

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

Ex. Appeal No.78774 of 2018

Arising out of O/A No.162/HWH/XAP-10/2017-18 dated 21.05.2018 passed by Commr. of CGST & Central Excise (Appeals II), Kolkata North

M/s Enviro Serene

Bangihati, Delhi Road,
Mallick Para,
Serampore,
Dist.-Hooghly,
Pin -712203

APPELLANT

VERSUS

Commr. of CGST & Central Excise, Howrah

Howrah Commissionerate,
Customs House,
15/1 Strand Road,
Kolkata-700001.

RESPONDENT

APPEARANCE

Shri Netai Sarkar, Consultant for the Appellant
Shri S.S.Chattopadhyay, Authorized Representative for the Respondent

CORAM:

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

DATE OF HEARING/DATE OF DECISION : 27. 12. 2018

FINAL ORDER NO.77337/2018

Per Shri P. K. Choudhary :

The present appeal is listed for admission.

2. After hearing both sides and notwithstanding the amount involved in this case being below the threshold of Rs.2.00 lakhs, the appellant intends to contest the issue on merit, which is admitted.
3. With the consent of both sides, the appeal itself is taken up for hearing.

4. Briefly stated the facts of the case are that the appellant is an SSI Unit and engaged in the business of manufacturing parts of industrial pollution control equipment falling under Chapter 84 of Central Excise Tariff Act, 1985. Though the turnover of the appellant never crossed Rs.150 lakhs in any of the last five years (the period of dispute being April, 2011 to June, 2011) , but still it got itself registered with the Central Excise Department as many of its customer, being big organization and having ISO accreditation, insisted in procuring materials only from Central Excise registered vendors. It is the case of the appellant that being tiny organization, they were unable to procure the inputs directly from the manufacturer, like SAIL, TISCO etc.. It had to depend on dealers for such procurement. In the present case, inputs were received in the factory under the cover of a duty paying documents issued by second stage dealer and an intermediary, namely, M/s Ashis Enterprise arranged for such procurement. Thus, the transaction becomes a sale-in-transit. But the fact remained that the goods were received in the factory under the cover of duty paying documents issued by second stage dealer, namely, M/s Roshanlal Bhagirathmal and the name of the appellant has been recorded as "consignee". In the monthly ER-1 Return for the month of April, 2011 and June, 2011, the cenvat credit taken on such inputs, have been shown. Show-cause notice dated 18.03.2016 was issued alleging that the appellant have availed cenvat credit of Rs.56,868/-, purchased through un-registered dealer, which do not qualify as valid documents as required under Rule 9 (1) of the said Rules and credit of duty paid

as shown on such documents, is not available as per Rule 3 (1) *ibid*. The Adjudicating Authority disallowed the cenvat credit and ordered for recovery along with interest and imposed a penalty of an equal amount in terms of Rule 15 (2) of Cenvat Credit Rules, 2004 read with Section 11AC of the Central Excise Act, 1944. On appeal, the order-in-original was upheld and the appeal was rejected. Being aggrieved, the appellant assessee is in appeal before the Tribunal.

4. Heard both sides and perused the appeal records.

5. I find that the issue is no more *res integra* in view of the decision of the Tribunal in the case of *Kunststoff Polymers Ltd. Vs. CCEx., Bhopal* reported in 2009 (247) ELT 546 (Tri.-Del.). In the above case, the Tribunal allowed the appeal filed by the assessee. For better appreciation, Paras 4 & 5 of the aforesaid order, are reproduced below:

"4. We have carefully considered the submissions from both the sides and have perused the records. There is no dispute about the fact that the goods have been procured by the appellant through M/s. Sumitomo Chemicals India Pvt. Ltd. However, from the records, it is seen that M/s. Sumitomo Chemicals India Pvt. Ltd. had placed the order for the goods with M/s. SC Enviro Agro India Pvt. Ltd., a second stage dealer who supplied the goods directly under their invoices to the appellant, mentioning the appellant's name as the consignee while at the same time mentioning M/s. Sumitomo Chemicals India Pvt. Ltd. as the customer. It is on this basis that Cenvat credit has been denied to the Appellant in respect of these invoices.

5. As per Rule 7(1) of the Cenvat Credit Rules, 2002, the invoices issued by a first stage dealer or a second stage dealer are valid documents for taking Cenvat credit. In this case, there is no dispute about the fact that M/s. SC Enviro Agro India Pvt. Ltd., who had issued the invoices and on the basis of which the Cenvat credit was taken by the appellant, are a second stage dealer. We find that Tribunal in the case of *Malwa Cotton Spg. Mills Ltd. v. CCE, Chandigarh (supra)*, relying upon the Board Circular No. 96/7/95-CX dated 13-2-95 has held that "mere mention of the words 'on account of the dealer' on the invoices or the name of the dealer on the invoice, in itself, would not make the invoices ineligible documents for availing Modvat credit", so far as the goods have been directly received in the user's premises. Similar view has been taken by the Tribunal in the case of *Prakash Cotton Mills Ltd. v. CCE, Bombay (supra)*, wherein the Tribunal held that in a situation where the inputs were received from a manufacturer I but through a dealer, the Cenvat credit cannot be denied so long as the co-relation between goods received by the user manufacturer from the dealer under the dealer's invoice can be established with the goods received by the dealer from the manufacturer. This judgment of the Tribunal has been followed in the cases of *Beepee Coatings Ltd. v. CCE, Vadodara* reported in [1997 \(92\) E.L.T. 223](#) (Tri.-Bom.) and *Ashok Leyland Ltd. v. CCE, Chennai* reported in [2003 \(161\) E.L.T. 710](#) (Tri.-Chennai). In this case it is not the case of the Department that the goods were not received directly by the appellant from a second stage dealer M/s. SC Enviro Agro India Pvt. Ltd. In view of these circumstances, just because the invoices issued by M/s. SC Enviro Agro India Pvt. Ltd. mention M/s. Sumitomo Chemicals India Pvt. Ltd. as the customer, while at the same time mentioning the appellant as the consignee, will not become invalid document for taking Cenvat credit, we therefore, hold

that the impugned order is not sustainable. The same is set aside and the appeal is allowed."

6. I find that the facts of the present case are squarely covered by the Tribunal's decision in the case of Kunststoff Polymers Ltd. (supra). In the present case, there is no dispute that the goods were directly received by the appellant from the second stage dealer, namely, M/s Roshanlal Bhagirathmal and the invoices issued by M/s Roshanlal Bhagirathmal mentioned M/s Ashis Enterprise as the buyers/customers, while at the same time, the name of the appellant is mentioned as "consignee". These documents cannot be rendered invalid for taking cenvat credit.

7. In view of the aforesaid decision of the Tribunal and the discussions made hereinabove, it is my considered view that the impugned order cannot be sustained and accordingly, the same are set aside.

8. The appeal filed by the appellant is allowed with consequential benefit, if any.

(Operative part of the order was pronounced in the open Court)

Sd/

(P. K. CHOUDHARY)
MEMBER (JUDICIAL)

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