IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL, CHENNAI

Excise Appeal No.41592 of 2013

(Arising out of Order-in-Appeal No. CMB-CEX-000-APP-149-13 dated 23.04.2013 passed by the Commissioner of Central Excise & Service Tax (Appeals), Coimbatore)

And

Excise Appeal No. 40180 of 2014

(Arising out of Order-in-Appeal No. CMB-CEX-000-APP-358-13 dated 30.10.2013 passed by the Commissioner of Central Excise & Service Tax (Appeals), Coimbatore)

M/s. Magna Electro Castings Ltd. **Appellant**
Mullipadi Village
Coimbatore – Pollachi Main Road
Pollachi Taluk, Coimbatore Dt.

Vs.

Commissioner of GST & Central Excise **Respondent**
6/7, A.T.D. Street
Race Course, Coimbatore – 641 018.

APPEARANCE:

Shri M. Saravanan, Consultant for the Appellant
Ms. Sridevi Tritula, ADC (AR) for the Respondent

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

Date of Hearing : 12.10.2021
Date of Pronouncement: 25.10.2021

Final Order Nos. **42414-42415 / 2021**

The issued involved in both these appeals being connected, they were heard together and are disposed by this common order.

Appeal No. E/40180/2014

2. Brief facts are that the appellants are engaged in manufacture of cast articles of iron and steel and they were

availing CENVAT credit on the invoices issued by the dealers who supplied to them the raw materials used for manufacture of finished goods. On investigation, it was unearthed by the departmental officers that their dealers during the period from November 2005 to December 2006 had procured non-duty paid goods (MS scrap) locally and supplied the same to the appellant under cover of invoices and thus passed the unavailable CENVAT credit to the appellant.

3. In respect of the dealer M/s. Sri Amman Steels, it was seen that 23 invoices issued of appellant were defective as the credit passed on was not eligible. In respect of M/s. Kamaraj Steels, who was the dealer from which the appellant purchased the raw materials it was seen that 19 invoices were defective. From the above, it appeared to the department that the appellants have availed ineligible CENVAT credit for which Show Cause Notice was issued on 24.8.2009 proposing to recover the wrongly availed credit to the tune of Rs.8,07,257/- under Rule 14 of CENVAT Credit Rules, 2004 r/w section 11A(1) and (2) of Central Excise Act, 1944. After adjudication, the adjudicating authority confirmed the demand, imposed equal penalty under Rule 15 of CENVAT Credit Rules, 2004 r/w section 11AC of Central Excise Act, 1944. Separate penalties of Rs.3,000/- and Rs.15,000/- were imposed on the dealers M/s. Kamaraj Steels and M/s. Sri Amman Steels. Aggrieved by the above order, the appellant is now before the Tribunal.

4. The learned consultant Shri M. Saravanan appeared and argued for the appellant. He submitted that in respect of raw materials received from M/s. Sri Amman Steels, the department has relied on the statement of Shri G. Baskaran, who is the proprietor of Sri Amman Steels. This statement cannot be relied as the department has not put the person for examination as required under section 9D of Central Excise Act, 1944. Though it is alleged that these dealers had purchased scrap from the local market and passed on the same to the appellants, there is no evidence adduced with regard to such sellers in the local market who have sold the local scrap to M/s. Sri Amman Steels. It is also alleged that the description of the goods received by the dealers do not match with the description of the goods actually sent to the appellant from the dealer. The said person namely G. Baskaran whose statement has been relied is not a person technically qualified to give details about the description of the goods. Shri Periyannan who is the Manager (Process) of the appellant factory has stated that the raw materials received from the dealers are cut and sized before use.

5. A letter issued by the Senior Manager (F&A), SAIL is relied by the department to hold that the appellant has not received the inputs as described in the invoice and supplied by the dealers. The said person who has given the letter is not a person who has technical knowledge of the goods described in the invoice. Another document relied by the department is the lab test report

of M/s. SAIL. It is contended that the chemical composition of the goods supplied by the manufacturer as waste and scrap to the first stage dealer M/s. Hindustan Hardware is different when compared to the chemical composition of the goods received at the appellant’s factory. For this the department has relied upon the statement of Shri P. Periyannan of the appellant-factory. Without furnishing any lab test report, the statement of Shri P. Periyannan is used to compare with the chemical composition given in the lab test report of M/s. SAIL which is not permissible in law.

6. The statement of Shri A. Veluchamy of Kamaraj Steels is relied by the department to allege that the amounts shown in the invoice is lesser than the actual value. This statement is not supported by documentary evidence and the said person has not been examined. The department’s case is based upon statements only and therefore cannot be accepted.

7. The learned counsel adverted to Final Order No. 40462 to 40464/2019 dated 12.3.2019 of the Tribunal in the case of M/s. Ellen Industries, M/s. Sri Meenakshi Steels and M/s. Sri Amman Steels. It is submitted that the Show Cause Notices issued against Sri Amman Steels alleging that they have passed on ineligible CENVAT credit has been set aside by the Tribunal in the above final order. He prayed that the appeal may be allowed.

8. The learned AR Ms. Sridevi Tritula appeared and argued for the department. She supported the findings in the impugned

order. She relied upon the statement of Shri P. Periyannan of the appellant-factory and submitted that it is clearly deposed by the said person that the chemical composition of the raw materials used by the department is entirely different from the chemical composition as seen in the lab test report of M/s. SAIL. In his statement, he has admitted that the relevant lab test reports show the discrepancy in the composition of the material with respect to manganese, phosphorus and sulphur. Further the letter issued by Senior Manager (F&A) of SAIL shows that the said manufacturer is clearing goods in the nature of defective coils, carbon steel plate which cannot be used for foundries for making casting. All these would establish that the appellants have procured raw materials from Sri Amman Steels and Kamaraj Steels who have purchased the scrap from local market and passed on the ineligible CENVAT credit.

9. Heard both sides.

10. On perusal of documents and after appreciating the submissions, it is seen that the case of the department is merely based on the statements given by G. Baskaran, proprietor of M/s. Sri Amman Steels and A. Veluchamy of M/s. Kamaraj Steels. These persons have not been examined under sec. 9D of the Central Excise Act, 1944 and therefore their statements cannot be admitted or relied in evidence. The Hon'ble High Court of Punjab and Haryana in the case of G – Tech Industries Vs. Union of India – 2016 (339) ELT 209 (P&H) has held that the procedure

under section 9D of Central Excise Act, 1944 has to be followed in adjudication proceedings. If the procedure of examining the witnesses is not done, the statement becomes irrelevant and no reliance can be placed on such statements.

11. The other evidence relied by the department is a letter issued by M/s. SAIL wherein it is stated that the waste and scrap cleared by them in the nature of defective coils, carbon steel plate cannot be used in foundries. Shri P. Periyannan who is the Manager (Process) of the appellant-factory has stated that raw materials are subjected to cutting and sizing before being put to use. The said person has given statement with regard to the chemical composition of the raw materials and his admission that there is a difference in the chemical composition of the raw material as per the reports of SAIL has been the basis for concluding that the raw material received by the appellant from dealers is not the actual raw material that has been supplied from the manufacturer viz. M/s. SAIL. Though the lab test report of SAIL is produced, the department has not produced the lab test of the appellant and has merely relied on the statement of Shri P. Periyannan. Chapter IV of the Evidence Act deals with oral evidence. Section 59 states that no oral evidence can be admitted to prove the contents of a document. Section 22 states that oral evidence with regard to contents of a document can be admitted only when genuineness of a document is in question. Thus, the content of the document (lab test report) has to be proved by

primary evidence i.e., document itself. Document when reduced in writing are considered to be best evidence and is placed on a higher footing than the oral evidence. The very object of documenting something is to perpetuate the memory of what has been written down so as to furnish prove of itself. If the department relies upon the difference in the chemical composition of the raw materials used by the appellant and the goods cleared by the manufacturer as waste from their factory to be different, then they have to produce both these lab test reports. The difference is comprehended by the department on the basis of the statement of Shri P. Periyannan which is not admissible in law. As already stated none of these persons have been examined at the time of adjudication and only the statements are relied to confirm the demand.

12. From the foregoing, I have no hesitation to conclude that the department has miserably failed to establish the allegations raised in the Show Cause Notice. The demand therefore cannot sustain. The impugned order is set aside. The appeal is allowed with consequential relief, if any.

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13. Brief facts are that after the Show Cause Notice dated 24.8.2009 (referred in the above case) was issued to the appellant, the adjudicating authority vide order dated 28.3.2011 confirmed the demand of Rs.8,07,257/- being the alleged wrongly availed CENVAT credit and imposed equal penalty on the

appellant. They preferred appeal before Commissioner (Appeals) and they were directed to make payment of 50% of duty and penalty as predeposit for granting stay of recovery of the balance dues. The appellant failed to comply with the predeposit and the appeal came to be rejected vide Order in Appeal No. CMB-CEX-000-APP-110//12 dated 21.5.2012. While so, as there was no stay order in operation, the Deputy Commissioner of Central Excise, as per section 11 of Central Excise Act, 1944 deducted / appropriated the amounts so payable from the sanctioned rebate claim of Rs.18,63,285/-.

14. The appellant then filed appeal before the Tribunal against the order of rejection by Commissioner (Appeals) for failure to comply with predeposit and vide Final Order No. 40184/2013 dated 15.5.2013, the Tribunal held that since the amounts have already been adjusted in the rebate claim, it would suffice compliance of predeposit and remanded the matter to the Commissioner (Appeals) for fresh consideration on merits. Thereupon the Commissioner (Appeals) passed the impugned Order in Appeal No. CMB-CEX-OOO-APP-149-13 dated 23.4.2013 which is the subject matter in Appeal No. E/40180/2014 as above.

15. As I have already set aside the order in Appeal No. E/40180/2014, the demand does not survive and the appropriation of the amount therefore requires to be set aside. The prayer in the present appeal is to set aside the said

appropriation made against the rebate claim sanctioned to the appellant. The prayer of the appellant is only to be allowed. The impugned order is set aside. The appeal is allowed with consequential relief, if any.

(Pronounced in court on 25.10.2021)

(**SULEKHA BEEVI C.S.**)
Member (Judicial)

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