

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

REGIONAL BENCH - COURT NO.2

Excise Appeal No.76734 of 2019

(Arising out of Order-in-Appeal No.60/KOL-SOUTH/2019 dated 29.04.2019 passed by Commissioner of CGST & CX, Kolkata Appeal-I Commissionerate, Kolkata.)

M/s. Devcon Systems & Projects Private Limited

(Piyali Town, Phultala, 24 Parganas (South), West Bengal-743387.)

...Appellant

VERSUS

Commissioner of CGST & CX, Kolkata South Commissionerate

.....Respondent

(GST Bhawan, 180, Shantipally, Rajdanga Main Road,
Kolkata, West Bengal-700107.)

APPEARANCE

Shri Ankit Kanodia, Chartered Accountant for the Appellant (s)

Shri K.Choudhury, Superintendent (Authorized Representative) for the
Respondent (s)

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

FINAL ORDER NO. 75563 / 2020

DATE OF HEARING : 23 September 2020

DATE OF DECISION : 09 November 2020

P.K.CHOUDHARY :

The facts of the case in brief are that the appellant is engaged in the manufacture of Pully, Belt Conveyor, parts and components of Conveyor System classifiable under Central Excise Tariff Sub-Heading 8483 5010, 8431 1010, and 8428 9090. Show cause notice dated 18.04.2017 was issued alleging irregular availment of Cenvat credit during the period 2013-14 against invoices issued by M/s.Roshanlal Bhagirathmal, a registered dealer. It is alleged in the show cause notice that the appellant assessee did not purchase the inputs from the said dealer. It is the case of the department that the said inputs as claimed to have been received by the appellant assessee in their factory premises on the strength of invoices issued by M/s.Roshanlal

Bhagirathmal are not the eligible inputs for the purpose of taking credit in terms of Cenvat Credit Rules, 2004 and Central Excise Rules, 2002, as the same were not purchased from the said dealer. The adjudicating authority disallowed the Cenvat credit and confirmed the demand along with applicable interest as also imposed penalty as per the provisions of Rule 15(2) of Cenvat Credit Rules, 2004 read with section 11AC of the Central Excise Act, 1944. On appeal, the lower appellate authority upheld the adjudication order and rejected the appeal. Hence the present appeal before the Tribunal.

2. The learned Consultant Shri Ankit Kanodia, Chartered Accountant, appearing on behalf of the appellant, submits that the Appellant has availed Cenvat credit on invoices issued by manufacturers wherein the name of the Appellant has been mentioned as consignee and thus having regard to Circular No. 1003/10/2015-CX dated 05.05.2015 and Circular No. 218/52/96-CX dated 04.06.1996, the Appellant is eligible for the said credit. He further stated that based on the above, the vendor, M/s. Ashish Enterprises was not required to take registration under the Central Excise Act. The vendor merely provided transit sale for the Appellant. The invoice issued by the manufacturer/first stage dealers contained the details of the Appellant as a consignee. Thus, all the conditions for availment of Cenvat credit was fulfilled by the Appellant and there is no question of any recovery to be made in this regard. In support of his arguments, he relied on the following decisions of the Tribunal :-

- (i) **Hydro Electro Machinery versus Commissioner of C. Ex., Mumbai – III [2017 (345) E.L.T. 314 (Tri.-Mumbai)]**
- (ii) **Alloy Tech versus Commr. Of C. Ex. (Appeals-I), Bangalore [2015(317) E.L.T. 168 (Tri.-Bang.)],**

3. He further argued that there is no dispute in the show cause notice that the Appellant has not received the captioned inputs in question and that the transactions were merely paper transactions. Hence, when the receipt and use of inputs are not disputed, the

question of not allowing the Cenvat Credit on the ground that the invoices were not issued by a registered dealer cannot be sustained. He also referred to the following decisions : -

- (a) **M/s PUSHKAR TECHNO PVT LTD Vs COMMISSIONER OF CENTRAL EXCISE AND SERVICE TAX, JAMSHEDPUR 2018-TIOL-2730-CESTAT-KOL.**
- (b) **COMMR. OF C. EX., AHMEDABAD-II Versus TRANSFORMERS & RECTIFIERS (INDIA) LTD. 2012 (281) E.L.T. 670 (Guj.)**
- (c) **ECHJAY FORGINGS PVT LTD Vs COMMISSIONER OF CENTRAL EXCISE, MUMBAI-III 2015-TIOL-780-CESTAT-MUM**

He further submits that there was no case for issuance of show-cause as there was no suppression on the part of the appellant. In support of his contention, he relied upon various decisions of the Tribunal.

4. The learned Authorized Representative appearing on behalf of the Revenue, justified the impugned order.
5. Heard both sides and perused the appeal records.
6. I find that the issue involved in this appeal is no more *res-integra* in view of the clarification issued by the CBIC vide Circular No. 1003/10/2015-CX dated 05.05.2015 issued for transit sale through dealer, wherein it was clarified that –

“(iii) Where a un-registered dealer negotiates sale of an entire consignment from a manufacturer or a registered importer and orders direct transport of goods to the consignee, credit can be availed by the consignee on the basis of invoice issued by the manufacturer or the registered importer. As the dealer is not registered, there is no question of issuing any Cenvatable invoice by him. Such dealers as in the past can continue to be un-registered.”

7. From the above it is unambiguously clear that if the invoice issued by the manufacturer contains the details of the Appellant as consignee, they are entitled to Cenvat credit even if the buyer is

unregistered. The Tribunal in **Hydro Electro Machinery (supra)** has observed as below-

"4. On careful consideration of submissions made by both sides, I find that invoices on which Cenvat credit was availed were admittedly issued by second stage dealer and the name of the appellant is appearing on the said invoices as a 'consignee' of the goods. As per the invoices, buyer of the goods was the agent of the second stage dealer who supplied the inputs. Even if the purchase of the same inputs were made by the appellant from an agent of the second stage dealer but duty paying invoices is consigned to the appellant, credit is legally admissible to the appellant. This position has been clarified by the Board Circular way back in 1995 vide Circular No. 96/7/95-CX, dated 13-2-1995. Relevant para of the circular is reproduced below :1. A registered person places an order on a manufacturer for supply and delivery of goods directly to a consumer and the goods are accordingly transported from the manufacturer's premises to the user's premises without being brought to the registered person's premises. In such a situation manufacturer will issue an invoice under Rule 52A. This invoice under Rule 52A will contain, in addition to the prescribed details including the consignee's name and address, mentioned therein, the registered person's name and address, on account of whose instructions the goods have been dispatched. The consignee in this case will be the end user. In such a situation the registered person's invoice is not required for availment of Modvat credit. The duplicate copy of the manufacturer's invoice under Rule 52A will serve as cover for transport and for availment of Modvat by the end user. As per the above clarification, it is very clear that if in the invoices end user's name is appearing as consignee irrespective of fact that sale purchase transaction is not between the supplier of inputs and the end user, the credit is admissible at the recipient's end. On this very issue, this Tribunal in the case of Transformers & Rectifiers (India) Ltd. (supra) and Kunststoff Polymers Ltd. (supra) has held that credit on invoices issued by first stage or second stage dealer, wherein recipient's name is appearing as consignee is admissible for Cenvat credit. The issue being settled as per the Board Circular as well as the ratio of the above referred judgments, impugned order is not sustainable, hence the same is set aside. Appeal is allowed."

8. I find that the facts of the present case are squarely covered by the aforesaid decision of the Tribunal.

9. In view of the above, the impugned orders are set aside and the appeal filed by the appellant is allowed with consequential benefit.

(Order pronounced in the open court on 09 November 2020.)

SD/
(P.K.CHOUDHARY)
MEMBER (JUDICIAL)