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

Date of Hearing/Decision:02.02.2018

Excise Appeal No.1089/2012 (SM)

[Arising out of Order-in-Appeal No.228(AKJ)CE/JPR-II/2011 dated 09.01.2012 passed by the Commissioner of Central Excise (Appeals), Jaipur]

Mr. Venkat R. Chari Appellants

Vs.

CCE, Jaipur Respondent

Appearance:

Rep. by Ms. Surabhi Sinha, Advocate for the appellant.
Rep. by Shri P. Juneja, DR for the respondent.

Coram: Hon'ble Shri S. K. Mohanty, Member (Judicial)

Final Order No…50779/2018…

Per S.K. Mohanty:

Brief facts of the case are that the officers of DGCEI, Zonal Unit, Ahmedabad conducted investigation against M/s. Hari Om Industries and observed that no manufacturing activities took place at its factory premises located in Dugar Pur, Rajasthan. On further investigation, it was revealed that Cenvat credit was wrongly availed, without receipt of inputs in the factory premises and the suppliers of the inputs were found defunct. The appellant, in the present case, is the General Manager of the Exporter Firm, M/s.Shri Krishna Impex, Ahmedabad. Since the present appellant is involved in the fraudulent activities in supplying the goods and facilitate availment of bogus Cenvat credit, proceedings were initiated against it for imposition of penalty under Rule 26 of the Central Excise Rules, 2002. The matter was adjudicated by order dated 31.3.2011, wherein Rs.1 lakh was imposed as penalty on the appellant. Ld. Commissioner (Appeals) has upheld the adjudged demand vide the impugned order dated 28.12.2011. Hence, the present appeal is before the Tribunal.

2. Ld. Advocate appearing for the appellant submits that the un-amended provisions of Rule 26 of the Central Excise Rules, 2002 (effective upto 1.3.2007) is not applicable in the facts and circumstances of the case, inasmuch as, there was no involvement of any goods, which were liable for confiscation. She further submits that since the none of the ingredients mentioned in Rule 26 ibid is present in the case of the appellant, such provisions cannot be invoked for imposition of penalty.

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

4. Heard both the sides.

5. Rule 26 of the Rules deals with imposition of penalty for certain offences. The said rule is extracted hereinbelow-

> "Penalty for certain offences. – Any person who acquires possession of , or is in any way concerned in transporting, removing, depositing , keeping , concealing, selling or purchasing, or in any other manner deals with, any excisable goods which he knows or has reason to believe are liable to confiscation under the Act or these rules, shall be liable to a penalty not exceeding the duty on such goods or rupees ten thousand, whichever is greater."

6. On perusal of the above Rule, it transpires that penalty can be imposed on fulfilling certain conditions enumerated therein. In this case, it is not the case of the Revenue that the appellant was in possession of any excisable goods, which were liable for confiscation. Further, I also found that there was no proposal for confiscation of the goods under Rule 25 of the Rules. Since there was no

involvement of any offending goods, the provisions of Rule 26 have not been attracted for imposition of penalty against the appellant. Therefore, I do not find any merit in the impugned order. Accordingly, after setting aside the same, I allow the appeal in favour of the appellant.

[order dictated and pronounced in the open court]

(S.K. Mohanty)
Member (Judicial)

ckp.

This appeal is directed against the impugned order dated 10.04.2017 passed by the Commissioner (Appeals), Customs, Central Excise and Service Tax, Bhopal.

2. The brief facts of the case are that the appellant is engaged in the manufacture of motor vehicle for transport of goods and body for motor vehicle falling under Chapter Heading 8704 and 8707 of the Central Excise Tariff Act, 1985.The appellant avails Cenvat credit of central excise duty paid on inputs and capital goods and on the input services as per the provisions of Cenvat Credit Rules, 2004. During the period, April, 2008 to July, 2013, the appellant had availed manpower and man power recruitment and supply services from M/s.New Pitampur Road Light, Pitam Pur. On the basis of the bill dated 30.09.2013 issued by such service provider, the appellant availed Cenvat credit of service tax indicted in such bills. Taking of Cenvat credit by the appellant was disputed by the Department on the ground that the service tax was paid by the service provider by reason of fraud, collusion or willful misstatement, etc. and accordingly, as per the provisions of Rule 9(1)(bb) of the Rules, the appellant is not permitted to take Cenvat credit. The matter was adjudicated against the appellant by order dated 12.06.2015 wherein Cenvat credit taken by the appellant amounting to Rs.116092 was disallowed and the penalty of Rs.5,53,046/- was imposed on the appellant. On appeal, the ld. Commissioner (Appeals) vide the impugned order has imposed the adjudged demand on the appellant.

Ld.Advocate for the appellant submits that though show cause notice was issued by the jurisdictional Service Tax Authorities on the service provider but the adjudication order passed against the service provider was set aside by the Commissioner (Appeals) vide order dated 2.6.2016.Thus, he submits that since the charges framed against the service provider was set aside by the jurisdictional Commissioner (Appeals), the service tax paid by the service provider cannot be denied as Cenvat to the appellant under the provisions of Rule 9(1) (bb) of the Rules.

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

Heard both the sides.

The observation of the ld. Commissioner (Appeals) relevant for deciding the present issue are contained in paragraph-6 in the impugned order, which is extracted herein below:-

(6)

On perusal of the above observations of the ld.Commissioner (Appeals), it transpires that the charges leveled against the service provider regarding fraud, collusion, willful mis-statement, etc. are no more in existence in view of the proceedings dropped by the jurisdictional Commissioner (Appeals). Since the service tax amount in question was not paid by the reason of fraud, collusion, etc., the appellant cannot be denied the Cenvat credit benefit in terms of the Rule 9(1) 9 (bb) of the Rules. Further, Rule 3 of the Rules extends the service receiver to avail Cenvat credit of service tax paid by the service provider. In this case, since the service tax paid by the service provider was availed as credit by the appellant on the basis of the bills raised by him, the benefit of Cenvat credit cannot also be denied to the appellant.

Therefore, I do not find any merit in the impugned order. Accordingly, after setting aside the same, I allow the appeal in favour of the appellant.