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

Appeal No.E/60423/2021

[Arising out of OIO No.LUD-EXCUS-000-COM-004-21-22 dated 15.6.2021 passed by the Commissioner of CGST, Rishi Nagar, Ludhiana]

Ms Datt Multimetals Ltd **Appellant (s)**
(G.T.Road Khanna Side, Mandi Gobindgarh)

Vs

C.C.E & S.T. Ludhiana **:Respondent (s)**
(Rishi Nagar, Ludhiana)

APPEARANCE:
Mr. Vikrant Kackria, Advocate for the Appellants
Mr. Amandeep Kumar, Authorised Representative for the Respondent

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

Date of Hearing/Decision:17.12.2021

FINAL ORDER No. 60977/2021

Per :**Ashok Jindal**

The appellant is in appeal against the impugned order wherein the credit on inputs has been denied on the basis of statement of supplier/dealer, namely, M/s. Makhan Lal Vinold Kumar. Consequently imposing penalty.

2. The facts of the case are during the course of investigation of M/s.Makhan Lal Vinod Kumar, it was alleged that the firm was engaged in passing of Cenvat credit fraudulently to the appellant on the strength of the cenvatable invoices, it was also alleged that it was a mere paper transactions. On the basis of the statement of
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supplier/dealer, a case has been made out against the appellant that they have not received the goods against the invoices issued by M/s. Makhan Lal Vinod Kumar and a show cause notice has been issued to the appellant to deny Cenvat credit on the inputs procured from M/s.Makhan Lal Vinod Kumar. After adjudication, the Cenvat credit was denied. Accordingly, the demand on account of denial of Cenvat credit confirmed and penalty was imposed on the appellant.

3. The matter was travelled upto this Tribunal and this Tribunal remanded the matter back to the adjudicating authority for cross examination of the suppliers and thereafter pass an order. In remand proceedings, cross examination was allowed and the credit was denied. Against the said order, the appellant is before me.

4. Ld. Counsel for the appellants submit that during the cross examination of Shri Vinod Kumar Guptra, partner of the supplier stated that they have supplied the goods to the appellant. The said statement of Shri Vinod Kumar Gupta was not retracted. In that circumstance, merely on the basis of statement of supplier, credit cannot be denied to the appellant.

5. Further, it is his submission that the penalty on the supplier, (who was the co-noticee) was also dropped vide Final Order No.60949-60950/2021 dated 1.11.2021. Therefore, the impugned order is to be set aside.

6. On the other hand, ld.AR reiterated the finding of the authorities below.

7. Heard the parties and considered the submissions.

8. On going through the facts in the hand, I find that the cenvat credit has been decided on the basis of statement of supplier/dealer, and a case has been made against the appellant that they have not received the goods but there is no evidence on record to show that the appellant has not received the goods. Further, during the course of cross examination, Shri Vinod Kumar Guptra, partner, has admitted that they have supplied the goods to the appellant and there is no rebuttal to the said statement. In that circumstance, the case of the Revenue is not sustainable without supporting evidence. Therefore, the cenvat credit cannot be denied to the appellant. Accordingly, I hold that the appellant is entitled to avail cenvat credit in dispute. In that circumstance, the whole of the demand as well as interest and penalty are set aside.

9. In the result, the appeal is allowed with consequential relief, if any.

(dictated & pronounced in the court)

(Ashok Jindal)
Member (Judicial)

Kailash