(2022) 02 CESTAT CK 0016

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Excise Appeal No. 52780, 52230 of 2019

M/s. M.J. Steels Private Limited And Anr. Vs Commissioner Of Central Excise And Customs?

Date of Decision : 17-02-2022

Acts Referred:

Central Excise Tariff Act, 1985 — Chapter 72
Cenvat Credit Rules, 2004 — Rule 9(1), 9(4), 9(5)

Citation : (2022) 02 CESTAT CK 0016

Hon'ble Judges : Anil Choudhary, J;C.J. Mathew, Technical Member

Bench : Division Bench

Final Decision : Allowed

Judgement

1. The dispute in this appeal is whether the appellant company have rightly been disallowed cenvat credit on receipt of raw materials or inputs, as disputed by Revenue.

2. The appellant is engaged in the manufacture of dutiable excisable goods known as M.S. Ingots falling under Chapter 72 of the CETA, 1985. Sponge Iron, Steel Scrap (Waste & Scrap) and Ferro Alloys are the major raw materials/inputs used for the manufacture of M.S. Ingots. The appellant receives its inputs from various supplier under the cover of CENVATABLE invoices and had availed CENVAT Credit on such purchases, based on such CENVATABLE invoices issued by such suppliers.

3. Investigation was carried out by the Central Excise Department against various manufacturer/dealers and it was alleged that such manufacturer/dealers (suppliers of inputs-scrap) were non-existent and some transactions between such manufacturers and/or dealers and the appellant, appeared to be dubious.

4. It is alleged that the appellant had purchased M.S Scrap from various First Stage dealers, namely, (i) Jetking Trading & Agencies; (ii) Rakti Trading Pvt. Ltd; (iii) Yes Commtrade Pvt. Ltd.; (iv) S.R. Metalics; (v) Bright Metal & Steel; and (vi) RMS Steel Tech (Co-noticee Nos. 7 to 12), all of Raipur. On the basis of information, the Department issued show cause notice dated 26.05.2017,

alleging that the assessee-Appellant is evading payment of Central Excise duty by availing Cenvat Credit on the basis of invoices issued by said First Stage Registered Dealers, without actually receiving the goods i.e. MS Scrap from them. The details are –

Table

Sl.No.

Dealer's name on whose invoices credit is availed.

Description of goods which are shown to be sold by the dealers.

Manufacturer's name shown in the invoices of dealers

Amount of Cenvat Credit involved (In Rs.)

1.

M/s.Jetking Trading & Agencies Pvt.Ltd., Bhanpuri, Raipur [1st State Dealer]

M.S. Scrap

M/s.Supreme Multitrade Pvt. Ltd. and M/s.Singh Mineral & Infratech (appear to be nonexistent manufacturers)

6,10,415/-

2.

M/s.RMS Steel Tech &Co.Hirapur, Raipur [Ist Stage Dealer]

M.S. Scrap

M/s.High Tides Infra Project Pvt. Ltd. M/s.Singh Mineral & Infratech (appear to be Nonexistent manufacturers)

6,73,428/-

3.

M/s.Bright Metal and Steel [Ist Stage Dealer], Raipur

M.S. Scrap

M/s.Singh Engineering Works (non-existent manufacturer), M/s. Mongia Steel Ltd., M/s. Adhunik Alloys and Power Ltd, (genuine manufacturers but on enquiry it is revealed that they have not issued the invoices to M/s. Bright Metal)

16,91,635/-

4.

M/s.S.R. Metallics [1st stage Dealer], Raipur

M.S. Scrap

M/s. Supreme Multitrade Pvt. Ltd.

56,270/-

5.

M/s.Rakti Trading Pvt. Ltd. [1st Stage Dealer] Raipur.

M.S. Scrap

M/s.Supreme Multitrade Pvt. Ltd. and M/s.Singh Engineering Works and M/s. Singh Mineral & Infratech (appear to be nonexistent manufacturers)

60,69,250/-

6.

M/s.Yes Commtrade [1st Stage Dealer], Raipur.

M.S. Scrap

M/s.Supreme Multitrade Pvt. Ltd. and M/s.Singh Mineral & Infratech (appear to be nonexistent manufacturers)

31,72,795/-

Total

1,22,73,793/-

5. It was further alleged in the show cause notice that the said dealers had purchased the MS Scrap from various manufacturing units of Dhanbad, namely i), Singh Minerals & Infratech; ii) Singh Engineering Works; iii) Supreme Multi Trade Pvt. Ltd and iv) High Tide Infra Projects Pvt. Ltd., some of which appeared non-existent and therefore, the First Stage Dealers had only supplied invoices without supplying the material to the assessee-Appellant. It was the case of the Department that the amount paid against the purported invoices by the assessee-Appellant through cheque, was returned in cash by the First Stage Dealers/Co-Noticees. The Revenue in this regard had placed reliance on the statement of Sh. Pradeep Agarwal dated 07.10.2015, as well as Commercial Tax Returns of the First Stage Dealers to substantiate that no purchases were actually made by the said First Stage Dealers from manufacturing units of Dhanbad. So, by denying the Cenvat Credit, the Department raised the demands against the assessee-Appellant, M/s. M.J. Steel Private Ltd. and imposed penalties on the company and the other Appellant - Director. Being aggrieved, the assessee-Appellants have filed the present appeals.

6. With this background, we have heard the learned counsels for the Appellants and the learned Authorised Representative for the Department.

7. The learned Counsel for the assessee-Appellant, M/s M.J. Steels Pvt. Ltd. assailing the impugned order, submitted that they have purchased the raw

material, namely, MS Scrap from the said First Stage Dealers, on the basis of 4228 duty paid invoices accompanied with weighment slips. For purchase of the said raw material, payments were made by way of a/c payee cheque or RTGS or through banking Channels, and necessary entries on receipt in the RG-23 Register were also made. Accordingly, Cenvat credit was availed by them in accordance with law by intimating the Department by filing ER-1 Returns regularly.

8. Regarding the allegation that payments were made through cheques and in lieu thereof cash was received, the learned counsel submitted that during search by the Revenue neither any unexplained cash was recovered from the premises of the assessee-Appellant, nor any corroborative evidence was brought on record to substantiate the claim. It is further contended that the Revenue has not even bothered to cross-check the Bank Account(s) of any of the First Stage Dealers, to prove the allegation of cash withdrawal by them, which clearly demonstrates that the Revenue has proceeded on the basis of assumptions and presumptions, and came to the conclusion merely relying upon the statement of Shri Pradeep Agarwal and Rajesh Agarwal (Third persons/parties).

9. The allegation that they were receiving invoices only from the suppliers, without supply of goods, or fraudulently availing of Cenvat Credit, is baseless and not sustainable. He also submitted that the Revenue did not carry out physical verification of stock of raw materials and finished goods on the date of visit, to ascertain shortage or excess, if any. Hence, the Department failed to take due diligence of the raw material/finished goods. It was further submission of the learned counsel for the assessee-Appellant, that they have produced their final product from the raw material (MS Scrap) purchased under the said invoices, and removed the same after discharging the duty liability. The Revenue has not pointed out any irregularities in the account books of the assessee-Appellant, and as such the allegation that no raw material (MS Scarp) was received is wholly erroneous and unsustainable.

10. The learned Counsel also submits that they have purchased the goods under proper invoices evidencing payment of appropriate amount of Central Excise duty, VAT & other taxes, and bonafidely entered the details in the statutory register and thereafter, at the time of receipt of Cenvatable invoices with the goods, paid the amount of duty, maintained proper accounts and filed returns, which were subjected to scrutiny by the jurisdictional Central Excise officers. It is further urged that for all the transactions of purchase and sale of the goods, payments were made through banking channel and the assessee-Appellant took reasonable care to purchase the goods from the registered dealers, and thus, the assessee-Appellant have discharged the onus on them and is not liable for disallowance of credit, penalty and/or interest. He, further, relied upon the ratio laid down by the Hon'ble Allahabad High Court in the case of CCE vs. Juhi Alloys Ltd. [2014 (302) ELT 487 (All)].

11. The impugned order is also bad in view of the judgement of the Hon.

Jharkhand High Court in Commissioner of C. Ex., East Singhbhum v. Tata Motors Ltd. - 2013 (294) E.L.T. 394 (Jhar.), wherein it was held that :-

"... Once a buyer of inputs receives invoices of excisable items, unless factually it is established to the contrary, it will be presumed that when payments have been made in respect of those inputs on the basis of invoices, the buyer is entitled to assume that the excise duty has been/will be paid by the supplier on the excisable inputs. The buyer will be therefore entitled to claim Modvat credit on the said assumption. It would be most unreasonable and unrealistic to expect the buyer of such inputs to go and verify the accounts of the supplier or to find out from the Revenue or Central Excise whether actually duty has been paid on the inputs by the supplier. No business can be carried out like this, and the law does not expect the impossible."

12. Learned counsel further submitted that the Revenue did not make any investigation to ascertain whether the Dhanbad parties were in existence at any point of time or stopped their operation subsequently. Being "non-operative" does not necessarily leads to a conclusion that the said parties were never in existence as alleged by the Department. Further, the said Units have been stated to be "non-operative" by the Revenue, much after the period under consideration being 2012-13 to 2016-17, for which demand is made in the show cause notice, and as such it cannot be conclusively said that the Units were not doing any manufacturing activities when supplies of MS Scrap were received by First Stage Dealers from such units, and which material was further supplied to the assessee-Appellant. It is the submission of the learned counsel that the allegation of "non-operative" units is only presumptive and assumptive in nature, and cannot be termed as conclusive evidence for raising demands. He further submitted that the assessee-Appellant has made purchases from the First Stage Dealers and not directly from the said Dhanbad units, and moreover it is not for the assessee-Appellant to verify their antecedents. However, the record discloses that during the period under consideration the said units were active and duly registered with the Department and, admittedly, the Excise registration was sought to be cancelled only on 17.02.2016. Accordingly, he prays for allowing the appeals.

13. Opposing the appeals, ld. Authorised Representative for the respondent/ Department relies upon the impugned order and further urges that the investigation by the Department against the aforementioned manufacturers and their alleged role in the case revealed, that these manufacturers were not in existence, as detailed and recorded in panchnama dated 9.9.2015, and thus, they have neither undertaken any manufacturing activities, nor have they supplied duty paid goods/scrap to Ist stage dealers, who subsequently issued cenvatable invoices to appellant. All summons sent by post to 'mfgr./dealers and individual directors returned back as undelivered with remark, "addressee not found". These facts have been recorded in the panchnama. Further, some of these dealers were found to have been engaged in trading of wire products/TMT. The Commissioner of Commercial Taxes vide his letter dated 17.10.2016

confirmed that none of the dealers of Raipur had shown purchase of any goods from Jharkhand, Dhanbad. As per registration number of vehicles, Car, motor cycles, auto rickshaw, mopped etc. were found to have been used for transportation of goods by dealers, are detailed in para 7 (i) of the order-in-original. Transporters or owners of the vehicles, claimed to have been used in transportation of the goods by the dealers, in their statements have categorically denied to know the appellant and transport of any goods in their vehicle, mentioned in the disputed invoices. The unlawful sale proceeds transferred to the account of dealers was managed for purchasing of wire rods, H.S. Wire, M.S. Round and T.M.T. bars from these dealers and sold in grey market in cash. The wire rods, H.S. Wire, M.S. Round and TMT bars were purchased by these dealers from manufacturers in the name of fake buyers. Shri Rajesh Agarwal, Raipur is a commission agent of Iron and steel products, used to arrange procurement of bazaar scrap, kabadi scrap and other non-cenvatable scrap, in alliance with one Shri Pradeep Kumar Agarwal, who used these sales proceeds against Cenvatable invoice. Shri Prince Kumar Singh in his statement dated 15.12.2015 accepted above facts. Shri Vivek Agarwal, Director/appellant stated that his company sold 400 MT of bazaar scrap and Kabadi scrap to M/s. Bright Metal & Steel, who are alleged to have issued fake cenvatable invoice, showing supply of iron and steel scrap for availing cenvat credit. Further, appellant have paid Rs.30 lakhs (under protest) against liability. Under Rule 9(5) of the Cenvat Credit Rules, the burden of proof regarding admissibility of CENVAT credit shall lie upon the manufacturer taking credit. In case of dealer, where dealer has maintained records, that inputs were supplied from the stock on which duty was paid by the producer of such inputs Rule 9(4). Accordingly, he prays for dismissing the appeal. He also relies on the following rulings:-

(i) N.R. Sponge Pvt. Ltd. – 2020 (372) ELT 321 (Chattisgarh High Court)

(ii) Silicone Concepts International Pvt. Ltd. –Final Order No.C/A/50963/2019-CU(DB) dt.1.8.2019 in Appeal No.C/50796/2019

(iii) Commissioner of Central Excise, Mumbai-IV Vs. Nipon Zip Industry Pvt.Ltd. -2009 (236) ELT 554 (T-Mumbai)

(iv) Commissioner of Central Excise, Madras Vs. Systems & Components Pvt.Ltd. – 2004 (165) ELT 136 (SC).

(v) K.I. Pavunny Vs. Asstt. Collector (HQ), Central Excise, Cochin. 1997 (90) ELT 241 (SC).

(vi) CCE & ST, Hyderabad-II Vs. Peers Technologies Pvt. Ltd. -2019 (27) GSTL 701 (Tr-Hyderabad)

(v) CC,Madras & Ors. Vs. D. Bhoormull – 1983 (13) ELT 1546 (SC)

(vi) Power Control Corporation – 2019 (369) ELT 471 (Raj.)

(vii) CCE,Salem Vs. CESTAT, Chennai-2019(366) ELT 647(Mad.)

(viii) Dharmendra Textiles Processors Vs.Union of India 2008(231) ELT 3 (SC).

(ix) Motabhai Iron and Steel Industries -2015(316)ELT 374 (Guj.)

(x) CCE & Cus & Service Tax Vs. Juhi Alloys Ltd.-2014(302)ELT 487(All.)

14. Having considered the rival contentions, we find that the Revenue is not disputing the fact that First Stage Dealers raised invoices giving all the particulars required to be given under the provisions of Cenvat Credit Rules, in respect of material supplied to the assessee-Appellant. It is also not being disputed that the assessee-Appellant has received inputs for manufacture and entered the same in their Central Excise records. The said inputs were further used by the assessee-Appellant in the manufacture of their final product which were cleared by them on payment of duty. This fact we hold is sufficient to prove the physical entry of the inputs in the assessee-Appellant's premises. Further, the ledger account and RG-23A register (cenvat register) maintained by the assessee-Appellant is supported by weighment slips, also proves the receipt of the goods. During the course of arguments before this Tribunal, the assessee-Appellant also produced the sample invoices against which they have availed the Cenvat Credit along with supporting documents, including lorry receipts and weighment slips. Also demonstrated the ledger account of the suppliers, supported with statutory register and Bank Statement. Thus, appellant have prima facie, discharged the onus on them. Therefore, the burden is cast upon the Revenue to prove that it was merely a paper transaction, and goods were not received by the assessee-Appellant, as alleged, which it failed.

15. It is further demonstrated that all the payments made to the First Stage Dealers are through banking channels, by way of Cheques/RTGS. The Revenue has not brought on record any evidence to prove any flow back of monies.

16. The Revenue's reliance on the VAT Returns filed by the First Stage Dealers, to contend that there is no mention of any receipt of goods from outside state (units at Dhanbad) is untenable, in as much as the VAT Returns sought to be relied upon by the Revenue only pertains to purchases within the State made by the said First Stage Dealers. Purchases made by the First Stage Dealers of Raipur, Chhattisgarh from units at Dhanbad, Jharkhand cannot be termed as "purchases within the State" and would thus not find any mention in the VAT Returns of such First Stage Dealers under the head "List of purchase from such dealers within the State from whom purchases of more than 3 lakh in a year have been made." As such purchases are definitely inter-state.

17. From the available record, we also find that the assessee-Appellant have discharged its onus as required under Rule 9(1) & (5) of CCR, 2004 and as explained by Hon'ble Allahabad High Court in its decision in the case of Commissioner, Excise Customs and Service Tax Vs Juhi Alloys limited 2014(302) ELT 487.

18. In view of the above, we find no reason to sustain the impugned Order dated

27.03.2019, and the same is hereby set aside in toto. Both the appeals filed by the Appellants are allowed with consequential relief.

(Pronounced on 17.02.2022).

