CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL PRINCIPAL BENCH, NEW DELHI.
COURT NO.IV

Excise Appeal No. 51973 of 2018

(Arising out of Order-in-Appeal No. 144-147(SM)/CE/JPR/2018 Dated 27.03.2018 passed by Commissioner (Appeal), Central Excise and Central Goods of Service Tax, Jaipur)

Shiv Kumar Garg **Appellant (1)**
Plot No. G-1/1282, Rampur Mundana,
Phase – V, RIICo Industrial Area,
Bhiwadi, Distt. Alwar (Raj.).

Versus

Commissioner of Central Excise and **Respondent**
Central Goods and Service Tax,
NCRB, Statue Circle,
Jaipur

with

Excise Appeal No. 51974 of 2018

(Arising out of Order-in-Appeal No. 144-147(SM)/CE/JPR/2018 Dated 27.03.2018 passed by Commissioner (Appeal), Central Excise and Central Goods and Service Tax, Jaipur)

Akash Garg **Appellant (2)**
Plot No. G-1/1282, Rampur Mundana,
Phase – V, RIICo Industrial Area,
Bhiwadi, Distt. Alwar (Raj.).

Versus

Commissioner of Central Excise and **Respondent**
Central Goods and Service Tax,
NCRB, Statue Circle,
Jaipur

With

Excise Appeal No. 52075 of 2018

(Arising out of Order-in-Appeal No. 144-147(SM)/CE/JPR/2018 Dated 27.03.2018 passed by Commissioner (Appeal), Central Excise and Central Goods and Service Tax, Jaipur)

M/s RNG Impex Pvt. Limited **Appellant (3)**
Plot No. G-1/1282, Rampur Mundana,
Phase – V, RIICo Industrial Area,
Bhiwadi, Distt. Alwar (Raj.).

Versus

Commissioner of Central Excise and **Respondent**
Central Goods and Service Tax,
NCRB, Statue Circle,
Jaipur

and

Excise Appeal No. 52122 of 2018

(Arising out of Order-in-Appeal No. 144-147(SM)/CE/JPR/2018 Dated 27.03.2018 passed by Commissioner (Appeal), Central Excise and Central Goods and Service Tax, Jaipur)

Amit Gupta **Appellant (4)**
S/o Shri Ram Niwas Gupta
C-30, 1st Floor, Adarsh Nagar
Prithvi Raj Road, New Delhi

Versus

Commissioner of Central Excise and **Respondent**
Service Tax, Alwar

<u>Appearance</u>
Present for the Appellant : Shri Vivek, Advocate
Present for the Respondent: Shri R.K.Mishra, Authorised Representative

<u>CORAM</u>: HON'BLE MR. BIJAY KUMAR, MEMBER (TECHNICAL)
HON'BLE MS. RACHNA GUPTA, MEMBER (JUDICIAL)

FINAL ORDER NOS. 51795-51798/2019

DATE OF HEARING/DECISION: 08.07.2019

BIJAY KUMAR:

This appeal seeks to assail order dated 29.03.2018 passed by the Commissioner of Central Excise and Central Goods and Service Tax, Jaipur, by which the order dated 23.12.2016 passed by the original Adjudicating Authority has been upheld and the appeal filed by the Appellants were rejected. Being aggrieved by the impugned order the appellant are in appeal before this Tribunal.

2. The brief facts of the case are that the appellant, M/s. RNG Impex (Private Limited, Alwar) is holding of Central Excise registration are engaged in the manufactured of 'Copper Wires' classifiable under Chapter Subheading 7408 of the First Schedule to the Central Excise Tariff Act, 1985. On the basis of specific information, that Shri Amit Gupta, Director of M/s. Progressive Alloys India Private Limited, alongwith associated dealers were involved in passing on inadmissible Cenvat Credit on the cenvatable of non ferrous metals to the manufacturers of excisable goods. The investigation was therefore taken up by the Director General of Central Excise Investigation (DGECI) by conducting searches at various premises belonging to Shri Amit Gupta and his residential premises and also at dealers place under his control.

2.1 The Statements of various persons including that of Shri Amit Gupta, various transporters, whose truck numbers appeared on the subject invoices, Authorized Signatory and Director of M/s. RNG Impex (other Appellant no-1) were recorded wherein Shri Amit Gupta (Appellant No.2) admitted that they have just supplied the Cenvatable invoices, without supply of goods to these manufacturers. The manufacturer (one of them being appellant no. 3) in turn availed the credit of duty mentioned in the invoices in a fraudulently manner in contravention of Rule 3,4 and 9 of the Cenvat Credit Rules, 2004 and Rule 4, 6, and 8 of Central Excise Rule, 2002. The case was adjudicated after due process of law which is under challenge before us in the impugned appellate order.

2.2. Learned Advocate on behalf of the Appellant submits as under:

Grounds of appellant No. 1, 2 & 3:

- the prime facie the SCN issued for the period prior to 04.08.2011 is barred by time as having being issued after a period of 5 years.
- that the transactions were availably conducted in cheques and through proper banking channels, payments were made after receipt of goods in the factory premises and the appellant had normal genuine transactions.
- that there is no admission on part of the appellant to have received the invoice without physical receipt of goods.
- that none of the transporters accepted the movement of goods which indicates that the statements were taken under coercion.
- that admission of non-delivery of goods on part of other person other than appellant does not become admission on part of appellant.
- that they have received the material against all those bills against which they have availed the Cenvat credit. The onus is on the department to prove clandestine receipt & removal of excisable goods.
- there is no suppression of facts.
- the appellant has relied upon a no. of judgements in support of their contentions.

Grounds of appellant no.4:

- that the appellant was not provided with the RUDs and hence the order against principles of natural justice.
- that the order has been passed without proper service of the notice.
- that penalty has been imposed solely on the basis of statement which were recorded under coercion.
- that the appellant has no rule to play in availment of credit by M/s. RNG, on the invoices issued by M/s. Unnati Alloys, as he is in no way connected with the said registered dealer M/s. Unnati Alloys as he is neiher a Director/ authorized signatory there.
- the appellant relied upon a no. of judgments in support of their contentions.

3. Learned Departmental Representative, however, supports the impugned order and submits that the appellant has not received the Cenvatable goods but only invoices were procured and the cenvat credit thereon was avail in contravention of the provisions of Cenvat Credit Rules and also the Central Excise Rule. Accordingly, he pleaded for dismissal of the appeal filed by these appellants.

4. We have considered the rival submission and also perused the case record. It was not in disputed that the appellant No.3 has received goods

from Central Excise registered dealers on payment of central excise duty and also made the payment to Shri Amit Gupta through banking channel. Regarding the transport of goods, it is not necessary to have the details of transport of goods verified by the Appellants. We also find that the department although has obtain statement of Shri Amit Gupta and also the transporter of the goods, who have denied to have supplied the Cenvatable goods to the appellant. The Department has not adduced any evidence regarding compliance of provisions of Section 9D of the Central Excise Act before the statement were admitted evidence. It has been held in the number of cases including **(i) Andman Timber Industries Vs. Commissioner of Central Excise 2015 (324) E.L.T. 641 (SC), (ii) Shyrise Overseas Pvt.Ltd. Vs. Commissioner of Central Excise 2017 (353) E.L.T. 421 (Cal.)** wherein it is held that without complying the Section 9D the reliance cannot be placed on such statements. We therefore do not place reliance on the statement of these persons. It is on record that appellant has manufactured the excisable goods and cleared them on payment of duty which is not disputed by the Department. The department has not found the other sources of raw material/ inputs procured by the Appellant. In such a circumstance it will not be appropriate to hold that the appellant has not procured the goods from the companies belonging to Shri Amit Gupta (other Appellant No.). We also find that identical issue come up for consideration before Hon'ble Allahabad high court in case of 2014 (302) E.L.T. 487 (All.). The paragraph which is relevant 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. Ultimately, the issue in each case is whether, within the meaning of Rule 9(3) of the Rules of 2004, the assessee has taken reasonable steps to ensure that the inputs in respect of which he has taken Cenvat credit were goods on which appropriate duty of excise was paid. Once it is demonstrated that reasonable steps had been taken, which is a question of fact in each case, it would be contrary to the Rules to cast an impossible or impractical burden on the assessee.

5. In view of above discussion and analysis of the issue involved, we find that impugned order is not sustainable and is accordingly being set aside.

6. As the appeal of main Appellant M/s. RNG Impex is not sustainable there is no question of imposition of penalty on any other appellant.

7. In result, all the appeals are allowed.

(Order pronounced in open court)

(BIJAY KUMAR)
MEMBER (TECHNICAL)

(RACHNA GUPTA)
MEMBER (JUDICIAL)

JB