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

APPEAL No. E/86469/2017

(Arising out of Order-in-Original No. 25/SKV-33/KEVIN/K-IV/TH-I/2016-17 dated 24.3.2017 passed by Commissioner of Central Excise, Thane-I)

Kevin Enterprises Pvt. Ltd.	**Appellant**
Vs.	
Commissioner of Central Excise, Thane-I	**Respondent**

Appearance:

Shri T.C. Nair, Advocate, for appellant
Shri Ajay Kumar, Additional Commissioner (AR), for respondent

CORAM:

Hon'ble Mr. Ramesh Nair, Member (Judicial)

Date of Hearing: 15.2.2018
Date of Decision: 16.5. 2018

ORDER No. **A/86443/2018**

The brief facts of the case are that the appellant is having corporate office at Andheri and factory at Ambernath. The corporate office at Andheri has a centralized service tax registration. As regards the excise duty at Ambernath, they have paid by utilizing the cenvat credit maintained in a common pool at their corporate office at Andheri. The demand was raised on the ground that as regards the excise duty on the removal of goods from Ambernath factory, the cenvat credit maintained at Andheri corporate office under a common pool cannot be utilized. Therefore, the demand of Rs.42,86,370/- for the period September 2009 to August 2014 was confirmed. Being aggrieved by the order-in-original, the appellant filed the present appeal.

2. Shri T.C. Nair, learned counsel appearing on behalf of the appellant, submits that the appellant at the corporate office is maintaining a common pool of input service credit for the factory at Ambernath as well as corporate office at Andheri. Therefore, the credit lying at corporate office at Andheri is also related to the Ambernath factory. Therefore, in respect of the goods cleared from Ambernath factory, the utilization of credit is not incorrect for the reason that firstly, the Ambernath factory and Andheri corporate office belong to same company. Secondly, the credit related to the factory was also taken at corporate office and being a centralized registered office, the credit of corporate office can be utilized for payment of excise duty in respect of Ambernath factory. He further submits that as per the Chartered Accountant certificate placed at page 104 of the appeal papers, the detail of cenvat credit availed during the period September 2009 to August 2014 was provided and it was also certified that out of total credit availed at their corporate office on the proportionate basis, the sufficient credit was attributed to the

Ambernath factory. Therefore, the utilization of the said credit for payment of excise duty payable by Ambernath factory is not incorrect. He further submits that the demand is clearly time barred as all the informations have been provided from time to time by way of monthly returns to the jurisdictional officers.

3. Shri Ajay Kumar, learned Additional Commissioner (AR) appearing on behalf of Revenue, reiterates the finding of the impugned order.

4. On careful consideration of the submissions made by both the sides and perusal of the records, I find that there is no dispute on the fact that the common pool of credit was being maintained at the corporate office of the appellant, which includes the credit on input service related to the Ambernath factory also. Therefore, the utilization of the said credit for payment of excise duty on the goods cleared from Ambernath factory cannot be disputed as the credit was belonging to the factory. It is also fact that the corporate office has a centralized registration. The correct procedure which could have been adopted by the appellant was that they should have distributed the input service credit to their factory by issuing invoices. In such cases, the factory could have availed the said credit and utilized for payment of excise duty. This is only a procedural lapse. However,

there is no wrong utilization of the credit. Instead of distributing to the factory and utilizing the same from there, it was utilized at the corporate office. Therefore, there is no revenue loss to the Government exchequer. Accordingly, I do not see any reason that for such procedural lapse, utilization of the credit should be denied. The Chartered Accountant certificate giving the bifurcation of the cenvat credit in the common pool of corporate office attributed to the factory as well as corporate office mainly shows that substantial cenvat credit was attributed to the Ambernath factory. Therefore, the utilization of the same for payment of duty in respect of Ambernath factory cannot be held to be incorrect.

5. Accordingly, I set aside the impugned order and allow the appeal.

(Pronounced in court on 16.5. 2018)

(Ramesh Nair)
Member (Judicial)

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