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

REGIONAL BENCH - COURT NO. – III

Excise Appeal No. 403 of2012

(Arising out of Order-in-Appeal Nos. 92 to 94/2012 dated 21.5.2012 passed by the Commissioner of Central Excise (Appeals), Coimbatore)

M/s. Ramprasad Tubes & Bars (P) Ltd. Appellant
Semanickenpalayam
No. 4, Veerapandi Post
Coimbatore – 641 019.

Vs.

Commissioner of GST & Central Excise Respondent
No.6/7, A.T.D. Street, Race Course Road
Coimbatore – 641 018.

WITH

Excise Appeal No. 401 of2012

(Arising out of Order-in-Appeal Nos. 92 to 94/2012 dated 21.5.2012 passed by the Commissioner of Central Excise (Appeals), Coimbatore)

M/s. Periyanayaki Amman Steels Appellant
SF No. 806/3, Flat No. 4
V.V.C. Nagar Housing Unit Road
Civil Aerodrome Post
Coimbatore – 641 014.

Vs.

Commissioner of GST & Central Excise Respondent
No.6/7, A.T.D. Street, Race Course Road
Coimbatore – 641 018.

AND

Excise Appeal No. 406 of2012

(Arising out of Order-in-Appeal Nos. 92 to 94/2012 dated 21.5.2012 passed by the Commissioner of Central Excise (Appeals), Coimbatore)

M/s. Lavanya Steels Appellant
34-B, 8th Street
Ganapathy Post
Coimbatore – 641 006.

Vs.

Commissioner of GST & Central Excise Respondent
No.6/7, A.T.D. Street, Race Course Road
Coimbatore – 641 018.

APPEARANCE:

Shri M.Saravanan, Consultant for the Appellant
Shri S. Govindarajan, AC (AR) for the Respondent

CORAM

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

Final Order Nos. **40690-40692 / 2019**

Date of Hearing : 19.03.2019
Date of Pronouncement : 29.04.2019

PER BENCH

The issue involved in all the three appeals being the same, they are heard together and are disposed by this common order.

2. Brief facts are that the appellant M/s. Ramprasad Tubes & Bars (P) Ltd., herein after referred to as first appellant, is engaged in manufacture of castings and are registered with the Central Excise Department. They purchased inputs MS scrap / CI borings from central excise registered dealers and availed CENVAT credit and used them in the manufacture of finished products. The officers of the department visited the premises of the first appellant and scrutinized the records pertaining to receipt of inputs. In order to verify the correctness of the goods received and the genuineness of the credit availed, the dealers such as M/s. Karpagam Steels, M/s. Sri Amman Steels, M/s. Periyanayaki Amman Steels, M/s. Lavanya Steels, M/s. Shanthi Iron Traders, M/s. Raja Iron Traders, M/s. Sree Vishnu Steels and M/s. J.V. Alloy & Scraps (P) Ltd. were called upon to explain their stand with regard to the supply of scraps to the appellant. The dealers stated that the actual goods supplied to first appellant were

nothing but locally procured non-duty paid goods. It was also stated by them that the duty paid goods purchased by them from manufacturers / first stage dealers were diverted to various customers who were not in need of CENVAT invoices. The duty paid goods originally received by them from the manufacturers had been sold at higher rates since the quality of the same were very goods. The locally procured goods were cheaper and they were also sold at higher rates since the quality of the same were very good. Therefore, they sold it to the first appellant since the first appellant required CENVAT bills for the locally procured non-duty paid goods. The invoices were given mentioning the duty involved so that the first appellant could avail CENVAT benefits. The department came to the conclusion that the 1st appellant has availed irregular credit during the period from September 2004 to February 2007 to the tune of Rs.31,75,858/- while procuring goods from the above dealers. Show Cause Notice was issued to the 1st appellant to recover the ineligible credit of Rs.31,75,858/- along with interest and also for imposing penalties. Separate Show Cause Notice was issued to the dealers including appellants 2 and 3 proposing to impose penalties. After due process of law, the original authority confirmed the duty demand against the 1st appellant along with interest and imposed equal penalty under Section 11AC of the Central Excise Act, 1944. A separate penalty of Rs.40,000/- each was imposed on appellants 2 and 3. Aggrieved, the appellants filed appeals before Commissioner (Appeals) who vide the order impugned herein upheld the adjudication order. Hence these appeals.

3. On behalf of the appellants, ld. consultant Shri M. Saravanan appeared and argued the matter. He filed written submission, which can be summarized as under:-

3.1 The Inputs used by the appellants are in the nature of Scraps which are mainly received from Central Excise Registered Dealers. The claim of the department is that the appellant had received non duty paid MS Scrap from various registered dealers and fraudulently taken ineligible CENVAT credit based on the CENVAT Invoices issued by such dealers. The main allegation is that the selling price of the manufacturer / first stage dealer is higher than the selling price of the second stage dealer and in few cases, description as per the first stage / manufacturer's invoice differs with that of the cenvat invoice issued by the second stage dealer as it indicates as MS Scrap, CI Borings, Cuttings etc.

3.2 The allegation that the materials received by the appellant are non-duty paid is without any basis or without any evidence. This presumption of the Department is totally incorrect for the simple reason that the appellant has been paying the supplier of raw material by way of cheque only, it includes the excise duty element. If the appellant had received non duty paid goods then they would not have paid the excise duty element to the Registered Dealers, who supplied it.

3.3 Shri A.L. Peria Karuppan, Proprietor of M/s Raghavendra Steels, Ganapathy, Coimbatore (first stage dealer) in his statement given before the Superintendent of Central Excise on 21.08.2007 had categorically stated that he receives HR Sheet, CR sheet, HR Coil, HR STL coil from M/s JSW Steel Limited, M/s Salem Steel Plant Ltd. He stated that he had sent raw material along with CENVAT invoices to the customers. When the statement of Mr. Velusamy of Vishu Steels, and Anand of Lakshmi Traders were shown to him and he denied the statement given by those two people and categorically stated that he sent the HR Coil and HR Sheets along with the CENVAT Invoices. He had also pointed out that he gives HR Sheet, CR sheet, HR Coil, HRSTL coil which was cut according to the requirement of the customer. For reasons best known the above statement has not been relied upon in the show cause notice.

3.4 The Department has listed cases where manufacturers selling price per kg. is higher than the registered dealers selling price per kg and credit has been denied only in such cases. On the other hand wherever the Dealers selling price per kg is higher than the manufacturers selling rate, credit was allowed. Statements were recorded from the dealers namely M/s Vishu Steels, M/s JV Alloys & Scraps (P) Ltd, Lavanya Steels and M/s.Raja Steel Limited, who cannot read and write English and this fact has been admitted by them in the Cross Examination. Also evident from the statement, wherein acknowledgment for receipt of the copy of the statement was given in Tamil only and that two with mistakes.

3.5 Further statements were recorded after a period of more than 3 years from the period of disputed and they were shown the list prepared by the investigating officers. It is not a case of voluntary statement by the dealer that out of so much supplies only so much is non duty paid supplies. Also it is not for anyone to identify few invoices as irregular invoice issued by them. This apart in the statement except in the case of M/s.Raja Iron Trades and

M/s.Shanthi Traders, wherein the difference in description of goods was raised by the department, in all other cases in questions were raised only with regard to difference in price, which means there is no difference in description of the goods as alleged by the department.

3.6 In the case of M/s.Raja Iron Traders and M/s.Shanthi Traders, statements were recorded from the Accountants, who does not have any knowledge about the pricing of the goods at which the goods were sold and reason for selling at higher or lower price as the decisions are taken by the owners. In the case of M/s.Lakshmi Traders, no statement was recorded from the supplier, whereas statements were recorded from one of the first stage dealers and in all other cases no statements were recorded from the first dealer to establish that either they have supplied non duty paid goods nor they have issued only excise invoices, without supply of goods.

3.7 The learned adjudicating authority in para 38 has identified 3 cases relating to M/s Shanthi and 3 cases relating to M/s.Raja Iron Traders, as detailed below, wherein description of goods mentioned in the differs with the description mentioned in the registers maintained by the appellant. This disputed credit works out to Rs.1,30,357/-, out of which an amount of Rs.36,701/- already reversed by the appellant on being pointed out by the Excise Internal much before this investigation. Hence disputed credit if at all it can be Rs.93,802/- only, even this amount is not payable as they have received only duty paid goods.

SHANTHI IRON TRADERS – DESCRIPTIONAL DIFFERENCE INVOICE DETAILS:-

Sl.No.	Invoice No.	Dated	Description of goods	Cenvat Credit	Cess	Total
1	2	04.04.2006	CI Borings	27,639	552	28,191

2	3	06.04.2006	CI Borings	35,982	719	36,701
3	17	17.08.2006	CI Borings	7,223	144	7,367
	Total					72,259
	Less Amount reversed during Audit					36,701
	Total					**35,558**

RAJA IRON TRADERS – DESCRIPTIONAL DIFFERENCE INVOICE DETAILS:-

Sl.No.	**Invoice No.**	**Dated**	**Description of goods**	**Cenvat Credit**	**Cess**	**Total**
1	53	29.11.2006	CI Borings	22,762	456	23,218
2	60	13.12.2006	CI Borings	15,165	301	15,466
3	58	07.12.2006	CI Borings	19,176	384	19.560
	Total					**58,244**

3.8 In statement dated 16.07.2009 of Mr.Sivakumar, question was asked to him with regard to credit taken without receipt of goods and it was record that he has admitted the lapse on his part and also they received invoices for taking credit and not monitored the receipt of the goods. However, during cross examination he has clearly stated that they have received the goods mentioned in the invoices. On one hand it is alleged that non duty paid goods received and hence credit is ineligible. On the other hand it is alleged that goods were not at all received. Hence the contradiction in the stand of the department is clearly evident and credit cannot be denied on basis of this statement.

3.9 The dealers during the cross examination had categorically stated that they had supplied duty paid goods only and payments were received by cheque only and statement was recorded forcibly. From the above it would be clear that statements were obtained under duress. Such statements are most unreliable. The entire demand is fastened on the appellant based on such statements obtained under coercion and therefore the allegations are based on imagination. In fact the notice only alleges receipt of non duty paid goods and whereas statement of Sivakumar was recorded as they never received the goods from the dealer. For reasons best known to the Central Excise Officers such statements were obtained forcefully and statement of Sri Ragavendra steels which is in favour of the appellant was not brought on record. There can be no doubt that the authorities functioning under the Act must and duty bound to protect the interest of the Revenue by levying and collecting the duty in accordance with law - no less and also no more. At the same time it is no part of their duty to deprive an assessee of CENVAT credit by forcing the witnesses to give false statements.

3.10 In the following decisions the Hon'ble Tribunal and Hon'ble High court allowed cenvat credit in a similar circumstances:-

i) Sri Ranganathar Industries Pvt. Ltd. and others Vs CCE, Coimbatore - Final Order No.40469-40478/2018 dated 28.02.2018.

ii) M/s Ultimate Alloys Pvt. Ltd and others Vs CCE, Coimbatore - Final Order No.42207-42208/2018 dated 02.08.2018. .

iii) M/s Anugraha Valve Castings Ltd and others Vs CCE, Coimbatore - Final Order No.42815-42819/2018 dated 13.11.2018.

iv) Commissioner of C.Ex. Cus and Service Tax Vs. Juhi Alloys Ltd. – 2014(302) ELT 487 (All).

v) Commission of C.Ex., Mumbai – V Vs. Mahindra and Mahindra Ltd. (Auto Divn) – 2017 (350) ELT 492 (Bom.)

3.11 The entire transaction with their suppliers of raw material is transparent and the records are clear and duly accounted in their books of accounts. The appellant was under a bonafide belief that the goods supplied to them are duty paid and rightly so. In fact that is the reason why they had paid inclusive of central excise duty. While so, there is no justification to demand the said credit from the appellant based on the allegation that they have taken credit on non duty paid goods. The presumption of the Department is incorrect.

3.12 Needless to say that in this case there is nothing on record to show that the material supplied to the appellant has not suffered central excise duty. The Department cannot proceed against the appellant merely based on statements of certain persons which contain contradictions and untruth. The officers not only obtained statements under duress but also suppressed the statement dated 21.8.2007 of Shri.A.L.Periya Karuppan, Proprietor of M/s Raaghavendra Steels.

3.13 Without prejudice to the above submissions it is submitted that it has been held by the Hon’ble High Court as well as Hon'ble Tribunal in various cases that a buyer cannot be penalized for dealer’s mistake.

3.14 The Cenvat Credit availed by them during the period of dispute was verified by the Department i.e. Central Excise Internal Audit Party on 27.06.2007 to 29.06.2007. After completion of Audit, they had instructed the appellants to reverse Cenvat Credit of Rs.2,51,300 with interest of Rs.8,007 availed by them against dealers invoice, as it is an ineligible credit, which was done by the appellant vide challan dated 30.06.2009. Hence it is evident that the department after verifying the entire credit availed by them and given clear Chit to all credits availed by them based on dealers invoice, except for Rs.2,51,300. When Central Excise Internal audit department had allowed the credit after verification of their records in June, 2007, to their surprise now in March 2011, the adjudicating authority has disallowed the credit availed by them on few purchases made from the dealers. The department has disallowed the very same credit which is was earlier allowed by the very same department. Hence it crystal clear that the facts are known to the department already and it only on account of change of opinion the impugned demand is raised. The impugned order disallowing the CENVAT credit and demanding the same with interest and penalty may kindly be set aside and allow their appeals.

4. The ld. AR Shri S. Govindarajn supported the findings in the impugned order. He submitted that the 1st appellant has availed wrong credit on the invoices. They have not received the goods as described in the invoices. The inputs were procured by the dealers herein from the manufacturers / first stage dealers. They had procured the original goods which are of higher rates and thereafter supplied the locally procured goods to the 1st appellant by merely transferring the CENVAT invoices. This is very much clear from the differences of the description of the goods in the CENVAT invoices as well as the invoices issued by the manufacturers / first stage dealers. The dealer can only pass the credit of the duty that has been passed on from the manufacturer / first stage dealer. Since the description of goods differs, it can be seen that the credit availed is irregular. The

statements given by various dealers would make it clear that the appellants have availed wrong credit. He relied upon the decision in the case of Mukund Ltd. Vs. Commissioner of Central Excise, Belapur – 2007 (218) ELT 120 (Tri. Mum.) to contend that the demand and penalties imposed arelegal and proper.

5. Heard both sides.

6. After hearing both side and on perusal of records, it is seen that the allegation is that the 1st appellant has availed irregular credit on invoices without receiving the goods described in the invoices. According to department, the goods received by them are merely locally procured scrap whereas as per the invoices issued by the manufacturers / first stage dealers, the goods are described as HR sheets, CR sheets, HR coils etc.

6.1 The allegations have been defended by the appellant stating that they have supplied / received goods as described in the invoices and that the allegation that the dealers supplied only scrap is incorrect. The ld. consultant has placed much reliance on the statement of Shri A.L. Peria Karuppan, proprietor of M/s.Raghavendra Steels, Coimbatore (first stage dealer) given on21.8.2007. In the statement he has stated that they have supplied HR sheets, CR sheet, HR Coil etc. and that it was supplied after cutting according to the requirements of the customers. However, his statement has been suppressed by the department and not taken as relied upon document. It is also to be mentioned that the entire evidence in this case is based upon the statements of various persons. It is later submitted by the dealers that they have given the statements under force and coercion. Though the department alleges that non-duty paid scraps were supplied to the 1st appellant and the duty paid scraps were diverted by the dealers, there is no evidence adduced in this regard. Department has not produced any evidence to show that the dealers have diverted the duty paid goods to others. It is also to be mentioned that the demand of duty raised against the 1st appellant is alleging that being the manufacturer, the appellant ought to have taken all possible steps to ensure that the goods described in the invoices and the goods received by them are one and the same and whether these goods have suffered central excise duty. It is brought out from evidence that the 1st appellant has received the goods by payment of central excise duty along with the value of the goods by making payment through cheques only. It is also clear that the appellant has received inputs which were used in the manufacture of the finished products. Though the department alleges that the said inputs are not duty paid and that they have not received goods described in the invoices, the department has not at all explained how the appellant has manufactured the finished products which have been cleared on payment of duty. There is no discrepancy in the statutory records maintained by the appellant with regard to quantity of inputs or finished goods. The records / documents maintained are proper. The reliance placed by the department on mere statements recorded which have not been subjected to examination / cross-examination as required under Section 9D of Central Excise Act, 1944 cannot be accepted as evidence. At the cost of repetition, it is to be stated at this juncture that the statement of A.L. Peria Karuppan who stated that he is the first stage dealer and used to cut and sell the goods / inputs according to the requirements of the customers has been totally disregarded by department.

6.2 The Tribunal on similar set of facts and on similar allegations in the case of Ellen Industries & Ors. Vs. Commissioner of Central Excise, Coimbatore vide Final Order Nos. 40462 to 40464/2019 dated 12.3.2019 had set aside the demand. The decision in the case of Mukund Ltd. (supra) relied by ld.. AR is not applicable to the facts. The Hon'ble High Court in the case of Commissioner of Central Excise Vs. Juhi Alloys Ltd. reported in 2014 (302) ELT 487 (All.) had occasion to consider a similar situation wherein it observed 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."*

6.3 Moreover, it is brought out that the department had conducted audit of the accounts of the 1st appellant from 27.6.2009 to 29.6.2009. After completion of the audit, appellants were instructed to reverse the credit of Rs.2,51,300/- with interest of Rs.8,007/- availed by them against dealers invoice pointing out that it is ineligible credit. The appellant obeyed the said instructions and reversed the credit by challan dated 30.6.2009. Thus, it is very much clear that the department has conducted audit and had considered all the dealers' invoices and observed that the credit except for Rs.2,51,300/- is eligible. Thereafter, a Show Cause Notice has been issued to the appellant on 9.9.2009 alleging that the credit on certain dealers' invoices as ineligible. The department has disallowed the credit availed on purchases made by the appellant from few dealers. When the department audit has conducted verification of the accounts with regard to the credit availed by them, without clinching evidence so as to treat the ineligibility of credit, department cannot disallow credit merely on the basis of assumptions and presumptions. We find that there is no iota of evidence in the present case to establish that the appellants have availed ineligible credit. Further, as the appellant had disclosed the credit in their accounts as well as ER1 returns, we find that the appellant cannot be saddled with the guilt of suppression of facts so as to invoke extended period of limitation and impose penalty under section 11AC of the Central Excise Act, 1944.

7. We are of the opinion that the department has not been able to establish the allegations raised in the Show Cause Notice. The demand and the penalties imposed on the 1st appellant and the dealers cannot therefore sustain. The impugned order to the extent of the appellants in the present appeals is set aside and the appeals are allowed with consequential relief, if any.

(Pronounced in open court on 29.04.2019)

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

(**MADHU MOHAN DAMODHAR**)
Member (Technical)

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