FAX : 0532-2400149

REGISTERED / AD

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
38,MG Marg Civil Lines,Old Red Building,Allahabad-211001
Regional Branch, Allahabad

Dated: 18/05/2017

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. **A/70495-70496/2017-SM[BR]** dated 12/05/2017

I am directed to transmit herewith a certified copy of order passed by the Tribunal under section **35-C(1)** of the **Central Excise and Salt Act, 1944.**

Assit. Registrar

Application	Appeal	Name and Address of Appellant
1	E/2943/2009	C.C.E, KANPUR 117/7, Sarvodaya Nagar, Kanpur 208005.
2	E/2944/2009	C.C.E, KANPUR 117/7, Sarvodaya Nagar, Kanpur 208005.
		Name and Address of Respondent
3		FRONTIER ALLOYS STEEL LTD. 25/5, KM Rania, Kalpi Road, Kanpur(Dehat),,
		,
4		SH MANU BHATIA,DIRECTOR M/s Frontier Alloys Steel ltd, 25/5, KM Rania, Kalpi Road, Kanpur(Dehat),,

Other Appellants and Respondents as per Annexure

Copy To

5Advocate(s) / Consultant(s):

ABHINAV PRASAD
ADVOCATES
ASSOCIATION HALL, HIGH
COURT, ALLAHABAD

6 Bar Association, CESTAT, Allahabad

7 Director Publications, Customs, Excise. I.P. Estate, Delhi

8 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, New Delhi-3

9 Company Law Institute of India Pvt. Ltd., No.2 (old no.36), Vaithyaram Street, T. Nagar, Chennai-17

10 Taxmann Allied Service Pvt. Ltd., 59/32, New Rohtak Road, New Delhi-110005

11 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)

12 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor. Vasant Arcade, Vasant Kunj, New Delhi - 110070

13 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad – 38

14 The ICFAI society, 52, Nagarjuna Hill,Punjagutta Hyderabad.-500082

15 M/S Knowledge Processing Pvt. ltd.(taxmanagementindia.com),FF-19,1st Floor,Cross River Mall,CBD Ground,Near Karkardooma Court,Delhi-110032

16 C.D.R. 17 Office Copy 18 Guard File

Asstt. Registrar

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

APPEAL No.E/2943 & 2944/2009-EX[SM]

(Arising out of Order-in-Appeal No. 227-228-CE/APPL/KNP/2009 dated 26/08/2009 passed by Commissioner of Central Excise & Customs (Appeals), Kanpur)

Commissioner of Central Excise, Kanpur **Appellant**

Vs.

M/s Frontier Alloys Steel Ltd. (in Appeal No.E/2943/2009) &

Shri Manu Bhatia, Director (in Appeal No.E/2944/2009) **Respondents**

Appearance:

Mohammad Altaf, Assistant Commissioner (AR) for Appellant
Shri Abhinav Prasad, Advocate, for Respondent

CORAM:

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

Date of Hearing : 12/05/2017
Date of Decision : 12/05/2017

FINAL ORDER NOs.-70495-70496/2017

Per: Anil Choudhary

The present appeal is filed by the revenue against Order-in-Appeal No. 227-228-CE/APPL/KNP/2009 dated 26/08/2009 passed by Commissioner of Central Excise & Customs (Appeals), Kanpur.

2. The issue in these two appeals, filed by the revenue, is whether the Commissioner (Appeals) have rightly held that the respondent-assessee is entitled to Cenvat credit on purchase of the raw material from M/s M.K. Steel's-proprietor Shri S.K. Gupta, of Kolkata.

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3. The learned Commissioner (Appeals) have recorded the following findings: -

(i) The records placed before me proves the following facts:- Appellant No.1 have received all the disputed goods on invoices of trading firms under cover of Form 48 issued under the West Bengal Rules, 1995 and Form 31 of U.P. Trade Tax Department evidencing the physical entry of the goods after proper verification by Trade Tax Department, other documents such as bilty and GR's, Form-31 inter-alia shows quantity of the goods correlated with the annexure to the show cause notice and the Truck number along with description of the goods and duly stamped by the Trade Tax Department.

The destination shown on the GR's clearly indicates receipt of the goods in the factory premises of the appellant No.1. The copy of ledger account of the appellant reflects inward freigtt of the disputed consignments have been paid by them (appellant No.1). Further, the appellant No.1 has made payments against these consignments by cheque or draft. They have recorded the consignment (raw material) related to the above mentioned firm in their statutory records and subsequently have shown production of finished goods against these consignments (raw material), and cleared the finished goods after payment of central excise duty to Indian Railways. The appellant has also accounted for these transactions in their trade tax returns and have discharged their trade tax liabilities. Thus on the basis of the records placed before me it may be concluded:

(a) The input in question have entered in U.P. as it is certified by another Govt. department (Trade Tax Department). The same was recorded by appellant in their records and used in the manufacture of the final products which was cleared on payment of duty.

(b) Payment for the purchase of the input has been made through cheque and by demand draft.

It is contention of the department that the above referred trading firms have extended the cenvat credit to the appellant No.1 without their being any duty paid mother invoices.

Thus in the light of findings of the preceding paras it is proved beyond doubt that appellant No.1 have received the goods on the invoices of above referred trading firm. Thus the contention of the department that appellant No.1 have availed cenvat credit without receipt of goods (raw material) is not tenable. Further, as the appellant No.1 have discharged the Central Excise duty on the final product manufactured out of the alleged raw material and if the department is of the opinion that the alleged goods was not received by the appellant then it is to duty of the department to prove that any other alternative raw material was used in the final products. Department has failed to do so thus, it again proves that appellant No.1 have received the alleged goods on the invoices.

It is contention of the appellant No.1 that they have received the goods on the invoices of the above trading firm, placed their orders for procuring of raw materials through brokers. This practice is very much prevalent in trade of Iron & Steel. It is proved by the document that they have received the quantity mentioned in the invoice in their unit and have made payments through cheques thereafter. On the contrary department have failed to prove beyond doubt that the goods were not received by the appellant No.1 and it was only a paper transaction. In my view this mode of transactions is bona-fide on appellant's part, in this circumstances it has been accepted that buyer can take only those steps which are in their control. He is not expected to verify records of supplier to check whether in fact the supplier has paid duty on goods supplied by him. He cannot verify whether their supplier is in fact registered with excise. He has to rely on statements made by supplier and documents supplied by him. The only reasonable steps he can take is to ensure that the supplier seems to be trustworthy, inputs are in fact received and documents prima facie appear to be genuine. Making payment by cheque to seller will prove his bona fide.

Further, CBEC, vide circular No.766/82/2003-CX dated 15.12.2003 has clarified that cenvat should not be denied to user-manufacturer as long as bona fide nature of the consignee's transaction is not doubted. Further, if the manufacturer-supplier has received payment from the buyer in respect of goods supplied including excise duty, action should be initiated against manufacturer supplier u/s 11D and 11DD."

4. The learned Counsel for the respondent further urges that the issue herein is no longer res-integra and the same have been

decided in favour of the assessee, under similar facts and circumstances where similar inputs were received by the Juhi Alloys Ltd. from the same supplier, M/s M.K. Steels, Kolkata, this Tribunal had decide the issue in favour of the assessee, reported at 2013 (296) ELT 533 (Tri.-Del.). Against the said order of the Tribunal, Revenue had preferred appeal before Hon'ble Allahabad High Court and by their judgment dated 15/01/2014, reported at 2014 (302) ELT 487(All.), Hon'ble High Court have also held in favour of the assessee and against the revenue. The relevant Paras of the judgment are reproduced herein for reference:-

"5. On behalf of the revenue, reliance has been placed on the provisions of Rule 9(3) of the Rules of 2004. According to the revenue, the assessee was obliged under Rule 9(3) to take all reasonable steps to ensure that the inputs in respect of which he has taken the cenvat credit are goods on which the appropriate duty of excise, as indicated in the documents accompanying the goods, has been paid. In the present case, it was urged that the assessee ought to have made an enquiry which would have indicated that Sarla Ispat (P) Ltd., that had allegedly supplied the original raw material was a fictitious entity.

Rule 9(3) of the Rules of 2004, provides as follows :-

"(3) The manufacturer or producer of excisable goods or provider of output service taking Cenvat credit on input or capital goods or input service, or the input service distributor distributing Cenvat credit on input service shall take all reasonable steps to ensure that the input or capital goods or input service in respect of which he has taken the Cenvat credit are goods or services on which the appropriate duty of excise or service tax as indicated in the documents accompanying the goods or relating to input service, has been paid."

6. The Explanation to Rule 9(3) of the Rules of 2004 provides a deeming fiction where a manufacturer or producer of excisable goods who takes Cenvat credit on inputs, would be deemed to have taken reasonable steps, if he satisfies himself about the identity and address of the manufacturer or supplier or provider of input services, as the case may be, issuing the documents specified in sub-rule (1) on the

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basis of his personal knowledge or on the basis of a certificate given by a person with whom he is familiar or on the basis of a certificate issued to the manufacturer or the supplier by the Superintendent of Central Excise concerned. In other words, the Explanation to Rule 9(3) provides a deeming definition as to when a manufacturer or a purchaser of excisable goods would be deemed to have taken reasonable steps. However, even in a situation where Explanation to Rule 9(3) is not attracted, it would be open to an assessee to establish independently within the meaning of the substantive part of Rule 9(3) that he had in fact taken reasonable steps. Whether an assessee has in fact taken reasonable steps, is a question of fact.

7. In the present case, both the Commissioner (Appeals) and the Tribunal have given cogent reasons to indicate that the assessee had taken reasonable steps to ensure that the inputs in respect of which he has taken the Cenvat credit are goods on which the appropriate duty of excise, as indicated in the documents accompanying the goods, has been paid. Admittedly, in the present case, the assessee was a bona fide purchaser of the goods for a price which included the duty element and payment was made by cheque. The assessee had received the inputs which were entered in the statutory records maintained by the assessee. The goods were demonstrated to have travelled to the premises of the assessee under the cover of Form 31 issued by the Trade Tax Department, and the ledger account as well as the statutory records establish the receipt of the goods. In such a situation, it would be impractical to require the assessee to go behind the records maintained by the first stage dealer. The assessee, in the present case, was found to have duly acted with all reasonable diligence in its dealings with the first stage dealer.

The view which the Tribunal has taken is consistent with the judgment of the Jharkhand High Court in Commissioner of C. Ex., East Singhbhum v. Tata Motors Ltd. - 2013 (294) E.L.T. 394 (Jhar.), where it was held as follows :-

"... 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 department of 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."

8. The judgment of the Division Bench of the Himachal Pradesh High Court in A.B. Tools Limited v. Commissioner of Central Excise -

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2010 (256) E.L.T. 382 (H.P.), on which reliance has been placed by the revenue, does not indicate that any contrary view of the law has been taken.

9. Ultimately, the issue in each case is whether, within the meaning of Rule 9(3) of the Rules of 2004, the assessee has taken reasonable steps to ensure that the inputs in respect of which he has taken Cenvat credit were goods on which appropriate duty of excise was paid. Once it is demonstrated that reasonable steps had been taken, which is a question of fact in each case, it would be contrary to the Rules to cast an impossible or impractical burden on the assessee."

Accordingly, learned counsel for respondent prays for dismissing the appeal of revenue.

5. Heard the learned A.R. for revenue have relied on the grounds of appeal, wherein it have been urged that there is no dispute regarding issue of fake Cenvat invoices by M/s M.K. Steels, who issued these invoices without receipt of duty paid ingots from their manufacturers and without transporting the same to the buyers. Reliance is also placed on the statement of director of Sarla Ispat Pvt. Ltd. who have stated that neither they knew M/s M.K. Steels, nor they had ever sold M.S. Ingots to or through M/s M.K. Steels. The said statement of Director of Sarla Ispat Private Ltd. has also been accepted by Shri S.K. Gupta the Proprietor of M/s M.K. Steels and accordingly, it is urged that the Order-in-Appeal be set aside and the Order-in-Original be restored.

6. Having considered the rival contentions, I find that the learned Commissioner (Appeals) have recorded categorical findings that the respondent-assessee have received the inputs/raw materials along with the duty paying documents

which are supported by pre-authenticated documents like road permit of the State of West Bengal and the State of Uttar Pradesh. Further, it is observed in the impugned order that the respondent assessee have made proper entries in their Cenvat records and other statutory records and have also manufactured dutiable goods which have been cleared on payment of duty. Learned Commissioner (Appeals) further observed that it is not the case of revenue that the respondent-assessee received only duty paying document from M/s M.K. Steels whereas they have received the raw material from any other source. In view of these findings, of facts, which have not been challenged by the revenue in their appeal, I find that the ruling of Hon'ble Allahabad High Court in the case of Juhi Alloys Limited (supra) is squarely applicable in the facts of this case. Accordingly, these two appeals filed by the revenue are dismissed. The respondent-assessee shall be entitled for consequential benefits, if any, in accordance with law.

(Dictated in Court)

-Sd/-
(ANIL CHOUDHARY)
Member(JUDICIAL)

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प्रमाणित प्रति/Certified True Copy
23/05/2017
सहायक पंजीकार/Asstt. Registrar
सीमाशुल्क, उत्पादशुल्क एवं सेवा कर
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