

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

REGIONAL BENCH - COURT NO.1

Excise Appeal No. 70573 of 2013

(Arising out of Order-in-Appeal No.13/KOL-III/2013 dated 28.02.2013 passed by Commissioner (Appeals-I), Kolkata)

Shree Behariji Polyfabs Pvt. Ltd
(1, Graham Road, Kamarhati, Kolkata-700058)

Appellant

VERSUS

Commissioner of Central Excise, Kolkata-III
(Kendriya Utpad Shulk Bhawan, 180, Santipally, Rajdanga Main Road, Kolkata-700107)
Respondent

APPEARANCE

Mr. Subhamay Mitra, Advocate for the Appellant
Mr. Debapriya Sue, Authorized Representative for the Revenue

CORAM: HON'BLE SHRI ASHOK JINDAL, MEMBER (JUDICIAL)

FINAL ORDER NO.76280/2024

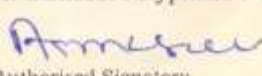
DATE OF HEARING : 12 July 2024
DATE OF DECISION : 12 July 2024

ORDER [Per : ASHOK JINDAL] :

The appellant is in appeal against the impugned order wherein Cenvat Credit was denied on the ground that address of the appellant in the invoice is although correct but goods have been delivered to another premises at "25B, Khagen Chattejee Road, Kolkata-700002" whereas the appellant is located at "1, Graham Road, Kamarhati, Kolkata-700058" as mentioned in the invoice. Therefore, proceedings were initiated against the appellant to deny Cenvat Credit. By impugned order, the Cenvat Credit was denied and ordered for appropriation of amount as already reversed by the assessee along with interest and penalty was also imposed. By way of this appeal, the appellant has challenged the said order.

2. Heard the parties.

3. On perusal of record, I find that Challan Cum Tax Invoice shows the address of the appellant as well as the place where the goods have been delivered are at "1, Graham Road, Kamarhati, Kolkata-700058". For better appreciation of the facts, both the invoices against which Cenvat Credit are said to be denied are extracted herein below:-

CHALLAN CUM TAX INVOICE				
DINMAN POLYPACKS PRIVATE LIMITED				
H.O. & REGD. OFF: "VARDaan" SUITE # 407, 25A CAMAC STREET, KOLKATA - 16, PH: (+91 33) 2240 7449/ 2358				
FACTORY: EXPORT PROMOTION INDUSTRIAL PARK, PO - B/NSKOPA, PS - KANKSA, DURGAPUR - 12 PH: (+91 343) 309 989				
To, SHREE BIHARI JI POLYFABES PVT.LTD. 1 GRAHAM ROAD KAMARHATTI KOLKATA-700058		Delivery Challan Cum Commercial Invoice No : 040 Date : 30.05.06 VAT NO- 15662215057 ECC NO- AADCS7044NXM001		
Goods Delivered To : 1. Graham Road, Kamarhatty KOLKATA-700058		Payment Terms:		
P.O.No. Verbal Name of Transporter : Bengal Trade & Transport		Truck No- WB-15-4449 L.R. No:		
Qty.	PARTICULARS	UNIT	RATE	AMOUNT
Kg.		Kg.	Rs.	Rs.
5,871.950 (31 Rolls)	PP WOVEN FABRICS	5,871.950	Rs.75.65 per Kg.	441,213
	Add : Central excise duty @16%			71,074
	E.D. Cess @ 2%			1,421
	Freight			
	As per Excise Invoice No : 040			
				516,708
	Add : VAT @ 4%			20,668
	TOTAL			537,376
	(Rs Five Lacs Thirty Seven Thousand Three Hundred Seventy Six only)			
Terms and Conditions : 1. Any complaints must be in writing with in 5 days 2. Our responsibility ceases once the goods are out of our factory. 3. Interest @ 24% will be charged on all overdue amounts.				
V.A.T. No.19432897066 CST No : 19432725279 dt. 08.05.2004		for Dinman Polypacks P Ltd  Authorized Signatory.		

CHALLAN CUM TAX INVOICE

DINMAN POLYPACKS PRIVATE LIMITED

H.O. & RECD. OFF: VARDMAN SUITE # 407, 25A CAMAC STREET, KOLKATA - 76, PIN (91 33) 2340 7449/ 2358
FACTORY EXPORT PROMOTION INDUSTRIAL PARK, IV, BANSKOPA, PO - KANKA, GUWAHATI - 781 295 (91 361) 309 989

To,
SHREE BHARATI POLYFABES PVT LTD
1 GRAHAM ROAD
KAMARHATTI
KOLKATA-700058

Delivery Challan Cum:
Commercial Invoice No : 046
Date : 11.06.06
VAT NO- 15662215057
ECC NO- AALXCS7044NXM001

Goods Delivered To :
1. Graham Road, Kamarhatti
KOLKATA-700058
P.O.No. Verind
Name of Transporter : Bengal Trade & Transport

Payment Terms:

Truck No- WB-33-964S
L.R. No: 2847

Qty.	PARTICULARS	UNIT	RATE	AMOUNT
Kg.		Kg.	Rs.	Rs.
5,880.200 (29 Rolls)	PP WOVEN FABRICS	5,880.200	Rs.75.08 per Kg.	447,366
	Advt : Central Excise duty @16%			71,579
	E.D. Cess @ 2%			1,432
	Freight			
	As per Excise Invoice No : 046			
	Add : VAT @ 4%			520,377
				30,815
	TOTAL			541,192
	(Rs Five Lacs Forty One Thousand One Hundred Ninety Two only)			

Terms and Conditions :
1. Any complaints must be in writing with in 5 days
2. Our responsibility ceases once the goods are out of our factory.
3. Interest @ 24% will be charged on all overdue amounts.

for Dinman Polypacks Pvt Ltd

Authorized Signatory.

V.A.T. No.19432897066
CST No : 19432725279 dt. 08.05.2006

29 Rolls

89

11/06/06

SHREE BHARATI POLYFABES PVT LTD

1, GRAHAM ROAD, KAMARHATTI

KOLKATA - 700058

4. As it is evident from the Challan Cum Tax Invoice that goods have been delivered to the appellant's factory premises and in support of the claim thus transporter has also filed an affidavit that they have delivered goods at 1. Graham Road, Kamarhati, Kolkata-700058. In that circumstance, I hold that Cenvat Credit cannot be denied to the appellant.

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5. In view of this, the impugned order deserves no merits, hence, set aside. Accordingly, I allow the appeal with consequential relief, if any, as per law.

(Dictated and pronounced in the open Court.)

Sd/-
(ASHOK JINDAL)
MEMBER (JUDICIAL)

Pooja