(2024) 11 CESTAT CK 1304

In the Customs, Excise And Service Tax Appellate, New Delhi

Case No : Excise Appeal No. 55138, 55139 of 2023

Sh. Prem Jain and Anr @APPELLANT @Hash Commissioner of CGST & Central Excise Udaipur @RESPONDENT

Date of Decision : 29-11-2024

Acts Referred:

Central Excise Act, 1944 — Section 11A(4), 11AA, 11AC
Cenvat Credit Rules, 2004 — Rule 14, 15(ii), 15A
Central Excise Rules 2002 — Rule 26(2)

Citation : (2024) 11 CESTAT CK 1304

Hon'ble Judges : Dilip Gupta, President (J);P. V. Subba Rao, Member (T)

Bench : Division Bench

Advocate : Rakesh Agarwal

Final Decision : Allowed

Judgement

P.V. Subba Rao, J

1. None appeared on behalf of the appellant despite notices having been served on 11.09.2024. Thereafter, these appeals were listed on 12.03.2024, 03.06.2024 and 09.09.2024, but nobody appeared. Today also, no one has appeared for the appellants.

2. We heard learned authorized representative appearing for the department and perused the records.

3. These two appeals assail the order-in-appeal dated 15.02.2023, Impugned order passed by the Commissioner (Appeals) Central Excise and CGST, Jodhpur upholding the Order-in-Original dated 27.04.2022, OIO passed by the Additional Commissioner and rejecting the appeals filed by Shri Prem Jain and Shri Gyan Jain along with the appeal filed by M/s Prem Jain Ispat Limited, Kota.

4. The facts which led to the issue of the impugned order are that the M/s Prem Jain Ispat Udyog Pvt Ltd., Kota, the assessee is engaged in manufacture MS billets and bars falling under Chapter 72 of the Schedule to the Central Excise Tariff Act, 1985. It pays central excise duty and also avails CENVAT credit on the

inputs and input service received by it.

5. A show cause notice dated 03.12.2021, SCN was issued to the assessee seeking to deny CENVAT credit of Rs.98,18,539/- which it had availed on the strength of dealers invoices issued by M/s Ridhi Sidhi Enterprises, Jaipur (Raj.) during the period November 2016 to May 2017 without allegedly receiving any inputs. Therefore, it was proposed in the SCN to deny this credit to the assessee and recover it under Rule 14 of CENVAT Credit Rules, 2004, CCR read with Section 11A(4) of the Central Excise Act, 1944, the Act along with interest under Section 11AA. It was also proposed to impose penalty on the assessee under Rule 15 (ii) of CCR read with section 11AC of the Act. The SCN also proposed to impose penalties on Shri Prem Jain and Shri Gyan Jain.

6. All the noticees resisted the proposals in the SCN which were, however, confirmed by the Additional Commissioner in his OIO which order was upheld by the Commissioner (Appeals) in the impugned order.

7. Learned authorized representative appearing for the department submits that insofar as the assessee is concerned, its appeal against the impugned order was returned by this Tribunal at defect stage and as on today there is no appeal by the asseessee. These two appeals are only by Shri Prem Jain and Shri Gyan Jain assailing the penalties imposed on them.

8. The relevant portion of the OIO imposing penalties is as follows:

(i) I impose penalty of Rs. 5,00,000/- (Rs. Five Lacs Only) upon SH. Prem Jain Director of M/s Prem Jain Ispat Udyog Pvt Ltd. under rule 15A of the Cenvat Credit Rules, 2004 and Rule 26(2) of the Central Excise Rules 2002.

(ii) I impose penalty of Rs.5,00,000/- (Rs. Five Lacs Only) upon Sh. Gyan Chand Jain Manager cum Authorised Signatory of M/s Prem Jain Ispat Udyog Pvt Ltd. under rule 15A of the Cenvat Credit Rules, 2004 and Rule 26(2) of the Central Excise Rules, 2002.

9. In these appeals both Shri Prem Jain and Shri Gyan Jain seek setting aside of the penalties imposed on them on three grounds:

(a) The CENVAT credit was correctly availed by the assessee and, therefore, there was no case for denial of CENVAT credit at all and consequently the penalties imposed on them also cannot be sustained.

(b) Rule 26(2) of the Central Excise Rules, 2002 does not apply to their case as there is no allegation or evidence that they had abetted issuing of any invoices without supply of goods.

(c) Rule 15A of CCR does not provide for importing penalty on the Director/ General Manager of the assessee.

10. Learned authorized representative appearing for the department vehemently supported the impugned order.

11. We find that of the three grounds on which Shri Prem Jain and Shri Gyan Jain assailed the penalties imposed do them, the question of wrong availment of CENVAT credit based on fraudulent invoices without receiving goods by the assessee is not before us. According to the impugned order, the assessee had availed CENVAT credit on the strength of fraudulent invoices issued without supply of goods and the same is recoverable. Therefore, this question cannot be examined by us in these appeals.

12. As far as penalties under Rule 26 (2) of Central Excise Rules and Rule 15A of CCR are concerned, these Rules read as follows:

"Rule 26(2) in Central Excise Rules, 2002

(2) Any person, who issues –

(i) an excise duty invoice without delivery of the goods specified therein or abets in making such invoice; or

(ii)any other document,or abets in making such document, on the basis of which the user of said invoice or document is likely to take or has taken any ineligible benefit under the Act or the rules made thereunder like claiming of CENVAT credit under the CENVAT Credit Rules, 2004 or refund, shall be liable to a penalty not exceeding the amount of such benefit or five thousand rupees, whichever is greater.

Rule 15A of CENVAT Credit Rules, 2004

RULE - 15A. General penalty. — Whoever contravenes the provisions of these rules for which no penalty has been provided in the rules, shall be liable to a penalty which may extend to five thousand rupees."

13. Evidently, Rule 26(2) of the Central Excise Rules provides for imposing penalty on any person who either issues an excise duty invoice without delivery of goods specified therein or abets in making any such an invoice or any other document or abets in making any such document on the basis of which a user of the invoice or the document is likely to take or has taken ineligible benefit under the Act or Rules. In this case, the allegation in the SCN as well as affirmation in the impugned order is that the assessee had taken CENVAT credit on the strength of fraudulent invoices issued by M/s Ridhi Sidhi without supplying of the goods. The allegation is not that the assessee had issued such invoices but that it had received such invoices from M/s Ridhi Sidhi and availed credit. The role of Shri Prem Jain is as the Director of the assessee and the role of Shri Gyan Jain is as the General Manager of the assessee. Neither the assessee nor Shri Prem Jain nor Shri Gryan Jain have either issued invoices or abetted issuing of the invoices according to the show cause notice or the impugned order. Therefore, Shri Prem Jain and Shri Gyan Jain are not covered by Rule 26 (2).

14. Rule 15A of CCR, provides for penalty for violations of CCR not elsewhere specified. The CCR provide for availment of CENVAT credit by an assessee

subject to some conditions and after following certain procedures. If there are violations of CCR, they can be violations by the assessee. There cannot be violations by the Director/ General Manager or any other functionary of the assessee because CCR do not place any obligation on these functionaries nor can these functionaries take any CENVAT credit. There is also no provision for imposing penalty upon the Director or the General Manager or other functionary of assessee under the CCR. Rule 15A of CCR, therefore, also does not apply to the Director or General Manager of the assessee.

15. Thus, neither Rule 26 (2) of Central Excise Rules, 2002 nor Rule 15A of CCR under which the penalty was imposed on Shri Prem Jain and Shri Gyan Jain apply to the facts of this case. The penalty imposed on them cannot be sustained as it is imposed without any authority of law.

16. It also needs to be pointed out that while penalties were imposed under two different Rules [Rule 26(2) of the Central Excise Rules and Rule 15A of CCR] the quantum of penalty imposed under each of them has also not been indicated in the order of the Additional Commissioner which was upheld by the impugned order by the Commissioner (Appeals).

17. In view of above, the impugned order is set aside insofar as it relates to the penalties imposed on Shri Prem Jain and Shri Gyan Jain.

18. Both the appeals are allowed and the impugned order is set aside to the extent indicated above with consequential relief, if any, to Shri Prem Jain and Shri Gyan Jain.

[Order pronounced on 29/11/2024]