

CUSTOMS, EXCISE & SERVICE TAX APPELLATE
TRIBUNAL,
WEST BLOCK NO.2, R.K. PURAM, NEW DELHI-110066
BENCH-DB
COURT –IV

**Excise Appeal No. E/55709,55721,55710 &
55813/2014-Ex [DB]**

[Arising out of Order-in-Original No. 21/COMMR/CEX/ADJ/STN/2014 dated 25.08.2014 passed by the Commissioner, Customs, Central Excise & Service Tax, Bhopal.]

M/s. AVM Brothers & Ors. ...Appellant
Manish Industries
Rajneesh Agrawal
Mukesh Sangla

Vs.

C.C.E., Bhopal. ... Respondent

Excise Appeal No. E/52678/2015-Ex [DB]

[Arising out of Order-in-Original No. 21/COMMR/CEX/ADJ/STN/2014 dated 25.08.2014 passed by the Commissioner, Customs, Central Excise & Service Tax, Bhopal.]

C.C.E., Jabalpur. ...Appellant

Vs.

M/s. Manish Industries ... Respondent

Appearance:

Mr. Rupendra Singh & Mr. M. Shaharan, (Advocates) for the
Appellant
Mr. H.C. Saini, DR for the Respondent

CORAM:

Hon'ble Mr. S.K. Mohanty, Member (Judicial)
Hon'ble Mr. B. Ravichandran, Member (Technical)

Date of Hearing. 21.08.2017
Date of Decision. __13.12.2017

Final Order No. 58354-58358/2017

Per S.K. Mohanty:

These appeals are directed against the impugned order
dated 25.08.2014 passed by the Id. Commissioner, Customs,
Central Excise & Service Tax, Bhopal. Vide the impugned order,

the Id. adjudicating authority has dropped the Duty demand of Rs. 1,27,29,183/- against the assessee-appellant M/s Manish Industries. However, cenvat credit of Rs. 18,85,971/- was disallowed and equal amount of penalty was imposed on it under Rule 15 of Cenvat Credit Rules, 2004. Further, demand of Rs. 72,02,038/- was also confirmed against the assessee-appellant along with imposition of equivalent amount of penalty under Section 11AC of the Central Excise Act, 1944 read with Rule 25 of Central Excise Rules, 2002. Besides, the impugned order has also imposed penalties on the other appellants namely, Shri Rajneesh Agarwal, Shri Mukesh Sangla and M/s AVM Brothers under Rule 26 of rules. Feeling aggrieved with the impugned order, the above appellants have filed appeals before the Tribunal. The Revenue is also in appeal before the Tribunal, against dropping of demand of Rs. 1,27,29,183/- by the Id. adjudicating authority.

2. The Brief facts of the case are that based upon search by the officers of Directorate General of Central Excise Intelligence, Regional Unit, Indore, the assessee-appellant was issued with the Show Cause Notice dated 05.05.2009 on the ground that it had received only invoices, without accompanying goods i.e. plastic granules from M/s Signet Overseas Ltd (SOL) and associates and availed Cenvat credit, based on such invoices. The statement of Transporters, employees of M/s SOL and its records were relied upon to make such allegations. It was also alleged that on enquiry from the office of RTO, some of the vehicles used for

transportation of goods to the assessee-appellant were found to be Tankers, Auto Rickshaws, Scooter and Motor Cycles, which were not capable of transporting the impugned goods. It was thus, proposed to disallow the cenvat credit of Rs. 1,56,07,771/- to the assessee-appellant. Further, a demand of Central Excise duty of Rs. 72,02,038/- along with penalty was proposed against the assessee-appellant on the ground that it had cleared finished goods and inputs to M/s AVM Brothers, New Delhi and other parties. The computer records maintained by the assessee-appellant and transit passes of M/s Dashmesh Roadlines were relied upon to frame the charges.

3. The Adjudicating authority vide the impugned order has held that the proposed cenvat demand of Rs. 1,27,29,183/-, out of Rs. 1,56,07,771/- made against the assessee-appellant on the ground of non-receipt of plastic granules is not sustainable. However, he has confirmed the demand of Rs. 18,85,971/-, on the ground that the vehicles being tankers etc., were not capable of transportation of the subject goods. He also confirmed demand of Rs. 72,02,038/- on the ground that the assessee-appellant had cleared raw material and finished goods to M/s AVM Brothers and others.

4. The Id. Advocate appearing for the appellants reiterated the submissions made in the ground of appeal. He also filed written submissions. In Revenue's appeal, he referred to and relied on

the submissions of the appellant made in the cross objection. He also submitted copies of details of vehicles downloaded from RTO website, to show that the vehicles mentioned in the invoices for transportation of the subject goods, were in fact trucks, used for transportation of the impugned goods. In support of his above submissions, he has referred to and relied upon various decisions of the Tribunal, to state that confirmed duty demand arising out of the same investigation, were set aside by the Tribunal against those appellants.

5. On the other hand, the Ld. DR for Revenue has reiterated the findings recorded in the impugned order, to support the adjudged demands confirmed in the impugned order, against the appellants. In case of revenue's appeal, he has relied upon the investigation conducted by the officers of the Department.

6. Heard both sides and perused the records.

7. We find that the Revenue is in appeal against setting aside of demand of Rs. 1,27,29,183/- on the ground that assessee-appellant had availed said credit fraudulently without receipt of goods. Reliance was placed upon the statement of employees of M/s Signet Overseas Ltd. and records maintained by said company and also statement of transporter Shri Vishal Agarwal. Shri Vishal Agarwal in his statement has stated that the bilty for transportation were issued after talking to drivers over phone.

We find that the assessee-appellant had sought cross examination of main transporter and all other transporters, whose vehicles were used for transportation of goods to its factory premises. However, the request was rejected by the adjudicating authority. The assessee-appellant also challenged the authenticity of computer data of laptops seized from employees of M/s SOL. It has been contended that nothing incriminatory was found from its factory and demand cannot be made against it, by relying upon third party statements and records. The adjudicating authority has held that the demands made on the basis of third party statements and records i.e. employees of M/s SOL are not sustainable. He also found that the assessee-appellant has maintained proper records of receipt and consumption of inputs, payment for raw material, Bank transactions and ledgers and there is no reason to doubt receipt of material. Further, he has also held that there was no evidence of non receipt of goods or clearances of goods clandestinely. Thus, the demands proposed in the SCN were dropped. In our considered view, we do not find any reason to deviate from the view taken by the adjudicating authority. Only on the basis of third party records and statements i.e. records seized from laptop of employee of M/s SOL and its statement, demand cannot be made against the assessee-appellant. Further Shri Mukesh Sangla, the supplier himself in his reply had stated that the records found from the laptop of his employees and records relied upon were in fact, records of "trading activity", in which

they had sold the goods in cash to buyers and to hide their identity and protect from taxation, they had entered the name of the assessee-appellant in their records. We also find that the cross examination of transporter was not allowed by the adjudicating authority and thus, the assessee had no occasion or scope to verify the authenticity of statements of transporter or relied upon documents. Shri Vishal Agarwal, who had issued the bilties, had also stated in his statement that the bilties were issued only after talking to drivers over phone. In such an eventuality, no demand can be made against the assessee-appellant on the basis of third party documents, as held by this Tribunal, in case of CCE, Chennai Vs. R.V. Steels Pvt. Ltd. 2009 (243) ELT 316 (TRI), M/s TGL Poshak Corporation Vs. CCE, Hyderabad 2002 (140) ELT 187 (TRI), CCE, Ludhiana Vs. Parmathma Jatinder Singh Alloys Pvt. Ltd. 2011 (266) ELT 67 (TRI – DEL). We also find that the following cases arising out of same investigation has already been decided by the Tribunal in the assessee's favour :

- (i) M/s Askas Plastics Pvt. Ltd. Vs. CCE, Indore
Final Order No. 54026/16 dt. 20.06.2016
- (ii) CCE & ST, Indore Vs. M/s Kisan Extrusions
Final Order No. 50982 – 50985/2016/SM dt. 15.02.2016
- (iii) CCE, Indore Vs. Parag Pentachem & M/s Rajshree Plastics
Final Order No. 51910 – 51915/2015/SM dt. 17.06.2015
- (iv) M/s Tulsi Extrusions Vs. CCE, Nashik
Final Order No. A/2462 – 2464/15/SM dt. 30.07.2015

8. In view of the above decisions of the Tribunal, we are of the view that there is no merits in the appeal filed by the Revenue. Accordingly, the same is dismissed.

9. Further, a demand of Rs. 18,85,971/- was confirmed against the assessee-appellant on the ground that the vehicle shown to have transported the goods were not capable of such transportation being tankers, tempos, auto rickshaw and in two cases, were moped and scooter. The assessee-appellant had submitted a chart before the adjudicating authority, showing that the numbers of vehicles were wrongly mentioned and also furnished the correct numbers, which are as under:

VEHICLE NUMBER	ALLEGED IN SCN	CORRECT TRUCK NUMBERS
MP09KC3444	AUTO	MP09KC8444
MP09KC3444	AUTO	MP09KC8444
MP09KC3444	AUTO	MP09KC8444
MP09KC3444	AUTO	MP09KC8444
MP09KC3444	AUTO	MP09KC8444
MP09KC3444	AUTO	MP09KC8444
MP09KC3444	AUTO	MP09KC8444
MP09KB4940	AUTO	MP09KB6940
MP09KB4940	AUTO	MP09KB6940
MP09KB4940	AUTO	MP09KB6940
MP09KB4940	AUTO	MP09KB6940
MP09K-3433	TRACTOR	MP09KD3423
MP09KD4448	AUTO	MP09KC8444
MP09KB6418	AUTO	MP09KD6418
MP09KB6418	AUTO	MP09KD6418
MP09KB6418	AUTO	MP09KD6418
MP09 9187	MOPED	MP09 9186
MP09 8686	SCOOTER	MP09 9186
MP09KB3788	TEMPO	MP09 9186
MP09KA8654	AUTO	MP09KD8653
MP06F2914	TANKER	TRUCK AT

		CONSIGNMENT TIME
MP06F2914	TANKER	TRUCK AT CONSIGNMENT TIME
MP09KB-3617	TANKER	TRUCK AT CONSIGNMENT TIME
MP09KB-3617	TANKER	TRUCK AT CONSIGNMENT TIME
MP09K3835	TANKER	TRUCK AT CONSIGNMENT TIME
MP09KA3018	TANKER	TRUCK AT CONSIGNMENT TIME
MP09KA3018	TANKER	TRUCK AT CONSIGNMENT TIME
MP09KA3018	TANKER	TRUCK AT CONSIGNMENT TIME
MP09KA3018	TANKER	TRUCK AT CONSIGNMENT TIME
MP09KA3018	TANKER	TRUCK AT CONSIGNMENT TIME
MP09KA3018	TANKER	TRUCK AT CONSIGNMENT TIME
MP09KA3018	TANKER	TRUCK AT CONSIGNMENT TIME
MP0KA3018	TANKER	TRUCK AT CONSIGNMENT TIME
MP0KA3018	TANKER	TRUCK AT CONSIGNMENT TIME
MP09KC1615	TANKER	TRUCK AT CONSIGNMENT TIME
MP09KC1615	TANKER	TRUCK AT CONSIGNMENT TIME
MP09KC3687	TANKER	TRUCK AT CONSIGNMENT TIME

10. The assessee-appellant also submitted that some of the vehicles were trucks, which were later on converted into tankers. It had provided the printout from the RTO Website as well as addresses of some of the vehicle owners to the adjudicating authority, requesting for verification of fact of transportation of the impugned goods. It has further stated that in number of cases, due to clerical error, the vehicle numbers were wrongly mentioned. It has been contended that only for reason that some of the vehicle numbers were wrongly mentioned, the same cannot be ground to deny the credit. The transport documents and bilties were prepared by the persons, who does not physically verify the

number and mention the number as communicated to them by the driver or any other person. That even Shri Vishal Agarwal has stated that bilties were issued after speaking over phone with drivers and that sometimes the vehicle owners does not provide the correct number. They had also sought cross examination of transporters, which were rejected by the adjudicating authority. The Ld. Counsel submitted that in absence of proper investigation by the Department, allegations cannot be made that the raw materials were not received in the factory for use in the intended purpose. He further stated that the goods were physically transported to the factory of the assessee-appellant and were actually used in the manufacture of finished products. Hence, denial of cenvat credit is baseless and not maintainable under law. We find that the receipt of inputs has been denied only on the ground of the vehicles were not capable of transportation of goods. The receipt of inputs has not been disputed, nor has any other corroborative evidence been brought on record by the Department to sustain the charges. The assessee had provided the correct number of vehicles and also some of the addresses of owners were also provided. In that case, the same could have been verified. The cross examination of transporters were rejected. The records of the assessee-appellant showed the receipt of inputs and their consumption, which has not been disputed by the Department. The final products which have been cleared on payment of duty are not in dispute. The Revenue has also failed to prove flow back of money for non-receipt of the

goods. In the absence of any contrary evidence, the Cenvat credit cannot be denied to the assessee, as held by the judicial forums in case of CCE, Chandigarh V.s Neepaz Steels Ltd. 2008 (230) ELT 218 (P & H), EM ESS Electricals Vs. CCE, Delhi 2003 (159) ELT 730 (TRI), Adhunik Ferro Alloys Ltd. Vs. CCE, Chandigarh 2009 (223) ELT 131 (TRI) and C.C.E., Ludhiana Vs. Parmatma Singh Jatinder Singh Alloys P. Ltd., 2012 (25) S.T.R. 281 (Tri. - Del.). We therefore hold that credit cannot be denied to the assessee-appellant.

11. Another demand of Rs. 72,02,038/- has been made against the assessee-appellant on the ground of clearances of raw material and finished goods to M/s AVM Brothers and others. Reliance has been placed upon the transit passes of M/s Dashmesh Road lines, which show the transit movement of goods and in some cases, computer printout of page no. 17 of data seized from premises of the assessee-appellant. The Ld. Counsel has referred to the statement of Shri Sushil Motwani, which has been relied upon in the SCN, wherein he had stated that he was not concerned with maintaining the details nor knew anything about such details. He had stated that Shri Brijesh Tripathi and Shri P.K. Indoria were concerned with maintaining of records. That in absence of any knowledge and investigation from the author of the computer data relied upon by the Revenue, no demand can be made. Further that cross examination of transporter was not allowed and no investigation

was conducted from M/s AVM Brothers or any recipient of goods. We find that the transit passes were seized from premises of M/s Dashmesh Roadlines and the statement of transporter was relied upon. The Appellant had requested for cross examination of transporter Shri Lakhwinder Singh, which was rejected without any reason. Further though the statement of Shri Sushil Motwani has been relied upon, but we find from his statement that he was unknown of any fact of receipt or clearances of goods through M/s Dashmesh Roadlines or transaction with AVM Brothers, as he was not looking the said affairs. He did not even know the contents of the transactions or material received/ dispatched to M/s AVM Brothers and other parties. The author of the details found in computer data was not examined. Similarly, nothing incriminating has been found in statement of Shri Rajneesh Agarwal, who was managing the affairs of the Unit. We also find that no investigation has been undertaken at M/s AVM Brothers, who allegedly consigned the re-processed granules and received Plastic granules from the assessee-appellant. In absence of any investigation from the person, who maintained the details at the factory of the assessee-appellant, denial of request for cross examination of transporter and investigation from M/s AVM Brothers, the alleged recipient of Plastic Granules and consignor of re-processed granules, the demand cannot be sustained. We also find that no details of any consideration towards such transactions appearing anywhere. In case of M/s CCE, Chennai Vs. Dhanvilas (Madras) Snuff Co. 2003 (153) ELT 437 (TRI), the

tribunal held that in absence of investigation of the alleged consignee/ buyer of the goods, the demand is not sustainable. Similar views were expressed by Tribunal in case of Pan Parag India Ltd. Vs. CCE, Kanpur 2013 (291) ELT 81 (TRI). Similar views adopted in case of Raipur Forging Pvt. Ltd Vs. CCE, Raipur 2016 (335) ELT 297, Commissioner Vs. Motabhai Iron & Steel Industries 2015 (316) ELT 374, CCE, Bhopal Vs. Ramadevi Steels Pvt. Ltd. 2017 (345) ELT 128, Century Metal Recycling Pvt. Ltd. Vs. CCE, Delhi IV 2016 (333) ELT 483 and Continental Cement Company Vs. UOI 2914 (309) ELT 411 (ALL – HC). In view of such observation, we thus find that the demand against M/s assessee-appellant is not sustainable.

12. In view of above discussion and analysis, we hold that the impugned order, so far as it confirmed the adjudged demand against the assessee-appellant is required to be set aside. In the result, the appeal filed by the assessee-appellant is allowed and the Revenue's appeal is rejected. Since the main appeal of the assessee-appellant is allowed, we therefore set aside the penalties imposed upon the other appellants namely, Shri Rajneesh Agarwal, Shri Mukesh Sangla and M/s AVM Brothers, by allowing their appeals.

13. All the appeals are thus, disposed off in above terms.

(Pronounced in the open court on __13.12.2017__)

(B. Ravichandran)
Member(Technical)

(S. K. Mohanty)
Member (Judicial)