IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, WEST ZONAL BENCH AT MUMBAI

COURT No. I

Appeal No. E/85795/17

(Arising out of Order-in-Appeal No. PUN-EXCUS-001-APP-382-16-17 dated 25.01.2017 passed by Commissioner of Central Excise (Appeals), Pune I)

Commissioner of Central Excise Pune II — **Appellant**

Vs.

EMA Lubes Pvt. Ltd. — **Respondent**

Appearance:

Shri S.V. Nair, Asst. Commr (AR) — for appellant
Shri R.S. Paranjape, C.A. — for respondent

CORAM:

Hon'ble Mr. M.V. Ravindran, Member (Judicial)

Date of Hearing & Decision: 29.12.2017

FINAL ORDER NO. A/92294/2017

Per: M.V. Ravindran

This appeal is filed by Revenue against order-in-appeal No. PUN-EXCUS-001-APP-382-16-17 dated 25.01.2017.

2. Heard both sides and perused the records.

3. The issue that falls for consideration in this case is whether the first appellate authority was correct in holding that the respondent had availed CENVAT Credit of various inputs or otherwise. It is the case of Revenue in the show-cause notice as well as before Tribunal that the respondent had availed ineligible CENVAT Credit of various inputs during the period 2009-10 to 2010-11 on the ground that they have not received the inputs mentioned in the duty paying documents. Adjudicating authority confirmed the demand raised. On appeal, first appellate authority set aside the order-in-original and also the penalty imposed.

4. After considering the grounds of appeal and arguments put forth by learned D.R., I find that the first appellate authority had considered the entire issue holistically and has perused various evidences produced by the respondent before him as to the recipient of inputs in the factory premises. The first appellate authority has also recorded that Revenue has not proved that the documents submitted by respondent were false or fictitious and has also not proved the involvement of respondent in connivance with the manufacturer in alleged paper transaction. As against such factual finding recorded by first appellate authority, in the grounds of appeal before the Tribunal, Revenue has not placed reliance on any evidence to controvert these

factual findings. In absence of any evidence to controvert, in my view the impugned order needs to be upheld and I do so.

5. The impugned order is upheld and the appeal of Revenue is rejected.

(operative portion pronounced in Court)

(M.V. Ravindran)
Member (Judicial)

nsk