IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL
SOUTH ZONAL BENCH AT CHENNAI
Court : DB- B1

E/1/2012, E/198/2012 & E/213/2012

(Arising out of Order-in-Appeal No. 236/2011 dated 13.12.2011 passed by the Commissioner of Central Excise, Customs and Service Tax (Appeals), Coimbatore).

1. M/s. Ellen Industries : Appellants
2. M/s. Sri Meenakshi Steels
3. M/s. Sri Amman Steels

Vs.

CCE & ST, Coimbatore : Respondent

Appearance

Shri R. Balagopal, Consultant
for the Appellants

Ms. T Usha Devi, DC (AR)
for the Respondent

CORAM :

Hon'ble Shri Madhu Mohan Damodhar, Member (Technical)
Hon'ble Shri P. Dinesha, Member (Judicial)

Date of Hearing : **14.02.2019**
Date of Pronouncement: **12.03.2019**

FINAL ORDER No**.** **40462-40464/2019**

Per Madhu Mohan Damodhar

The facts of the case are that M/s. Ellen Industries (herein after referred to Ellen) are manufacturers of 'Mono Block

Pumps' and have a foundry unit functioning in their premises for casting requirements. Ellen were availing Cenvat credit on inputs viz., Pig iron, MS Scrap, Bearings, Silicon Sheets, Copper Coil etc. and were austentively purchasing the said inputs from Central Excise registered dealers. Pursuant to visit of the departmental officers to the factory premises of Ellen and further follow up investigations, it was alleged that Ellen received only non-duty paid scrap without any valid cenvat documents from M/s. Leadsman Enterprise (hereinafter referred to Leadsman), M/s. Sri Meenakshi Steels (hereinafter referred to Meenakshi) and M/s. Sri Amman Steels (hereinafter referred to Amman). It was further alleged that Ellen had fraudulently taken ineligible cenvat credit based on cenvat invoices of these three dealers who had issued invoices mentioning invoice numbers of source documents which were irrelevant to the credit taken by Ellen. It appeared that Leadsman, Meenakshi and Amman had not sold cenvat credit availed goods to Ellen. From statements of Shri R Rajkumar, Leadsman, Shri K. Chandran, Meenakshi and Shri G. Bhaskaran, Amman, it appeared that they had sold MS scraps to Ellen which were procured from local market without payment of cenvat duties. Accordingly, SCN dated 24.08.2009 was issued to Ellen, Leadsman, Meenakshi and Amman and many others interalia, proposing recovery of illegally, wrongly and fraudulently taken cenvat credit of Rs. 7,09,188/- with interest thereon and imposition of penalty under Rule 15(1) and 15(2) of Cenvat Credit Rules, 2004, read with Section 11 AC of the Central Excise Act, 1944 on Ellen and penalties under Rule 25 of

Central Excise Rules, 2002 read with Section 9 of Central Excise Act, 1944 on Leadsman, Meenakshi and Amman. In adjudication, the original authority vide order dated 25.11.2010 confirmed the proposals for recovery of cenvat credit as made out in the SCN, imposed equal penalty on Ellen under Rule 15(2) read with Section 11 AC and penalty of Rs.2,60,000/- on Leadsman under Rule 25 ibid and interalia penalties of Rs. 55,000/- under Rule 25 ibid on Meenakshi and Rs. 3,70,000/- on Amman. In appeal, the Commissioner (Appeals) vide impugned order dated 13.12.2011 upheld the order of the original authority. Hence appeals E/1/2012, E/198/2012 and E/213/2012 filed by Ellen, Meenakshi and Amman respectively.

2. Today when the matter came up for hearing, on behalf of the appellants, Ld. Consultant, Shri R. Balagopal made a number of submissions, which are summarized as under:-

a) No evidences have been adduced against the appellants other than the statements to prove that Meenakshi and Amman had issued cenvatable invoices of duty paid material, had only supplied non-duty paid MS scrape, etc. and in consequence that Ellen also had wrongly availed credit on the invoices when actually they had received only non-duty paid goods. Copies of the statements were not made available to the persons involved.

b) similar allegations and disputes had been made in respect of another appellant M/s. Ferro Cast Industries. There also, it was similarly alleged that cenvat credit on MS scrap has been fraudulently passed on by iron & steel scrap registered dealers viz., Leadsman, Manju Steels, Sree Balaji Iron Traders etc. who had supplied only non-duty paid scrap to Ferro Cast Industries. On appeal, the Tribunal has held in favour of the appellants

c) The issue involved in the present cases being similar to the one decided by this Bench in the case of M/s. Ferro Cast Industries and hence it is prayed for deletion of the impugned additions.

3. On the other hand, Ld. AR vehemently opposes the appeals. She submits that investigations have sufficiently established the modus operandi being followed by the appellants herein. In all the statements recorded from the dealers concerned they have uniformly admitted that they had supplied only non-duty paid scrap but that they had issued invoices of duty paid scrap to only to enable wrong availment of cenvat credit thereon. She also submits that even the Managing Director had admitted to the modus operandi. Further, the statements recorded were not retracted by the persons concerned at any stage of adjudication. She also drew our attention to paragraph-4 of the SCN dated 24.08.2009 to canvass that the first dealer had procured MS wire, coil, etc., and subsequently, there was discrepancy with regard to the very description of the goods.

4. We have considered the rival contentions, perused the orders of the lower authorities and also have gone through the final orders of CESTAT referred to during the course of hearing.

5. We find the Ld. Consultant is correct in his assertion that similar issue had been addressed by the Tribunal in the case of M/s. Ferro Cast Industries (supra). On going through the said decision that are pari material and therefore the ratio decidendi therein will be applicable to the present matters also. The findings as recorded in the said decisionr after considering various contentions, is as under:-

> "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.
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> 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.

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 :-

> "... 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."

6. The ratio laid down in the aforecited decision in our view, will be applicable on all fours to the matter at hand.

7. In view thereof, we are constrained to set aside the impugned order and allow the appeals with consequential benefits, if any, as per law.

(Order pronounced in the open Court on 12.03.2019)

(P.DINESHA) MEMBER (JUDICIAL)	(MADHU MOHAN DAMODHAR) MEMBER (TECHNICAL)

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