IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
SOUTH ZONAL BENCH AT CHENNAI

Appeal No.: E/00171/2012

(Arising out of Order-in-Appeal Sl. No. 01/2011-C.Ex. dated 24.11.2011 passed by the Commissioner of Customs and Central Excise (Appeals), Coimbatore.)

M/s. Ferro Cast Industries : Appellant

Vs.

The Commissioner of Central Excise & ST, Combatore : Respondent

Appearance:-
Shri. R. Balagopal, Consultant
for the Appellant
Shri. A. Cletus, ADC (AR)
for the Respondent

CORAM:
Hon'ble Ms. Sulekha Beevi C.S., Member (Judicial)
Hon'ble Shri Madhu Mohan Damodhar, Member (Technical)

Date of Hearing:17.08.2018

Date of Pronouncement: 18.09.2018

Final Order No. *42488 / 2018*

Per Bench :

The appellants are manufacturers of iron and steel castings, machined castings, textile machinery parts and automobile parts. Based on intelligence gathered that they have availed CENVAT Credit on MS Scrap which is fraudulently passed on by Iron & Steel Scrap registered dealers, the officers attached to the Headquarters

Preventive Unit visited the premises of the appellant on 25.01.2008. On verification of the purchase documents, it was found that they had procured scrap from M/s. Leadsman Enterprises, Coimbatore, M/s. Manju Steels and M/s. Sree Balaji Iron Traders. It was noticed that in all the CENVAT Credit invoices, the description mentioned was only Scrap/MS Scrap. As a follow up, the officers verified the sales and purchase documents of M/s. Leadsman Enterprises. It was found that M/s. Leadsman Enterprises had purchased only MS Wire Coils from M/s. Shri. Karpagam Steels and Sky & Sky Corporation. On the strength of these purchase documents, M/s. Leadsman Enterprises had passed on CENVAT Credit mentioning the description as scrap. Hence, *prima facie,* it appeared that M/s Leadsman Enterprises had fraudulently passed on the CENVAT Credit to the appellants.

2. Apart from these purchases, M/s. Leadsman Enterprises purchased MS Wire Coils directly from M/s. Shri Abirami Industries under the cover of scrap and sold the scrap procured from open market for bills on the strength of the purchase documents received from M/s. Shri Abirami Industries without delivery of any goods. Further, officers also verified the purchase and sale documents of registered dealer M/s. Sky & Sky Corporation as well as M/s. Sri

Karpagam Steels. It was found that they had purchased only MS Wire Coils.

3. In view of the above facts, the Department was of the view that the appellants have availed CENVAT Credit which was fraudulently passed on by M/s. Leadsman Enterprises and the credit availed is ineligible. Show Cause Notice was issued proposing to recover the fraudulently availed credit along with interest and also for imposing penalties. After due process of law, the Original Authority confirmed the demand along with interest and imposed equal penalty besides imposing equal penalty on M/s. Leadsman Enterprises and also separate penalties on M/s. Kwality Enterprises, M/s. Sky & Sky Corporation, M/s. Shri Abirami Industries, M/s. Skanda Engineering Ind. P. Ltd. and M/s. Sri. Karpagam Steels. Aggrieved by the demand, interest and penalties, the appellant is now before the Tribunal.

4.1 The Ld. Consultant Shri. R. Balagopal appeared and argued the matter on behalf of the appellant. He submitted that appellants had purchased goods/inputs as per the invoices issued by the first stage dealer. Their raw materials being scrap, the invoices of the inputs also described the goods as scrap. The whole allegation is based on the statement given by Shri. R. Rajkumar, proprietor of M/s. Leadsman Enterprises. The appellants placed purchase orders to the dealers only for scrap and they have issued invoices for the same. There is no difference in the description of the goods purchased and sold to the appellants. All the payments were made through banks. They had submitted copies of invoices and ledger extracts to prove that the payments were made inclusive of excise duty through the banks. Nothing contrary has been proved by the Department by the investigation against these facts. There is no evidence to establish that the appellants have contravened the provisions of Rule 9(3) of the CENVAT Credit Rules, 2004. The Department has not placed any evidence to prove that the appellants had any part or role in the offence, if any, committed by M/s. Leadsman Enterprises and its suppliers. There is also no evidence to show that the appellants have connived with M/s. Leadsman Enterprises and its suppliers. Since the raw materials used by appellants are scrap and the input invoices describe the materials as scrap and the duty has been discharged on such goods received by the appellant, the allegation of the Department that the appellant has received invoices without delivery of the goods or that fraudulent CENVAT Credit has been passed on to the appellants, cannot sustain.

4.2 He relied upon the decision of the Tribunal in the case ***of M/s. Sri Suguna Machine Works, Unit-II Vs. C.C.E., Coimbatore – 2014 (306) E.L.T. 500 (Tri. – Chennai)*** and ***M/s. Sam Turbo Industries Ltd. Vs. C.C.E. & S.T., Coimbatore – 2014 (304) E.L.T. 598 (Tri. – Chennai)*** to argue that on a similar set of facts which involved allegation of fraudulent availment of credit on the invoices issued by M/s. Leadsman Enterprises, the Tribunal had set aside the demand. He drew sustenance from the decision of the Hon'ble Allahabad High Court in the case of ***C.C.E. & S.T. Vs. Juhi Alloys Ltd. – 2014 (302) E.L.T. 487 (Allhd.)*** to argue that it would be impractical to require the appellant to go behind the records maintained by the first stage dealer; that the appellant had acted with all reasonable diligence with the first stage dealer as provided in Rule 9(3) of the CENVAT Credit Rules, 2004. The appellant cannot be forced to do which is not practicable. The decision in the case of ***C.C.E., East Singhbhum Vs. Tata Motors Ltd. – 2013 (294) E.L.T. 394 (Jharkhand) w***as also relied by the appellant in support of the above arguments. He argued that since the appellants had acted in a *bona fide* manner, the extended period cannot be invoked.

5. The Ld. AR Shri. A. Cletus supported the findings in the impugned Order. He submitted that it is usual in the iron and steel industry that fraudulent credit is availed by issuing invoices showing the description as scrap. When the manufacturer M/s. Abirami Industries has issued invoices describing the materials as MS Wires/Coils to M/s. Shri Shri. Karpagam Steels, who is the first stage dealer, the goods which are sold by the first stage dealer issuing CENVAT invoices can only be MS Wires and Coils. So the invoices issued by the dealer M/s. Leadsman Enterprises, M/s. Shri. Karpagam Steels, etc., mentioning the goods as scrap, reveals that the credit passed on by the dealer and availed by the appellants is not eligible.

6. Heard both sides.

7. The undisputed fact of the case is that appellants have used scrap as their raw materials and the invoices issued by the first stage dealer to them describes the goods as scrap. It is also not disputed that appellants have paid excise duty for the goods described in the invoices. The allegation of the Department is that since the first stage dealer has received only MS Wires and Coils from the manufacturer, they cannot issue CENVAT invoices to the appellants

describing the goods as scrap. When the invoices had clearly stated the description of the goods and the duty paid, the appellants cannot be expected to go behind the accounts maintained or transactions made by the first stage dealer so as to ensure whether the credit availed is correct or not. To hold the assessee liable for availing credit fraudulently, there must be positive evidence to show that they have indulged in some wilful act enabling them to avail such wrong credit. In the present case, there is nothing brought out from the evidence so as to establish that the appellants have any role in the offence, if any, committed by M/s. Leadsman Enterprises and other first stage dealers.

8. The appellants have availed CENVAT Credit on the duty paid on the invoices. So also the entire transaction of the appellant has been through banks. Apart from certain assumptions based on the statements given by M/s. Leadsman Enterprises, there is no cogent evidence to prove that the appellants have availed wrong credit. The Hon'ble Allahabad High Court in the case of *Juhi Alloys Ltd. (supra)* had occasion to consider a similar issue and had observed that Sub-clause (3) of Rule 9, though states that the manufacturer/producer of excisable goods shall take all reasonable steps to ensure that the goods on which he has taken CENVAT

Credit has been suffered appropriate duty, does not mean that manufacturer/producer of excisable goods has to go to such an extent so as to make enquiries with regard to the records maintained by the first stage dealer. The relevant portion of the said judgment is reproduced as under :

> "**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.*
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> *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 :-*
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> > *"... 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." "*

9. From the discussions on facts as well as of law and decisions, as applied to the facts and evidence, we are of the considered opinion that the demand raised cannot sustain and required to be set aside. The demands in respect of the appellants herein is set aside with consequential benefits, if any.

(Pronounced in open court on ***18.09.2018****)*

(Madhu Mohan Damodhar)
Member (Technical)

(Sulekha Beevi C.S.)
Member (Judicial)

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