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

Appeal No. E/14/2012-EX(SM)
[Arising out of Order-in-Appeal No. 277(DKV)CE/JPR-I/2011 dated 19.10.2011, by the Commissioner of Customs, Central Excise & Service Tax (Appeals), Jaipur].

M/s. Sunil Healthcare Ltd. **....Applicants**

Vs.

C.C.E. Jaipur-I **....Respondent**

Appearance:

Ms. Rinki Arora, Advocate for the Appellants
Shri R.K. Mishra, DR for the Respondent

CORAM:
Hon'ble Shri V. Padmanabhan, Member (Technical)

Date of Hearing: 04.01.2017

FINAL ORDER NO.50356/2017-EX(SM)

Per V. Padmanabhan:

The appeal is directed against the order-in-appeal dated 19.10.2011.

2. The appellant is engaged in the manufacture of 'empty hard gelatin capsules' an excisable item. During the period 2004-05 to 2007-08, the appellant purchased certain capital goods from M/s. Ashok Electrical Stampings Pvt. Ltd. against the invoice and payment of excise duty. The appellant claimed Cenvat Credit to the tune of Rs.11,91,360/- in respect of those capital goods. Accounts of M/s. Ashok Electrical Stampings Pvt. Ltd. was scrutinized and the departmental investigation revealed that M/s. Ashok Electrical Stampings Pvt. Ltd. did not have capacity to produce that much quantity of capital goods regarding which the appellant had availed

cenvat credit. Accordingly, show cause notice was issued to both the appellant and M/s. Ashok Electrical Stampings Pvt. Ltd. The appellant as well as M/s. Ashok Electrical Stampings Pvt. Ltd. contested the show cause notice. The adjudication process however culminated into confirmation of demand of Rs.11,91,360/- against the appellant along with interest and equal amount of penalty was imposed upon him. The appellant preferred appeal against the adjudication order but the appellant did not find favour with the Commissioner (A).

3. Ld. Counsel for the appellant submits that the confirmation of demand against him is not sustainable in law for the reason that the appellant is a bonafide purchaser who purchased the relevant capital goods against proper invoices on payment of excise duty. That there is no allegation against the appellant that he was party to the fraud or collusion with the supplier M/s. Ashok Electrical Stampings Pvt. Ltd. It is submitted that during adjudication proceedings, the invoices as well as transportation receipts and other relevant documents were produced before the adjudicating authority but those were ignored while passing the impugned order. He also assailed the impugned order on the point of limitation.

4. Shri R. K. Mishra, ld. AR for the Revenue has contended that the adjudicating authority as also the Commissioner (A) have rightly confirmed the demand because the cenvat credit has been availed against non-existent supply on the basis of forge / fake invoices. It is further submitted that this is a case of fraud, and as per provision of section 11A of the Central Excise Act, 1944, the extended period

of five years can be availed by the Department. Ld. AR for the Department relies upon the judgment of the Supreme Court in the matter of CC Vs. Candid Enterprises 2001 (130) ELT 404 (SC) held that fraud nullifies everything and nobody should be permitted to reap the bona fide duty fraud committed by anybody.

5. With the above background I have heard Ms. Rinki Arora, Advocate for the Appellants and Shri R.K. Mishra, DR for the Respondent.

6. The Submission of Ld. Counsel is that the appellant has availed Cenvat Credit on the basis of invoices issued by M/s. Ashok Electrical Stampings Pvt. Ltd. These invoices are supported by purchase orders, the transport documents, register, ledger account as well as bank payment documents. These documents indicate that they have purchased the impugned goods bonafidely from the supplier and made payment through banking channels. There is no allegation that the goods have not been received or that the excise duty has not been paid by the supplier. Accordingly she submitted that the Cenvat Credit taken on the capital goods cannot be denied. She also submitted the plea of time bar in as much as period of dispute is 2004-05 but the show cause notice has been issued only in 2009. In the absence of any allegation of fraud against the appellant, the demand will be hit by time bar.

7. Ld. DR on the other hand supported the orders passed by the lower authorities. He submitted that the investigations undertaken by Revenue against M/s. Ashok Electrical Stampings Pvt. Ltd. (Supplier) have established that they have not undertaken

manufacturer of the capital goods in their factory. The report of the Charted Engineer establishes that no such manufacture could have happened at the supplier’s factory. Under the circumstances he argued that the Cenvat Credit is liable to be disallowed. He also requested to ascertain fate of the order passed against the supplier before deciding the present appeal.

8. From the records, I find that revenue undertook detailed investigation against the supplier of capital goods M/s. Ashok Electrical Stampings Pvt. Ltd. and concluded that they have not undertaken manufacturing activities. The show cause notices for reversing the regular availment of Cenvat Credit amounting to Rs.18 crores has been issued to the supplier. The main reason for disallowing the Cenvat Credit to the extent of Rs.11,91,390/- in the hands of the appellant is that the capital goods could not have been received by the appellant since it is established that the supplier had not undertaken manufacturing.

9. The submission of the appellant is that they have received the impugned goods on which Cenvat Credit was availed. This is evidenced by the transport documents produced by them issued by M/s. Shivam Transport. Their further submission is that goods were procured on the basis of purchase orders and invoices evidencing the description of the goods as well as payment of excess duty thereof by the supplier. It is also on record that the appellants paid for purchase through banking channels. Both the authorities below have denied Cenvat Credit only for the reason that the goods have

not been manufactured by the supplier neither has it been made by any of their job workers.

10. The scheme of Cenvat Credit is that buyer of inputs / capital goods receives the excisable items along with invoices evidencing payment of duty and immediately thereafter is allowed to take Cenvat Credit of the excise duty so paid. It is not expected that the buyer will carry out verification of the Accounts of the supplier to find out whether the Central Excise duty has actually been paid on the inputs / capital goods. From the records of the case, I find that Cenvat Credit has been availed on the basis of invoices issued by the supplier. I do not find any evidence on record establishing that excise duty has not been paid by the supplier on the capital goods. There is nothing on record to show that the goods have not been received in the factory of the appellant. Under the circumstances, I find no justification to deny the Cenvat Credit.

11. Revenue's case is that fraud had been established at the end of the supplier of the goods, the allegation against the supplier is that no goods were manufactured at their factory. Further, the goods have also not been manufactured by job worker's. I find that for these reasons the Cenvat Credit in the hands of the recipient cannot be denied. This view has been supported in the decisions of the Hon'ble High Court of Allahabad in the case of **CCE Vs. Juhi Alloys Ltd. 2014 (302) ELT 487 (All)**. The Hon'ble High Court held as follows:

> *"In the present case, both the Commissioner (A) 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 bonafide 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 dealing with the first stage dealer.

The view which the Tribunal has taken is consistent with the judgment of the Jharkhand High Court in CCE East Singhbhum Vs. Tata Motors Ltd. 2013 (294) ELT 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 assumptions. 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.""*

12. Ld. DR has made vehement plea to keep the appeal pending till it is ascertained about the fate of the proceedings against the supplier. I find no justification to do that. In view of the above discussions, the impugned order is set aside and appeal is allowed.

[Dictated and Pronounced in the open Court]

(V. Padmanabhan)
Member (Technical)

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