

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE  
TRIBUNAL, KOLKATA  
EASTERN ZONAL BENCH : KOLKATA**

REGIONAL BENCH - COURT NO.2

**Excise Appeal No.76477 of 2018**

(Arising out of Order-in-Appeal No.04/Bol/CT(Audit-II)/2017-18 dated 06.02.2018 passed by Commissioner of Central Tax (Audit), Kolkata-II Commissionerate (Appeals).)

**M/s. Kalimata Vyapaar Private Limited**

(1/98, Bidhan Road, Hatashuria, Sahebdihi, Barjora, Bankura-722204.)

**...Appellant**

*VERSUS*

**Commissioner of CGST & CX, Bolpur Commissionerate**

**.....Respondent**

(Nanoor Chandidas Road, Sian, Bolpur, Dist: Birbhum, West Bengal.)

**APPEARANCE**

Shri S.P. Siddhanta, Consultant for the Appellant (s)

Shri K.Chowdhury, Authorized Representative for the Respondent (s)

**CORAM: HON'BLE SHRI P.K.CHOUDHARY, MEMBER(JUDICIAL)**

**FINAL ORDER NO. 75390/2022**

DATE OF HEARING : 7 July 2022

DATE OF DECISION : 7 July 2022

**P.K.CHOUDHARY :**

The short question to be considered in the instant appeal is whether the appellant is entitled to take Cenvat Credit of Rs.1,13,941/- on the inputs purchased from M/s Himadri Chemicals & Industries Limited (hereinafter referred to as HCIL), Mahistikry, Haripal, Hooghly, West Bengal during the period from December 2007 to June 2008. According to the Department, M/s HICL is not the manufacturer as per the definition of manufacture as defined in Section 2 (f) of Central Excise Act, 1944. An investigation was initiated by the divisional anti-evasion team against M/s HICL and a show-cause notice in this regard was issued to M/s HCIL for recovery of the Cenvat Credit availed on inputs Furnace Oil for the relevant

period. In the show-cause notice issued to M/s HCIL, *prima-facie*, allegation is that the processes carried out by M/s HCIL, were simply blending/mixing of Heavy Creosote Oil with Furnace Oil and thereafter, sold the blended final product in the name of "Fuel Oil". This process of blending/mixing does not amount to manufacture under Section 2 (f) of the Central Excise Act, 1944. It was also alleged that the payment made by M/s HCIL was not Central Excise duty, rather it was simply a deposit made to Government Account.

2. Heard both sides and perused the appeal records.

3. After considering the submissions, I find that the Appellant satisfied the essential requirements for CENVAT credit. Notwithstanding excisability of the input, the supplier of the input paid duty thereon and issued a valid invoice to the Appellant. The input so received in the Appellant's factory was used in or in relation to manufacture of their final product and its duty-paid character was evidenced by the invoices. In the circumstances, the Appellant was entitled to take CENVAT credit of duty paid on the input. The question whether the input had arisen out of a process of manufacture is irrelevant. The relevant question is whether the input was duty-paid.

4. In view of the above discussions, the impugned order is set aside and the appeal filed by the Appellant is allowed with consequential relief as per law.

(Operative part of the order was pronounced in the open Court.)

Sd/  
**(P.K.CHOUDHARY)**  
**MEMBER (JUDICIAL)**