

IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL,
WEST BLOCK NO.2, R.K. PURAM, NEW DELHI-110066

BENCH-SM

COURT -IV

Service Tax Appeal No.ST/51853/2018-ST [SM]

[Arising out of Order-in-Appeal No.61 (RK) ST/JPR/2017-18
dated 22.02.2018 passed by the Commissioner (Appeals),
DGGSTI, Jaipur]

M/s.Larsen & Toubro Ltd. ...Appellant

Vs.

C.C.E. & S.T., Jaipur-I ... Respondent

Present for the Appellant : Mr.S.J. Vyas, Advocates
Present for the Respondent: Mr.K. Poddar, D.R.

Coram: HON'BLE MRS. RACHNA GUPTA, MEMBER (JUDICIAL)

Date of Hearing/Decision: 10/12/2018

Final ORDER NO. 53451/2018

PER: RACHNA GUPTA

The appellants herein are engaged in providing management, maintenance or repair services, business support service, erection, commissioning and installation services etc. During the course of audit of record of the appellant for the period w.e.f. January, 2005 to September, 2009, Department noticed them of availing cenvat credit of input services wrongly on the basis of invoice/bills not in the name of M/s. L & T, Jaipur. Rather those were in the name of M/s. L & T, Delhi. Therefore, vide show cause notice No. 2436 dated 12.10.2010, the Department demanded the irregularly availed and utilised

cenvat credit amounting to Rs.46,40,390/- for the aforesaid period along with the interest at the appropriate rate and the proportionate penalties. Demand was confirmed by the order of Jt. Commissioner No. 05 of dated 11.01.2012. Being aggrieved, the appeal was preferred before Commissioner (Appeals) who vide order No. 461 dated 11.11.2016 allowed the appeal by way of remand to the original adjudicating authority directing the appellant to submit all the original documents within 60 days from the date of receipt of the said order.

2. The original adjudicating authority vide its order No. 141 dated 27.01.2017 had still confirmed the demand of the show cause notice. Being aggrieved, the appeal was again preferred before Commissioner (Appeals) who vide the order under challenge bearing No.61 dated 22.02.2018 has allowed the credit for Rs.9,92,754/-, however, still confirming the demand for Rs.36,57,357/- alongwith the proportionate interest and the penalties. Being aggrieved, the appellant is before this Tribunal.

3. I have heard Shri S.J. Vyas, Id. Advocate for the appellant and Shri K. Poddar, Id. DR for the Revenue.

4. It is submitted that the cenvat credit has been denied mainly on the basis that the same has been availed on photocopies of the invoices. The similar issue is mentioned to no more be *res integra*. The order of this Tribunal in the case of **Cords Cable Industries Ltd. vs. CCE, Jaipur reported in**

2015 (320) ELT 155 has been impressed upon. The reliance has also been placed upon the decision of Hon'ble Gujarat High Court in the case of **CCE vs. Steelco Gujarat Ltd. reported in 2010 (255) ELT 518 (Guj.)**. It is submitted that photocopies of invoices qua the credit availed to the tune of Rs.16,87,366/- were also produced before Commissioner (Appeals). It is only for the credit availed of Rs.9,721/- that no document, since inception could have been produced. It is accordingly prayed that the other available photocopies of invoices may also be directed to be considered by the Commissioner (Appeals). Appeal is prayed to be allowed by way of remand.

5. While rebutting these arguments, the order under challenge has been justified submitting that the Commissioner (Appeals) has already considered the documents in the form of invoices as were submitted by the appellant before him and it is after verifying 22 original invoices that the cenvat credit of Rs.9,92,754/- has been allowed. It is submitted that photocopies of the documents cannot be looked into as per the statute. Otherwise also were never provided. Appeal is prayed to be dismissed.

6. After hearing both the parties, it is observed that there is no dispute regarding the receipt of duty paid inputs covered under the impugned invoices and their use in the manufacture of finished goods. Nor there is any allegation that the invoices are bogus. The only objection of Department is that the

invoices are not original. Thus, the narrow compass of the adjudication appears to be as to whether assessee is entitled for availing cenvat credit based on the photocopies of the invoices.

7. Rule 9 of Cenvat Credit Rules, 2004 is relevant for the purpose which mandates the requirement of invoices issued by a manufacturer for clearance of inputs and capital goods from his factory as the prescribed documents for availing cenvat credit. From the perusal of rule 9, it is clear that there is no express mandate for such invoices to only be in original. The Hon'ble High Court in the case of **CCE vs. Stelko.. Strips Ltd. as reported in 2010 (255) ELT 397 P & H** has held that Cenvat Credit can be taken on strength of private challans so long as there was proper certification that the duty has been paid and that the credit has not been taken earlier on the basis of the same documents. As already mentioned above, there is no such dispute. It is observed that emphasis of the original invoice is mere a rigid opinion about the technical procedure, Hon'ble P & H High Court in another case titled as **Commissioner vs. Relson India reported in 2006 (202) ELT 759** has held that the mere technicalities should not be a hurdle in the grant of cenvat credit under the beneficial scheme once it is proved that the transaction was genuine and tax has been paid to the State. It is very much apparent from the show cause notice itself that Department is not aggrieved of the transaction being ingenuine or tax to have not been paid. Otherwise also the Indian Evidence Act permits the

admissibility of the photocopies by way of being tendered as the secondary evidence. In the given circumstances and in view of entire above discussion, I opine that emphasis of original copies of invoice is highly insufficient to deny the benefit as that of the cenvat credit to the assessee. Further, the given facts and circumstances are also sufficient to hold that no *mala fide* can be attributed to the appellant.

8. In view of entire above discussion, since the verification and re-calculation based on the photocopies of invoices as are asserted to be available with the appellant for entitling him the credit of Rs.1,68,766/- is required. It is opined that the matter be remanded back to the Commissioner (Appeals) for considering the photocopies of the invoices, as would be produced by the appellants before him within 15 days of receiving the notice from him and for adjudicating there, however, keeping in view the above discussion. As a result, appeal in hand is allowed by way of remand.

[Operative part pronounced in the Open Court]

(RACHNA GUPTA)
MEMBER (JUDICIAL)

Anita