CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
CHANDIGARH

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REGIONAL BENCH – COURT NO. 1

Appeal No.E/61943/2018

[Arising out of OIA-141-CE-CGST-APPEAL-GURUGRAM-SG-2018 dated 25/09/2018 passed by the Commissioner (Appeals) of Central Excise-JAMMU & KASHMIR]

Moral Alloys Pvt. Ltd. **: Appellant (s)**

205 Ajeet Bhawan 4697/6 Ansari
Road Daryaganj, DELHI

Vs

CCE & ST- Gurgaon I **: Respondent (s)**

Plot No 36 & 37,Sector 32, NEAR MEDANTA HOSPITAL
Gurgaon, Haryana, 122001

With

Appeal No. E/61944, 61945,61997-61999,62006-62008/2018, E/60284/2020

[Arising out of OIA-142-CE-CGST-APPEAL-GURUGRAM-SG-2018 dated 25/09/2018 passed by the Commissioner (Appeals) of Central Excise-JAMMU & KASHMIR]

[Arising out of OIA-126-ST-CGST-APPEAL-GURUGRAM-SG-2018-19 dated 14/09/2018 passed by the Commissioner (Appeals) of Central Excise-JAMMU & KASHMIR]

[Arising out of OIA-176-ST-CGST-APPEAL-GURUGRAM-SG-2018-19 dated 28/09/2018 passed by the Commissioner (Appeals) of Central Excise-JAMMU & KASHMIR]

[Arising out of OIA-172-ST-CGST-APPEAL-GURUGRAM-SG-2018-19 dated 28/09/2018 passed by the Commissioner (Appeals) of Central Excise-JAMMU & KASHMIR]

[Arising out of OIA-173-ST-CGST-APPEAL-GURUGRAM-SG-2018-19 dated 28/09/2018 passed by the Commissioner (Appeals) of Central Excise-JAMMU & KASHMIR]

[Arising out of OIA-129-ST-CGST-APPEAL-GURUGRAM-SG-2018-19 dated 17/09/2018 passed by the Commissioner (Appeals) of Central Excise-JAMMU & KASHMIR]

[Arising out of OIA-130-ST-CGST-APPEAL-GURUGRAM-SG-2018-19 dated 17/09/2018 passed by the Commissioner (Appeals) of Central Excise-JAMMU & KASHMIR]

[Arising out of OIA-128-ST-CGST-APPEAL-GURUGRAM-SG-2018-19 dated 17/09/2018 passed by the Commissioner (Appeals) of Central Excise-JAMMU & KASHMIR]
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[Arising out of OIA-145-CE-CGST-APPEAL-GURUGRAM-SG-2019 dated24/10/2019 passed by the Commissioner (Appeals) of Central Excise-JAMMU & KASHMIR]

Moral Alloys Pvt. Ltd. : **Appellant (s)**

205 Ajeet Bhawan 4697/6 Ansari
Road Daryaganj, DELHI

Amit Gupta

S/o Shri Ram Niwas Guptac-30 1st Floor Adrash
Nagar Prithvi Raj Road
NEW DELHI

M/s Unnati Alloys Pvt. Ltd.

205 Ajeet Bhawan 4697/6 Ansari
Road Daryaganj, DELHI, NEW DELHI, 110002

Shri BalaJi Enterprises

Shop No 112 Village Sukhrali
Sector 17 A, GURUGRAM, HARYANA, 122001

Vs

CCE & ST- Gurgaon I : **Respondent (s)**

Plot No 36 & 37,Sector 32, NEAR MEDANTA HOSPITAL
Gurgaon, Haryana, 122001

APPEARANCE:

Shri Saurabh Kappor, Ms.Reena Rawat & Sh. Naveen Bindal,
Advocates for the Appellants

Shri Bhasha Ram, Authorised Representative for the Respondent

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

FINAL ORDER No.60008-60017/2021

Date of Hearing:13.01.2021

Date of Decision:13.01.2021

Per :Mr.Ashok Jindal

The appellants are in appeal against the impugned orders imposing penalties under Rule 25 or26 of the Central Excise Rules, 2002.

2. In all the cases the issue is common, therefore, all are disposed of by a common order.

3. The fact of the case are that on the basis of an intelligence, the search was conducted by DGCEI against one Shri Amit Gupta (one of the appellants herein), admitted that he has floated fictitious firm in the name of M/s Unnati Alloys Pvt. Ltd. and M/s Moral Alloys Pvt. Ltd. (the appellants herein above), who were issuing cenvatable invoices enabling the manufacturers buyers to avail inadmissible cenvat credit. In one of the cases, M/s.Unnati Alloys Pvt. Ltd. and Moral Alloys Pvt. Ltd. issued cenvatable invoices to one Shree BalaJi Enterprises, dealer (who is also an appellant before me) enabling them to issue cenvatable invoices to the manufacturer to avail Cenvat credit. During the course of investigation, Shri Amit Gupta admitted that he has issued only invoices without accompanying the goods. Further, investigation was conducted wherein the dealers or manufacturers have admitted that they have received the goods and which were used in the manufacture of final goods which has been cleared on payment of duty. During course of investigation, the statements of certain transporters have also recorded who denied the transportation of the goods. It is admitted fact that no investigation was conducted with the directors/authorised representatives of the M/s.Unnati Alloys Pvt. Ltd. or M/s Moral Alloys Pvt. Ltd. The summons were issued but no statement was recorded. Various show cause notices were issued, the Revenue made out a case that as Shri Amit Gupta has admitted that he has created fictitious firms in the name of co appellants to issue cenvatable invoices without accompanying the goods, therefore, the appellant, Shri Balaji Enterprises cannot receive the said goods against the invoices issued by Shri Amit Gupta in the name of the co-appellants, in that circumstance, the second stage dealers or the manufacturers are not entitled to avail credit on the goods mentioned in the invoices issued by Shri Amit Gupta in the name of M/s. Moral Alloys Pvt. Limited or M/s.Unnati Alloys Pvt.Ltd. Therefore, the recipients of the invoices being manufacturers are not entitled to take the cenvat credit and also

proposed to impose penalties on the first stage dealers or M/s.Unnati Alloys Pvt. Ltd./Moral Alloys Pvt.Limited/Shri Amit Gupta. The matters were adjudicated, Cenvat credit availed on the basis of invoices in question was denied to the manufacturers, and the penalties were imposed on Shri Amit Gupta, M/s.Unnati Alloys Pvt. Ltd., Moral Alloys Pvt. Limited and Shree Balaji Enterprises, the first stage dealers. Against those orders, the appellants named hereinabove are in appeal before me.

4. Ld. Counsel appearing on behalf of Shri Amit Gupta submits that the penalties have been imposed on him on the basis of denial of credit to the manufacturer buyer and in the case of manufacturer buyer the cenvat credit already been allowed, in that circumstances, the penalty cannot be imposed on Shri Amit Gupta.

5. It is further submitted during course of cross examination also Shri Amit Gupta appeared and admitted that he has supplied the goods. Examination in chief was also conducted and no adverse statement has been recorded by the adjudicating authority, in that circumstance, penalties cannot be imposable on Shri Amit Gupta.

6. Shri Saurabh Kapoor, Advocate appeared on behalf of M/s.Moral Alloys Pvt. Ltd. and M/s. Unnati Alloys Pvt. Ltd. and submits that these firms have no relation with Shri Amit Gupta and no statement on behalf of the appellants have been recorded, therefore penalties on the appellants cannot be imposed on the basis of the statement of third party.

7. Shri Naveen Bindal, Advocate appeared on behalf M/s. Shree Balaji Enterprises and submits that it has been alleged that M/s. Shri Bajaji Enterprises has not received the goods, therefore, they have not supplied the goods to the buyer,M/s.Chikara Industries. It is his case, that the appellant had received the goods from M/s.Moral Alloys/M/s.Unnati Alloys and the said goods have been supplied to various manufacturer buyers and

in the case of M/s. Haryana Industries vide Final order No.60133-60134/2019dated 14.2.2019, the credit has been allowed by this Tribunal. Therefore, no penalty is imposable.

8. On the other hand, Ld.AR appeared for the Revenue submits that it is a case of fraud where no duty has been paid and the credit has been distributed, which has been availed by various manufacturers without actually receiving the goods and Shri Amit Gupta in his statement has admitted the said fact. Further, the transporter has also admitted that no goods have been transported by them. Moreover, some dealers have also admitted that they have not received the goods. He also submits that the written submissions be also taken on record.

9. Heard the parties and considered the written submissions and judgement placed on record. I find that on the basis of the investigation in the matters, various show cause notices were issued to various manufacturers/buyers of the goods in question and this Tribunal has observed in the case of M/s. Haryana Industries (supra) as under:-

"3. On hearing the parties, I find that on the same investigation, several cases have been adjudicated by this Tribunal and in this case also facts emerges that the supplier of goods as well as the appellants have admitted that they have received the goods against the invoices in question which were used in manufacture of final goods which were cleared on payment of duty, now burden on the Revenue that if the appellants have not received the goods against the invoices in question that from where the appellants procured those inputs. Further, in terms of Rule 9(2) of Cenvat Credit Rules, 2004, the appellant has taken proper care to examine the invoice against which they have received the goods. It is not the duty of the appellant to know about the manufacturer of the goods when invoice contains all the details in terms of Rule 9(2) of Cenvat Credit Rules, 2004. In that circumstances, without investigating the allegation non receipt of input by the appellant is not sustainable and benefit of doubt goes in favour of the appellants, therefore, I set aside the impugned orders, and allow the Cenvat credit to the appellants and hold that no penalty is imposable on the appellants.

4. In these terms, the appeals are allowed."

the same view was taken by this Tribunal in similar other cases.

10 Further, I find that it has been alleged that the invoices in question have been issued by M/s.Moral Alloys and M/s.Unnati Alloys but, no investigation has been conducted with the Directors/authorised persons of these appellants to ascertain the fact that weather they have issued the invoices in question or not? In that circumstance, the investigation is faulty. Further, in the absence of evidence on record that if the invoices were not accompanying the goods then from where these manufacturers have procured the goods who has manufactured the dutiable goods which has been cleared on payment of duty. In some of the cases, the cenvat credit has already been allowed, therefore, I hold that in any of the above case, no penalty is imposable on the appellants under Rules 25/26 of the Central Excise Rules, 2002.

11 Therefore, the impugned orders quo imposing penalties on the above appellants are set aside. Consequently, the appeals are allowed with consequential relief, if any.

(Dictated & pronounced in the Court)

(Ashok Jindal)
Member (Judicial)

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