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

Excise Appeal No. E/471/2011-E[SM]
[Arising out of Order-In-Appeal No. IND/395-396/2010 dated 26.11.2010 passed by Commr. (Appeals) Indore]

For approval and signature:
Hon'ble Mr. S.K. Mohanty, Member (Judicial)

M/s Indo Zinc Ltd. …Appellant(s)

Vs.

C.C.E. Indore …Respondent(s)

Appearance:
Mr. Manish Sharan (Advocate) for the Appellant
Mr. H.C. Saini (DR) for the Respondent

CORAM:
Hon'ble Mr. S.K. Mohanty, Member (Judicial)

Date of Hearing. 03.10.2016
Date of Decision. 02.02.2017

Final Order No. 52585 /2017

Per S. K. Mohanty:

This appeal is directed against the impugned order dated 26.11.2010 passed by Commissioner (Appeals), Customs, Central Excise and Service Tax, Indore. Brief facts of the case are that the appellant is engaged in the manufacturer of Brass Ingots and Copper Ingots, falling under Chapter Heading No. 7403 of the Central Excise Tariff Act, 1985. The appellant avails cenvat credit on the inputs purchased by it. An intelligence collected by the officers of DGCEI indicated that the appellant was receiving the cenvetable invoices for the inputs and was wrongly availing cenvat credit on the strength of such invoices without actual receipt of the input against such duty paid documents. Thus, the DGCEI officers visited the factory of the appellant on 10.04.2007 and found that the factory had been closed since 2004 and the machines installed in the factory are in rusted condition. The officers also visited the office premises of the appellant situated in MG Road, Indore on 10.04.2007 and recorded statement of Shri Mayur Shah, Authorized Signatory of the appellant, who deposed that the factory is closed since last 4-5 years and only trading activities are being carried from their Mumbai office . During the course of investigation it was observed that the appellant had shown receipt of Copper/Brass Granules procured form Ms. Sunrise Zinc Ltd. under invoices indicating LR Nos. of Ms. Gokul M.P. Cargo Movers, Indore. On the basis of such investigation, the DGCEI officers verified the type of vehicle from the office of RTO who confirmed that the vehicle No. MH01A2138 was allotted to car LMV Saloon. Further the owners of vehicles bearing registration Nos. MI-I-08-0403, MH-04-AL-556 and MH-0811-0341 had confirmed that they had not transported any goods from the premises of Sunrise Zinc Ltd., Goa to the appellants premises at Pithampur in respect of invoice no.s 192,177 and191. Further, the department also conducted enquiry from the transporter Ms. Gokul M.P. Cargo Movers who vide the statement submitted that the transport company is not functioning for last 3 years and that the Blank Bilties books of the appellant company had been provided to Ms. Sunrise Zinc Ltd. Authorized Signatory, further submitted that Blank Bilties Books had been provided on receipt of nominal payment of Rs. 150 to 200 in cash from Mr. Mayur Shah (Authorized Signatory) of the appellant company. The transporter also stated that it had never transported any goods from M/s Sunrise Zinc Ltd. Goa to the appellants premises at Pithampur and had only provided the blank bilties and had received the commissioner for that purpose. Investigation conducted by DGCEI from the alleged supplier of goods M/s. Sunrise Zinc Ltd. reveals that the appellant arranged the lorry for transportation of the goods and the transporter, namely, Gokul N.P. Roadline *and* Gokul Freight Carriers were nominated by the appellant.

1.2 On the basis of the investigation conducted by DGCEI, the department initiated Show Cause proceedings against the appellant. the SCN dated 19.08.2008 issued by the department culminated in the adjudication order dated 31.03.2010, wherein the additional Commissioner of Customs had confirmed the demand of cenvat credit of Rs. 23,74,163/- along with interest. Besides equal amount of penalty has also imposed on the appellant. In appeal, the Ld. Commissioner (Appeals) has upheld the adjudged demand. Hence, the present appeal is before the Tribunal.

2. The Ld. Advocate appearing for the appellant submitted that the principles of natural justice have been violated by the authorities below inasmuch as no opportunity for cross examination of some of the witnesses were granted; that the information regarding vehicle no. was wrongly obtained by DGCEI Officials from the office of RTO and thus, the said report of RTO cannot be relied on to arrive at the conclusion that the disputed

goods were transported to the factory of the appellant; that receipt of goods and taking of cenvat particulars were duly entered in the cenvat records and the particulars were furnished in the ER-I returns filed before the jurisdictional Central Excise Office. Thus, the Ld. Advocate submitted that the allegation made by the department and cenvat demand confirmed against the appellant on the ground of non-receipt of inputs in the factory is not sustainable. Ld. Advocate has relied on various decisions rendered by the judicial forum to substantiate his stand that the department has not proved the fact of clandestine receipt of goods by the appellant.

3. On the other hand, the Ld. DR appearing for the respondent reiterated the findings recorded in the impugned order and further submitted that since upon proper verification of documents, recording of statements from the concerned persons, the department has confirmed the cenvat demand, the same is sustainable under law.

4. Heard both the sides and perused the records.

5. I find that Sh. Mayur Shah, the Authorized Signatory of the appellant vide his statement dated 10.04.2007 deposed that the factory of the appellant was closed since last 4-5 years and only trading activities are being carried from their Mumbai office. Further, based on the information furnished by the authorized signatory that copper/ brass granules were procured from M/s Sunrise Zinc Ltd. through the transporter M/s Gokul N.P. Cargo Movers, Indore, has been denied by the said transporter stating

that it had never transported the goods from the factory of Sunrise Zinc Ltd., Goa to the appellant's factory at Pithampur and only provided blank bilties on payment of commission. Further, the RTO has also confirmed that the type of vehicle used for transportation of goods is a car, which is not capable of carrying 15.010 MT of the impugned goods. Further, the owners of other vehicles had also denied transportation of goods to the appellants factory under the cover of invoice Nos. 192, 177 and 191. Since, based on the above statements recorded from various persons, the Commissioner (Appeals) has arrived at the conclusion that without receipt of goods in physical condition, the cenvat credit had been taken only based on the invoices, the said findings cannot be disturbed at this juncture, in view of the fact that he has arrived at such conclusion upon proper analysis of the factual aspects. Further, the statements made before the Tribunal were also submitted by the appellant before the Ld. Commissioner (Appeals). Upon consideration of the submissions made by the appellant, the Ld. Commissioner (Appeals) has rejected the appeal of the appellant on the ground that the goods in question were not received by the appellant for use in its factory and irregular cenvat credit has been taken without actual receipt of the goods. Since onus to prove transportation of goods from the supplier's premises and receipt of the same within the factory for use in the intended purpose have not been satisfactorily discharged, I am of the view that the appellant does not make out any case against confirmation of the adjudged demand by the authorities below.

6. Therefore, I do not find any infirmity in the impugned order and accordingly, dismiss the appeal filed by the appellant.

(Pronounced in open court on __02.02.2017__)

(S. K. Mohanty)
Member(Judicial)

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