

**IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE
TRIBUNAL, KOLKATA**

EASTERN ZONAL BENCH: KOLKATA

Appeal No. E/480-481/2009

**(Arising out of Orders-in-Original No.
17/COMMISSIONER/CE/KOL-V/ADJN/09 dated 20/03/2009 and
19/COMMISSIONER/CE/KOL-V/ADJN/09 dated 25/03/2009
passed by Commissioner of Central Excise, Kolkata-V.)**

Commissioner of Central Excise, Kolkata-V

Appellant (s)

Vs.

M/s. Creative Products Pvt. Ltd.

Respondent (s)

Appearance

Shri H. S. Abedin, A. C. (A. R.) for the Revenue

Shri T. Chandran Nair, Advocate for the Respondent

CORAM:

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

HON'BLE SHRI V. PADMANABHAN, MEMBER (TECHNICAL)

Date of Hearing-14.12.2018

ORDER NO. FO/77267-77268/2018

PER CORAM

The appellant was engaged in manufacturing of small packs of detergent from the Detergent Powder received in bulk from M/s. Hindustan Lever Ltd. (M/s. HLL). At the time of such stock transfer, they were taking the credit of duty paid on the bulk detergent powder by M/s. HLL and clearing the small packs of detergent powder on payment of duty. During the periods April 2001 to March 2002 and June 2002 to March 2003 M/s. HLL paid differential duty in a case of under valuation detected during audit. They issued supplementary invoices for the differential duty paid and on the basis of such supplementary invoices, the appellant availed Cenvat Credit. The department took the view that the credits availed on the basis of such supplementary invoices were irregular, since these were issued in respect of payment of tax in an

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under valuation case. Accordingly, Show Cause Notices were issued proposing to reverse the Cenvat Credit availed on the basis of supplementary invoices. 2. The Show Cause Notices were finalized by the Adjudicating Authority by issue of the impugned orders dt. 20/03/2009 as well as 25/03/2009 in which, he dropped the demands raised by the Show Cause Notices. Revenue has challenged these orders by filing appeals. These appeals are disposed of through this common order.

3. Heard Shri H. S. Abedin, Ld. AR and Shri T. Chandran Nair, Ld. Advocate on behalf of the respondent.

4. After hearing both sides and perusal of record, it is seen that the limited point of dispute is whether the respondent will be entitled to Cenvat Credit on the basis of the Supplementary invoices issued by M/s. HLL at the time of payment of differential duty. The Show Cause Notices have been issued proposing to demand such credits in terms of Rule 7 (1)(b) of the Cenvat Credits, 2002. The Show Cause Notice mentions that the differential duty became payable in the hands of M/s. HLL in view of the under valuation detected by the department.

5. The Adjudicating Authority has made a distinction between the Cenvat Credit availed on the basis of supplementary invoices issued in the case of stock transfer and such invoices issued in respect of sale of inputs, otherwise. He was of the view that the transfer of goods from M/s. HLL to the Respondent was in the nature of stock transfer and hence, will be entitled to the Cenvat Credit in the hands of the Respondent.

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6. The respondent has placed reliance on several case laws which have also been cited by the Adjudicating Authority including the following:-

- (i) Karnataka Soaps & Detergents-2005 (192) ELT 892 (T)
- (ii) -do- Upheld by Karnataka HC-2010 (258) ELT 62 (Kar)
- (iii) Jai Raj Ispat Ltd.-2007 (217) ELT 272 (T)
- (iv) -do- Upheld by AP High Court-2009 (245) ELT 118 (AP)
- (V) Bosch Chassis Systems India-2017 (358) ELT 255 (T)
- (v) Jindal Steel & Power Ltd.-2017 (355) ELT 568 (T)
- (Vi) United Phosphorus Ltd. 2014 (313) ELT 418 (T)

7. We have perused the said case laws. In the Tribunal's decision in the case of Karnataka Soaps and Detergents, Ltd. (Supra), the Tribunal has taken the view that the ban on taking credit of supplementary invoices operate only in the case of sale. In the case of Stock Transfer, prohibition under Rule 7 (1)(b) of Cenvat Credit Rules held as not applicable. The observations of the Tribunal are reproduced below:-

"11. *The relevant portion of Rule 7(1)(b) is reproduced below :*

"Rule 7. Documents and accounts. - (1) *The Cenvat credit shall be taken by the manufacturer on the basis of any of the following documents, namely :-*

(a) *****

(b) *a supplementary invoice, issued by a manufacturer or importer of inputs or capital goods in terms of the provisions of Central Excise Rules, 2002 from his factory or from his depot or from the premises of*

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the consignment agent of the said manufacturer or importer or from any other premises from where the goods are sold by, or on behalf of the said manufacturer or importer, in case additional amount of excise duties or additional duty of customs leviable under Section 3 of the Customs Tariff Act, has been paid, except where the additional amount of duty became recoverable from the manufacturer or importer of inputs or capital goods on account of any non-levy or short-levy by reason of fraud, collusion or any wilful misstatement or suppression of facts or contravention of any provisions of the Act or of the Customs Act, 1962 or the rules made thereunder with intent to evade payment of duty."

(emphasis supplied)

A very careful reading of the above rules shows that the bar for availment of credit on supplementary invoices would operate only when the additional amount of duty becomes recoverable from the manufacturer on account of non-levy or short levy by reason of fraud, collusion or any wilful misstatement or suppression of facts etc. Further, the prohibition to avail credit on supplementary invoices will operate only in the case of sale. In other words the receiver of the input should have purchased the goods from the manufacturer who had to pay the additional amount of duty after detection of suppression of facts, fraud, etc., on his part. Therefore, when there is simply a stock transfer the prohibition under Rule 7(1)(b) will not be applicable. In other words, when there are two units A and B, and if goods are stock transferred from unit A to unit B and even if the additional amount of duty becomes recoverable from A on account of fraud, suppression of facts, etc., the unit B can take credit. The case laws relied on by the learned advocate are squarely applicable. We are in agreement with the above contentions of the appellant that Rule 7(1)(b) of Cenvat credit rules cannot debar availment of Cenvat credit at Bangalore factory for the simple reason that the transaction between the two factories is not one of sale. It should also be borne in mind that both the factories belong to the Government of Karnataka. Although the irregularity committed in Mysore resulted in Revenue loss to the Mysore Commissionerate, looking into the totality of the circumstances, there was no revenue loss to the exchequer at all. This fact has been recorded by both the Adjudicating authorities. Whatever duty is paid at Mysore on Sandalwood oil, the same is taken as Cenvat credit at Bangalore. The duty on the finished products namely, toilet soaps is discharged under Section 4A on the basis of MRP. Since the value of soap takes into account the escalated cost of the sandalwood oil there cannot be any short payment of duty on the toilet soaps at Bangalore. In effect, the Government did not suffer any loss. In view of the above reasons there is absolutely no justification to deny Cenvat credit taken by Bangalore factory based on supplementary invoices issued by Mysore factory. Hence, the OIO passed by Commissioner of Central Excise Bangalore, has no merits. The same is set aside. Hence, we allow the appeal E/277/05."

8. The Tribunal's decision in the case has also been upheld by the Hon'ble Karnataka High Court reported as 2010(258) ELT 62

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(Karnataka). We find that similar views have been expressed in the other decisions.

9. By following the decisions cited above, we find no infirmity in the orders passed by the Lower Authority. The same are upheld and the appeals filed by Revenue are rejected.

(Dictated and pronounced in the open court.)

Sd/-
(P. K. CHOUDHARY)
MEMBER (JUDICIAL)

Sd/-
(V. PADMANABHAN)
MEMBER (TECHNICAL)

Pooja