(2022) 01 CESTAT CK 0014

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Excise Appeal No. 51557, 51558 Of 2019

M/s Precious Electrochem (I) Pvt. Ltd. And Anr. — APPELLANT

Vs

Commissioner Of Central Goods Service Tax And Central Excise — RESPONDENT

Date of Decision : 18-01-2022

Acts Referred:

Cenvat Credit Rules, 2004 — Rule 15(2)
Central Excise Rules, 2002 — Rule 25

Citation : (2022) 01 CESTAT CK 0014

Hon'ble Judges : Anil Choudhary, J

Bench : Single Bench

Final Decision : Allowed

Judgement

1. The brief facts of the case are that the appellant is manufacturer of electroplating and metal finishing chemicals inter alia requires various raw materials including Nickel Cathode and Tin Ingots for its manufacturing activities. Vide the impugned order, the Commissioner has confirmed the disallowance of cenvat credit on inputs as well as penalty under Rule 15(2) of Cenvat Credit Rules.

2. In normal course, the appellant placed order on one M/s Unnati Alloys Pvt. Ltd., for supply of ingots. As per the orders placed by the appellant, the appellant was regularly receiving ingots from M/s Unnati. The goods were delivered at their registered premises in Bhiwadi and invoices for the same were duly issued by M/s Unnati. The appellants made all payments through banking channels. Further, the price of the goods included the transportation charges, which was arranged by the supplier and therefore, the appellant had no role to play in the same.

3. Upon receipt of the said raw materials, the appellant used to utilise the same for manufacture of the final product which were sold to third parties on payment of duty. Pertinently, there is no dispute in respect to the manufacture, and sale by the appellant to third parties.

4. Being a regular assessee, the appellant was duly subjected to audit by the jurisdictional division office of the Central Excise Department, and was regularly maintaining its statutory RG-23 register, and other records.

5. It is the case of the department, that M/s Unnati Alloys were involved in importing goods from abroad and selling the same in cash. Thereafter, they used to show fake sales and used to transfer inadmissible CENVAT credit, without actual transfer or delivery of goods. The aforesaid allegation of the department stems out of investigation initiated by the department against other identical placed buyers of M/s Unnati Alloys.

6. Vide the impugned order in appeal, cenvat credit on inputs was disallowed with respect to the present appellant and also other co-noticees / appellants namely M/s Arya Alloys Pvt. Ltd., M/s KMG Rolling Pvt. Ltd., M/s Bhiwadi Cylinders Pvt. Limited. The appeal of this appellant was allowed in part, setting aside the penalty imposed under Rule 25 of Central Excise Rules, 2002. Being aggrieved, the appellant have preferred appeal before this Tribunal.

7. Learned Counsel Sh. Ashish Batra for the appellant mentioned that another co-appellant arising from the same common impugned order - M/s Arya Alloys Pvt. Ltd., and its Directors who are also similarly situated, had filed Appeal Nos. E/51623, 51542-43/2019. A Co-ordinate Bench of this Tribunal has been pleased to allow the appeals setting aside the impugned order in appeal with consequential relief vide final order Nos. 50434 – 50437/2020 dt.02.03.2020. Accordingly, he prays for allowing the appeals of this appellants being similarly situated.

8. Learned Authorised Representative appearing for the Revenue relies on the impugned order. He also mentioned that in case of similarly situated appellant - M/s Multimetals Limited, this Tribunal set aside the demand and penalty, wherein M/s Multimetals had received inputs from M/s Unnati Alloys Pvt. Ltd., The Revenue has preferred appeal before the Hon'ble Rajasthan High Court, which is filed on 26.11.2018 and is pending adjudication by the Hon'ble High Court.

9. Having considered the rival contentions, I find that in the case of similarly situated co-appellant (arising from the common impugned order), the coordinate Bench of this Tribunal in the case of M/s Arya Alloys Pvt. Ltd., have held as follows:-

"2. After hearing both the sides duly represented by Shri Vijai Kumar and Ms. Reena Rawat, learned Advocates for the appellants and Shri Y. Singh and Shri K. Poddar, learned Authorised Representatives for the Revenue, I find that M/s Arya Alloys engaged in the manufacture of metal alloys and is procuring the inputs from Unnati Alloys. As per the investigation conducted by the Revenue, a belief was entertained that M/s Unnati Alloys is only providing the Cenvatable invoices to M/s Arya Alloys without actually supplying the inputs. It was further alleged that though the payments for the said inputs was being made by M/s Arya Alloys through banking channels but subsequently M/s Arya Alloys was receiving back the said amounts in cash. Statements of Shri Amit Gupta as also some of the transporters were recorded by the Revenue indicating that no inputs were being transported by M/s Unnati Alloys to M/s Arya Alloys.

3. Based upon the above, proceedings were initiated against the appellant resulting in passing of the present impugned orders. The appellant, on the other hand, contended that all the inputs received by them were duly recorded in their statutory records and were shown to have been consumed in the manufacture of their final product, which was cleared on payment of duty. It was their contention that the Revenue has not shown any other source of procurement of inputs and without the use of the inputs, their final product cannot be manufactured.

4. At this stage learned Advocate brings to my notice the fact that based upon the same set of investigations, proceedings were initiated against no. of other assesses similar situate. It was alleged by the Revenue that all those assesses have procured only the Cenvatable invoices for the purpose of availing the Cenvat, without actually receiving the inputs. Appeals against the other assesses were taken up by the Tribunal and the orders impugned therein were set aside. My attention stands brought to the Tribunal Final Order No. 51800-51808/2018 dated 11 May, 2018 vide which the orders passed against the assesses on similar set of facts and circumstances were set aside. It was observed by the Tribunal that Department’s entire case is solely based on the statement of Shri Amit Gupta and other transporters for which no cross examination was provided. Further, as regards the payments by cheque, Tribunal observed that the Revenu ve’s case that the said payment was received back in cash is not sustainable for the reason that no cash was seized from the appellant’s premises and there is no evidence to that effect. Tribunal also observed that all the transactions related to inputs purchased was duly recorded in the books of account and inventory records. As such, the denial of Cenvat credit in those cases was set aside.

The said decisions stands followed by the Tribunal in number of other judgments. Reference can be made to following decisions:

(i) M/s Moranl Alloys Pvt. Ltd., M/s Unnati Alloys Pvt. Ltd. – Final Order No. 52055-52056/2018-SM dated 29.5.2018;

(ii) Synergy Steel Pvt. Ltd. Vs. CGST & CCE, Alwar – Final Order No. 50673/2019 dated 15.3.2019;

(iii) Gian Castings Pvt. Ltd. Vs. CCE, Chandigarh – 2015 (319) ELT 339 (Tri.-Del.).

5. On going through the impugned orders, I find that the same set of investigations and the same evidences stand referred to in the present case also which were available in the earlier orders of the Tribunal. On being questioned, learned Authorised Representative has not been able to bring out any other evidence on record except the statement of Shri Amit Gupta and the transporters and the allegations of receiving back of cash as against the payments made through banking channels. It is also a fact that the appellant was reflecting the

receipt of the inputs in their statutory records. Further, the Revenue has not alleged that the inputs required for making the final product were procured by the appellant from any other source. In the absence of the inputs, it is not possible to manufacture final product, which the appellant have shown to have manufactured and cleared on payment of duty.

7. In view of the above, I find no justifiable reasons to deny the Cenvat credit or to impose penalties upon the appellants. Accordingly, the impugned order is set aside and all the appeals are allowed with consequential relief."

10. Accordingly, following the precedent order of this Tribunal in M/s Arya Alloys Pvt. Ltd., I allow the appeals with consequential benefits. The impugned order is set aside against the appellant company and its Director Sh. Amit Jain.

11. In the result, both the appeals are allowed with consequential relief.

(Pronounced on 18.01.2022).

