

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

BENCH-SM

COURT -IV

Excise Appeal No.E/53443/2018-EX[SM]

[Arising out of Order-in-Appeal No.773(CRM)/CE/JDR/2018 dated 17.07.2018 passed by the Commissioner (Appeals), Central GST & Central Excise, Jodhpur]

M/s.Shriram Rayons

...Appellant

Vs.

CCGST & Central Excise, Udaipur... Respondent

Present for the Appellant : Mr.S.C.Kamra, Advocates
Present for the Respondent: Mr.P.Juneja, D.R.

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

Date of Hearing/Decision: 01/01/2019

Final ORDER NO. 50003 /2019

PER: RACHNA GUPTA

Present is an appeal against the order of Commissioner (Appeals) bearing No. 773(CRM)/CE/JDR/2018 dated 17.07.2018 vide which the appellant has been denied to avail the Cenvat Credit based on supplementary invoices issued by the manufacturer.

2. The appellant is the manufacturer of Rayon Tyre Yarn, Nylon Tyre Yarn and Rayon Tyre Cord Fabric falling under Chapter 54, 55 & 59 respectively of the First Schedule to the

Central Excise Act, 1985. The appellant is utilizing coal for generation of electricity in their power plant and was also availing cenvat credit of excise duty paid on the said input under the provisions of Cenvat Credit Rules, 2004 (CCR, hereinafter). The Department, on an intelligence gathered, has alleged that during the period March, 2012 to December, 2013 the appellants have taken Cenvat Credit of Rs.18,80,841/- on the basis of supplementary invoices raised by the South Eastern Coalfields Ltd., Karba i.e. on account of differential excise duty paid by them, for Royalty Stowing Excise Duty, Niryat, Dev Tax & Env. Tax. The said credit is alleged to have been barred in view of Rules 3 and 9 (1) (b) of CCR 2004 with an intent to avail & utilize cenvat credit wrongly. The Original Adjudicating Authority vide order dated 30th September, 2016 has confirmed the demand as levied which has been upheld by the order under challenge herein. Hence the present appeal.

3. We have heard **Shri S.C. Kamra, Id. Advocate for the appellant and Shri P. Juneja, Id. D.R.** for the Department.

4. The appellant has impressed upon that similar matter has already been decided by the Division Bench of this Tribunal in **Birla Corporation Ltd. vs. CGST, Jabalpur, Final Order No. 52486/2018 dated 3rd July, 2018** and same has been followed by the Single Bench of this Tribunal in decision of **Jaypee Sidhi Cement and Hindustan Zinc Ltd. vs. CGST,**

Jabalpur and CGST Udaipur, vide Final Order No.52540-52541 dated 18th July, 2018. It is impressed upon that since the main issue is still pending adjudication in the Hon'ble Apex Court that both the said decisions have considered that Rule 9 (1) (b) of CCR is not applicable to the given set of circumstances, appeal is accordingly prayed to be allowed.

5. While rebutting these arguments, Id. DR has impressed upon that it was the duty of the appellant itself to ascertain as to whether supplementary invoices so issued were on account of any such factor, which is covered/hit by the exclusion clause of Rule 9 (1) (b). Since the appellant has failed to ascertain the same, the alleged suppression and collusion cannot be ruled out. Resultantly, Rule 9 (1) (b), the permission in first part thereof cannot be extended in favour of the appellant. Appeal is accordingly, prayed to be rejected.

6. After hearing both the parties and perusing the decisions as impressed upon, I observe that the similar line of arguments has been submitted rather by both the parties in both the said matters i.e. about the moot issue of the entitlement of the appellants to avail cenvat credit on the basis of supplementary invoices issued by the Coal Companies. In both these decisions, it has been specifically noted that the connected matters of South Eastern Coal Field Ltd. are pending adjudication before the Hon'ble Apex Court, issue being already sub-judiced the element of confusion cannot be ruled

out. Suppression being altogether contradictory to confusion cannot be made applicable in the given circumstances, unless and until there is some apparent positive act of the appellant on the record. Mere failure of ascertaining about the exclusion part of Rule 9 (1) (b) cannot be held to be the act of suppression or collusion on part of the appellant. Above all, the supplementary invoices have been issued by the Coal Companies, which are the undertakings of the Government of India, there can be no presumption, unless rebutted, of any alleged suppression or collusion.

7. The observations from the Tribunal decision in that case are reproduced below:-

"7. Having considered the rival contentions of both the sides, we take notice that this Tribunal in connected matter of South Eastern Coalfields Ltd. in Appeal No.52023- 52026/2014-DB dated 3.4.2017 vide Final Order No.52723- 52726/2017 dated 3.4.2017, taking notice of pendency of similar matter before the Hon'ble Supreme Court in the case of South Eastern Coal Fields Ltd. and ors. and also other cases, referred to in the above case, disposed of the appeal of the South Eastern Coal Fields Ltd., granting liberty to them to come again after having final verdict from the Hon'ble Supreme Court. Moreover, we are satisfied that there is 4 Excise Appeal No.50308/2018 no element of fraud and suppression on the part of the appellant. The issue herein is recurring in nature. Accordingly, we allow this appeal and hold that the appellant is entitled to take cenvat credit on the supplementary invoices in question. Thus, the appeal is allowed with consequential relief to the appellant."

8. Following the said decision and the above observations, we hereby set aside the order under challenge and allow the appeal. However, parties are granted liberty to come again after verdict from the Hon'ble Supreme Court, if required.

[Dictated and pronounced in the Open Court]

(RACHNA GUPTA)
MEMBER (JUDICIAL)

Anita