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

Appeal No. E/87806/17

(Arising out of Order-in-Appeal No. PK/13/APPEAL/THANE/BW/2017-18 dated 8.9.2017 passed by the Commissioner of CGST & Central Excise (Appeals), Thane).

M/s Uravi T & Wedge Lamps Pvt. Ltd.	Appellant

Vs.

Commissioner of CGST & Central Excise, Thane	Respondent

Appearance:

Shri Stebin Mathew, Advocate	for Appellant
Shri S.J. Sahu, AC (AR)	for Respondent

CORAM:

HON'BLE SHRI RAMESH NAIR, MEMBER (JUDICIAL)

Date of Hearing: 02.05.2018

Date of Decision: 02.05.2018

ORDER NO. **A/86337 / 2018**

Per: Ramesh Nair

The issue involved is that whether the appellant is entitled for CENVAT Credit on the strength of invoice issued by an importer, who is registered as first stage dealer. The case of the department is that the supplier being an importer could have been registered separately as an importer. Since the appellant is registered only as first stage dealer, therefore, the invoices issued in capacity of first stage dealer is not a valid document on the ground that Notification No. 30/2016-CE dated 15.8.2016 have no separate registration as required for an importer, if he is registered as first stage dealer. The contention of the Revenue is that prior to this notification, the importer was required to be registered separately as importer for issue of cenvatable invoice. Therefore, CENVAT Credit passed on by an importer without having separate registration is not valid document for availing the CENVAT Credit.

2. Shri Stebin Mathew, learned Advocate appearing on behalf of the appellant submits that firstly this Notification No. 30/2016-CE (NT) dated 28.6.2016 is a clarification and it is not notification by which rule 9 was amended. Therefore, this clarification will have retrospective effect. Accordingly, the importer was not required to be registered separately once he was registered as first stage dealer. He takes support from this Tribunal's judgment on identical issue in the case of *Commissioner of CGST, Thane Rural Vs. Western Refrigeration Pvt. Ltd. – 2018-TIOL-08-CESTAT-MUM.*

3. Shri S.J. Sahoo, learned Assistant Commissioner (AR) appearing on behalf of the Revenue reiterates the findings of the impugned order.

4. I have carefully considered the submissions made by both sides. I find that at the relevant period from 1.3.2015 to 31.1.2016, the definition of first stage dealer is as under: -

> *"(ij) "first stage dealer" means a dealer, who purchases the goods directly from, -*

> *(i) the manufacturer under the cover of an invoice issued in terms of the provisions of Central Excise Rules, 2002 or from the depot of the said manufacturer, or from premises of the consignment agent of the said manufacturer or from any other premises from where the goods are sold by or on behalf of the said manufacturer, under cover of an invoice; or*
>
> *(ii) an importer or from the depot of an importer or from the premises of the consignment agent of the importer, under cover of an invoice;"*

From the plain reading of the above rule, it is clear that the first stage dealer includes the importer who sells the goods imported by him under the cover of invoice on which CENVAT Credit has been taken. In the present case, the importer who is registered as first stage dealer issued the invoice, therefore, the importer is undoubtedly covered in the terms 'first stage dealer'. Therefore, the invoices issued by first stage dealer in respect of indigenous goods or imported goods, the invoice issued by such first stage dealer is valid document for availing the CENVAT Credit.

4.1 As regards the notification No. 30/2016-CE (NT) heavily relied upon by the learned AR and it was also relied upon by the appellate authority, I am also of the view that this is not an amendment notification, however, the same is a clarification issued for the reason that this notification was not given effect to amendment under the Rule 9(2) of CENVAT Credit Rules, 2002. It is also observed that this clarification was issued by the CBE&C, therefore, this being a clarification has retrospective effect. Therefore it cannot be interpreted that only on or after the date of 28.6.2016 this clarificatory notification was issued, the first stage dealer was not entitled to issue a cenvatable invoice in respect of imported goods. This issue has been considered by this Tribunal in the case of *Western Refrigeration Pvt. Ltd. (supra)*, wherein this

Tribunal held that no double registration is required by a dealer when he sells the imported goods under the cover of cenvatable invoice. Therefore, in my considered view, there is absolutely no hesitation in holding that the invoice issued by the first stage dealer in respect of the imported goods is clearly a valid document in terms of Rule 9 of CENVAT Credit Rules, 2004 for availing the CENVAT Credit.

5. Accordingly, the impugned order is set aside and appeal is allowed.

(Dictated and pronounced in Court)

(Ramesh Nair)
Member (Judicial)

Sinha