IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, KOLKATA
EASTERN ZONAL BENCH: KOLKATA

E/S-85/2008
And
Appeal No. E/80/2008

(Arising out of Order-in-Original No. 65/Commr/Bol/07 dated 27/09/2007 passed by the Commissioner of Central Excise, Bolpur.)

M/s. Manaksia Ltd. Applicant (s)/Appellant (s)
Vs.
CCE-Bolpur
Respondent (s)

Appearance:
Dr. Samir Chakraborty, Sr. Advocate & Shri Abhijit Biswas, Advocate for the Appellant (s)
Shri D. Haldar, A. C. (A.R.) for the Revenue

CORAM:
HON'BLE SHRI P. K. CHOUDHARY, MEMBER (JUDICIAL)
HON'BLE SHRI BIJAY KUMAR, MEMBER (TECHNICAL)

Date of Hearing: -10.07.2018
ORDER NO. MO/76078/2018 & FO/77189/2018

PER SHRI P. K. CHOUDHARY

The instant appeal has been preferred by Manaksia Limited, formerly known as Hindustan Seals Limited, against Order No. 65/Commr/Bol/07 dated September 27, 2007, passed by the Commissioner of Central Excise, Bolpur Commissionerate, disallowing Cenvat credit of Rs. 2,98,06,375/- availed and utilised by the appellant during the period 2003-04 and confirming the demand of the same under Rule 12 of the Cenvat Credit Rules, 2002/Rule 14 of the Cenvat Credit Rules, 2004, read with Section 11A(2) of the Central Excise Act, 1944, along with interest thereon and imposing penalty of an equivalent amount upon the appellant under Rule 13 of the Cenvat Credit Rules, 2002/Rule 15 of the Cenvat Credit Rules, 2004, read with Section 11AC of the Central Excise Act.

2. The facts, in brief, are that during the investigation conducted by the DGCEI authorities in respect of the allegation of evasion of Central Excise Duty by one Ishaan Technologies Private Limited, Byrnihat, Meghalaya, it was observed that Ishaan Tech. Pvt. Ltd. had misused Notification No. 32/99-CE dated 8.7.1999 in not actually manufacturing any excisable goods in its factory premises, situated in the specified area under the said Notification. Further, by resorting to gross over-invoicing of the products, claimed to have been manufactured and cleared from its factory by misdeclaration and misrepresentation of facts, had passed irregular cenvat credit to various customers, namely, the various units of Manaksia Limited and its sister companies. A show cause notice dated May 1, 2006 was issued alleging that it had shown to have purchased machineries, detailed in Annexure W-5 of the show cause notice, from Ishaan Technologies Private Limited which were not actually manufactured by Ishaan Technologies Private Limited, with an ulterior motive of availing wrong and irregular cenvat credit amounting to Rs.2,98,06,375/-. It was further alleged that inasmuch as the goods had not been manufactured and cleared from the factory of Ishaan Technologies Private Limited, the amount paid as duty of excise without undertaking any manufacturing activity and by exaggerating the assessable value by Ishaan Tech Pvt. Ltd. cannot be construed as Excise Duty leviable under the Central Excise Act, as envisaged in Rule 3 of the Cenvat Credit Rules and hence, the appellant was not eligible for availing Cenvat credit thereof and therefore, the amount of credit of Rs.2,98,06,375/- was required to be demanded and recovered from

the appellant along with interest and penalty imposed in terms of specified provisions of Cenvat Credit Rules, 2002, read with the provisions of the Central Excise Act. The allegations and demand made and penalty proposed in the show cause notice have been confirmed by the impugned order of the Commissioner

3. It is contended on behalf of the appellant that similar show cause notice was issued to the appellant's unit in Kutch, Gujarat, wherein similar allegations, based on same investigation and evidences, were made in respect of 10 MW Alternator supplied by Ishaan Technologies Private Limited to the said unit of the appellant. The said show cause notice and the demand made therein was confirmed by a final order dated March 30, 2007 of the Commissioner of Central Excise, Rajkot. However, the appeal of the assessee against the said adjudication order was allowed by Ahmedabad Bench of the Tribunal by an order dated 24th June, 2008, reported in ***2008 (232) ELT 497 (Tri-Ahmd) [Manaksia Limited Vs. Commissioner of Central Excise, Rajkot]***. The appeal of the Revenue against the said order dated June 24, 2008 of the Tribunal was dismissed by the Hon'ble Gujarat High Court by an order dated April 21, 2010 passed in ***Tax Appeal No. 24 of 2009 (Commissioner of Central Excise and Customs Vs. Manaksia Limited)***, reported in ***2010-TIOL/852-HC-AHM-CX.*** The said order of the Hon'ble Gujarat High Court has become final as no appeal was preferred against the same by the Revenue. It is submitted that the instant case is fully covered

by the said decision of the Hon'ble Gujarat High Court and following the same, the impugned order is liable to be set aside.

4. Ld. DR reiterates the findings of the Commissioner in the impugned order.

5. Heard both sides and perused the appeal records.

6. From a detailed perusal of the show cause notice, we find justification in the contention of the appellant that the instant proceeding is a consequence of investigation initiated by DGCEI authorities against Ishaan Technologies Private Limited, Byrnihat, Meghalaya and simultaneously against all the units of Manaksia Limited, including the appellant and its associates/sister concerns and that on the basis of the evidences on record, similar show cause notice was issued to the Kutch unit of Manaksia Ltd. at Gujarat alleging wrong availment of cenvat credit.

7. In the order passed by the Ahmedabad Bench of the Tribunal in the case of ***Manaksia Limited Vs. Commissioner of Central Excise, Rajkot (supra)*** the relevant facts, in brief, set out therein, are as follows:-

(a) M/s Manaksia Ltd., the main appellant placed an order with M/s Ishaan Technologies P. Ltd. (ITPL, for short) for 10 MW Slow speed alternator with AVRS and Voltage Control System.

(b) M/s Manaksia Ltd. received the said system under Invoice No.2 dt.12.4.03 issued by ITPL, showing the value of the consignment as Rs.5,50,00,000/- and the amount of duty paid as Rs.88 lakhs and based on the said document took the cenvat credit of the same amount.

(c) According to the investigations by the department, the alternator was not manufactured by ITPL and therefore, there was no clearance of the aforesaid capital goods under the invoice issued by ITPL based on which credit of Rs.88 lakhs was taken.

(d) Commissioner, accordingly, confiscated the goods and allowed redemption of the same on payment of fine of Rs.2 crores; he disallowed credit of Rs.88 lakhs and ordered recovery of interest on the said amount; imposed penalty of Rs.88 lakhs on M/s Manaksia Ltd.; he also imposed penalty of Rs.10 lakhs on Shri Rajib Lalwani, Vice President of M/s Manaksia Ltd. and Rs 10 lakhs each on ITPL and its director Shri Kiran Bhagwat.

8. On appeal to the Tribunal, the appeal of the assessee was allowed and the order dated March 30, 2007 of the Commissioner of Central Excise, Rajkot was set aside with consequential relief to the appellant.

9. This decision of the Tribunal was upheld by the Hon'ble Gujarat High Court and the appeal of the Revenue against the same was

dismissed by a judgment dated April 21, 2010. The Hon'ble Gujarat High Court held that:

> *"Sub-rule (1) of rule 7 of the CENVAT Credit Rules, 2002, insofar as the same is relevant for the present purpose, provides that the CENVAT credit shall be taken by the manufacturer on the basis of any of the following documents, namely, an invoice issued by a manufacturer for clearance of capital goods from his factory or his depot or from the premises of the consignment agent of the said manufacturer or from any other premises from where the goods are sold by or on behalf of the said manufacture in terms of the provisions of Central Excise Rules, 2002. In the facts of the present case, the Tribunal has found that it is an undisputed position that the respondent Company had received the alternator which was consigned; that no evidence had been produced that the supplier had not paid the duty; that receipt of goods was also not disputed. According to the Tribunal, as long as the amount of duty as indicated in the duty paying document had been paid and as long as the inputs/capital goods which are indicated in the duty paying documents are received by the assessee, the CENVAT credit cannot be denied. Besides, it is not even the Department's case that the assessee has not received the goods accompanied by duty paid documents or that the respondent assessee has*

> *availed of higher credit than the duty actually paid, as reflected by the duty paying documents. In the circumstances, the Tribunal has rightly held that even if the alternator may have been manufactured at Delhi as contended by the revenue, as long as the duty liability of such alternator had been discharged by the supplier, entitlement of the respondent company to avail of CENVAT credit in respect of the duty paid on the capital goods in question cannot be disputed."*

10. In the instant case also there is no dispute that the subject machineries were received at the appellant's factory at Barjora, Bankura, West Bengal. It is also not disputed that the duty on the said machineries stands paid by Ishaan Technologies Private Limited and that the goods were received under the cover of Central Excise invoices issued by the said company. It is also not the case of the Revenue that the appellant had availed higher credit than the duty actually paid as reflected in the duty paying documents. In such circumstances, as held by the Hon'ble Gujarat High Court, the requirement of Rule 7(1) of the Cenvat Credit Rules, 2002 stands duly satisfied

11. In the premises, following the decision of the Hon'ble Gujarat High Court in the case of ***Commissioner of Excise and Customs Vs. Manaksia Limited*** (supra), we hold that the appellant's entitlement to avail Cenvat credit in respect of the duty paid on the subject goods is legal and valid and cannot be denied.

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12. We, therefore, set aside the impugned order and allow the appeal with consequential relief to the appellant. Stay petition disposed.

(Operative part of the order already pronounced in Open Court)

Sd/-	Sd/-
(BIJAY KUMAR)	**(P. K. CHOUDHARY)**
MEMBER (TECHNICAL)	**MEMBER (JUDICIAL)**

Pooja