

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
CHENNAI**

REGIONAL BENCH – COURT NO. III

EXCISE APPEAL No.40180 of 2020

[Arising out of Order-in-Appeal No.18/2020 (CTA-I) dated 12.02.2020 passed by the Commissioner of GST & Central Excise (Appeals-I), Chennai]

M/s.Karaikal Chlorates

(Unit of Mepco Industries Ltd.)
No.222-Melakasakudi Village,
Nedungadu,
Commune Panchayat,
Karaikal 609 603.

Appellant

Vs

The Commissioner of GST & Central Excise

Puducherry Commissionerate,
No.1, Goubert Avenue,
Puducherry 605 001.

Respondent

APPEARANCE:

Shri M. Kannan, Advocate
For the Appellant

Shri M. Ambe, Deputy Commissioner (AR)
For the Respondent

CORAM:

Hon'ble Ms. Sulekha Beevi C.S., Member (Judicial)

Date of Hearing : 05.09.2022

Date of Pronouncement: 08.09.2022

FINAL ORDER No. 40317 / 2022

Brief facts of the case are that appellants are engaged in manufacture of Potassium Chlorate falling under Chapter 28 of CETA, 1985. On verification of invoices on which the appellant has availed input services credit, it was seen that they have availed credit on

bills/invoices raised by M/s.KJF Logistics, Chennai under various categories. It was noticed by the department that the services mentioned in these invoices were not rendered by M/s.KJF Logistics, Chennai but outsourced to the third parties who had rendered the services directly to the appellant. Such third parties who rendered services were M/s.Maersk Line India Pvt. Ltd., M/s.Gateway Distriparks South Pvt. Ltd. M/s.Overseas Enterprises etc. and the invoices were issued by M/s.KJF Logistics based on which the appellant had availed cenvat credit. M/s.KJF Logistics, who was the direct receiver of the services, had enclosed third party bills addressed to M/s.KJF Logistics and sent to the appellant only for reimbursement purposes. The department was of the view that the credit availed by the appellant on such invoices raised by M/s.KJF Logistics, as if they were the direct service provider, is not eligible for credit for the appellant. Show cause notice was issued to the appellant proposing to disallow the credit of an amount of Rs.10,69,590/- for the period from March 2012 to March 2015. After due process of law, the original authority vide order dated 27.09.2017 confirmed duty demand of Rs.5,81,389/- along with interest in respect of invoices which did not contain the name of the appellant as recipient of services. He also imposed penalty under the provisions of law. Aggrieved by such order, the appellant filed appeal before the Commissioner (Appeals) which was rejected. The appellant approached the Tribunal and vide Final Order dated 11.03.2009, the matter was remanded by the Tribunal to the adjudicating authority to examine the transactions once again. Subsequent to the remand, the

original authority in *de novo* adjudication again confirmed duty demand of Rs.5,81,389/- and imposed penalty. Against such order, the appellant filed appeal before the Commissioner (Appeals) who upheld the order passed by the original authority. Hence the appellant is once again before the Tribunal.

2. Ld. Counsel Shri M. Kannan appeared and argued on behalf of the appellant. He submitted that the appellant has availed input service credit based on the bills raised by M/s.KJF Logistics, Chennai who provided the services for import of raw materials. The appellant requires to import raw material, Potassium Chloride, for manufacturing their final product Potassium Chlorate. The appellant is eligible to take cenvat credit on service tax paid on various services availed by them for import of the raw material and also for other activities relating to manufacture. They had engaged M/s.KJF Logistics, Chennai for clearance of the goods, as their Custom House Agent. Certain services in the nature of Steamer Agent Service, CFS service, De-stuffing service, survey etc. were outsourced by M/s.KJF Logistics. Thus, some services were rendered to the appellant by other parties. The bills were issued to KJH Logistics, who in turn billed the appellant and collected charges including service tax. The Department has denied eligibility of credit to the appellant in respect of 35 invoices alleging that the services were provided by the third parties other than M/s.KJF Logistics and therefore credit is not eligible. He argued that the appellant had entrusted M/s.KJF Logistics who is a CHA to provide various services.

Merely because M/s.KJF Logistics outsourced some of the activities to other persons, appellant cannot be denied the credit. The service tax was collected from the appellant by M/s.KJF Logistics and therefore the appellant is eligible to take credit. Further, they have submitted letter dated 24.08.2017 wherein it was confirmed by M/s.KJF Logistics that they have not availed credit on invoices issued by the third parties who provided the services. Merely because the invoices show that the services were provided by parties who were outsourced by the service provider, the credit cannot be denied. He submitted that the invoices establish that the services were consumed by the appellant for import and clearance of goods of the appellant. He relied upon the decision in the case of *CCE Mysore Vs Chamundi Textiles (Silk Mills) Ltd.* - 2010 (258) ELT 141 (Tri-Bang.) to argue that when it is mentioned in the invoice that the services were availed on behalf of the assessee, credit cannot be denied.

3. The second reason for denying credit is that in 10 invoices instead of mentioning the name and address of the factory, the address of the Head office of the appellant was mentioned. It was argued by Ld. Counsel that Department does not dispute that the services were availed for import of raw material by the appellant's factory. Merely because the invoices were issued in the name of the Head office situated at Madurai, credit disallowed is without any legal or factual basis.

4. The third reason for disallowing credit on 19 invoices is that instead of name of the appellant, name of M/s.Mitsubishi Corporation India Pvt. Ltd. is mentioned. He submitted that the original importer of the goods was M/s.Mitsubishi Corporation India Pvt. Ltd. Later, the appellant had purchased the goods on High Sea Sales basis. The appellant had explained these facts and also produced documents before the original authority to establish that the appellant had purchased the goods on high sea sales basis. Many services required for import of the goods into the Indian territory were already agreed upon to be provided by various service providers. Such an agreement was entered by M/s.Mitsubishi Corporation India Pvt. Ltd. (the original importer) on placing the order for supply and import of the goods. After purchase of goods on High sea sales basis, the appellant became the owner of the goods and the services for import and clearing of the goods into the Indian territory were availed by the appellant. However, invoices were raised in the name of M/s.Mitsubishi Corporation India Pvt. Ltd. as the original agreement for supply of goods was for M/s.Mitsubishi Corporation India Pvt. Ltd. The appellant had produced proof of purchase of goods by High Sea Sales basis and therefore the department ought to have considered that the services in regard to import and clearances are availed by the appellant. He argued that as there is no dispute with regard to the services availed by the appellant and also the service tax paid by the appellant, the department ought not to have denied credit.

5. The Ld. Counsel argued on the ground of limitation also. He submitted that appellant had filed E.R.1 returns wherein they had reflected the credit availed and also the purchase of raw material on high sea sales basis. Further, for import of the goods and clearance of the same, appellant had given intimation to the department. When the appellant had provided all the details to the department, demand raised invoking extended period is not sustainable. He prayed that the appeal may be allowed.

6. Ld. A.R Shri M. Ambe appeared and argued for the Department. He supported the findings in the impugned order. He referred to pages 12 & 13 of the Order-in-Original which contains scanned copy of invoices. He submitted that these invoices are in the name of M/s. Mitsubishi Corporation India Pvt. Ltd. and not in the name of the appellant. He adverted to the discussions made in para-10 of the impugned order and submitted that the invoices do not show the name of the appellant as service recipient. It does not even show the tax portion and therefore credit has been rightly denied. He prayed that the appeal may be dismissed.

7. Heard both sides.

8. As already narrated above, this is the second round of litigation before the Tribunal. First reason for denying credit on 35 invoices is that the services were not provided by M/s.KJF Logistics, Chennai. It

is brought out from the facts that M/s.KJF Logistics, who was the CHA acting on behalf of the appellant for import and clearance of goods, had outsourced certain services in the nature of steamer agent service, CFS service, De-stuffing service etc. to other persons. They had collected charges in the nature of steamer agent charges, CFS charges, De-stuffing charges, survey charges. The third parties to whom the services were outsourced by M/s.KJF Logistics had raised the invoices in the name of M/s.KJF Logistics, Chennai and not in the name of the appellant. Though the services were provided to the appellant the invoices were raised in the name of KJF Logistics. The Department has taken the view that since the services were outsourced, M/s.KJF Logistics is the service recipient and therefore the credit is not eligible to the appellant. On perusal of the invoices, it can be seen that the appellant has paid the service tax on such charges as collected by M/s.KJF Logistics. It is also established by the letter issued by KJF Logistics that they have not availed credit on the service tax mentioned in the invoices issued by third parties. On such score, the department cannot deny the credit alleging that invoices were raised in the name of CHA, M/s.KJF Logistics and that services were not provided to the appellant. It is clear that the goods were imported (purchased in high Sea Sales) by the appellant and not KJF Logistics. So the services for clearances of the goods are also provided to appellant and not to KJF Logistics. The Tribunal in the case of *Chamundi Textiles (Silk Mills) Ltd.* (supra) observed as under :

“6. As regards the excess credit taken, he submitted that this was on the ground that the invoice was raised on M/s. Passage Cargo Pvt. Ltd., whereas the credit was taken by the assessee. I perused the invoice and found that in the invoice it has been mentioned that Passage Cargo on account of the assessee. I agree that in this case, M/s. Passage Cargo had acted as a pure agent of the assessee and had discharged the liabilities which would otherwise have been discharged by the assessee. Therefore I find that the appellant-assessee cannot be denied credit.”

9. From the discussions, and the above decision, I hold that when there is no dispute with regard to service availed by the appellant and service tax paid by them, the credit cannot be denied at the service recipient's end.

10. According to the Ld. Counsel for appellant, for 10 invoices the credit has been denied alleging that name and address of the Head office of the appellant-company has been mentioned instead of the name and address of their factory into which the raw materials were received. It is seen that the service provider had issued the invoices to the appellant's registered office at Madurai instead of factory address of Karaikal. Once again it has to be reiterated that when there is no dispute with regard to the services availed and the tax paid by the assessee, the credit cannot be denied alleging that invoices are raised in the name of the Head office.

11. The credit availed on 19 invoices has been denied alleging that name in the invoices show the name of M/s. M/s.Mitsubishi Corporation India Pvt. Ltd. and not that of the appellant. Ld. Counsel for the appellant submitted that the goods were originally imported by M/s.Mitsubishi Corporation India Pvt. Ltd. and the appellant had purchased the goods on High Sea Sales basis. This is evident from the Bills of Entry. The original importer had engaged various service providers for import of the goods and clearance of the goods. After purchase of the goods by the appellant, these services providers had provided services to the appellant for clearances of the goods. However, the invoices were issued in the name of original importer M/s.Mitsubishi Corporation India Pvt. Ltd. It is clear from the records that the appellant had paid service tax for the services availed. I find that denial of credit alleging that invoices mention the name of the original importer is too technical and cannot be accepted.

12. Ld. Counsel has also argued on the ground of limitation. On perusal of records, I find that there is no positive evidence put forward by the department to show that the appellant had intentionally done some act to avail wrong credit. All the issues required interpretation of provisions of law with regard to availment of credit and there is no ulterior motive or overt act established by the department to show that appellant has done some fraud or suppressed facts so as to evade payment of duty. The department was given intimation with regard to

import of goods and they have also filed E.R.1 returns disclosing credit availed by them. On such score, a very vague allegation that the appellant has suppressed facts with intention to evade payment of duty cannot be the basis for invoking extended period. For these reasons, the demand is time-barred. Appellant succeeds on the ground of limitation also.

13. From the foregoing, I hold that the impugned order requires to be set aside which I hereby do. Appellant succeeds both on merits as well as on limitation. Appeal is allowed with consequential relief, if any, as per law.

(Pronounced in court on 08.09.2022)

**(SULEKHA BEEVI C.S.)
MEMBER (JUDICIAL)**