CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
CHANDIGARH
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REGIONAL BENCH – COURT NO. 1

Appeal No. E/60178/2019

[Arising out of OIA No. 306-307/CE/CGST-APPEAL-GURUGRAM/SG/2017 dated 31.01.2018 passed by the Commissioner (Appeals) of Central Excise, Gurugram]

M/s Laxmi International
Delhi Road, Behind Gupta Metal Pvt. Ltd.
Distt- Rewari, Haryana **: Appellant (s)**

Vs

CCE & ST- Rewari
CGST Division, Punshika House, 35/3, Rajiv Chowk, Sector 3, Bawal Road,
Rewari, Haryana **: Respondent (s)**

APPEARANCE:
Shri Manmohan, Gupta, Advocate for the Appellant
Shri B. Ram, Authorised Representative for the Respondent

CORAM : HON'BLE Mr. ASHOK JINDAL, MEMBER (JINDAL)

FINAL ORDER No. 60470 / 2019

Date of Hearing:02.05.2019

Date of Decision:02.05.2019

Per : Mr. Ashok Jindal

The appellant is in appeal against the impugned order wherein cenvat credit has been denied on the allegation that the appellant has not received any goods from the first stage dealer who has admitted that he has not supplied the goods.

2. The facts of the case are that an investigation was conducted at the end of Shri Amit Gupta he has floated various fictitious firm, viz. M/s Moral Alloys Pvt. Ltd. to issue cenvatable invoices for allowing inadmissible cenvat credit by the various manufacturers. On the basis of the Statement of Shri Amit Gupta, an investigation was conducted from the transporters on the invoices issued by Shri Amit Gupta which
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revealed that they have not transported the goods to the appellant. Thereafter, the statement of the appellant was also recorded wherein the appellant has stated that they have received the goods which were used in the manufacture of final product which cleared on payment of duty. On the basis of the above investigation, it was alleged that the appellant has not received any goods from M/s Moral Alloys Pvt. Ltd. Consequently, cenvat credit was denied. Against the said order, the appellant is before us.

2. The Ld. Counsel appearing on behalf of the appellant submits that the appellant during the course of investigation itself has stated that they have received the goods in question which were used in the manufacture of final product, therefore, the cenvat credit cannot be denied. He further submits that the appellant sought cross examination of the transporter/Shri Amit Gupta, but, the same was denied by the adjudicating authority which is in violation of principle of natural justice. He further submits that several cases have been booked on the basis of investigation conducted at the end of Shri Amit Gupta by DGCEI and in all the cases, the proceedings were dropped by this Tribunal. Therefore, the impugned order is to be set-aside.

3. On the other hand, the Ld. AR opposed the contention of the Ld. Counsel and submits that as the supplier of goods categorically stated that they have not supplied the goods and the said statement has been affirmed by the transporter. In that circumstances, it is concluded that the appellant has not received the goods, therefore, the appellant is not avail entitled to cenvat credit.

4. Heard the parties.

5. In this case, the case has been booked against the appellant on the basis of the statement of Shri Amit Gupta that the he has floated fictitious firm for issuance of fake invoices for enabling the appellant

to avail inadmissible cenvat credit. Shri Amit Gupta was not made a part of the show cause notice as he has acted for abating the appellant to avail inadmissible cenvat credit, the same is in violation to Rule 26 of the Cenvat Excise Rules, 2002 as no penalty is proposed to be imposed on Shri Amit Gupta which shows that the authorities have not applied their mind while issuing show cause notice to the appellant. I further observed that no cross examination of the witnesses whose statements have been heavily relied upon by the revenue has been granted and the same is in gross violation as per the procedure laid down in Rule 9-D of Cenvat Excise Act, 1944 as held by this Tribunal in the case of CCE, Delhi-I vs. Kuber Tobacco Industries reported in 2016 (338) ELT 113 (Tri. Del.). Further, no efforts has been conducted by the revenue to ascertain the fact if the appellant has not received the goods then from where he procured the inputs to manufacturer their final product which has been cleared on payment of duty. In that circumstances, I hold that the show cause notice has been issued to the appellant without investigation of the case, therefore, the proceedings against the appellant are not sustainable.

6. In view of the above analysis, I set-aside the impugned order and allow the appeal with consequential relief, if any.

(Dictated & pronounced in the Court)

(Ashok Jindal)
Member (Judicial)

G.Y.