IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH AT MUMBAI
COURT NO.

Appeal No. E/85172/17

(Arising out of Order-in-Appeal No. PK/106/RGD/2016 dt. 1.11.2016 passed by the Commissioner of Central Excise (Appeals) Mumbai-II)

M/s. Paras Lubricants Ltd. : **Appellant**

VS

Commissioner of Central Excise, Mumbai-II : **Respondent**

Appearance

Ms. Anjali Hirawat, Advocate for Appellant

Shri M.P. Damle, Asstt.Commr. (A.R) for respondent

CORAM:

Hon'ble Shri Ramesh Nair, Member (Judicial)

Date of hearing : 16/02/2018
Date of decision: 16/02/2018

ORDER NO. A/85418/2018

The fact of the case is that the appellant have availed re-credit of the amount paid through cenvat account in respect of the clearances made during the month of October 2010. However the appellant have given reference of challan through which the cash payment was made instead of the duty paid through cenvat for the month of October, 2010. The case of the department is that the appellant should have taken re-credit with reference to the debit made through cash in the month of August 2010 against the wrong availment of credit. Therefore the re-credit made against the cash payment is not correct and accordingly the re-credit was denied.

2. Ms. Anjali Hirawat, Learned Counsel appearing on behalf of the appellant submits that the only error made by the appellant is that they have given reference to the challan of cash deposit made during the month of May and June 2014. However in any case, since in the month of October 2010 duty was debited through cenvat and then subsequently the same amount was paid through cash, the debit made in the month of October 2010 should be restored and they have taken the re-credit of the same amount. She referred to the Tribunal's order NO. A/370/12/EB/C-II dt. 15.6.2012 wherein para 11 the Tribunal has allowed re-credit of the amount paid through cenvat account during the month of October 2010, subject to payment of said amount in cash along with interest. She submits that as per the Tribunal order the amount of duty debit through cenvat was paid along with interest in the month of May and June 2014 and subsequently debits made in the month of October 2010 was taken as re-credit. Therefore there is nothing wrong in taking re-credit it was permitted in the Tribunal's order.

3. Shri M.P. Damle, Learned Assistant Commissioner (A.R.) appearing on behalf of the Revenue reiterates the findings of the impugned order.

4. I have carefully considered the submissions made by both the sides. I find that the appellant have re-credited the amount equal to the cenvat credit utilized during the month of October 2010 on the ground that they have paid the same amount in cash as per the Tribunal's order No. A/370/12/EB/C-II dt. 15.6.2012. The

department's contention is that the credit should have been taken in respect of the debits made against the utilization of wrongly availed credit is not correct for the reason that in the month of October 2010 the appellant was made a charge that they have defaulted on payment of monthly duty by utilizing the cenvat credit therefore they were directed to pay the said cenvat utilized amount in cash subsequently the appellant have paid the amount of cenvat credit utilized during the month of October 2010 along with interest in cash which resulted into double payment of duty on the same clearances. The Tribunal has rightly allowed the re-credit in respect of the cenvat credit utilized during the month of May & June 2014. Therefore I do not find anything wrong in re-credit of the amount equal to the cenvat credit utilized during the month of October 2010. The only lapse on the part of the appellant is that instead of giving reference of the debit entries in the cenvat account, they have given reference to the TR6 challan through which payment was made in cash towards duty liability in October 2010. This is only a procedural lapse and there is no excess availments of credit, therefore the appellant have re-credited the amount whatever was eligible to them. Accordingly, the impugned order denying the credit is set aside. The appeal is allowed.

(Pronounced & Dictated in court)

(Ramesh Nair)
Member (Judicial)

SM.