IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.
Principal Bench, New Delhi

COURT NO. II

DATE OF HEARING : 30/11/2017.
DATE OF DECISION : 30/11/2017.

Excise Appeal No. 4026 of 2012 (SM)

[Arising out of the Order-in-Appeal No. 76/CE/DLH/2012 dated 29/10/2012 passed by The Commissioner of Central Excise (Appeals), Delhi – I, New Delhi.]

M/s Britannia Industries Limited Appellant

Versus

CCE, Delhi – I Respondent

Appearance

Shri R. Krishnan, Advocate – for the appellant.

Shri Udhap Sengraj, Authorized Representative (DR) – for the Respondent.

CORAM: **Hon'ble Shri Anil Choudhary, Member (Judicial)**

Final Order No. 58794/2017 Dated : 30/11/2017

Per. Anil Choudhary :-

This is the second round of litigation. In the earlier round, this Tribunal in appeal by the appellant herein, in CEA No. 1346/2007 – SM (BR) with a final order No. 1440/2009 – SM (BR) dated 10^{th} November 2009 passed the following order remanding the matter to the Original Authority for verification and allowing the credit under dispute.

"Per M. Veeraiyan:

This is an appeal against the order of the Commissioner (Appeals) No. 08/CE/DLH/2007 dated 8.2.2007.

2. Heard both sides.

3. The relevant facts, in brief, are that the appellants are manufacturer of biscuits and they have received sugar directly from the manufacturer and occasionally from the dealers and have been availing Cenvat credit of duty paid on the sugar. A Circular by CBEC dated 6.3.2003 was issued permitting the credit of AED (GSI) in respect of the inputs received from 1.4.2000. An amendment to Rule 3 of the Cenvat Credit Rules was made on 1.3.2004 giving retrospective application to the amendment granting Cenvat credit of AED (GSI). The appellant received supplementary invoices on 30.8.2003 and availed AED (GSI) in respect of sugar procured from the dealers during the period 2000-01 to 2002-03. A show cause notice was issued alleging that the supplementary invoices issued by the dealers are not covered under Rule 7 of the Cenvat Credit Rules as specified documents for the purpose of availing the Cenvat credit and therefore, they are not eligible for the same. The original authority accordingly disallowed the credit of Rs.6,66,108/- along with interest and also imposed equal amount as penalty. Commissioner (Appeals) has upheld the order of the original authority.

4. Learned Advocate for the appellants submits that they are a major manufacturer of biscuits and pay substantial amount as central excise duty every year. They are generally procuring sugar from the manufacturer and

the invoices issued by the manufacturers indicated clearly the break-up of basic excise duty and the AED (GSI). However, during the period 2000-01, 2002-03, they had availed credit only in respect of basic excise duty paid on the sugar. However, the intention of the Government was made clear by the Circular dated 6.3.2003 issued by Board and accordingly the credit of AED (GSI) was availed by them subsequently. Though there was dispute on AED credit on sugar procured from manufacturer, the same was allowed by the same order of the original authority. The present dispute is only in respect of supplies received from the dealers. The invoices issued by the dealers were for an amount naturally including the entire excise duty amount and other expenses and profit of margin of the dealers. However, during the relevant period, as only BED was eligible as credit, the said dealers have not specifically indicated the AED(GSI) in the invoices issued by them. However, they gave reference of the original invoices of the manufacturers under which the duty has been paid by the said manufacturers of sugar. Consequent to clarification of the Board dated 6.3.2003, the appellants have taken credit of AED (GSI) in respect of sugar procured from the dealers as well. The original authority denied the credit on the ground that Rule 7 does not refer to supplementary invoices by the dealers as relevant documents. It was also found by the authorities that along with any supplementary invoices, no goods have been received by them. He submits that both these grounds are not valid. The invoices supplied by the manufacturer or by the dealers are issued in terms of Rule 11 of the Central Excise Rules, 2002. Rule 11 (7) of the Central Excise Rules specifically states that the said provisions are applicable to first stage and second stage dealers as they are applicable to the manufacturer. He also submits that the invoices of the dealers are to be treated as invoices issued under Rule 11 of the Central

Excise Rules, 2002. In the present case, as the dealers inadvertently have not indicated the AED(GSI) which during the relevant period was not admissible as Cenvat credit , they issued supplementary invoices supplementing information given in the original invoices. As there is no dispute that subsequent to amendment dated 1.3.2004 to Rule 3 of Cenvat Credit Rules, AED (GSI) is eligible for the grant of credit and that appellants have received the goods from the dealers under their invoices which gave reference to the manufacturer s invoices, the credit should not be denied with reference to the supplementary invoices. He also submits that Rule 7 does not exclude the other situation for issue of supplementary invoices. He also relies on the decisions of the Tribunal permitting credit based on TR-6 challans though the said document is not referred in Rule 7 of Cenvat credit Rules. He, further submits that the question of imposition of penalty does not arise as the Board issued clarification in 2003 permitting retrospective availment of Cenvat credit on AED (GSI) followed by the amendment of Rule 3 of Cenvat Credit Rules in 2004.

5. Learned SDR submits that the supplementary invoices by the dealers are not recognised in Rule 7 of the Cenvat Credit Rules and the concession has to be given strictly in terms of the said Rule and therefore, he seeks upholding of the order of the Commissioner (Appeals).

6. I have carefully considered the submissions from both sides. It is not in dispute that the AED (GSI) paid on sugar is eligible as Cenvat credit in view of retrospective amendment of Rule 3 of the Cenvat Credit Rules. It is also submitted by the learned Advocate for the appellants that the original invoices issued by the dealers have reference to the invoices of the manufacturer. On the basis of the said invoices, BED portion which was specifically indicated has already been availed as credit

which is not in dispute. The invoices as well as supplementary invoices of the dealers are to be construed as having been issued under rule 11 of the Central Excise Rules, 2002 as submitted by the learned Advocate for the appellants. It is noticed that conscious decision have been taken to allow credit of AED (GSI) by amending the Rules retrospectively. The omission by the dealers in not mentioning the AED in the invoices has to be viewed in the context of providing law not permitting the credit of AED. Therefore, I hold that the appellants shall be eligible for the Cenvat credit of the AED (GSI) paid by the manufacturer in respect of consignments in question However, the fact of payment and the quantum of AED (GSI) as mentioned in the supplementary invoices has to be verified with reference to the documents referred to by the appellants.. In the given facts and circumstances of the case, which involved a conscious amendment to give retrospective benefit of credit of AED (GSI), the question of imposition of penalty does not arise.

7. In view of the above, the appeal is disposed of as follows:

a) Penalty is set aside.

b) The matter is remanded to the original authority to allow the credit of AED (GSI) with reference to the supplementary invoices issued by the registered dealers subject to verification of particulars of manufacturer s invoices referred in the original invoices of the registered dealers. The original authority will issue order after granting reasonable opportunity of hearing to the appellants.

(M. Veeraiyan)
Member (Technical)”

2. Pursuant to the remand, the Additional Commissioner taking note of the direction of this Tribunal directed them to submit the original invoices of the sugar manufacturer detailed herein the details of AED (GSI) paid by the manufacturer. The appellant submitted at the time of hearing that they have no business connection with the manufacturer and further the first stage dealer – M/s Delhi Sugar Trading Company was requested to submit the details of manufacturer invoice. The first stage dealer vide their letter dated 12th July, 2011 expressed their inability to produce the original invoice of the sugar manufacturer, wherein it is stated that in spite of putting the best efforts to locate/trace out of records as desired they are enable to find the same. Hence, they are enclosing herein an affidavit to the effect that invoice/record prior to 2004 are not available with them, hence, could not produce the same. The said letter was produced to Superintendent, Central Excise Range 7, New Delhi. The Additional Commissioner observed that in spite of giving adequate opportunity to the appellant, they failed to submit the original documents as undertaken before this Tribunal by them at the time and accordingly he was pleased once again to disallow the Cenvat credit under dispute with interest and also equal amount of penalty.

3. Being aggrieved, appellant preferred appeal before learned Commissioner (Appeals) who was placed to allow the appeal in part observing that this Tribunal directed the Original Authority to allow the credit, in question, with reference to the supplementary

invoices issued by the registered dealer subject to verification of particulars of manufacturer's invoices referred in the original invoices of registered dealers. Now, when manufacturers invoices have not been produced and when they are not available on record the verification of particulars of manufacturer's invoices is not possible. Consequently, as per direction of this Tribunal, the said verification is not possible and accordingly the plea of granting credit of AED (GSI) is not tenable and accordingly the order of recovery of the same is upheld.

4. Being aggrieved the appellant is before this Tribunal. The learned Counsel states that they have done their best of what was possible under the scheme of the Act in order to lead evidence. Alternatively it is evident from the facts on record that the Adjudicating Authority also failed to exercise jurisdiction by not referring for cross-verification of the relevant data from the jurisdictional assessing authority of the manufacturer in spite of the full details of the concerned manufacturer namely M/s Dhampur Sugar Limited, Dhampur having Central Excise registration No. 14/UPS/DPR/1992 and also details of invoice number, date etc. being available in the invoices available with the appellant and also similar invoices with respect to procurement from the said dealer of other manufacturers the authorities below have mechanically rejected the credit under dispute. Although this Tribunal found the credit is admissible on merits subject to verification, but the authority have rejected the credit mechanically without making any reasonable effort to

cross-verify the details of credit. The learned Counsel further states that there is no material on record that the credit is sham or incorrectly taken. It is neither the case of Revenue that the said manufacturers in question, have not paid the duty or penalty or AED (GSI), in question.

5. The learned AR for Revenue have relied on the impugned order. He further states that instead of opportunity provided by this Tribunal in remand, the appellant have failed to provide necessary verification, as such, appeals are dismissed.

6. Having considered rival contentions, I find that the appellant have done their best whatever they could do under the scheme of Act under rule. I further find that the authorities below fail to exercise their duty to make adequate enquiries by referring or calling for cross-verification report of the concerned jurisdictional officers of the manufacturers. More so, in face of the fact that the appellant have categorically stated that the said evidence is not available with them or with the first stage dealer – Delhi Sugar Trading Company. I further find that there is no adverse report material on record as regards non-availability of Cenvat credit, in question. I further find that the appellant is in possession of proper documents as required under the Cenvat Credit Rules, readwith the Service Tax Rules for availing the Cenvat credit, in question. Accordingly, I set aside the impugned order and allow this appeal. I further direct that the appellant is entitled to take the Cenvat credit, in question. Accordingly, the

appeal is allowed with consequential benefits in accordance with law.

(Order dictated and pronounced in open court.)

(Anil Choudhary)
Member (Judicial)

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