CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
SCO 147-148, SECTOR 17-C, CHANDIGARH-160017

DIVISION BENCH
Court-I
Appeal No.E/805/2009

(Arising out of OIO No.29/Ldh/08 dt.6.1.2009 passed by the Commissioner of Central Excise, Ludhiana)

Date of hearing/Decision: 22.02.2019

M/s. Garg Industries Ltd. **Appellant**
Vs.
CCE, Ludhiana **Respondent**

Appeal No.E/1222/2009

CCE, Ludhiana **Appellant**
Vs.
M/s. Garg Industries Ltd. **Respondent**

Present for the Appellant: Shri Kamaljeet Singh, Advocate & versa
Present for the Respondent: Shri Vijay Gupta, AR & versa

Coram: Hon’ble Mr. Ashok Jindal, Member (Judicial)
Hon’ble Mr.Bijay Kumar, Member (Technical)

FINAL ORDER NO. 60244-60245/2019

PER: ASHOK JINDAL

Both sides are in appeal against the impugned order.

2. The assessee in appeal against the impugned order confirming the demand against them. The Revenue is in appeal against the impugned order of dropping demand against the assessee.

3. The facts of the case are that intelligence received by the DGCEI that the assessee is availing the credit on furnace oil without receiving the same in the factory premises. On 23.8.2003, the factory of the assessee was investigated and it was found that there was shortage of 14.500 MT of wire rods. The assessee is

availing the facility of Cenvat credit in respect of various inputs including furnace oil, light diesel oil and carbon black feed stock used in the manufacture of final products. During the course of physical verification of stock, it was also found excess stock of 32.100 MT of steel ingots allegedly received by the assessee from its sister concern M/s.Adhunik Alloys (P) Ltd. without payment of duty. The said stock was placed under seizure. Thereafter a show cause notice dt.20.2.2004 has been issued to the assessee alleging that the assessee is availing the Cenvat credit on raw material and furnace oil, kerosene oil etc. without actual receipt of the same in the factory. The appellant was required to show cause as to why Cenvat credit amounting to Rs.1,72,47,362/- be denied to them. Consequently, the same is required to be recovered from the assessee. Central Excise duty of Rs.39,100/- was demanded on shortage of wire rods allegedly cleared clandestinely and penalty should not be imposed on the assessee for the period January, 2001 to August, 2003. The matter was adjudicated, the Commissioner after taking into account the various evidence produced by the appellant during the course of adjudication confirmed the demand of Rs.6,08,435/- on account of non receipt of furnace oil and the same is required to be recovered along with interest and penalty of Rs.6,08,435/- has been imposed on them. Against the said order the assessee is in appeal against the confirmation of demand against the assessee and the Revenue is in appal against the order for dropping of demand against the assessee.

4. Ld. Counsel for the assessee submits that the show cause notice was issue on the ground that the consignments of the goods against which the appellant has availed credit were not found entered in the record of Information Collection Centres set up by the Punjab Govt. for transportation of the vehicles.

5. It is his submission that during the course of personal hearing various persons were examined. During the course of cross examination, they have stated that they had transported the goods to the assessee. He also submits that the adjudicating has confirmed the demand of Rs.6,08,435/- on the grounds that the goods transported by M/s.Amrit Roadlines, India Roadlines, M/s.Kotak Petroleum Pvt.Ltd. and M/s.APPL and as report of the transport authority the vehicles were not tankers.

6. It is his submission that Shri Kamal Gupta, Shri Mukesh Anand and Shri Avtar Singh were presented for cross examination on 22.03.2007 but the Counsel could not reach the office of the Ld. Commissioner due to unavoidable circumstance as the car was broken down enroute from Ghaziabad to Ludhiana. Thereafter, no cross examination was granted to the assessee, therefore, there is gross violation of principles of natural justice.

7. He further submits that M/s.Amrit Roadlines have accepted that they have transported the goods from M/s.Coastal Wartsila Petroleum Pvt.Ltd to the premises of M/s. APPL, the registered dealer but they have denied having transported any goods to the assessee. The vehicle number mentioned on the invoice of M/s.APPL is that of M/s.Amrit Roadlines only and the transportation was arranged by M/s.APPL and not by the assessee. Therefore, the

adjudicating authority has wrongly interpreted the statements and as invoices show the vehicle number is the same. He further submits that reliance placed on the statement of Shri Kamal Gupta, son of the owner of M/s. Gupta Transport Co. wherein he has stated that they have not transported the goods for LOTC.

8. It is his submission that the assessee has received the goods along with each and every invoice of LOTC. The assessee sought cross examination of Shri Kamal Gupta. But Shri Kamal Gupta appeared for cross examination on 22.03.2007 at the back of the assessee which is not permissible in the eyes of law and the statement of Shri Kamal Gupta has not been tested for cross examination. He also submits that the transporters M/s.Garg Roadlines, M/s.R.A. Kapoor Transporters Ltd., M/s.Ritco Logistics Pvt.Ltd. and M/s.Shiv Roadlines have admitted that they have transported the goods to the premises of the assessee. Therefore, the credit on the goods cannot be denied.

9. He further submits that the invoices accompanied by the goods. The dealers have filed their monthly returns with the Range Superintendent. The suppliers have also been maintaining the prescribed records and this fact is not in dispute. No objection raised by the Range Office. The goods were duly entered in the RG-23A. These goods were subsequently issued for production and the production has been taken place out of thee goods has been recorded in the RG-1 and duly reflected in the RT-12 returns of the assessee, however, no objection has been raised by the department at any time. Hence, the allegation that the assessee

has not received the goods along with invoices is erroneous and not sustainable.

10. For the appeal filed by the Revenue, it is the submission that the demand has been dropped in light of the certificate issued by the State Tax department, therefore, there is no merit in the Revenue appeal.

11. On the other hand, Ld.AR supported the impugned order on the ground that the transporters have not transported the goods along with invoices to the assessee. Further, in some cases, the vehicle numbers were different which were not capable of transportation of goods.

12. Heard the parties.

13. We find the main reason to issuance of the show cause notices to denial of the cenvat credit to the assessee is that the transport vehicles are not entered at ICCs, therefore, it was alleged that the assessee has not received the inputs. In some cases, suppliers have admitted that they have not supplied the goods. Moreover, some of the vehicles found non existence and not capable of transportation of goods are other than tankers.

14. A similar issue came up before this Tribunal on the same investigation in the case of M/s Adhunik Alloys Ltd. wherein this Tribunal after examining the evidence placed by the assessee observed as under:

> *"10. The case of the revenue is that the furnace oil never cross the border of Punjab as the vehicle no. were not found entered at ICC. The purpose of setting of ICC is to establish that the goods which are entering in the Punjab have suffered VAT/C. Sales Tax/ Sales Tax. This*

fact has been certified by the concern Excise Officer Ludhiana by certifying that the appellant has suffered CST/ST/VAT on the invoices in question. Therefore, merely, the vehicles in question were not entered at ICC does not dis-entitle to the appellant to avail cenvat credit on the inputs in question. As the appellant has produced the certificate issued by Excise & Taxation Officer of Punjab therefore, the appellant cannot be denial cenvat credit merely, on the ground that vehicle number have not crossed at ICC. I further find that in the case of ***Hitkari Industries Ltd. – 2008(226) ELT 583 (Tri. Del.) and Himalayan Pipe Industries- 2013 (293) ELT 739 (Tri. Del.)*** *this tribunal has also observed information revealed from Sales Tax Department are not reliable as the appellant has produced certain documents which show with the transaction have been declared by the appellant. Admittedly, in the case the appellant has produced the certificate issued by the Excise Taxation Department, certifying that these goods have been received in their factory, therefore, the cenvat credit cannot be denied.*

11. The revenue has also relied on the various statements of supplier/transporters and also relied on the statement of Parveen Kumar Garg of M/s LOT initially made on 25.02.2005. This same was retracted by him on from next date 26.02.2005 which was despatched on 28.02.2005 thereafter, various summons have been issued to Sh. Praveen Kumar Garg but Sh. Praveen Kumar Garg never appeared nor the cross examination of Sh. Praveen Kumar Garg was granted in that circumstances, statement of Sh. Praveen Kumar Garg have no evidentially value in the light of the decision in the case of ***M/s Vishnu & Co. Pvt. Ltd. (Supra)*** *wherein the Hon'ble High Court Delhi has observed as under:*

"38. In the present case it needs to be first observed that there was not confession as such by any of the noticees as to their involvement in the activities alleged against them in both the SCNs. The Department relied on the statements made by third parties including transporters, agents, and their employees. Where such statements are subsequently retracted or resiled from, it becomes necessary for the department to produce other evidence which is of an independent nature which corroborates the retracted statements."

15. We also take note of the fact that during the course of adjudication, the assessee has produced certificate issued by the Excise and Taxation officers, Ldh certifying that the assessee has received the material on each and every one of the disputed invoices and the same has been reconfirmed by the adjudicating

authority from Excise and Taxation officers, Ldh. who vide his certificate confirmed that certificate dated 10.10.2006 was duly issued by the office. As one of the Government Department has already certified that on the basis of the invoices in question, the asseessee has received the goods, therefore, relying on the decision of this Tribunal in the case of M/s Adhunik Alloys Ltd. (Supra), the assessee is entitled to avail cenvat credit on the invoices in question on which the adjudicating authority allowed the cenvat credit to the assessee.

16. We also take note of the fact that the adjudicating authority has examined the issue that there is no entry at ICC but Punjab Tax Department assessed the case and found that the goods found received by the assessee. Therefore, we do not find infirmity with the impugned order wherein it has been observed as under:-

> 3.76 There are in fact, certain circumstantial evidences which indicate that the notice had indeed purchased and consumed/FO/LDO. There is an assessment order by sales tax authorities certifying receipt of FO/LDO by the notice. There is proof of payment through banking channels in lieu of purchase of FO/LDO. There are Central Excise records which are proof of production and its clearance on payment of Central Excise duty and proof of export of goods manufactured by the notice. Production is not possible without the consumption of FO/LDO. Then there is a report by CBI, who after investigation concluded that the notice had manufactured goods and their export is genuine.
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> 3.77 Maintaining judicial discipline and going by the ratio laid down by the superior judicial authorities in the similar cases I conclude that the allegation of non-receipt of FO/LDO except the quantity of 389.250 kl of FO/LDO is not proved and there is no justification in denying Cenvat Credit involved on the rest of the quantity of FO/LDO purchased by the noticee."

17. Therefore, the demand dropped by the adjudicating authority in the impugned order is justified. Consequently, the appeal filed by the Revenue deserves no merit hence the same is dismissed.

18. We further take note of the fact that the credit sought to be denied to the extent of Rs.6,08,435/- on the basis of statement of Shri Kamal Gupta, who stated that they have never transported the goods but no cross examination was granted, therefore, on that account for the involvement of Shri Kamal Gupta, son of owner of M/s.Guptra Transport Co, the credit cannot be denied.

19. Further, the credit sought to be denied on the basis of GRs issued by M/s.APPL, we find that as the transportation arranged by M/s.APPL i.e. M/s.Amrit Roadlines and the invoices bearing the same number, therefore, on this ground, the credit cannot be denied. In that circumstance, the assessee is required to be a chance to produce the invoices with supporting evidence for availment of credit.

20. As we have observed that the assessee is entitled to avail credit as discussed above, on certain invoices the assessee shall produce documentary evidence and to that extent the adjudicating shall allow the credit to the appellant. The demand shall be reduced to that extent and penalty, the amount of credit shall be adjusted by the adjudicating authority in the remand proceedings.

21. With these terms, the appeals are disposed off.

(dictated and pronounced in the court)

(BIJAY KUMAR) **MEMBER (TECHNICAL)**	**(ASHOK JINDAL)** **MEMBER (JUDICIAL)**

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