

**IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL
SOUTH ZONAL BENCH, CHENNAI**

Appeal No. E/329/2012

(Arising out of Order-in-Appeal No.41/2012 dated 20.2.2012 passed by the Commissioner of Customs, Central Excise and Service Tax (Appeals), Coimbatore)

M/s. C.P.C. (P) Ltd.

Appellant

Vs.

Commissioner of GST & Central Excise
Coimbatore

Respondent

Appearance

Shri R. Balagopal, Consultant for the Appellant
Shri L. Nandakumar, AC (AR) for the Respondent

CORAM

Hon'ble Ms. Sulekha Beevi C.S., Member (Judicial)

Date of Hearing / Decision: **11.12.2018**

Final Order No. **43074 / 2018**

Brief facts are that the appellants are engaged in the manufacture of cast articles of iron and steel and are having Central Excise registration. They are availing the facility of CENVAT credit of inputs, capital goods etc. They purchased inputs from central excise registered dealers under CENVAT credit scheme and availed the credit of such inputs. Based on intelligence, the officers visited the factory of the appellant and verified the CENVAT account and related documents. With regard to transaction with M/s. Kovai Scrap Traders, Coimbatore, a registered dealer of iron and steel scrap, it was

noticed that for the period from 2005 – 06 to 2007 – 08, for about 24 invoices, there was variation in the product description in the dealers invoice and the Material Inward Notes (MIN) maintained by the appellant. Statement of Shri Selva Lakshmanan, partner was also recorded. Based on such evidence, the department was of the view that the appellant had availed fraudulent credit of inputs. Show cause notice was issued for demanding an amount of Rs.2,78,814/- and also proposing to impose equal penalty under section 11AC of the Central Excise Act, 1944. After due process of law, the original authority confirmed the demand, interest and penalties. In appeal, Commissioner (Appeals) upheld the same. Hence this appeal.

2. On behalf of the appellant, Id. consultant Shri R. Balagopal submitted that the demand has been raised by the department alleging that there is difference in the description of goods in the dealer's invoices and the MIN. The appellant had placed purchase order for CI borings and the dealer had supplied CI borings. Instead of noting in the dealer's invoice the goods as CI borings, the dealer had mentioned the goods as waste and scrap. He argued that CI borings fall within the very same Tariff heading as of waste and scrap and there is no separate Tariff heading for CI borings. The goods are generally known as waste and scrap and in specific it may be known as CI borings. Since the appellant had placed purchase order for CI borings and had received CI borings, the same was noted in the MIN. Only for

the difference in the description of the goods, the demand has been raised. He adverted to the relevant Tariff regarding waste and scrap under 72044900 and submitted that the rate of duty for such waste and scrap is 8%. There is no separate heading for CI borings and therefore the appellant does not gain anything by the difference in the description of the goods. With regard to the statement of Shri Selva Lakshmanan, partner, he submitted that the said dealer had merely stated that he had not supplied CI borings but waste and scrap. Although the appellant requested for cross-examination of this witness, the same was not allowed. That therefore his statement cannot be relied on evidence. Further, even by his statement, it is not seen that the appellant had availed fraudulent credit. He prayed that the impugned order may be set aside.

3. The Id. AR Shri L. Nandakumar supported the findings in the impugned order. He relied upon the statement of Shri Selva Lakshmanan and argued that the said person had deposed that they have not supplied the goods as mentioned in the invoice. That itself would show that the appellant has availed fraudulent credit. The demand therefore confirmed is legal and proper.

4. Heard both sides.

5. The issue is with regard to 24 invoices out of the 47 invoices that is related to the transaction by M/s. Kovai Scrap Traders. The appellant has furnished the details of such invoices. The goods are mentioned as waste and scrap. It is also submitted by the appellant that though they had placed

purchase order for CI borings, the supplier / dealer had mentioned the goods in the invoices as 'waste and scrap'. In common parlance, CI borings would fall under waste and scrap and the Tariff heading 72044900 would apply for CI borings also. There is no different central excise duty with regard to CI borings and waste and scrap (other). On such score, I cannot find any reason for the appellant to have any intention to avail fraudulent credit. The very variation in the description of the goods in the dealers invoice as well as the material inward notes cannot be a ground for alleging that the appellant has availed fraudulent credit. There is no allegation with respect to the difference in quantity of the goods received. It is only with regard to the variation in the description of the goods in the dealers invoice. It is also important to note that though the department has relied upon the statement of Shri Selva Lakshmanan, the said person has not been put to cross-examination even though the appellant had requested for the same. Taking into consideration all these facts, I am of the view that the demand cannot sustain. The impugned order is set aside and the appeal is allowed with consequential relief if any.

(Dictated and pronounced in open court)

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

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