CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No.2, R. K. Puram, New Delhi, Court No. 2

Date of hearing/decision: 26.09.2017

Appeal No. E/50159 & 50327/2017-SM

(Arising out of order in appeal No. 242-244/CE/DLH 2016 dated 18.10.2016 passed by the Commissioner (Appeals) of Central Excise, New Delhi).

M/s. Nagpal Brothers & Paramveer Nagpal — Appellant

Vs.

C.C.E, New Delhi-II. — Respondent

Appearance:

Sh. Naveen Mullick, Advocate for the appellant –Revenue

Sh. G.R. Singh, AR for the Respondent -assessee

Coram: Hon'ble Mr. Ashok Jindal, Member (Judicial)

F. O. No. **56863-56864/2017**

Per: **Ashok Jindal:**

The appellants are in appeal against the impugned order wherein cenvat credit has been denied, consequently, the duty is demanded alongwith interest and penalties on both the appellant have been imposed.

2. The Brief facts of the case are that the appellants are manufacturer of excisable goods. They procured goods from M/s. Steel India and M/s. Aggarwal Traders against duty paid invoice and avail cenvat credit there on. Investigation were conducted had been end of the registered dealer/supplier of the goods, wherein they admitted that they are issuing invoices for availment of inadmissible cenvat credit without accompanying the goods in some cases. On the

basis of the statements, an investigation was conducted at the end of the appellants and the invoices on which the appellants have availed cenvat credit issued by the above mentioned two registered dealers, the Vehicle number is mentioned as DL 1GA 1350. It was further investigated from the registered owner of the Vehicle who stated that the vehicle in question was sold by him as scrap on 06.03.2008 and the statement of the scarp dealer to whom the Vehicle was sold was also recorded who stated that the vehicle was scraped immediately. On the basis of the statement as the vehicle no. mentioned in these invoice which were issued after 06.03.2008, it was alleged that the appellant has not received the goods against the invoices in question, therefore the cenvat credit sought to the denied by issuance of the Show Cause Notice .

3. Both the authorities below, denied the cenvat credit to the appellant, consequently the duty was demanded along with interest and penalties on both the appellant were imposed. Agreed from the said order, the appellants are before me.

4. The ld. Counsel for the appellants submits that in this case the appellants have received the goods in question and same the has been entered in the record which has been used in manufacturing of the excisable goods which has been cleared on payment of duty. It is his contention that the appellant never admitted that they have not received the goods against the invoices in question. Moreover, the registered dealers of the supplier of the goods never specifically

stated that they have not supplied the goods to the appellants against invoices issued by them. The only dispute is on the basis of the Vehicle no. which have been alleged that the Vehicle was sold as the scrap. Therefore, the same cannot be able transport the goods. On this issue, it is his contention that receipt of the sale of vehicle and the statement of the owner of the vehicle and the statement of the person to whom vehicle was sold are in doubt. As per the statements, they have seen the documents and signed there on, but there is no signature on the documents. On the Receipt of the sale of the vehicle, no address of buyer has been given, in that circumstance, it is doubtful how the Revenue traced out the buyer of the vehicle. Moreover, the witness of the statements of the seller of the vehicle and buyer of the vehicle is also doubtful. In that circumstances, merely on the statement of seller and buyer of the vehicle, the cenvat credit cannot be denied to the appellants. Therefore, it is that feel that the impugned order is set aside.

5. On the other hand the ld. AR opposed the contention of the ld. Counsel and submits that in this case supplier/ registered dealers themselves have admitted that they were issuing invoices without accompanying the goods and the appellant was also ready to pay duty on account of reversal of cenvat credit. He also relied on the statement and Receipt of the vehicle in question to say that the appellants have not received the goods.

6. Heard the parties consideration of submissions.

7. In this case the allegation has been made out against the appellants on the basis of the statements of the registered/ dealers of the supplier of the goods wherein it has been stated that the registered dealers were issuing the invoices for availment of inadmissible cenvat credit without accompanying the goods.

8. I gone through the statement of the registered dealers / supplier. In their statements, they never stated that they have not supplied goods to the appellant. The registered of the supplier have been given a general statements that they are indulged in the activity of issuing invoices without accompanying the goods. But for the two specific invoices in question, the Department has not put any specific question to the supplier whether against those invoices, the goods has been supplied or not? In that circumstances, a general statement cannot be make a specific statement and can be used against the appellants. Therefore, on the basis of the statements of the registered dealers who has given a general statement, it cannot be alleged that the appellants have not received the goods.

9. The whole dispute is with regard to the vehicle in question as owner of the vehicle, Shri. Ramesh Chander Gupta has stated that he has sold the vehicle on 06.03.2008 to the scrap dealer who also states that he has scrapped the vehicle very next day. In this case, the vehicle was sold in March 2008 and the statement were recorded after almost three and a half years in the month of October, 2011. If a scrap dealer is dealing in scraping the vehicle, it is not

understandable how he knew the no. of specific vehicle which was scrapped very next day. There is no specific instance shown by the scrap dealer that the particular vehicle has been scrapped on the day. Further, the scrap dealer in his statement, has stated that he has seen the receipt of the vehicle and the statement of Shri. Ramesh Chander Gupta (the seller of the vehicle) and signed the statement given by Shri. Ramesh Chander Gupta and the receipt of the vehicle for sale on 14.10.2011, on going through the receipt, I find that there is not signature of Shri Kuldeep Singh. Therefore the statement given by Shri Kuldeep Singh is not admissible but is doubtful to alleged that same has been taken by the Department to implicate the appellants in this case.

10. Further, I find that the statement of Ramesh Chander Gupta and the Shri. Kuldeep Singh has been obtained by Shri. A.K Trivedi Superintendent AE. On both the statements, he has signed in different manner which also create doubts whether this statements has been taken by him or has obtained by some other ways. Therefore, the statements of seller of the vehicle and the buyer of vehicle cannot be the piece of evidence to implicate the appellant in this case to deny cenvat credit.

11. In view of the above analysis, I hold that the cenvat credit cannot be denied to the appellants in the absence of any concrete evidence against the appellants.

12. Therefore, the impugned order for denial of cenvat credit to the appellants is set aside. In result, the appeals are allowed with consequential relief, if any.

(Dictated and pronounced in the open Court).

(Ashok Jidnal)
Member (Judicial)

Sakshi