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Dear Professional Colleague,

Assessee not expected to verify with Department in order to avail Cenvat credit, whether supplier had paid duty on inputs or not.

We are sharing with you an important judgement of the Hon'ble Supreme Court of India, in the case of **Commissioner of Central Excise, Jalandhar vs. M/s. Kay Kay Industries [AIT-2013-147-SC]** on following issue:

Issue:

Whether the assessee is expected to verify with Department whether supplier had paid duty on inputs supplied by Manufacturer-Supplier in order to avail deemed MODVAT credit?

Facts & Background:

M/s Kay Kay Industries ("**the Respondent**" or "**the assessee**") availed deemed MODVAT credit of Rs. 77,546/- during the quarter of March, 2000 on the strength of invoices issued by M/s. Sawan Mal Shibhu Mal Steel Re-Rolling Mills, Mandi Govindgarh, supplier of inputs. During MODVAT verification it was found that the supplier of inputs had not discharged full duty liability for the period covered by the invoices on the strength of which the Respondent took the benefit of deemed MODVAT credit. The Competent Authority was of the view that it was obligatory on the part of the Respondent to take all reasonable steps to ensure that the appropriate duty of excise had been paid on the inputs used in the manufacture of their final product as required under Rule 57A(6) of the Central Excise Rules, 1944 ("**the Rules**") read with notification No. 58/97-CE(NT) dated 30.8.1997 ("**the notification**") and issued a show-cause notice on 19.1.2001 proposing recovery of deemed MODVAT credit of Rs. 77,546/- and imposition of penalty. The adjudicating authority, after receipt of the reply to the show-cause notice, by order dated 22.3.2002, disallowed the deemed MODVAT benefit availed earlier and ordered for recovery of the said sum along with interest, and, further imposed penalty of Rs. 40,000/-.

Being aggrieved by the aforesaid order the Respondent preferred an appeal before the Commissioner (Appeals), Central Excise, Jalandhar, who concurred with the view taken by the adjudicating authority. However, it reduced the penalty from Rs. 40,000/- to Rs. 20,000/-. Thereafter, the Respondent preferred an appeal before the Customs, Excise and Service Tax Appellate Tribunal ("**the Tribunal**") who quashed the orders passed by the adjudicating authority and that of the appellate authority.

Questioning the justifiability of the aforesaid order, Revenue preferred an appeal before the High Court who concurring with the view expressed by the Tribunal dismissed the appeal. Hence, the Revenue preferred an appeal before the Hon'ble Supreme Court.

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Held:

It was held by the Hon'ble Supreme Court that ***Rule 57A (6) of the Rules postulates and requires "reasonable care" and not verification from the Department whether the duty stands paid by the manufacturer-seller.***

The Hon'ble Supreme Court held that there is no dispute that a declaration was given by the manufacturer of the inputs indicating that the excise duty had been paid on the said inputs under the Act.

It is also not in dispute that the said inputs were directly received from the manufacturer but not purchased from the market. There is no cavil over the fact that the manufacturer of the inputs had declared the invoice price of the inputs correctly in the documents.

Rule 57A (6) of the Rules requires the manufacturer of final products to take reasonable care that the inputs acquired by him are goods on which the appropriate duty of excise as indicated in the documents accompanying the goods, has been paid.

The notification has been issued in exercise of the power under the said Rule. The notification clearly states to which of those inputs it shall apply and to which of the inputs it shall not apply and what is the duty of the manufacturer of final inputs. Thus, when there is a prescribed procedure and that has been duly followed by the manufacturer of final products, it cannot be perceived that the assessee had not taken reasonable care as prescribed in the notification. Due care and caution was taken by the Respondent. It is not stated what further care and caution could have been taken.

Therefore, the Hon'ble Supreme Court dismissed the appeal and decided the case in favour of the Respondent.

Present Scenario under the Cenvat Credit Rules, 2004 ("the Credit Rules"):

As such there is no specific condition under the Credit Rules that the assessee has to verify with Department in order to avail Cenvat credit, whether supplier had paid duty on inputs supplied by Manufacturer-Supplier. Further, Sub rule (5) and (6) of Rule 9 of the Credit Rules, only specify that burden of proof lies on Manufacturer or Service Provider regarding admissibility of the CENVAT credit on Inputs, Capital Goods and Input Services as reproduced here in below:

"(5) The manufacturer of final products or the provider of output service shall maintain proper records for the receipt, disposal, consumption and inventory of the input and capital goods in which the relevant information regarding the value, duty paid, CENVAT credit taken and utilized, the person from whom the input or capital goods

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have been procured is recorded and the burden of proof regarding the admissibility of the CENVAT credit shall lie upon the manufacturer or provider of output service taking such credit.

(6) The manufacturer of final products or the provider of output service shall maintain proper records for the receipt and consumption of the input services in which the relevant information regarding the value, tax paid, CENVAT credit taken and utilized, the person from whom the input service has been procured is recorded and the burden of proof regarding the admissibility of the CENVAT credit shall lie upon the manufacturer or provider of output service taking such credit.

Recently, the Hon'ble Delhi Tribunal in the case of **CC & CCE Vs M/s Juhi Alloys Ltd (2013-TIOL-1310-CESTAT-DEL)** has held that **"A buyer can take steps which are in their control and he cannot be expected to verify the records of the supplier's broker (i.e dealer) to check whether in fact the supplier has paid duty on the goods supplied by him or not - as long as bonafide nature of the consignee transaction is not doubted, credit should not be denied - Revenue appeals rejected: CESTAT [paras 6, 7 & 8]:DELHI CESTAT"**

Hope the information will assist you in your Professional endeavors. In case of any query/information, please do not hesitate to write back to us.

Thanks & Best Regards.

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Released a Book - "Guide to Service Tax Voluntary Compliance Encouragement Scheme, 2013", authored by Bimal Jain, FCA, FCS, LLB

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