IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH : ALLAHABAD
COURT No. I

APPEAL No.E/1628/2012-EX[SM]

(Arising out of Order-in-Appeal No. 28-CE/MRT-I/2012 dated 31/01/2012 passed by Commissioner of Central Excise (Appeals), Meerut-I)

M/s Doaba Rolling Mills Pvt. Ltd. **Appellant**

Vs.

Commissioner of Central Excise & S.T., Meerut-I **Respondent**

Appearance:

Shri Aalok Arora, Advocate for Appellant
Shri Pawan Kumar Singh, Supdt (AR), for Respondent

CORAM:

Hon'ble Mr. Anil Choudhary, Member (Judicial)

Date of Hearing : 20/12/2017
Date of Pronouncement : 01/06/2018

FINAL ORDER NO-71016/2018

Per: Anil Choudhary

The issue in this appeal is whether the appellant had rightly taken Cenvat credit on the sales/clearances returned to them, on rejection by the buyer and whether the show cause notice have rightly invoked the extended period of limitation.

2. The brief facts of the case are that the appellant is a manufacturer of Ingots. During the scrutiny of ER-1 for the month of December, 2008, it was observed that the appellant had taken Cenvat credit on the items namely

M.S. Ingots on 05th December, 2008, which is the final product manufactured by them, on the strength of their own invoices issued on 04/12/2008. It was also observed that as per the ER-1 returns, the duty on the clearances affected in the month of December, 2008, was paid on 05/01/2009, whereas the duty paid against the said invoices was availed on 05th December, 2008. On further scrutiny of the returns, it was observed that vide 9 entries, serial number nil, all dated 05/12/2008 Cenvat credit to the tune of Rs.15,77,237/- including cess on M.S. Ingots shown as received by them on the strength of their own invoices, was taken. The Range Superintendent vide letter dated 24th June, 2009 directed to explain how and why such irregular credit have been taken in contravention to the Cenvat Credit Rules, 2004. The officers of Central Excise (Preventive) visited the factory premises of the appellant on 04/12/2008. During the course of physical verification of finished stock, that is, M.S. Ingots was conducted by the officers in the presence and in the manner suggested by Shri Pawan Kumar, Authorized Signatory, as result of verification, shortage of 502.605MT of M.S. Ingots was detected. The unit was asked to produce the current invoice book, which was in use, right from the time of arrival of the officers at 11.00

Hrs. The said invoice book was made available to the visiting officers at 17.15 Hrs. Further, in the statement it was recorded that in reply to question number four (which was about the shortage of 502.605 MT of Ingots) they are not in a position to explain the reasons for the shortage detected. From the current invoice book, it was noticed that the appellant had issued invoices from Sl. No.010100263 to 010100272 (9 invoices) all dated 04.12.2008 to M/s Rana Steels, Meerut Road, Muzaffarnagar and also to M/s Rana Rolling Mills (P) Ltd., By Pass Road, Muzaffarnagar. A follow up action was conducted on the same day at M/s Rana Steels, Muzaffarnagar and the statement of Shri Ashwani Agarwal, Accounts Manager was recorded under Section 14 of the Act at 18.00 Hrs on 04/12/2008, wherein he stated that they– M/s Rana Steels, had neither placed any order for supply of M.S, Ingots to the notice/appellant nor had made any purchases from the noticee-appellants between 02nd December, 2008 to 04th December, 2008. He further stated that they had not received M.S. Ingots in their factory on the strength of invoices as aforementioned vide Sl. No.010100263 to 272, issued by the appellant.

3. On further query, the appellant submitted the

copies of invoices vide letter dated 25/11/2009. On perusal of the invoices revealed that these invoices are issued to M/s Rana Steels (a unit of M/s K.K. Steels Ltd.) for sale of M.S. Ingots by appellant on 04/12/2008. The goods were cleared from the appellant unit between 01.25 Hrs to 05.40 Hrs. The invoices also bears a hand written remark on the face of the said invoices "Material is rejected and returning the same." with the stamp of "for M/s Rana Steels, (a unit of K.K. Steels Ltd.) and signed by the Authorized Signatory. In the statement of Authorized Signatory of M/s Rana Steels Mr. Ashwani Agarwal recorded on 04.12.2008, he stated that the signature affixed on the said invoices, appears to be similar to their signature but the same have not been affixed by him and question of signing by any other person does not arise.

4. It appeared to revenue that the appellant had issued the said invoices to cover up the shortage detected by the visiting officers on 04/12/2008 as the current invoice book was not produced before the officers till 17.15 Hrs. The follow up investigation in the unit of M/s Rana Steels which was conducted on the same day, revealed that the goods shown cleared under cover of the said invoices could not cover a distance of less than

3kms approx, even after the lapse of more than 12 Hrs. It appeared to Revenue that the invoices were issued by way of an afterthought and they made a remark on the invoices 'rejected and returned' on the invoices by intentionally manipulating and/or forging the signatures of the authorized signatory of M/s Rana Steels and availed the credit of duty which was not due. It further appeared to revenue that under Rule 2 of Cenvat Credit Rules, 2004, inputs and capital goods are defined, on receipt of which Cenvat credit can be taken/availed by an assessee. The goods in question are neither capital goods, nor inputs of the appellant. Further, Rule 9 of CCR 2004 prescribes the documents on the strength of which Cenvat credit can be taken by an assessee on receipt of capital goods, or inputs. Accordingly, it appeared to revenue that the appellant have taken irregular credit and utilized the Cenvat credit wrongly and accordingly vide show cause notice dated 11/01/2010, they were required to show cause, as to why the Cenvat credit involved with respect to the 9 invoices under dispute, totaling Rs.15,77,237/- should not be disallowed and demanded along with interest and further penalty was also proposed. Penalty was also proposed on the Director of the appellant-assessee under Rule 26 (2) (i) & (ii) of

CER, 2002.

5. The SCN was adjudicated on contest. The proposed demand was confirmed in the following words–Cenvat credit amounting to Rs.15,77,237/- including cess under Rule 14 of CCR, 2004 read with Section 11 A of Central Excise Act, 1944. Further, ordering payment of interest and also penalty was imposed equal to amount offer under Rule 15 (2) of CCR, 2004. Further, penalty of Rs.5lakhs was imposed on the Director Shri Shahnawaz Rana. Being aggrieved, the appellant preferred appeal before learned Commissioner (Appeals) who vide the impugned order was pleased to confirm the demand of duty and/or disallowance of Cenvat credit on the appellant company along with the penalty and interest. However, the penalty of Rs.5lakhs on the Director Shri Shahnwaz Rana was set aside.

6. Being aggrieved, the appellant-assessee is before this Tribunal. The learned counsel for the appellant at the outset states that the show cause notice is bad for invocation of extended period of limitation. He further states that there was an inspection in their factory on 04th/05th December, 2008 wherein shortage was found in the stock of finished goods- M.S. Ingots was detected. Further, in the course of scrutiny of ER-1 returns for the

month of December, the revenue noticed regarding taking of Cenvat credit on the 9 invoices for which the Range Superintendent vide notice dated 24th June, 2009 asked for explanation, in reply appellant filed copy of invoices. Accordingly, the show cause notice dated 11.01.2010 being issued after more than 12 months, from 24/06/2009 is barred by limitation.

7. Further, arguing on merits, learned counsel states that admittedly the appellant had opening stock of 182.735 MT Ingots on 04/12/2008. Further, from the copy of invoices annexed in the appeal paper book, the learned counsel demonstrates that the lorry number(s) used for clearance, time of clearance, gross weight and net weight are mentioned. Further, other than Excise duty, Sales Tax have also been debited or charged. Further, there is endorsement of rejection by M/s Rana Steels (consignee). He further submits that the allegation of revenue is only presumptive. The learned counsel further points out from the affidavit of the drivers of the trucks who had transported the goods from their factory to M/s Rana Steels, where in one of the driver named, Shri Charan Singh have stated that he was the driver of Truck No.HR–56/5897. On 04/12/2008, he had loaded the goods from the appellant's factory and proceeded

with invoice, documents, etc. to M/s Rana Steels. After inspection of the goods M/s Rana Steels rejected the goods and for some time, he was waiting outside the factory alongwith the invoice of the documents, etc. Thereafter, on receiving instructions from the appellant company, he brought the goods back to the factory of the appellant and unloaded the same.

8. The learned Counsel further states that the revenue placed heavy reliance on the evidence of Shri Ashwani Agarwal, Accounts Manager of M/s Rana Steels, being statement recorded at the back of the appellant. Further, in spite of specific prayer for cross-examination, the said Mr. Ashwani Agarwal was neither examined by revenue during the adjudication proceedings nor produced for cross-examination. Thus, his evidence by way of statement under Section 14 recorded during investigation has no evidentiary value under Section 9D of the Act. Further, the appellant in the course of adjudication proceedings had filed affidavits of the drivers of the trucks who had transported the goods– M.S. Ingots cleared by the appellant to M/s Rana Steels. The adjudicating officer have erred in rejecting their evidences without following the process of law. Thus, his findings are vitiated.

9. It is further contended that taking of Cenvat credit is permissible under Rule 16 of CER 2002 when goods cleared are returned to the factory of the manufacturer due to any reason like rejection, etc. Further, revenue have erred in drawing adverse inferences based on apparent shortage of finished stock on the date of inspection, without bothering to reconcile the stock, with respect to clearances made on the date of inspection before the arrival of the inspection team. Further, it is a matter of record that freight have been paid for the disputed transaction, which is duly recorded in the Books of Accounts. Further, there is no allegation of the goods being not available for dispatch or clearance by the revenue. In this view of the matter, the courts below have erred in confirming the denial of Cenvat credit along with penalty on the appellant.

10. The learned A.R. for revenue have relied on the findings in the impugned order.

11. Having considered the rival contentions, I find that the evidence in the shape of statement of Shri Ashwani Agarwal the Authorised Signatory of M/s Rana Steels is not admissible piece of evidence, as the same is hit by Section 9D of the Act. Further, I find that the courts below have not considered the applicability of Rule 16 of

CER, 2002. Further, I find that no effort have made by revenue to reconcile the stock found on the date of inspection with respect to the invoices issued on the date of inspection, before arrival of the inspection team. Further, I find that there is no allegation by revenue of the goods, not being available with the appellant which were stated to be dispatched before the arrival of the inspection team. Further, I find that the appellant had filed the evidence in the shape of affidavit of drivers of the truck, in support of the goods being dispatched and transported, which the adjudicating authority have summarily rejected without examining the drivers, unknown to the process of law. I also find that the query regarding taking of Cenvat on the goods returned, was made by revenue on 24/06/2009 which had been replied along with evidence by the appellant-assessee. Accordingly, I hold that the impugned order is vitiated being not based on evidences on record and for relying upon evidences, having no evidentiary value. Further, the cogent explanation given by the appellant have not been found untrue in the course of investigation. Thus, I find that the whole case of revenue is based on presumptions and assumptions.

12. Accordingly, I allow the appeal and set aside the impugned order. So far it relates to the appellant company.

(Pronounced in Open Court on- / /2018)

(Anil Choudhary)
Member (Judicial)

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