IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI PRINCIPAL BENCH, COURT - III

Appeal No. E/3294-3296/2009-Ex [DB]
[Arising out of Order-in-Appeal No. 29/D-1/2009 dated 30.09.2009, passed by the Commissioner of Central Excise, New Delhi]

M/s Ankit Exim Pvt. Ltd,
Shri Ishwar Singh Chaudhary,
Ronik Metal **....Appellant**

Vs.

C.C.E., New Delhi **....Respondent**

Appearance:
Sh. B. Garg, Advocate for the Appellant
Sh. R.K. Manjhi, DR for the Respondent

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

Date of Hearing: 21.02.2017
Date of Pronouncement: 09.06.2017

FINAL ORDER NO. 53839-53841/2017-Ex[DB]

Per V. Padmanabhan

The present appeals have been filed against the Order-in-Original No. 29/2009 dated 30.09.2009 passed by the Commissioner (Central Excise), New Delhi. The appeals have been filed by M/s Ankit Exim Pvt Ltd. (AEPL)-assessee, Shri Ishwar Singh Choudhary (ISE), Director of AEPL and M/s Ronik Metal (RM). The departmental officers undertook search at the premises of AEPL, residence of ISE, premises of RM, Premises of M/s Metal Tube India, Mumbai (MTI) and other connected premises on 09.11.2006. AEPL (who was formerly known as Shri Ganesh Metal Company (SGMC) is engaged in the manufacture and export of stainless steel utensils, SS circles and SS rectangles. They were claiming rebate of the Central Excise Duty paid on SS circles and SS rectangle. They were also claiming rebate of Central Excise Duty paid on the inputs used in the manufacture of SS utensils, which were subsequently exported by AEPL. The Department investigated the allegation that AEPL were claiming Cenvat credit by fraudulent means on the basis of invoices against which no goods were actually received by them. AEPL were also reported to be purchasing goods from the open market and export the same by showing them as their manufactured product.

2. AEPL were purchasing raw material mainly from RM which was a partnership firm wherein the partners were Ms. Mitlesh, wife of Shri Ishwar Singh Choudhary and Shri Sandeep, Nephew of Shri Ishwar Singh Choudhary. RM sold their entire goods exclusively to AEPL after purchasing the entire goods from two parties viz. M/s Metal Tube India (MTI) as well as M/s Shri Sundar Steel Pvt Ltd. (SSPL), Mumbai (SSPL). Both MTI as well as SSPL were stockists of M/s Jindal Stainless Steel, Hissar,Haryana. RM received the entire goods from Mumbai through the transporter M/s Sai Sidhi Freight and Movers , Mumbai (SSFM), which was owned by Shri Dinesh Chabda.

3. The Department undertook investigations at the end of SSFM, Mumbai. Shri Dinesh Chabda, the owner of the said transport company stated that he had never taken any license for transportation of goods; that he never had any four wheeler or truck or other vehicles for transportation; he never prepared any challan or other transport documents. He further stated that he allowed Shri Ishwar Singh Choudhary to make use of GRs in the name of his transport company in return for payment of commission of Rs 200-Rs 500 per truck by Shri Ishwar Singh Choudhary. Further, he stated that he never paid any freight charges to any transporter.

4. The department undertook verification of vehicle nos. mentioned in the LR/GR of SSFM said to have been used for transport of goods from Mumbai to Delhi. Many of the Delhi registration nos. were found to be non-existing in transport authoritie's records and a few were issued NOC's for other RTO's. In respect of many LR/GR's vehicles nos. were not found mentioned.

5. The Department undertook verification of vehicles shown in the invoices of RM which were shown to have been used for transporting goods from RM to AEPL. It was found that some of the vehicles were non-existing in the records of transport authorities, some were issued NOC's for other states. In respect of many vehicles registered with RTO of Faridabad, the details could be obtained as the records were lost in a fire accident.

6. The Department also undertook the verification of vehicle nos. used by few other dealers who had issued invoices showing

supply of goods to AEPL. Many such vehicles were found to be incapable of transporting goods. Statements were also recorded from some of the owners of the vehicles who confirmed that no goods were transported to AEPL using the such vehicles on the dates of the invoices.

7. On the basis of the above investigations the department issued a Show Cause Notice crystallizing the case against AEPL and others as follows:

i. Shri Ishwar Singh Choudhary floated RM as a dummy dealer, with the sole purpose of procuring invoices for availing Cenvat credit without receipt of the accompanying goods. This is proved from the fact that the entire goods shown as procured by RM from Mumbai where were accompanied by LR/GRs of SSFM, whose owner Shri Dinesh Chabda has confirmed that he has not undertaken transport of any goods from Mumbai to Delhi but had allowed Shri Ishwar Singh Choudary to issue GRs by collecting a commission of Rs 200 – Rs 500. Accordingly, it is to be concluded that the goods were never transported from Mumbai to AEPL, Delhi.

ii. Most vehicles whose nos. have been indicated in the invoices of RM have been founded to be non existing in the records of transport authorities. Accordingly, it is to be concluded that such goods never moved from RM to AEPL, accompanying in the invoices. On this basis, Cenvat credit amounting to about Rs 62 lakhs availed by AEPL on the basis of invoices issued by RM is fraudulent and is required to be recovered.

iii. Goods have also been procured by AEPL from a few other local dealers based in and around, Delhi. Verification of the registration nos. of vehicles shown in their invoices also revealed that many such vehicles were incapable of carrying the goods shown in the invoices. The statements recorded from the owners of such vehicles also confirmed that these vehicles were never used for transportation of goods to AEPL on the dates of the invoices. Consequently, it is to be concluded that AEPL has availed cenvat credit fraudulently on the basis of invoices of other dealers to the extent of about Rs 10 lakhs.

8. Contesting the allegation in the Show Cause Notice, the following points have been urged:

iv. Credit of about Rs 62 lakhs is sought to be recovered in respect of goods purchased from RM. The department has conducted investigations regarding vehicles mentioned in the invoices. This has been done only in respect of 17 vehicles which were found to be non existing. These vehicles covered Cenvat credit only amounting to about Rs 18 lakhs. This evidence cannot be used to deny the entire credit availed by AEPL based on invoices of RM.

v. The Department has alleged that no goods were received by RM from MTI Mumbai, since, these invoices were accompanied by GRs issued in the name of SSFM which was alleged to be a dummy unit whose GRs were procured by Shri Ishwar Singh Choudhary for commission. It has been submitted that RM or AEPL had nothing to do with the movement of goods from Mumbai to Delhi, and the same was the responsibility of the supplier of goods of Mumbai. It has also been submitted that Shri Ishwar Singh Choudhary had nothing to do with working of RM.

vi. The Department has not alleged anything against the duty paid character of the invoices. Cenvat credit cannot be denied unless the duty paid nature of the documents is disputed.

vii. The department has alleged that AEPL has procured SS utensils, sheets and patis and exported the same and claimed Cenvat credit on the inputs fraudulently. It has been submitted that all the goods procured by AEPL have been duly accounted in the books of accounts. Therefore, there was no room for any doubt regarding the genuineness of purchase and export of the goods.

9. With the above background we have heard Shri Bipin Garg, ld. Advocate for the appellant as well as Shri R.K. Manjhi, ld. DR for the respondent.

10. The ld. Counsel for the appellants reiterated the points in the grounds of the appeal and also submitted that the whole case is made out on the basis of presumption. He also placed reliance on several case laws in support of his case:

i. ***Commissioner Vs Motabhai Iron and Steel Industries 2015(316) E.L.T. 374(Guj.).***
ii. ***Commissioner of Central Excise, Chandigarh Vs. Neepaz Steels (India) 2007(213) E.L.T. 100(Tri. –Del.)***
iii. ***Commissioner of Central Excise, Chandigarh Vs. Neepaz Steels Ltd. 2008(230) E.L.T. 218(P& H).***
iv. ***Royal Industries Vs. Commissioner of C. Ex, Chandigarh-I 2016(342) E.L.T. 135(Tri.- Chan.)***

11. The ld. DR supported the impugned order. He argued that the goods in the nature of inputs procured by AEPL could not have travelled from M/s. Jindal Stainless Steel in Harayana all the way to Mumbai and then travel back to appellant's factory in Delhi. This basic fact has further been supported by the investigation carried out by Revenue which has established that the transporter SSFM whose GRs have accompanied of the consignments from Mumbai to Delhi have been found to be dummy. Only GRs have been made use of in the name of transporter. Accordingly, it is to be concluded that no goods were received by RM in Delhi from the suppliers in Mumbai. Verification of vehicle nos. shown in the invoices of RM as transport vehicles to AEPL were found to be non existing and scrapped vehicles. Accordingly, it is evident that no goods were received by AEPL, but only invoices were received which were used to avail Cenvat credit fraudulently. He submitted that the Cenvat credit availed fraudulently is required to be recovered as has been donen by the impugned order.

12. He also relied upon the decision of the Tribunal in the case of ***Bhagwati Steel Caste Ltd. Vs. CCE Nashik 2013(293) ELT 417 (Tri Mumbai).***

13. Heard both sides and perused the records. AEPL who was earlier known as Shri Ganesh Metal Co. (SGMC) is engaged in

manufacture of stainless steel articles. SS circles and SS rectangles were cleared from the appellant's factory for export under claim for rebate. SS utensils (Which are exempted from payment of duty) were exported under claim of rebate of duty paid on the inputs procured by AEPL. The case of the department is that the AEPL has availed Cenvat credit fraudulently by procuring only invoices which were not accompanied by goods. Substantial portion of the invoices based on which such credit is availed to the extent of about Rs.62 lakhs have been issued by RM which is partnership firm with Smt Mitlesh wife of Shri Ishwar Singh Choudhary and Shri Sandeep nephew of Shri Ishwar Singh choudhary as a partner.

14. The Revenue has found that RM were procuring the goods from M/s. Metal Tube (MTI), Mumbai. RM has sold the entire goods only to AEPL. All the goods shown as received by RM from MTI have been accompanied by GRs issued by only one transport company SSFM whose owner is Shri Dinesh Chabda. In the statement given by Shri Dinesh Chabda, he has admitted that his company has never undertaken any business of transport of goods or paid any freight to any transporter for undertaking such transport of goods. He has also admitted that he allowed Shri Ishwar Singh Choudhary to make use of GRs in the name of his company in return for commission amounts ranging from Rs 200 to Rs 50. This very clearly establishes that RM has not received any goods from the supplier MTI in Mumbai.

15. RM has taken registration as a dealer. He is required to account for the goods received from the manufacturer / first stage

dealer by means of proper documents and is allowed to issue invoices passing on the credit availed by him on the basis of goods received by him. At this juncture we quote with approval findings of the adjudicating authority in para 58 of the impugned order:

> *"In view of the above, I arrive at the conclusion that the goods, stated to be sold by M/s, MTI, Mumbai had not been transferred to the buyer. The contention of the counsel is misconceived and false, and hence cannot be accepted. When the goods had not been delivered by the dealer, i.e. M/s. MTI Mumbai, the question of passing on the CENVAT to the main notice by M/s. Ronik Metals, Delhi does not arise. The main Noticee cannot take the shelter under the plea that they had purchased the goods from the Registered Dealer i.e. M/s Ronik Metals, Delhi. The registered dealer M/s. Ronik Metals were required to prove that they had received the goods with the cenvitable invoices. They in the instant case, failed to produce any documentary evidence to prove that the goods in question, purchased from Mumbai were actually received by them. The allegation of the department that the transport company M/s. SSFM, Mumbai had not transported any goods through their company or through any other transporter stands proved. Therefore, I hold that M/s. Ronik Metals, committed fraud in passing on the Cenvatable invoices to the main notice when the goods were not received."*

16. Consequently, the invoices issued by RM for further transmitting the cenvat credit to AEPL are not valid documents for availing credit.

17. The investigation undertaken by the Department into the vehicles numbers indicated by RM in the invoices issued in favour of AEPL were found to be non-existing in the Transport Authorities' records. Some vehicle no. were already found issued NOC for

transfer to some other RTOs. Further, some of the vehicles nos. were also found no-existing in the records of transport authorities. These facts lead to a reasonable belief that no goods accompanied the invoices issued by RM in favor of AEPL. Cenvat Credit can be taken by recipient only if goods accompanied by relevant valid invoices are received. Since AEPL has availed Cenvat Credit without satisfying either of the above two conditions, such credits are irregular.

18. Revenue has relied upon the case law in the case of ***Bhagwati Steel Caste Ltd. Vs. CCE Nashik 2013 (293) ELT 417 (Tri-Mumbai).*** The facts of the case are similar to that in the present case and the allegation was availment of Cenvat Credit on the basis of dealer’s invoices without receipt of goods. There was a difference of opinion between the Member (Judicial) who held that Cenvat Credit has been correctly availed on the basis of the invoices issued by the dealers. However, Member (Technical) took a different view and the matter was referred to the their Member who gave detailed findings and supported the view of Member (Technical). Since the decision has been given by a three Member Bench, the same is binding on this Bench.

19. In para 73.2 to 73.4 of the above decision, it was held as follows:

> *“73.2 Rules 11 of the Central Excise Rules, 2002 stipulates that no excisable goods are to be removed from a factory or warehouse except under an invoice signed by the owner of the factory or his authorised agent. Sub-rule (2) of the said Rule stipulates that the invoices shall be serially numbered and shall*

contain registration number, address of the concerned Central Excise Division, name of the consignee, description, classification and date of removal, mode of transport and vehicle registration number, rate of duty, quantity and value of goods and the duty payable thereon. The proviso to the said rule provides the dispensation of the copies of the invoices i.e., original copy for the buyer, duplicate for the transporter and triplicate for the assessee. Sub-rules (4) to (6) deal with certain procedural requirements relating to invoices and sub-rule (7) provides that the provisions of said Rule shall apply mutatis mutandis to goods supplied by a first stage dealer or a second stage dealer. Similar provisions were stipulated in the Central Excise Rules, 2001 and also the Central Excise Rules, 1944 to the same effect.

73.3 The Cenvat Credit Rules, 2004, deal with the procedure relating to availment of credit. As per Rule 3, a manufacturer or a producer of final products or a provider of taxable service shall be allowed to take credit (hereinafter referred to as Cenvat credit) of the duties specified therein paid on any inputs or capital goods and received by the manufacturer for use in or in relation to the manufacture of final products. Rule 4 of the said Rule stipulates that Cenvat credit in respect of inputs may be taken immediately on receipt of the inputs in the factory of the manufacturer or in the premises of the provider of output service. Rule 9 of Cenvat Credit Rules, 2004 deals with the documents and accounts on the basis of which the Cenvat credit can be taken and this includes an invoice issued by a manufacturer, an importer, a first stage dealer or second stage dealer. Sub-rule (2) further stipulates that no Cenvat credit shall be taken unless all the particulars as prescribed under the Central Excise Rules, 2002 or the Service Tax Rules, 1994 are contained in the said document. In case any particulars are missing, Cenvat credit may be taken only with the prior approval of the jurisdictional Asst./Dy. Commissioner of Central Excise, if he is satisfied that the goods or service covered by the *document have been received and accounted for in the books of account of the receiver. Sub-rule (4) of the said rule further stipulates that the Cenvat credit in respect of input or capital goods purchased from a first stage dealer or second stage dealer shall be allowed only if such first stage dealer or second stage dealer, as the case may be, has maintained records indicating the fact that the input or capital goods was supplied from the stock on which duty was paid by the producer of such input or capital goods and only an amount of such duty on pro rata basis has been indicated in the invoice issued by him. Sub-rule (5) further stipulates that the burden of proof regarding the admissibility of the Cenvat credit shall lie upon the manufacturer or provider of output service taking such credit. Similar provisions existed in Rule 57A of the Central Excise Rules, 1944, Rule 7 of the Cenvat Credit Rules, 2001 and 2002.*

73.4 From the above provisions of law, it becomes evident that to avail Cenvat credit, the inputs or capital goods should have suffered the stipulated duty by the producer/manufacturer of such goods and the goods should be received by the manufacturer availing credit in his factory and the inputs or capital goods so received should be utilised in or in relation to the manufacture of final products. In respect of inputs received from a first or second stage dealer, an additional condition is stipulated to the effect that the inputs or capital goods were supplied from the stock on which duty was paid by the producer of such goods and only an amount of such duty on pro rata basis has been indicated in the invoices issued by him. It is further stipulated that the burden of proof regarding admissibility to Cenvat credit shall lie upon the manufacturer taking such credit. Sub-rule (2) of Rule 7 of the Cenvat Credit Rules, 2001/2002 (as they stood at the relevant time) further stipulated that a manufacturer/producer taking Cenvat credit on inputs or capital goods shall take all reasonable steps to ensure that the inputs or capital goods in respect of which he has taken Cenvat credit are goods on which appropriate duty of excise as *indicated in the document accompanying the goods has been paid and the manufacturer shall be deemed to have taken reasonable steps if he satisfies himself about the identity, name and address of the manufacturer/supplier issuing the document specified in the said Rule either from his personal knowledge or on the strength of a certificate given by a person with whose handwriting or signature he is familiar with or on the strength of a certificate issued to the manufacturer or supplier by the jurisdictional Superintendent of Central Excise."*

20. While discussing the evidence in light of the above statutory provisions, the Tribunal held as follows:

"74.2 The contention of the appellants is that the delivery in these cases were arranged by the dealers themselves and the freight was pre-paid. Discrepancy occurred due to entering of incorrect numbers of the transport vehicles by the dealer as admitted by the dealer. The appellants have received the scrap from the dealer and this fact is not in dispute and they have made payments for these scrap and they have also accounted for the receipt of the scrap in the Form IV register/RG-23 register maintained by them and, therefore, the demand is not sustainable in law.

74.3 The department's case is that the appellant have not adduced any evidence whatsoever towards receipt of the goods carried under the aforesaid invoices by way of Goods Receipt Note (GRN) or consignee's copy of the transporter's document. The appellants have also not maintained any material inwards register showing the entry of the vehicles into the factory premises carrying the iron and steel scrap and, therefore, the receipt of the goods is not established by the appellants.

74.4 The invoice stipulated under Rule 11 of the Central Excise Rules is not only an assessment document but also a transportation document. That is why the details relating to date and time of removal of the goods, mode of transport, *registration number of vehicle, etc., are stipulated statutorily in the document. Since the entire excise duty regime is administered on self-assessment/self-removal basis, the sanctity of the assessment/transport document is paramount. The department has to establish their case only on the basis of the particulars declared in these documents. If the particulars given in the statutorily prescribed document are found to be untrue or incorrect, then an irrebutable presumption arises about the genuineness of the document and the transaction covered by the said document. If the particulars declared in the document are found to be untrue, the onus of proof shifts to the appellant-assessees to show that they have received the goods covered by the document. The evidence that can be led by the assessees are the GRNs or the consignee's copy of the transport document. In the case before me, none of the appellants have been able to produce even single copy of the GRN or the consignee copy even in respect of a single case. Further, it is on record that the appellants have not maintained any gate register or materials inward register which would show the entry of the transport vehicle in the factory premises of the receiver and receipt of the materials in their factory premises. In the absence of any such evidence, it cannot be concluded that the appellant-assessee has discharged the onus cast on them regarding the admissibility of the Cenvat credit. As per the provisions of sub-rule (4) of Rule 7 of the Cenvat Credit Rules, as they stood at the relevant time, the onus is on the manufacturer who avails credit to show that he is entitled for the credit. Inasmuch as the appellant-assessees have not discharged this onus, it would be reasonable to conclude that the appellants are not eligible for or entitled to the Cenvat credit covered by these invoices."*

21. Bulk of the Cenvat Credit has been availed by AEPL on the basis of the invoices issued by RM. However, as discussed above,

RM was required to prove that they have received the goods accompanying the Cenvat Credit invoice which they have failed to establish.

22. It has been contended that the Cenvat Credit should not be denied for the reason that all particulars required are not indicated in the accompanied invoices. This plea has been discussed by the Adjudicating authority as follows:

> *"59. The further contention raised by the Ld. Counsel on behalf of the main noticees, i.e. noticees no. 1&3 that the Cenvat Credit of Rs. 1,89,845/- should not be denied in terms of Rule 9(2) of Cenvat Credit Rules, 2004 on the ground that the documents mentioned in sub-rule (i) did not contain all the particulars, as the lapse occurred due to the fault of the supplier, who by oversight omitted to mention the vehicle no. on the said invoice and non-mentioning of vehicle no. was a bonafide error.*
>
> *Rule 9(2) of the Cenvat Credit Rules 2004 stipulates 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, 1944, as the case may be, are contained in the said document, provided that if the said document does not contain all the particulars but contains the details of duty or service tax payable, description of the goods or taxable service, assessable value, name and address of the address of the factory or warehouse or premises of first or second stage dealer or provider of taxable service, and the Deputy Commissioner of Central Excise or the Assistant Commissioner of Central Excise, as the case may be, is satisfied that the goods or services covered by the said document have been received and accounted for in the books of the account of the receiver, he may allow the Cenvat Credit.*

As the main notice, i.e. the manufacturer had not filed any such application with the Assistant Commissioner / Dy. Commissioner of the Central Excise Division on receipt of the goods covered by invoices, where no vehicle no. was mentioned, it establishes the malafide intention on their part and proves the complicity of the suppliers and the buyer in the fraudulent act.

Further Rule 9(5) of CCR 2004, stipulates that the manufacturer of final products or the provider of output services shall maintain proper records for the receipt, disposal, consumption and inventory of the input and capital goods in which the relevant information regarding the value, duty paid, CENVAT credit taken and utilized, the person from whom the input or capital goods have procured is recorded and the burden of proof regarding the admissibility of the Cenvat credit shall lie upon the manufacturer or provider of output service taking such credit. Thus, in terms of Rule 9(5) of Cenvat Credit Rules, 2004, the burden of proof regarding admissibility of Cenvat Credit shall be on the manufacturer of final product.

I find that the vehicle nos. mentioned on most of the invoices issued by dealers of Delhi, Bhiwadi and Mumbai were not correct and on some invoices, registration no. of the vehicle transporting the goods were not mentioned in clear violation of provisions of Rule 9 of Cenvat credit rules 2004, and the failure on the part of the main notice for informing the jurisdictional Asstt. Commissioner at the time of receipt of the invoices and before taking the Cenvat Credit, I cast aside the plea of the Ld. Counsel that it happened due to oversight and the same was a bonafide error."

23. Invoice stipulated in Rule 11 of the Central Excise Rules is not only the assessment document but also the transportation document. If the particular statutorily prescribed in the invoice are found to be untrue then the irrebuttable presumption arises about the genuineness of the document and the transaction. Cenvat

Credit stands availed by AEPL on the basis of invoices issued by various dealers. In respect of RM, the investigation by Revenue at the end of transporter SSFM has established that no goods moved from Mumbai to RM. The entire supply of RM is shown only to AEPL. Further, most of the vehicles whose numbers are indicated in the invoices of RM have been found to be none existent in the records of transport authorities. Consequently, it is to be held that the particulars given in the invoice regarding the vehicle numbers are untrue which make the entire document as not genuine. The verification with reference to other dealers also have established similar facts with reference to the vehicle numbers.

We also find that AEPL or any of the other appellants have submitted any proof such as GRN or the gate register at the factory which would show entry of the transport vehicle in the factory premises. In the absence of any such evidence we are constrained to conclude that the appellant has failed to discharge the onus cast upon them regarding admissibility of the Cenvat Credit. We are in agreement with the above findings of the adjudicating authority.

24. It has been submitted on behalf of the appellants that Revenue has not carried out investigation in respect of the vehicles mentioned in the invoices. Consequently, it has been argued that the evidence cannot be used to deny the entire Cenvat Credit availed by AEPL.

We note that Revenue has established that no goods have moved from Mumbai to RM and consequently, from RM to AEPL. A large percentage of the transport vehicles in respect of all dealers have been found to be incorrectly mentioned in the invoices. The question, therefore before us, is whether on the basis of available evidence, can we come to the conclusion that the demand is to be upheld. It is very well established that in quasi-judicial proceedings, as in civil cases, the principal to be applied to evaluate the evidence is "preponderance of probabilities". The standard is whether the proposition is more likely to be true than not true. Lord Denning in Miller Vs. Minister of Pensions described it simply as "more probable than not." The Apex Court in the case of Maharashtra State Board of Secondary and Higher Education Vs. K.S. Gandhi and others – 1991 (2) SCC 716 wherein it has been held in para 37 as follows:

"37. It is well settled that strict rules of the Evidence Act and the standard of proof envisaged therein do not apply to departmental proceedings of domestic Tribunal. It is open to the authorities to receive and place on record all the necessary facts though not proved strictly in conformity with the Evidence Act. The evidence must be germane and relevant to the facts in issue. In grave cases like forgery, fraud, conspiracy, misappropriation, etc. seldom direct evidence would be available. Only the circumstantial evidence would furnish the proof. There must be evidence direct or circumstantial to deduce necessary inference in proof of the facts in issue. There can be no inferences unless there are objective facts, direct or circumstantial from which to infer the other fact which it is sought to establish….The standard of proof is not proof beyond reasonable doubt 'but' the preponderance of probabilities tending to draw an inference that the fact must be more probable. Standard of proof cannot be put in a strait jacket formula. No mathematical formula could be laid on degree of proof. The probative value could be gauged form facts and

circumstances in a given case. The standard of proof is the same both in civil cases and domestic enquiries."

In the case of D. Bhoormull, the Apex Court has stated that the law does not require the prosecution to prove the impossible. All that it requires is the establishment of such a degree of probability that a prudent man may, on that basis, believe in the existence of the fact in issue.

25. The evidence brought on record by the Revenue, leads to the conclusion that no goods from the dealers in Mumbai, Bhiwadi and Delhi were received by AEPL.

26. In the light of the above discussions, and by following the decision of the Tribunal in the case of ***Bhagwati Steel Cast (Supra),*** we come to the conclusion that the credit availed by AEPL on the basis of invoices issued by various dealers is not admissible. We find no reasons to interfere with the impugned order which is consequently upheld and all the appeals are dismissed.

[Pronounced in the open court on 09.06.2017]

(Ashok Jindal)
Member (Judicial)

(V. Padmanabhan)
Member(Technical)

Bhanu