

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI**

PRINCIPAL BENCH, COURT NO. 1

EXCISE APPEAL NO. 50224 OF 2019

[Arising out of Order-in-Appeal No. 438(SM)/CE/JPR/2018 dated 17.10.2018 passed by the Commissioner (Appeals), Central Excise & Central Goods and Service Tax, Jaipur]

M/S SUBHADRA RINGS PVT LTD

Appellant

G-66/67, RIICO Industrial Area,
Bagru Extn, Jaipur (Rajasthan)

VERSUS

**COMMISSIONER OF CENTRAL EXCISE AND
CENTRAL GOODS AND SERVICE TAX,
COMMISSIONERATE-JAIPUR**

Respondent

NCRB, Statue Circle, C-Scheme,
Jaipur

Appearance:

Present for the Appellant : Shri Bipin Garg and Ms. Kainaath, Advocates

Present for the Respondent: Shri Bhagwat Dayal, Authorised Representative

CORAM:

HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT

HON'BLE MR. P. V. SUBBA RAO, MEMBER (TECHNICAL)

Final Order No. 50225 /2024

Date of Hearing : 10/01/2024

Date of Decision: 09/02/2024

P V SUBBA RAO

1. M/s Subhadra Rings Pvt. Ltd.¹ filed this appeal to assail the Order in Appeal dated 15.10.2018² passed by the Commissioner (Appeals) whereby he upheld the order in original dated 17.01.2017 passed by the Joint Commissioner and rejected the appellant's appeal.

1 Appellant

2 Impugned order

2. The appellant manufactures Bearing Rings falling under Central Excise Tariff Heading 84829900 and avails CENVAT credit on the inputs used in their manufacture. One of its suppliers is National Engineering Industries³, Jaipur whose records were audited during July 2014 and on being pointed out by the audit party, NEI paid Additional Duty of Customs amounting to Rs. 2,25,33,782/- on the goods which it had imported and sold to the appellant herein. NEI had issued supplementary invoices to the appellant for this amount on the strength of which the appellant availed CENVAT credit.

3. CENVAT credit can be availed on the strength of supplementary invoices issued by the supplier as per Rule 9(1) (b) of the CENVAT Credit Rules, 2004⁴ except where the duty was originally not paid or short paid by reason of fraud, collusion or wilful misstatement or suppression of facts or contravention of any provisions of the Customs Act or Excise Act with an intent to evade payment of duty. It reads as follows:

"Rule 9. Documents and accounts

RULE 9. Documents and accounts. — (1) The CENVAT credit shall be taken by the manufacturer or the provider of output service or input service distributor, as the case may be, on the basis of any of the following documents, namely :-

(b) a supplementary invoice, issued by a manufacturer or importer of inputs or capital goods in terms of the provisions of Central Excise Rules, 2002 from his factory or depot or from the premises of the consignment agent of the said manufacturer or importer or from any other premises from where the goods are sold by, or on behalf of, the said manufacturer or importer, in case additional amount of excise duties or additional duty leviable under section 3 of the Customs Tariff Act, has been paid, except where the additional amount of duty became

recoverable from the manufacturer or importer of inputs or capital goods on account of any non-levy or short-levy by reason of fraud, collusion or any wilful mis-statement or suppression of facts or contravention of any provisions of the Excise Act, or of the Customs Act, 1962 (52 of 1962) or the rules made thereunder with intent to evade payment of duty. Explanation. - For removal of doubts, it is clarified that supplementary invoice shall also include challan or any other similar document evidencing payment of additional amount of additional duty leviable under section 3 of the Customs Tariff Act; or."

4. The case of the Revenue is that NEI had short paid duty on account of fraud, collusion, wilful misstatement or suppression of facts and hence the appellant was not entitled to take CENVAT credit on the strength of the supplementary invoices issued by NEI. An SCN was issued to NEI seeking recovery of the differential duty and also proposing to impose mandatory penalty equal to the amount of duty.

5. Another SCN dated 19.7.2016 was issued to the appellant seeking to deny the CENVAT credit taken on the strength of supplementary invoice issued by NEI and impose penalty. This proposal was confirmed by the Joint Commissioner and affirmed by the Commissioner (Appeals) in the impugned order. Undisputedly, the only ground on which the SCN was issued to the appellant and the CENVAT credit was denied and penalty was imposed on the appellant is that NEI had short paid duty by reason of fraud collusion, etc.

6. Learned counsel for the appellant submitted the SCN issued to the NEI was decided by the Commissioner of Central Excise, Alwar, by his order in original dated 17.1.2017. On appeal, this Tribunal, by Final Order No. 52498 of 2018 dated 10.7.2018,

allowed the appeal of NEI and set aside the penalty imposed on it on the ground that there was short payment on account of fraud, etc.

7. Learned authorised representative supports the impugned order. However, he also confirms the fact that this Tribunal has, by Final Order dated 10.7.2018, decided the matter in favour of NEI.

8. Such being the case, we find that the entire cause of action against the appellant herein being that the supplementary invoices were issued by NEI in respect of the duty short paid by reason of fraud, collusion, wilful misstatement or suppression of facts. Once the order against NEI has been set aside by this Tribunal, nothing survives to support the allegations in the SCN, the Order in Original or the impugned order in this appeal.

9. The impugned order, therefore, needs to be set aside as the cause of action no longer exists and the appellant had correctly availed CENVAT credit on the strength of the supplementary invoices issued by NEI.

10. The impugned order is, accordingly, set aside and the appeal is allowed with consequential benefits to the appellant.

[Order pronounced on **09/02/2024**]

(JUSTICE DILIP GUPTA)
PRESIDENT

(P. V. SUBBA RAO)
MEMBER (TECHNICAL)