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

REGIONAL BENCH – COURT NO. 1

Excise Appeal No. 445 of 2012

(Arising out of Order-in-Original No. 9-11/Commissioner/CE/Kol-IV/2012 dated 17.04.2012 passed by the Commissioner of Central Excise, Kolkata-IV, M.S. Building, 15/1, Strand Road, Kolkata – 700 001)

M/s. Ganpati Environ Projects (P) Limited **: Appellant**
Delhi Road, Bhadua, Dankuni, Hooghly – 711 224
[Regd. Address: 167, Old China Bazar Street, 2nd Floor,
West Bengal – 700 001]

VERSUS

Commissioner of Central Excise **: Respondent**
Kolkata-IV Commissionerate,
M.S. Building, 15/1, Strand Road, Kolkata – 700 001

WITH

Excise Appeal No. 446 of 2012

(Arising out of Order-in-Original No. 9-11/Commissioner/CE/Kol-IV/2012 dated 17.04.2012 passed by the Commissioner of Central Excise, Kolkata-IV, M.S. Building, 15/1, Strand Road, Kolkata – 700 001)

M/s. Ronix Polymer Private Limited **: Appellant**
Delhi Road, Vill: Bhadua, P.O.: Mollaber (Dankuni),
Hooghly – 711 224
[Regd. Address: 167, Old China Bazar Street, 2nd Floor,
West Bengal – 700 001]

VERSUS

Commissioner of Central Excise **: Respondent**
Kolkata-IV Commissionerate,
M.S. Building, 15/1, Strand Road, Kolkata – 700 001

WITH

Excise Appeal No. 447 of 2012

(Arising out of Order-in-Original No. 9-11/Commissioner/CE/Kol-IV/2012 dated 17.04.2012 passed by the Commissioner of Central Excise, Kolkata-IV, M.S. Building, 15/1, Strand Road, Kolkata – 700 001)

Shri Rajendra Kumar Saraogi, Director, **: Appellant**
M/s. Ganpati Environ Projects (P) Limited
167, Old China Bazar Street, 2nd Floor,
West Bengal – 700 001

VERSUS

Commissioner of Central Excise **: Respondent**
Kolkata-IV Commissionerate,
M.S. Building, 15/1, Strand Road, Kolkata – 700 001

WITH

Excise Appeal No. 555 of 2012

(Arising out of Order-in-Original No. 23-25/Commissioner/CE/Kol-IV/2012 dated 14.06.2012 passed by the Commissioner of Central Excise, Kolkata-IV, M.S. Building, 15/1, Strand Road, Kolkata – 700 001)

M/s. Ronix Polymer Private Limited : Appellant
Delhi Road, Vill: Bhadua, P.O.: Mollaber (Dankuni),
Hooghly – 711 224
[Regd. Address: 167, Old China Bazar Street, 2nd Floor,
West Bengal – 700 001]

VERSUS

Commissioner of Central Excise : Respondent
Kolkata-IV Commissionerate,
M.S. Building, 15/1, Strand Road, Kolkata – 700 001

WITH

Excise Appeal No. 556 of 2012

(Arising out of Order-in-Original No. 23-25/Commissioner/CE/Kol-IV/2012 dated 14.06.2012 passed by the Commissioner of Central Excise, Kolkata-IV, M.S. Building, 15/1, Strand Road, Kolkata – 700 001)

M/s. Ganpati Environ Projects (P) Limited : Appellant
Delhi Road, Bhadua, Dankuni, Hooghly – 711 224
[Regd. Address: 167, Old China Bazar Street, 2nd Floor,
West Bengal – 700 001]

VERSUS

Commissioner of Central Excise : Respondent
Kolkata-IV Commissionerate,
M.S. Building, 15/1, Strand Road, Kolkata – 700 001

AND

Excise Appeal No. 557 of 2012

(Arising out of Order-in-Original No. 23-25/Commissioner/CE/Kol-IV/2012 dated 14.06.2012 passed by the Commissioner of Central Excise, Kolkata-IV, M.S. Building, 15/1, Strand Road, Kolkata – 700 001)

Shri Rajendra Kumar Saraogi, Director, : Appellant
M/s. Ganpati Environ Projects (P) Limited
167, Old China Bazar Street, 2nd Floor,
West Bengal – 700 001

VERSUS

Commissioner of Central Excise : Respondent
Kolkata-IV Commissionerate,
M.S. Building, 15/1, Strand Road, Kolkata – 700 001

APPEARANCE:

Shri N.K. Chowdhury, Advocate for the Appellant(s)

Shri B.K. Singh, Authorized Representative for the Respondent

CORAM:

HON'BLE SHRI ASHOK JINDAL, MEMBER (JUDICIAL)
HON'BLE SHRI K. ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NOs. 75588-75593 / 2025

DATE OF HEARING: 27.01.2025

DATE OF DECISION: 05.03.2025

ORDER: [PER SHRI ASHOK JINDAL]

The appellants are in appeal against the impugned orders wherein the following demands have been confirmed:

Sl. No.	Name	Excise Appeal No.	Order-in-Original No(s). & Dt.	Duty / Penalty amount (in Rs.)
1.	M/s. Ganpati Environ Projects (P) Ltd.	445/2012	9-11/Commissioner/CE/Kol-IV/2012 dt. 17.04.2012	Duty = Rs.1,07,08,912/- Penalty = Rs.1,07,08,912/-
2.	M/s. Ronix Polymer Pvt. Ltd.	446/2012	9-11/Commissioner/CE/Kol-IV/2012 dt. 17.04.2012	Penalty = Rs.10,00,000/-
3.	Shri Rajendra Kr. Saraogi	447/2012	9-11/Commissioner/CE/Kol-IV/2012 dt. 17.04.2012	Penalty = Rs.1,00,000/-
4.	M/s. Ronix Polymer Pvt. Ltd.	555/2012	23-25/Commissioner/CE/Kol-IV/2012 dt. 14.06.2012	Duty = Rs.92,72,820/- Penalty = Rs.92,72,820/-
5.	M/s. Ganpati Environ Projects (P) Ltd.	556/2012	23-25/Commissioner/CE/Kol-IV/2012 dt. 14.06.2012	Penalty = Rs.1,00,000/-
6.	Shri Rajendra Kr. Saraogi	557/2012	23-25/Commissioner/CE/Kol-IV/2012 dt. 14.06.2012	Penalty = Rs.1,00,000/-

2. The facts of the case are as under: -

(i) M/s. Ganpati Environ Projects (P) Limited was engaged in the manufacture and clearance of PVC Compound under the Central Excise Tariff Sub-heading No. 39041090 and P.E. Fittings falling under Central Tariff Sub-heading No. 39172190 from the inputs i.e. Resin, Paraffin Wax/Wax, Calcium, Stearic Acid R.P. 1018 and Titanium Dioxide. They were registered with the Central Excise Authority. The appellant were clearing their product on payment of Central Excise duty and had taken credit on the inputs used in the manufacture of finished goods. On 05.11.2009 and 11.11.2009, officers of the Department visited the factory premises of M/s. Ronix Polymer Private Limited when it was found that another manufacturing unit belongs to M/s. Ganpati Environ Projects (P) Limited. The officers of the Department seized some documents.

(ii) The officers of the Department did not find any documents showing purchase of mixture machine which was essential for manufacture of PVC Compound though, said machine was installed in the factory of M/s. Ganpati Environ Projects (P) Limited. The officers also found that there was a mixture machine in the premises of M/s. Ronix Polymer Private Limited. The mixture machine in the premises of M/s. Ronix Polymer Private Limited was attached with cooling machine but in the factory of M/s. Ganpati Environ Projects (P) Limited, it was noticed that no cooling system was attached but just a blender which cannot function as mixture machine according to the views of the officer.

(iii) The statements of Rajendra Kumar Saraogi, who was the Director of M/s. Ganpati Environ Projects (P) Limited and who was also the Authorised Signatory of M/s. Ronix Polymer Private Limited, were recorded. Mr. Saraogi in his statements dated 08.06.2010 and 20.09.2010 clarified the position stating that M/s. Ganpati Environ Projects (P) Limited are purchasing the inputs from different suppliers, including M/s. Ronix Polymer Private Limited. It was also stated that M/s. Ganpati Environ Projects (P) Limited cleared the manufactured finished goods on payment of duty; M/s. Ronix Polymer Private Limited was purchasing the goods and also availing credit. M/s. Ronix Polymer Private Limited was also clearing the goods on payment of duty.

(iv) Proceedings were initiated by issuing the Show Cause Notice dated 25.11.2011 against M/s. Ganpati Environ Projects (P) Limited making M/s. Ronix Polymer Private Limited and Mr. Rajendra Kumar Saraogi as co-noticees. Proposals were made in the said Show Cause Notice to deny credit and recovery of the same from M/s. Ganpati Environ Projects (P) Limited and proposing imposition of penalty on M/s. Ronix Polymer Private Limited and Mr. Rajendra Kumar Saraogi on the allegation that M/s. Ganpati Environ Projects (P) Limited was not eligible for the credit for not undertaking manufacturing activities in their factory. It was alleged that Noticee No. 2 i.e. M/s. Ronix Polymer Private Limited had shown to have supplied the goods to Noticee no. 1 & others by manipulating statutory records.

(v) The appellant submitted the reply to the said Show Cause Notice vide their letter dated 24.03.2012 denying and disputing the allegations contending, inter alia, that the appellants had taken credit on specified raw materials brought under duty paying documents. The finished product was manufactured and cleared on payment of duty and credit cannot be denied. The appellants had also submitted returns showing the payment of duty.

(vi) The ld. adjudicating authority vide Adjudication Order dated 17.4.2012 ultimately denied the credit mainly on the ground that M/s. Ganpati Environ Projects (P) Limited did not undertake any process which is amounting to manufacture ignoring the fact that the appellant was making payment of duty on the finished goods. It is claimed by the appellant that the mixture machines were there in the factory and the factory was also being run by Generator when there was no power supply. They have also stated that had the goods not been supplied by M/s. Ronix Polymer Private Limited and others, the manufacturing of the finished goods would have not been possible. Accordingly, the ld. adjudicating authority denied the credit to M/s. Ganpati Environ Projects (P) Limited, charged interest and imposed penalty. At the same time, penalty was imposed on noticee no. 2 assuming that they had issued invoices without supplying the goods to enable credit by M/s. Ganpati Environ Projects (P) Limited. Penalty was imposed on noticee no. 3 assuming that he is the main person behind the taking of credit on the goods which were not used in the manufacturing process.

(vii) Similar proceedings were initiated vide Show Cause Notice dated 02.03.2012 from the same transaction, denying credit to M/s. Ronix Polymer Private Limited and imposing penalty on M/s. Ganpati Environ Projects (P) Limited and Mr. Rajendra Kumar Saraogi in respect of Appeal Nos. 555, 556 & 557 of 2012. M/s. Ganpati Environ Projects (P) Limited had cleared the goods on payment of duty to M/s. Ronix Polymer Private Limited and M/s. Ronix Polymer Private Limited was also clearing the goods on payment of duty. CENVAT credit on the goods purchased by M/s. Ronix Polymer Private Limited has been proposed to be denied and imposition of penalty has been proposed on M/s. Ganpati Environ Projects (P) Limited and Mr. Rajendra Kumar Saraogi which were not proper. The second proceeding for denying credit on M/s. Ronix Polymer Private Limited was arising out of the same investigation and credit has been proposed to be denied and imposition of penalty were also proposed.

(viii) In these proceedings, the adjudication order dated 14.06.2012 was passed denying credit to M/s. Ronix Polymer Private Limited, who had purchased the goods from M/s. Ganpati Environ Projects (P) Limited and subsequently cleared the finished goods on payment of duty.

3. The Ld. Counsel appearing on behalf of the appellants submits that the credit cannot be denied to M/s. Ganpati Environ Projects (P) Limited (hereinafter referred to as "M/s. Ganpati") since they had used the inputs on which credit was taken and manufactured

the goods, clearing the same on payment of duty. Therefore, he contends that the question of denying credit and imposing penalty on M/s. Ganpati and the two other appellants does not arise.

3.1. Similarly, in respect of the denial of CENVAT Credit to M/s. Ronix Polymer Private Limited (hereinafter referred to as "M/s. Ronix"), it is submitted that as M/s. Ronix have purchased duty paid PVC compound from M/s. Ganpati, used the same in their factory and cleared the same on payment of duty, in this case also, CENVAT Credit cannot be denied and penalty cannot be imposed.

3.2. To support his contention, he relied upon the decision of the Hon'ble Gujarat High Court in the case of *Commissioner of C.Ex. & Cus., Surat-III v. M/s. Creative Enterprises [2009 (235) E.L.T. 785 (Guj.)]* which has been affirmed by the Hon'ble Apex Court as reported in *2009 (243) ELT A120 (S.C.)* and the decision of the Hon'ble Bombay High Court in the case of *Commissioner of C.Ex., Pune-III v. M/s. Ajinkya Enterprises [2013 (294) E.L.T. 203 (Bom.)].*

3.3. He further submits that whole of the demand is barred by limitation since the periods of dispute in these cases is from 01.05.2007 to 31.03.2011 and the investigation was conducted on 05.11.2009 and 11.11.2009 and the Show Cause Notices were issued on 25.11.2011 and 02.03.2012. Therefore, it is submitted that the impugned demands are barred by limitation.

4. On the other hand, the Ld. Authorized Representative of the Revenue reiterated the findings in the impugned orders.

5. Heard the parties and considered their submissions.

6. In this case, the Revenue had initiated an investigation and on investigation, it was revealed that M/s. Ganpati had no electricity connection and therefore the Revenue took the view that they would not be able to manufacture the goods. Thus, it has been alleged that they are not entitled to avail CENVAT Credit on the invoices issued to M/s. Ronix. However, it is a fact on record that M/s. Ganpati has manufactured the goods and the same have been cleared on payment of duty, which has been accepted by the Revenue. If the duty has been accepted by the Revenue, in these circumstances, CENVAT Credit availed cannot be denied, as has been held by the Hon'ble Bombay High Court in the case of *Commissioner of C.Ex., Pune-III v. M/s. Ajinkya Enterprises [2013 (294) E.L.T. 203 (Bom.)].* wherein it has been held that payment of duty shall amount to reversal of credit even if there is no manufacturing activity. Admittedly, in this case, M/s. Ganpati has paid the duty and therefore, we hold that CENVAT Credit cannot be denied.

7. The same is with the case of M/s. Ronix, which has taken CENVAT Credit on the duty paid by M/s. Ganpati and the same has been used in the manufacture of their final product, which were cleared on payment of duty. In these circumstances, when the Revenue has accepted the duty payment from the appellants, CENVAT Credit cannot be denied.

8. In fact, we are of the opinion that whole of the exercise is futile in this case. Consequently, the proceedings initiated against the appellants are not sustainable.

9. In these terms, we set aside the impugned orders and allow the appeals with consequential relief, if any, as per law.

(Order pronounced in the open court on **05.03.2025**)

Sd/-
(ASHOK JINDAL)
MEMBER (JUDICIAL)

Sd/-
(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

Sdd