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

Date of hearing: 28.05.2018
Date of pronouncement: 01.06.2018

Ex. Appeal No. 56953 of 2013-SM
(Arising out of order-in-appeal No. 99-98/CE/DLH/2012 dated 30.11.2012 passed by the Commissioner of Central Excise, New Delhi).

M/s Veekay Industries Appellant

Vs.

CCE, Delhi-I Respondent

Appearance:

Sh. Rajat Pandey, Advocate for the appellant
Sh. S. Nunthuk & Sh. P. Juneja, ARs for the Respondent

Coram:

Hon'ble Ms. Archana Wadhwa, Member (Judicial)

Final Order No. 52103/2018

Per: **Archana Wadhwa**:

As per facts on record, the appellant is engaged in the manufacture of Elastic Rail Clips (ERC) for Railways and in terms of the contract entered by them with the Railways the goods were to be manufactured out of specified grade of standard raw material which was rounds of standard specification of 55 Si7 20.64 mm only. The appellant were procuring the raw material from M/s Jagdamba Steels and M/s Daga Trading Co. Pvt. Ltd., the two dealers of the raw materials. The same was being received by them under the cover of invoices issued by the said two dealers and the appellant was claiming the duty of Central Excise paid on the same as credit and was utilising the said credit for payment of duty on their final product.

2. The Revenue conducted searches in the premises of the said two dealers and made certain investigations and entertained a view that the said two dealers were only issuing invoices without the corresponding supply of the raw materials. Statements of authorised signatories were recorded and resumed records were scrutinised. The Revenue also approached the present appellant and statement of one Sh. Dhanesh Kumar Jain, Authorised Signatory was recorded on 29.03.2010 wherein he specified that ERC manufactured for the railways are required to be manufactured out of the specified raw materials and inasmuch as their dealings with the said two traders are concerned they were only receiving the invoices without corresponding receipt of the raw material. However, the said statements were recorded by Sh. Dhanesh Kumar Jain on 31.03.2010 but subsequently another statement was recorded on 20.08.2010 wherein he admitted that his first statement dated 29.03.2010 was the correct retraction of facts.

3. During the course of further investigation statements of the Partners of M/s Jagdamba Steels as also M/s Daga Trading Co. (P) Ltd. were recorded. The scrutiny of the statement also revealed that they have never purchased the round of standard specification from M/s Rashtriya Ispat Nigam Limited (RINL), which was the manufacturer of the said goods.

4. Based on the above, proceedings were initiated by way of issuance of show cause notice dated 30.08.2010 proposing denial of the credit to the extent of around Rs. 12 lakhs alongwith confirmation of interest and imposition of

penalties on the ground that the appellant did not receive the raw material and the credit has been taken only on the basis of the fake invoices. The said show cause notice culminated into an order passed by the original adjudicating authority, confirming the demand to the tune of Rs. 12,49,165/- as also imposing penalty of identical amount under Rule 15(2) of the Cenvat Credit Rules, 2004 read with Section 11AC of the Central Excise Act. Penalty of Rs.50,000/- was also imposed upon Sh. Dhanesh Kumar Jain, Authorised Signatory in terms of Rule 26 of Central Excise Rule. The said order of the original adjudicating authority stands upheld by Commissioner (Appeals) and hence the present appeal.

5. For better appreciation of the reasons adopted by Commissioner (Appeals), for denial of the benefit to the assessee are reproduced below:

> "6. *It is on record that the appellant No. 1, M/s Vee Kay Industries were engaged in the manufacturing of elastic rail clips (ERC) for Railways and that Railways had specified the grade of standard raw material to be used for manufacturing of ERC as Rounds of standard specification of 55 Si7 20.64mm only. It is also on record that Railways have authorised the purchase of said raw material from five different units amongst which M/s Rashtriya Ispat Nigam Limited (RINL) is one of the units; that M/s Jagdamba Steel has never purchased the Rounds of standard specification of 55 Si7 20.64mm from M/s RINL; that M/s Daga Trading Co. Pvt. Ltd. has though, purchased Rounds of standard specification of 55 Si7 20.64mm from M/s RINL but the same have never been sold to appellant t No. 1. The scrutiny of case records by the investigation in the matter has also proved that though both M/s Jagdamba Steel and M/s Daga Trading Co. Pvt. Ltd. have shown sale of Rounds of other specification to appellant No.1, but the same cannot be used for manufacturing of ERC as they are of different size and composition. Further it is also on record that the vehicle numbers mentioned on the sale invoices of both M/s Jagdamba Steel and M/s Daga Tradin g Co. Pvt. Ltd. were misquoted and misused which means that in the instant case no physical sale of any material took place. Both the appellants, neither at the time of adjudication proceedings nor at the appellate stage have given any kind of avoidance to rebut above specific charge of not receiving physically the said material. When the only specified standard raw material meant to be used for the*

> *manufacturing of ERC has never been sold by any of the two dealers i.e. M/s Jagdamba Steel and M/s Daga Trading Co. Pvt. Ltd. to the appellant No. 1 namely M/s Vee Kay Industries, the question of physical movement of the said material to the premises of appellant No. 1 M/s Vee Kay Industries, does not arise and the invoices issued in this regard are thus meant only for fraudulently passing on the benefit of cenvat credit to appellant No. 1. The objections raised by both the appellants in this regard are bereft of any merit, when Sh. Dhanesh Kumar Jain, Authorised Signatory, in his various statements tendered voluntarily, accepted and corroborated the findings of the investigation, thus leaving no scope for any interference in the observations of the impugned order in this regard."*

6. On going through the above, it is seen that the Revenue has come to a finding of non receipt of raw material on the ground that the said two traders who have supplied the raw material to the appellant, under the cover of their invoices, never purchased the rounds of standard specifications from RINL, which was the requirement of the contract. Even if the above allegation of the Revenue are accepted, this will lead to one factor that the appellant did not use the standard specifications material, as specified in the contract. The said fact will not lead to inevitable conclusion that no raw material was ever received by the assessee. The Revenue has not produced any evidence that if the raw material was not received by the present appellant, where was the same diverted. Going further, the appellant have admittedly manufactured their final product which stands cleared on payment of duty. Such final product can be manufactured only out of the raw material. If the appellant have not received the raw material, I really fail to understand that how the final product can be manufactured. The Revenue has neither alleged nor produced any evidence to show any alternate source of procurement of said raw material. As such, it cannot be said that merely on the basis of the raw material not being of standard specifications that the raw material was never supplied by the present

trader. As observed earlier, it may be said that the appellant have used sub-standard raw material in the manufacture of their final product supplied to the railways. Further, the Revenue has also not brought any evidence to show that the final product manufactured by the appellant does not stand accepted by the Railways or there is dispute between the Railway and the present appellant to the fact that the goods manufactured by the appellant supplied to Railway are of sub-standard quality.

7. In view of the foregoing reasons, I find no justifiable reason to deny the cenvat credit to the appellant. Accordingly, the impugned order is set aside and appeal is allowed with consequential relief to the appellant.

(Pronounced on 01.06.2018).

(Archana Wadhwa)
Member (Judicial)

Pant