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

Ex.Appeal No.75779/18

Arising out of Order-in-Appeal No.340/HWH/CE/2017-18 dated 29.11.2017 passed Commr. of CGST & Central Excise (Appeals), Kolkata.

M/s Victory Iron Works Ltd.

...APPELLANT(S)

VERSUS

CGST & Excise, Howrah

RESPONDENT (S)

APPEARANCE

Shri N. K. Chowdhury, Advocate for the Appellant (s)
Shri H.S.Abedin, Asstt.Commr. (A.R.) for the Revenue

CORAM:

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

DATE OF HEARING & PRONOUNCEMENT : 07. 02. 2019

ORDER NO.FO/75187/2019

Per Shri P. K. Choudhary :

The instant appeal is against the Order-in-Appeal No.340/HWH/CE/2017-18 dated 29.11.2017 confirming the denial of credit to the extent of Rs.29,060/- and imposition of equal amount of penalty.

2. The relevant facts are that the appellant had taken credit on the basis of Invoice Nos.3424 dated 08.09.2007 and 3492 dated 13.09.2007 (Pages 41 & 42 of the Appeal Paper Book) of M/s Hercules Hoist Limited. They purchased two consignments from M/s Elequip Tools Pvt. Ltd. under cover of duty paid Central Excise Invoices. They

availed credit on the inputs on the basis of invoices of M/s Hercules Hoist Limited. It has been alleged that the appellant purchased the goods from M/s Elequip Tools Pvt. Ltd., who purchased the goods from the manufacturer of goods i.e. M/s Hercules Hoist Limited. The appellants have availed the credit on the basis of invoice of the manufacturer and the goods were directly dispatched to their factory by the manufacturer. The name of M/s Elequip Tools Pvt. Ltd. was printed both as buyer and consignee inadvertently and the mistake was rectified by making corrections by Authorized Signatory of M/s Hercules Hoist Limited showing the appellant's name as "consignee".

3. The ld.Advocate appearing on behalf of the appellant, submits that the corrections were made under proper signature and seal and this is a case of transit sale and such transactions are permissible in law. Accordingly, he submits that the credit should not be denied to the appellant. The ld.Advocate further contends that the Adjudicating Authority objected to the availability of the credit on the ground that M/s Elequip Tools Pvt. Ltd. was not a registered dealer both as a buyer as well as consignee and the benefit of credit has been extended to the appellant as a consignee and end user by altering their names. He further argues that there is no occasion for imposition of penalty.

4. The ld.D.R. appearing on behalf of the Revenue, contends that the credit has been availed where the appellant's name has been shown as consignee by overwriting and M/s Elequip Tools Pvt. Ltd. has been shown as buyer of the goods and payments have been made by the appellant to M/s Elequip Tools Pvt. Ltd. and not to the

manufacturer, M/s Hercules Hoist Limited. He further submitted that M/s Elequip Tools Pvt. Ltd. is not a registered dealer and cannot pass on the duty benefit to the appellant.

5. Heard both sides and perused the appeal records.

6. I find that the appellants have purchased the goods from M/s Elequip Tools Pvt. Ltd. and made payment to them. There was some mistake in mentioning the name of the consignee in the manufacturer's invoices, wherein the name of the appellant, M/s Victory Iron Works Ltd. was required to be mentioned as consignee, but inadvertently, the name of the buyer, M/s Elequip Tools Pvt. Ltd. was mentioned both as a buyer and the consignee of the goods. The particulars of duty payments on the goods are covered under the impugned invoices and therefore, the credit shall be admissible on the impugned invoices. In the said invoices, both the dealer's name as well as the assessee's name are mentioned and since the goods were purchased through the dealer and directly received from the manufacturer, there is no occasion to deny the credit on the facts of the case as discussed above.

7. In view of the above discussions, I find that the impugned orders cannot be sustained and are, therefore, set aside. The appeal filed by the appellant is allowed with consequential benefit.

(Dictated and pronounced in the open Court)

Sd/

(P. K. CHOUDHARY)
MEMBER (JUDICIAL)

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