CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH AT HYDERABAD
Division Bench
Court – I

Appeal No. E/659/2011

(Arising out of Order-in-Original No. 46/2010 (MP) dated 31.12.2010 passed by Commissioner of Customs, Central Excise & Service Tax, Visakhapatnam-I)

M/s Concast Ferro Inc …..**Appellant(s)**

Vs.

Commissioner of Central Excise, Customs and Service Tax, Visakhapatnam-I …..**Respondent(s)**

Appearance
None for the Appellant.
Shri R. Srinivas, (AR) for the Respondent.

Coram:
Hon'ble Mr. M.V. RAVINDRAN, MEMBER (JUDICIAL)
Hon'ble Mr. C.J. MATHEW, MEMBER (TECHNICAL)

Date of Hearing: 19/02/2018
Date of Decision: 19/02/2018

FINAL ORDER No. A/30463/2018

[Order per: M.V. Ravindran]

This appeal is directed against Order-in-Original No. 46/2010 (MP) dated 31.12.2010.

2. None appeared on behalf of the appellant despite notice. Since the matter is of 2011 we take up the same for disposal even in the absence of any representation.

3. We considered the submissions made by Learned Departmental Representative and the grounds of appeal as in the appeal memorandum.

4. On perusal of records, it transpires that the issue is regarding availment of CENVAT credit during the period March, 2005 to March, 2006 on Pig Moulds and C.I. Castings. It is the case of the Revenue that appellant had availed CENVAT credit on these items without receipt of the same as Central Excise Department having jurisdiction over the suppliers of the materials has recorded that suppliers was not in manufacturing of said Pig Moulds and C.I. Castings. We find that the Adjudicating Authority in paragraph No. 30,31,32 has categorically brought on record that the goods on which CENVAT credit was availed were not manufactured by suppliers of said goods. The reasonings given by the Adjudicating Authority in the impugned orders at the said paragraphs has reproduced.

> *30. Thus, it was brought on record that the goods were not manufactured by the supplier of goods, the fake invoices were issued by them to pass on CENVAT credit without actual supply of goods, the transporters are either denied the said transactions of transportation or found not in existence and none of the vehicle numbers against which the goods were stated to be supplied are got entered in the Integrated check-post to evidence that the vehicles have entered in to the Boarder of the Andhra Pradesh. There was no other alternative valid evidence from the assesses to prove the manufacture, clearances, transportation and receipt of the goods covered in the subject invoices in the factory premises of the assesses. From the above un rebutted material facts, one can easily understand that the subject goods were not actually manufactured and cleared from the place of supplier. In such a case, the discussion on the issue of transportation of the subject goods and receipt of the goods in the factory premises of the assesses is a futile exercise, in the instant case, from the above material facts, any common prudent man, with common knowledge, can easily conclude that the subject goods were not manufactured, not cleared, not transported and not received in the factory of production of the assesses and the entire exercise is made just for fraudulent availment of CENVAT credit on faked invoices against which no goods were supplied.*

31. The assessees' pleading that no proceedings can be issued against the noticee for taking credit on Pig Mould/ C.I. Castings without receipt of the same based on Order-in-Original No. 31/Commr./BOL/10 dated 02.06.2010 of the Commissioner of Central Excise, Bolpur Commissionerate in as much as the said order has not demanded the duty and interest but only imposed penalty, which may likely to be set aside in appeal proceedings as there was no demand of duty, has no force of law. They have failed to note that the Commissioner, Bolpur has clearly held that M/s Burdwan Iron & Steel Company Pvt. Ltd., were consciously indulged in the illegal act of issuing fake invoice to pass on the benefit of CENVAT credit to the sister concern <u>without any manufacture and supply of goods</u>. The duty and interest could not be recovered from them not because M/s Burdwan Iron & Steel Company Pvt. Ltd., are not guilty by their act but for their act of alleged payment of duty on the false clearances using fake invoices. In other words, duty could not be demanded when there was no manufacture and clearance of goods. However, since the unit in Bengal has issued fraudulent invoices to cheat the exchequer, the heaviest amount of penalty was imposed for their conscious indulgement of their illegal act. The sustainability of the imposition of penalty on M/s Burdwan Iron & Steel Company Pvt. Ltd., under Rule 15 of the CENVAT Credit Rules or under other Rules, has no bearing on the quantum of penalty to be imposed on the present assessee but strengthens the denial of illegal CENVAT credit availed by them. The fact of non manufacture of goods and non supply of goods covered under subject fake invoices issued by them to the assesses based on which the assesses availed CENVAT credit, was established beyond doubt therein and this vital fact having greater relevancy to the present issue, could safely be taken into consideration while deciding the present case. The assessee's other contention that other than the non entry of the incoming lorry numbers, the Department has no evidence in support of non receipt of the Pig Moulds/ C.I. Castings is therefore not correct.

32. A number of questions were posed in the reply to the notice by the assesses expecting answers from the department. But they have failed to note that the burden to prove the admissibility of the goods for taking CENVAT credit, is on the person, who takes such credit, but not on the Revenue as per the terms of sub rule (6) of Rule 9 of the CENVAT Credit Rules, 2004, (the text of which is reproduced hereunder for better appreciation).

Rule 9: Documents and accounts

6) The manufacturer of final products or the provider of output service shall maintain proper records for the receipt and consumption of the input services in which the relevant information regarding the value, tax paid, CENVAT credit taken and utilized, the person from whom the input service has been procured is recorded and the burden of proof regarding the admissibility of the CENVAT credit shall lie upon the manufacturer or provider of output service taking such credit.

Accordingly, to avail CENVAT credit on Pig Moulds/CI Castings, the assesses themselves ought to have produced the valid evidence in support of their claim of receipt of the goods into their factory of production rebutting all the other material facts and evidence put forth by the department against to them and in support of the allegation that the CENVAT credit had been availed on fake invoices against which no goods were supplied. It could be seen that no valid evidence has been put forth by the assesse in support of *their claim that the goods covered under the subject invoices were actually been received in his factory of production neither the copies of the assessments of Central Sales Tax nor the endorsement given by the Commercial Tax Officer, Rajam (Annexure-vii) clarifying that it was not mandatory to enter all incoming vehicles in "HOLOOL SOFTWARE" used experimentally came to the rescue of the assesses as there was no piece of evidence that they are for the goods under subject invoices rebutting the material facts brought on record by the department. It is strange to believe that there is a possibility to escape all the vehicles more than 60 in number passed the check post at different intervals on different days without getting entered even at least one vehicle. By not furnishing the reply to the show cause notice for a period of over one year the assesses appears to have made all possible efforts with post thoughts to side track the issue. The assesses have not produced any valid evidence to prove that the subject goods were manufactured by their suppliers, supplied, transported and received in their factory of production.*

5. As against the above factual findings as recorded by the Adjudicating Authority, we find that the appellant has not effectively controverted the said findings in the grounds of appeal and has argued the matter more on limitation. In our view, both on merits as well as on limitation, the Adjudicating Authority has recorded detailed findings which in our view, in the facts and circumstances of this case are acceptable. Accordingly, we hold that the impugned order is correct and legal and does not require any interference.

6. The impugned order is upheld and the appeal stands rejected.

(Operative part of this order was pronounced in open court on conclusion of hearing)

C.J. MATHEW
MEMBER (TECHNICAL)

M.V. RAVINDRAN
MEMBER (JUDICIAL)

Lakshmi….