otherwise available, it can be satisfied that the input belonging to the appellant was sent for job work and the final product was exported by the appellant, in my considered view, no further procedure is required to be followed.

6. *As regards direct supply of input from the supplier to the job worker, this Tribunal in various judgments held that even if the input is supplied directly from supplier to the job worker, the Cenvat credit cannot be denied."*

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

(Dictated and pronounced in the open court.)

Sd/

(P. K. CHOUDHARY)
MEMBER (JUDICIAL)

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