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

Excise Appeal No. E/3760-3761/2010- EX[SM]
[Arising out of Order-In-Appeal No. IND/231,232/2010dated 23.08.2010 passed by Commissioner (Appeals) Customs & Central Excise Indore]

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

M/s. Haryana Bidi Udyog & Ramesh Chand Joshi ...Appellant

Vs.

C.C.E Indore …Respondent

Appearance:
Sh. Soumyajit Pani, (Advocate) for the Appellant
Sh. G.R. Singh, (AR) appeared for the Respondent

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

Date of Hearing/ Decision. 11.12.2015

Final Order No 54341-34342 /2015

Per S K Mohanty

The appellant is engaged in the manufacturer of H.M. Brand Bidi and is duly registered with the Central Excise Department. The appellant avails cenvat credit of Central Excise duty indicated in the invoices issued by the raw Bidi manufacturers located in the state of Orissa. The Department carried out the investigation in the premises of the appellant and found that during the period April 2003 to March 2008, the appellant had availed cenvat credit of Rs. 13, 76,239/- on the strength of forged invoices. During the course of investigation, the appellant deposited Rs. 19, 65,200/- and informed the Department vide letter dated 23.06.2008 regarding such deposit. Thereafter, show cause notice dated 01.08.2008 was issued to the appellant, seeking disallowance of cenvat credit and for imposition of penalties. The said notice was adjudicated vide order dated 30.10.2009, wherein cenvat credit of Rs. 13, 76,239/- was disallowed alongwith interest. The amount of Rs. 19, 65,200/- was appropriated towards the cenvat and the interest demand confirmed against the appellant. Besides, penalties were imposed on the appellant under Rule 15(1) and 15(2) of the Cenvat Credit Rules, 2004. Further, penalty on Shri. Ramesh Chand Joshi, Manager of the appellant company was also imposed under Rule 15(1) *ibid.* On appeal, the ld. Commissioner (Appeals) vide the impugned order dated 23.08.2010 has upheld conformation of the cenvat demand and the penalties imposed on the appellant company under Rule 15(2) *ibid.* However, the penalty of Rs. 27,50,000/- imposed under Rule 15(1) *ibid* was reduced to Rs. 13,76,239/- and penalty on appellant no. 2 was reduced from Rs. 13,76,239/- to Rs. 5 lakhs. Feeling aggrieved with the impugned order, the appellants have filed before this Tribunal.

2. The ld. Advocate appearing for the appellant submits that the appellant is not contesting disallowance of cenvat credit of Rs. 13,70,513/- and the interest amount of Rs. 5,94,687/- confirmed against it. However, the ld. Advocate submits that the appellant is contesting the penalties imposed against both

the appellants. It his submissions that based on the invoices, TR-6 Challans issued by the raw Bidi manufactures, the appellant had availed cenvat credit of Central Excise duty indicated in the invoices and non-payment of excise duty by the suppliers was not known to the appellants at the time of taking such cenvat credit. Thus, he submits that malafides cannot be attributed to the appellants, justifying imposition of penalties. The ld Advocate also disputed the cenvat demand confirmed in the adjudication order inasmuch as according to the appellant, the cenvat credit availed during the disputed period was Rs. 13,70,513/-, whereas the cenvat credit of Rs. 13,76,239/- was confirmed in the adjudication order.

3. On the other hand, the ld. DR appearing for the Revenue reiterates the findings recorded in the impugned order.

4. Heard both sides and perused the records.

5. Since the appellant is not contesting disallowance of cenvat credit of Rs. 13,70,513/-, I upheld the said demand confirmed by the authorities below. The issue for consideration before the Tribunal is, as to whether, penalty can be imposed on the appellants in the terms of Rule 15(1) and 15(2) *ibid.*

6. The statement, recorded by Department from Shri Ramesh Chand Joshi, under Section 14 of the Central Excise Act, 1944 is relevant in this case for consideration of the issue whether penalty can be imposed on the appellants in the circumstances of the case. The relevant portion in the

statement, as recorded vide paragraph 5 in the adjudication order dated 13.10.2009 is extracted here in below:

> *The bidi manufacturer were giving invoice/ delivery invoice and TR-6 challan of payment of duty alongwith each consignment and on the basis of such documents, Bidi and duty were accounted for in factory records. Shri Joshi has produced original delivery invoices and copies of TR-6 challans for the bidi received during the period April' 03 to March' 08. Further, he stated that they had taken Cenvat credit of duty paid on purchased loose bidi and the same was utilized for clearance of bidis manufactured in their factory and he has produced the RG-23A Pt. I and RG-23 Pt.II register for the relevant period. The payment of loose bidi so purchased were made by cheque /demand draft/cash but mainly payments were made by draft and he has produced copy of ledger showing details of payments made to bidi buyers.*

7. The above statement shows that based on the invoice and the TR-6 Challan evidencing payment of duty, the appellant had availed cenvat credit on the strength of the invoices. Further, the raw Bidis was purchased on payment of amount through Demand Drafts. The payment/receipt particulars were entered in the ledger account maintained by the appellant. Thus, so far as taking of cenvat credit by the appellant, I am of the view that the conditions of Rule 3 *ibid* has not been violated

in this case. The documents available in the case file show that the appellant was not aware of the fact regarding non-payment of Central Excise duty by the supplier of raw Bidis into the Central Government account. The adjudicating authority vide paragraph 10 in the order dated 13.10.2009 has stated the fact regarding non-payment of duty by the Bidi suppliers in terms of the confIrmation provided by the UCO. Bank, Angul vide letter dated 13.06.2008. I also find that for the fraudulent activities of non-payment of duty and issuance of forged invoices, the appellant had logged the FIR before the concerned police station and also filed the complaint case before the First Class Magistrate, Gwalior against the supplier of the raw Bidis.

8. The statement recorded from Shri Joshi, filing of FIR and lodgment of the criminal case by the appellant prove the fact that appellant was not aware of non-payment/deposit of the duty by the suppliers of goods and that based on the invoice / TR-6 Challan the cenvat credit was taken by it on receipt of the raw Bidis into the factory. Thus, I am of view that malafides cannot be attributed to the appellants, justifying imposition of penalties.

9. Therefore, the impugned order is set aside and the appeals are allowed to the extent of imposition of penalties on the appellants. Since the appellant is contesting that the amount of cenvat demand confirmed is not correct and appropriate inasmuch as there is difference in the figures (i.e. Rs. 13,70,513/- as claimed by the appellant and Rs.

13,76,239/- confirmed in the adjudication order), the matter is remanded to the original authority for necessary verification of the actual cenvat credit involved in the case, which can be reversed by the appellant. The appeal is disposed of in above terms.

(Operative Portion pronounced in open court)

(S. K. Mohanty)
Member(Judicial)

Sakshi