CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI.

PRINCIPAL BENCH - COURT NO. II

Service Tax Appeal No. 53625 of 2018-SM

(Arising out of order-in-appeal No. 312(SM) CE/JPR/2018 dated 03.07.2018 passed by the Commissioner (Appeals), Central Excise & Central Goods and Service Tax, Jaipur).

M/s Mammon Concast Pvt. Limited **Appellant**
E-129 to E-132, F-133 to F-134
RIICO Growth Centre, Dholpur
Rajasthan.

VERSUS

Commissioner of Central Goods and Service Tax, Customs & Central Excise **Respondent**
'A' Block, Surya Nagar , Alwar (Rajasthan)-301001.

APPEARANCE:

Shri Abhishek Jaju, Advocate for the appellant
Shri P. Juneja, Authorised Representative for the respondent

CORAM:

HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)

FINAL ORDER NO. 51578/2021

DATE OF HEARING: 23.03.2021
DATE OF DECISION: 17.06.2021

ANIL CHOUDHARY:

The issue in this appeal is whether the appellant have rightly taken credit of service tax on port charges etc. in the facts that they had purchased the goods from high sea seller and some of the invoices for port services etc. were in the name of high sea seller, but in fact have been paid by the appellant who have filed Bill of Entry for home consumption, and such Bill of Entry also

mentioned the name of the original importer (who sold on high sea sale basis).

2. The appellant is a manufacturer of M. S. Billets, falling under Chapter sub-heading 72071920 of the Central Excise Tariff Act, 1985 and is registered with the Central Excise Range, Bharatpur, vide Registration No. AGCM5635GEM001. That the appellant was also availing the cenvat credit facility of input and input services, for the manufacture of their final product.

3. That the appellant had purchased 'melting iron scrap' on 'high sea sales' from high sea seller namely; (i) M/s Utkal Steel Pvt. Ltd., Mumbai, (ii) Utkal Steel Intrade Pvt. Ltd., Mumbai, (iii) M/s A.A. International, (iv) M/s Rathi Industries Ltd., & (v) Sudama Exports Pvt. Limited.

4. Accordingly, the appellant has taken cenvat credit of Rs.14,09,763/- during the period 2010-11 to 2012-13. In the course of audit it appeared to Revenue that the appellant have wrongly taken cenvat credit on the strength of improper document of input service, mainly for the reason that some of the invoices are not issued in their name but are issued in the name of the high sea seller who sold the goods to the appellant on high sea sale basis. On the demand made by the Superintendent pursuant to audit, the appellant took the stand vide their letter dated 16.10.2014, that they were eligible to take the credit disputed by the Revenue.

5. However, it appeared to Revenue that credit under dispute is in contravention of Rule 9(i) and (ii) of Cenvat Credit Rules and is recoverable. It further appeared that the appellant had not intimated to the Department the taking of credit on improper documents prior to discovery during audit, and accordingly extended period of limitation is invokable under the provisions of Section 11A/11A(4) of the Central Excise Act. Accordingly, show cause notice was issued proposing the recovery of the aforementioned amount with interest and penalty was also proposed.

6. The appellant contested the show cause notice inter-alia urging that they have purchased melting scrap for manufacture of M.S. billets which is an input and have accordingly availed cenvat credit on the input services used in bringing the raw material to the factory, as allowable under Rule 2(l) read with Rule 3 of Cenvat Credit Rules, 2004. It was further urged that the Revenue have earlier also conducted audit by internal Audit party, Central Excise Commissionerate on 19-20.09.2013. It was further urged that input is defined in Rule 2(k) of Cenvat Credit Rules, means – all goods used in factory by the manufacturer of the final product and further input services as defined in Rule 2(l) - includes all services used by the manufacturer for manufacture of dutiable goods. It was also urged that in the facts and circumstances, the appellant having purchased the input on high sea sale basis from the original importer (in whose name the bill of lading existed), all the documents cannot

be in the name of the appellant, as it is practice in the trade that the various service providers for port charges, clearance charges, etc. raised the invoices for their services in the name of the party whose name appear in the bill of lading. Admittedly, appellant being a purchaser of the goods in transit from high sea seller, had filed the Bill of Entry (also mentioning the name of the other party alongside in whose name the bill of lading existed). Admittedly, Bill of Lading is a negotiable instrument and the title in the goods is transferable by endorsement and delivery. It is also admitted that the appellant had paid the amount of service tax to the service provider(s) who are registered with the Department. It was further urged that the appellant has taken credit on the invoices and not against extra/ photocopies of invoices, as alleged in the show cause notice. The appellant has also produced invoices at the time of hearing before the Court below as is mentioned in the order in original. Further, as regards the defect with some of the invoices – signature not found of the issuing authority, it was pointed out that such invoices are computer generated invoices and that there is no requirement to sign by the authorised person, as per the settled law in the case of **Creative Architects & Interiors -2012 (26) STR 477** (Commr. Appl.). It was further pointed out that most of the invoices are issued by shipping line, which relates to terminal handing charges, etc. are in the name of importer – high sea seller, from whom the appellant has purchased the goods. Further, there is no dispute that the goods purchased by the appellant on high sea sale basis have not been received by them and used for manufacture of dutiable

final product. It was pointed out that some of the service provider/ shipping line who had issued the invoices (under dispute) have issued a certificate to the effect that – the payment of invoices have been made to them by the appellant, though the invoices are issued in the name of high sea seller and thus the name of service receiver should be read as "to Utkal Intrade Pvt. Limited, Mumbai Account Memmon Concast Pvt. limited, Dholpur". Such certificates were produced before the Court below and also relied in the audit, but the same has not been considered.

7. Reliance was placed by the appellant on the ruling in the case of **R. G. Pigments (P) Ltd., vs. CCE, Jaipur-I -2013 (30) STR 507 (Tri. Del.)** wherein also under similar facts and circumstances waiver of pre-deposit was allowed and recovery was stayed.

8. Further, as regards the objection that cenvat credit have been taken on the document namely 'estimate', issued by shipping line - Transasia Shipping Services Pvt. Limited, it was urged that the said document contain all the necessary details as required to be contained in the document, as per Rule 4A of Service Tax Rules, 1994, i.e. service tax registration number, address, name of service provider and receiver, description and value of service, service tax payable, etc.

9. It was further urged that the extended period of limitation is not invokable as appellant has maintained proper record

of the transaction and also filed the returns with the Department under the scheme of the Act read with the Rules. There being no element of suppression or mis-representation or fraud, the show cause notice issued invoking extended period is bad and fit to be dropped. Reliance was placed on the ruling of this Tribunal in **CCE vs. Jala Ram Plastic Pack -2014 (34) STR 56** and **Pharmalab Equipments Pvt. Ltd., vs. CCE, Ahmedabad- 2009 (242) ELT 467 (Tri. Ahmd.)**.

10. The show cause notice was adjudicated vide order-in-original dated 12.01.2016 and the proposed demand was confirmed alongwith interest. Penalty was imposed @ 50% under Section 11AC(1)(c) read with Section 11AC of the Act as substituted.

11. Being aggrieved, the appellant preferred appeal before the learned Commissioner (Appeals). The learned Commissioner was pleased to dismiss the appeal relying on the ruling of this Tribunal in the case of **Mukund Brass Industries vs. CCE, Rajkot -2009 (234) ELT 161 (Tri.)** whereunder the fact that bill of entry was not in the name of the assessee, and goods have been claimed imported on high sea sale basis, and held not proved, as high sea purchaser steps into the shoes of the importers, is required to file Bill of Entry. The Bill of Entry, not being in the name of assessee, claim of credit held was not acceptable (in part), allowed for the Bill of Entry in name of **Mukund Brass**. Being aggrieved, the appellant is before this Tribunal.

12. Learned Counsel for the appellant Shri Abhishek Jaju assailing the impugned order urges that the Court below have erred in shutting their eyes due to the flow of transaction and the admitted facts. Admittedly, the appellant is a purchaser of inputs – melting scrap by way of subsequent sales i.e. when the goods are in transit. In other words, the goods have been purchased by the original buyer (or importer) whose names appears in the Bill of Lading, as well as the invoices issued by the seller (exporter). Further, the law of the land under the provisions of Sale of Goods Act, Sales Tax Act, Central Sales Tax Act recognises the sale of goods in transit from the title holder to the buyer, by delivery and endorsement of the document in favour of the buyer. Such transaction have not been doubted and not been found to be illegal by the Revenue. Admittedly, appellant have received the goods in their factory of production after getting the same cleared as importer by filing the Bill of Entry for home consumption. Admittedly, the name of the appellant as well as the high sea seller both appeared on the Bill of Entry. Such Bill of Entry also co-relates the other documents like Bill of Lading, invoice No., Name of the shipper (in the country of origin) etc. Further, after the goods arrive at port, certain other expenses are incurred like terminal handling charges, which are paid by the shipping company and thereafter taken reimbursement from the importer, wherein they also charge service tax on their services. Such invoices contain the details like Bill of Lading No., the container No. in which the goods arrived, etc. Similarly, the CHA also issues invoices in the name of the importer/ high sea seller as the case

may be for their clearing charges and these also contain reference to Container No., Bill of Lading No., etc. Accordingly, series of transaction is corelatable to the appellant. Further, it is not in dispute that the appellant paid for such services including service tax and have accordingly accounted for the same and taken cenvat credit, being input services under the Cenvat Credit Rules. There is no violation of the provisions of Rule 9 of Cenvat Credit Rules read with Rule 4 of Service Tax Rules. Accordingly, prays for allowing their appeal.

13. Learned Authorised Representative appearing for the Revenue have relied on the impugned order.

14. Having considered the rival contentions and on perusal of record, I find that admittedly the melting scrap purchased by the appellant on high sea sale, is their input for manufacture of M.S. billets. I further find that Rule 9(1) of Cenvat Credit Rules provides that cenvat credit shall be taken by the manufacturer on the basis of invoice issued by a manufacturer for clearance of inputs from his factory or depot or from the premises of the consignment agent of the said manufacturer or from any other premises from where the goods are sold by or on behalf of the said manufacturer. Similarly, an importer is entitled to avail cenvat credit on inputs if the importer is registered in terms of the provisions of Central Excise Rules, 2002 (admittedly appellant is registered with the Central Excise Department as well as the Service Tax Department). Further, Rule 9(2) of Cenvat Credit Rules 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 documents.

15. Further, I find that Rule 4A(1) of Service Tax Rules provides that every provider of taxable service on completion of such service or receipt of payment towards the same, shall issue an invoice or bill or as the case may be, a challan in respect of such taxable service provided or agreed to be provided and such document shall be serially numbered and shall contain the following , namely:-

(i) Name and address and the registration No. of such person;

(ii) Name and address of the person receiving taxable service;

(iii) Description and value of taxable service provided or agreed to be provided; and

(iv) The Service Tax payable thereon.

16. I find that there is no dispute as to the aforementioned requirement save and except the invoice not being in the name of the appellant (but in the name of the original importer - high sea seller). I find that no specific documents have been mentioned considering the transaction of subsequent sale on high sea sale basis, in the Rules. Thus, the scheme of the Act read with the Rules has to be read harmoniously. If for something missing in the rules, the cenvat credit is available under the scheme of the Act, read with Rule 3 read with Rule 2(l) and (k) of the Cenvat Credit Rules, service

tax credit cannot be denied for some gap left in the statute. Such interpretation will defeat the scheme of cenvat credit, leading to anomalous situation. Accordingly, in the facts and circumstances, I hold that appellant has rightly taken cenvat credit under dispute. Accordingly, this appeal is allowed with consequential benefit and the impugned order stands modified. The penalty imposed is also set aside.

(Pronounced on 17.06.2021).

(Anil Choudhary)
Member (Judicial)

Pant