IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI
PRINCIPAL BENCH, COURT NO. IV

Excise Appeal Nos. 50941 & 51369 of 2018

[Arising out of Order-In-Appeal No. 22-23/AK/CE/JPR/2017 dated 24.01.2018 passed by Commissioner (Appeals), CGST, Jaipur (Raj)]

M/s. Suncity Sheets Pvt Ltd. **Appellants**

Vs.

Commissioner of Central Excise & ST, Jodhpur **Respondent**

Appearance:
Shri O P Agarwal, Chartered Accountant for the Appellants
Shri P Juneja, AR for the Respondent

<u>CORAM</u>:
Hon'ble Shri Ashok Jindal, Member (Judicial)

Date of Hearing /decision: 29.06.2018

FINAL ORDER NO. 52403-52404 /2018

<u>Per Ashok Jindal :</u>

The appellants are in appeal against the impugned orders wherein cenvat credit on inward transportation was denied to the appellant on the ground that the documents against which they have taken the cenvat credit is not proper document in terms of Rule 9 of the Cenvat Credit Rules, 2004.

2. The facts of the case are that the appellants are manufacturer of excisable goods and availing the cenvat credit on inputs and ,inputs

service, on receipt thereof. The goods were transported in house and the first stage dealer raised invoices for the the value of goods supplied to the appellants and also charged transportation charges on which dealer has paid the service tax. The appellant took cenvat credit on service tax paid on transportation charges. Revenue is of the view that as the dealer is not transporter, therefore, on invoices issued by the dealer, appellant is not entitled to avail cenvat credit. Moreover, it was also alleged that being recipient of transportation service, the appellant was required to pay Service Tax which he also failed to do so. In the circumstances, the cenvat credit on service tax paid is not available to the appellant.

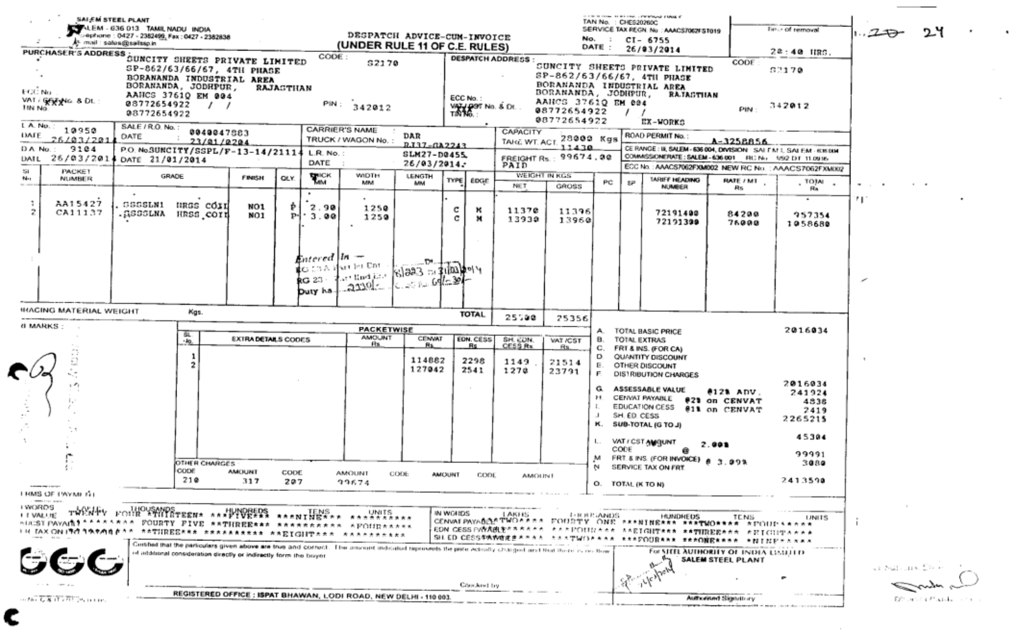
3. In these facts and circumstances, proceedings were initiated against the appellant and show cause notices were issued which were adjudicated. Cenvat credit of transportation service was denied consequentially demand was raised along with interest and penalty was also imposed.

4. Against these orders, appellant is before me.

5. As the issue involved in both the appeals is common, therefore, both the appeals are taken up together for disposal.

6. Heard the parties. Considered the submissions.

7. On careful consideration of submissions made by both the sides, I find that in this case, dealer has raised the sample invoice as extracted below :


SALEM STEEL PLANT
SALEM - 636 013 TAMIL NADU INDIA
Telephone : 0427 - 2382499, Fax : 0427 - 2382838
E-mail : sales@sailssp.in

DESPATCH ADVICE-CUM-INVOICE
(UNDER RULE 11 OF C.E. RULES)

TAN No. : CHES20260C
SERVICE TAX REGN. No. : AAACS7062FST019
No. : CI- 6755
DATE : 26/03/2014
Time of removal: 20 : 40 HRS.

PURCHASER'S ADDRESS : SUNCITY SHEETS PRIVATE LIMITED, SP-862/63/66/67, 4TH PHASE, BORANANDA INDUSTRIAL AREA, BORANANDA, JODHPUR, RAJASTHAN
CODE : S2170
ECC No. : AAHCS 3761Q EM 004
VAT / CST No. & Dt. : 08772654922 / /
TIN No. : 08772654922
PIN : 342012

DESPATCH ADDRESS : SUNCITY SHEETS PRIVATE LIMITED, SP-862/63/66/67, 4TH PHASE, BORANANDA INDUSTRIAL AREA, BORANANDA, JODHPUR, RAJASTHAN
CODE : S2170
ECC No. : AAHCS 3761Q EM 004
VAT / CST No. & Dt. : 08772654922 / /
TIN No. : 08772654922
PIN : 342012
EX-WORKS

I.A. No. : 10950 DATE 26/03/2014
D.A. No. : 9104 DATE 26/03/2014
SALE / R.O. No. : 0040047583 DATE 23/01/2014
P.O. No. SUNCITY/SSPL/F-13-14/21114 DATE 21/01/2014
CARRIER'S NAME : DAR
TRUCK / WAGON No. : RJ37-GA2243
L.R. No. : SLM27-D0455
DATE : 26/03/2014
CAPACITY : 28000 Kgs
TARE WT. ACT. : 11430
FREIGHT Rs. : 99674.00 PAID
ROAD PERMIT No. : A-3258856
CE RANGE : III, SALEM - 636 004, DIVISION : SAIL, SALEM
COMMISSIONERATE : SALEM - 636 001
ECC No. : AAACS7062FXM002 NEW RC No. : AAACS7062FXM002

Sl No.	PACKET NUMBER	GRADE	FINISH	QLY.	THICK MM	WIDTH MM	LENGTH MM	TYPE	EDGE	WEIGHT IN KGS NET	WEIGHT IN KGS GROSS	PC	SP	TARIFF HEADING NUMBER	RATE / MT Rs	TOTAL Rs
1	AA15427	SSSSLN1 HRSS COIL	NO1	P	2.90	1250		C	M	11370	11396			72191400	84200	957354
2	CA11137	SSSSLNA HRSS COIL	NO1	P	3.00	1250		C	M	13930	13960			72191300	76000	1058680
	PACKING MATERIAL WEIGHT Kgs.								TOTAL	25300	25356					

Entered in —
RG 23A Part I Ent. / RG 23 Part II Ent. 81223 Dt. 31/03/2014
Duty ha 23304

PACKETWISE

SL No.	EXTRA DETAILS CODES	AMOUNT Rs	CENVAT Rs	EDN. CESS Rs	SH. EDN. CESS Rs	VAT / CST Rs
1			114882	2298	1149	21514
2			127042	2541	1270	23791

OTHER CHARGES: CODE 210 AMOUNT 317; CODE 207 AMOUNT 99674

A.	TOTAL BASIC PRICE	2016034
B.	TOTAL EXTRAS	
C.	FRT & INS. (FOR CA)	
D.	QUANTITY DISCOUNT	
E.	OTHER DISCOUNT	
F.	DISTRIBUTION CHARGES	
G.	ASSESSABLE VALUE @12% ADV.	2016034
H.	CENVAT PAYABLE	241924
I.	EDUCATION CESS @2% on CENVAT	4838
J.	SH. ED. CESS @1% on CENVAT	2419
K.	SUB-TOTAL (G TO J)	2265215
L.	VAT / CST AMOUNT CODE @ 2.00%	45304
M.	FRT. & INS. (FOR INVOICE)	99991
N.	SERVICE TAX ON FRT @ 3.09%	3080
O.	TOTAL (K TO N)	2413590

IN WORDS: TWENTY FOUR *THIRTEEN* ***FIVE*** ***NINE***
CENVAT PAYABLE: **TWO**** FOURTY ONE ***NINE*** ***TWO**** *FOUR*****

Certified that the particulars given above are true and correct. The amount indicated represents the price actually charged and that there is no flow of additional consideration directly or indirectly form the buyer.

Checked by

For STEEL AUTHORITY OF INDIA LIMITED
SALEM STEEL PLANT
Authorised Signatory

REGISTERED OFFICE : ISPAT BHAWAN, LODI ROAD, NEW DELHI - 110 003.

8. On perusal of invoice, I find that the dealer has charged transportation charges from the appellant on which service tax have been paid. In terms of Rule 3 of Cenvat Credit Rules, 2004, the assessee is entitled to avail cenvat credit of duty paid /service tax paid by them. Admittedly, the show cause notices were issued to the appellant to deny the cenvat credit of the amount of service tax shown in the invoices. Moreover, the appellant has not paid service tax directly to the transporters but the dealer has paid, i.e. charge of transportation of Goods purchased. As the dealer has paid the transportation charges and service tax and issued invoices to the appellant. On the strength of the invoices issued by the dealer, the appellant is entitled to avail the cenvat credit. Therefore, the

appellant has correctly availed the cenvat credit on transportation charges on the amount paid by the dealer shown in the invoice issued by the dealer.

9. In these circumstances, the impugned orders deserves no merits. Accordingly, the same are set aside.

10. In the result, both the appeals are allowed with consequential relief.

(dictated and pronounced in the open court)

(Ashok Jindal)
Member(Judicial)

ss