CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH – COURT NO. IV

EXCISE Appeal No.54172 of 2018

(Arising out of Order in Appeal No. 407(SM)/CE/JPR/2018 dated 24.09.2018 passed by Commissioner (Appeals), Central Excise & Central Goods and Service Tax, Jaipur)

M/s. Sumetco Alloys Pvt. Ltd. **...Appellant**
G-740, Phase-II, Bhiwadi,
Distt. Alwar (Rajasthan)

Versus

Commissioner of Customs, **....Respondent**
Central Excise& Central GST, Alwar
NCR Building, Statue Circle,
Jaipur-302005

APPEARANCE:
Mr. Ravinder Singh, Consultantfor the appellant
Mr. Pradeep Gupta, Authorised Representative for the Respondent

CORAM :HON'BLE Ms. RACHNA GUPTA, MEMBER (JUDICIAL)

Date of Hearing:**4.9.2019**

Date of Decision: **24.12.2019**

FINALORDER No.51788/2019

RACHNA GUPTA

1. The appellant herein are engaged in manufacture of pure lead and lead alloys. They were purchasing inputs on high seas import basis through different importers and were filing bills of entry. Department during the course of audit observed that the principle importer were receiving certain services from various providers regarding cargo handling upto the port. These service providers were raising bills directly to the principle importer in this regard. The said principle importer was further sending those bills

to the assessee for the purpose of passing of credit. Department further observed that the appellant neither availed the service nor paid any amount in lieu of the said services but has availed the Cenvat Credit of the service tax amounting to Rs. 2,11,398/- for the period from June 2014 to December 2014. Alleging the same that the show cause notice no. GR-L-4/2015 dated 16.12.2015 was served upon the appellant proposing the reversal of the said cenvat credit with the interest at the appropriate rate and the proportionate penalties. The said proposal was confirmed initially by the order in original bearing no. 46/2017-18 dated 15.12.2019. The appeal thereof has been rejected vide order in appeal no. 407/JPR/2018 dated 24.9.2018. Being aggrieved, thereof, the present appeal has been filed.

2. I have heard Mr. Ravinder Singh, Consultant for the appellant Mr. Pradeep Gupta, Authorised Representative for the Respondent.

3. It is submitted on behalf of the appellant that the Cenvat Credit availed by the appellant has been denied on the sole ground that the invoices issued by the service provider are not in the name of the appellant but in the name of the principle manufacturer. It is submitted that there is no denial about the appellant to have purchased inputs on high sea import basis from the said principle importers. It is submitted that the Department has wrongly observed that the appellant has not made any payment in lieu of the services with the emphasis that though the services were availed by principle importer but it is the appellant who only had paid the service tax in lieu thereof and as such is entitled for

claiming the credit thereupon. It is submitted that since the documents furnished at the time of availing cenvat credit, contains all other details as mentioned in proviso to Rule 9(2) of Cenvat Credit Rules 2004 , it is appellant who is entitled to claim the credit. These details have wrongly been ignored by the adjudicating authority below. The sole reliance upon the fact that the invoice is in the name of the principle importer is alleged to be bad in law. Order accordingly is prayed to be set aside and appeal is prayed to be allowed.

4. Per contra, the learned DR has justified the order under challenge and prayed for the appeal to be dismissed.

5. After hearing the parties and perusing the records I observe and hold as follows:

While serving the impugned show cause notice, the department formed the opinion that the impugned services were not availed by the appellant nor the appellant had paid any amount in lieu of the said services which are in the nature of cargo handling upto the port. A similar fact though has been recorded by the Commissioner (A) in the order under challenge but while recording his findings, he has mentioned:

> "It is immaterial if the appellant has made payment to the service provider on the behalf of the original importer. The original importer etc. were entitled to take credit on such documents if they fulfil the terms and conditions of Cenvat Credit Rules 2004, but certainly the appellant was not

entitled to credit in respect of any of the invoices or bills even if the appellant has made payment".

Thus it become apparent that the basic allegation levelled against the appellant about making no payment of service tax was held otherwise by the commissioner(A). To adjudicate appellant's entitlement of claiming cenvat credit, I observe that:

The cenvat credit can be availed in accordance of the procedure as mentioned in Rule 9 of Cenvat Credit Rules 2002.Sub rule 2 thereof provides that no Cenvat Credit under sub-rule (1) shall be taken unless all the particulars as prescribed under the Central Excise Rules, 2002 or the Service Tax Rules, 1994, as the case may be, are contained in the said document provided that if the said document does not contain all the particulars but contains the details of duty or service tax payable, description of the goods or taxable service, assessable value, Central Excise or Service Tax registration number of the person issuing the invoice, as the case may be, name and address of the factory or warehouse or premises of first or second stage dealers or provider of output service, and the Deputy Commissioner of Central Excise or the Assistant Commissioner of Central Excise, as the case may be, is satisfied that the goods or services covered by the said document have been received and accounted for in the books of account of the receiver, he may allow the Cenvat Credit.

6. Thus it becomes clear that the proviso to Rule 9(2) states that credit shall not to be denied on the ground of lack of documents if the particulars with respect to details of service tax payable, description of taxable service, assessable value, service tax registration number of the person issuing invoice and his address which otherwise are available on record. The provision extends power to the authorities to allow the credit in case these details are available in the documents submitted. From the record, it is perused that appellant while availing the Cenvat Credit has furnished following documents –

i. Photocopies of input service invoices issued by the shipping lines and in most of the invoices the name of the Appellant is clearly mentioned in front of remarks column as High seas to Sumetco Alloys.

ii. Photocopies of Demand Drafts issued by the Appellant banker Bank of Baroda, Asaf Ali Road, New Delhi in favour of shipping lines.

iii. Certificate dated 20.12.2016 issued by the Branch Manager of Bank of Baroda, Asaf Ali Raod, New Delhi. In this certificate the branch manager has certified that they have made the demand drafts from Appellant's bank account number 00930200000521 in favour of shipping lines.

iv. Photocopies of High Seas Agreement along with copies of Bills of entries against which the Appellant had purchased the imported inputs from principal importers.

v. Photocopies of invoices issued by the principal importers in favour of Appellant.

vi. Photocopies of Bills of lading.

7. These documents clarifies that all the requisite details as mentioned in the proviso to sub rule 2 of Rule 9 (as mentioned above) were made available to the Department while availing the credit by the appellant. In such circumstances, the denial of credit for the sole reason that the invoices issued by the service provider were not in the name of the appellant who was the availing credit is not justifiable. I draw my support from the decision in the case of **Eupec-Wellspun CoatingsIndia Ltd. Vs. CCE Indore 2009 (235) ELT 347(Tri-Ahmd)** wherein it was held that the credit should not be denied if the documents submitted contain all the particulars. In another case of **Century Dying &Printing Mills Vs. Commissioner of Central Excise reported as 2013 (298) ELT 558 (Tri-Ahmd)**it was held that name of the consignee is not one of the essential requirement as per Proviso (2) of Cenvat Credit Rules. Therefore, it was necessary for the adjudicating authority to examine as to whether other conditions required to be fulfilled for allowing the Cenvat Credit, have been fulfilled or not.

8. From the above discussion it stands clarified that the other conditions for availing cenvat credit were fulfilled by the appellant who admittedly had paid the service tax. There remains no more requirement of invoice to be in his name only, Hence order under challenge is held unreasonable passed ignoring the intent of Rule 9

CCR, 2004. Otherwise also, the availability of Cenvat Credit is a substantial relief. The same cannot be denied merely on the ground of procedural lapse. Above all in the present case there has been a wrong observation by the Department about any payment to have been made by the appellant. The documents as mentioned above are sufficient to prove that it was appellant only, who had made the payment of service tax for the invoice raised by the services providers though in the name of the principle importer. It is the said principle importer with whom the appellant had entered into an agreement of purchasing the inputs at high seas basis. The service in question is that of cargo handling on port.

9. Seen from any angle and in view of above discussion, the order under challenge is held as erroneous as being passed in sheer ignorance to proviso 2 of Rule 9 of Cenvat Credit Rules 2004. The same is accordingly hereby set aside. As a result thereof appeal stands allowed.

(Order pronounced in the open court on 24.12.2019)

(RACHNA GUPTA)
MEMBER (JUDICIAL)

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