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

Appeal No. E/1544 & 1545/2011

(Arising out of Order-in-Original No. 02/2011-CE-HYD-III Adjn. Commr dated 11.03.2011 passed by Commissioner of Customs, Central Excise & Service Tax, Hyderabad)

M/s Deepak Galvanising & Engineering Industries Pvt. Ltd., **…..Appellant(s)**

Vs.

Commissioner of Central Tax, Secunderabad - GST **…..Respondent(s)**

Appearance
Shri M. V Sridhar, Advocate for the Appellant.
Shri Bhagat Deepak, (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/30469-30470/2018

[Order per: M.V. Ravindran]

These appeals are filed against the Order-in-Original No. 02/2011-CE-HYD-III Adjn. Commr dated 11.03.2011.

2. The relevant facts that arise for consideration, after filtering out of unnecessary details are the main appellant herein had availed CENVAT credit of Central Excise duty paid on various goods purchased from first stage registered dealers. During the period 2007 to 2008 on verification of the records by the DGEI officers, it was noticed that the description mentioned in the original duty paying documents issued by the registered dealers was different from the description mentioned in the original duty paying documents of the manufacturer coming to a conclusion that appellant had not received the goods of the description mentioned in the duty paying documents of the registered dealers, show cause notice was issued for demand of the amount availed as CENVAT credit with interest and also for imposition of penalties. Appellant contested the show cause notice on merits as well as on limitation. The Adjudicating Authority did not agree with the contentions raised and confirmed the demands with interest and imposed penalties on main appellant as well as the individual on the director.

3. Learned Counsel after taking the Bench through the records submits that appellant places purchase orders for the materials as per the required and procured the same after releasing the purchase orders on the suppliers either manufacturers or registered dealers; the said materials are accepted only if they conform to the specifications mentioned in the related purchase

orders. It is the submission that if the materials do not conform to the specifications they are returned back. It is the submission that for the goods received from registered dealer, the documents are excise invoice of a registered dealer, delivery challan of registered dealer and commercial invoice (tax invoice). It is his submission that they ensure that the documents on which credit is availed contains all the information as prescribed in sub rule 2 of rule 9 of the CENVAT Credit Rules read with Rule 11 of Central Excise Rules. He would then takes through a specific example in respect of supplies made by one of the dealers M/s HST Steels Pvt. Ltd. He would submit that the documents indicate clearly the description of the goods and correlation is made with the order number/ delivery challan and first stage dealer invoices. He would submit that as the recipient of duty paid goods, they are not required to go beyond that and cause verification where the registered dealer had procured the goods as per the description on manufacturing invoice. He would submit that the following case laws as laid down this proposition of law and which are in favour of the main appellant herein.

i. CCE & Service Tax Vs. Juhi Alloys Ltd., [2014 (302) ELT 487 (ALL.)]

ii. CCE, Kanpur Vs. Juhi Alloys Ltd., [2013 (296) ELT 533 (Tri. DEL)]

iii. CCE & C. Ex, Kanpur Vs. RHL Profiles Pvt. Ltd., [2013 (292) ELT 313 (Tri. DEL)]

iv. Luxmi Metal Industries Vs. CCE, Delhi [2013 (287) ELT 487 (Tri. DEL)]

v. Transpek Industries Ltd., Vs. CCE, Vadodara [2010 (249) ELT 91 (Tri. AHMD)]

vi. Elveety Industries Pvt. Ltd., Vs. CCE, Bangalore [2001 (130) ELT 199 (Tri. Chennai)]

vii. CCE, Jaipur Vs. Unichem Trading Co Pvt. Ltd., [1998 (102) ELT 284 (Tri.)]

It is his submission that the demands are hit by limitation as audit parties are fortified the records regularly and the same documents were produced before them; no objections were raised by the audit section and draws our attention to the various audits conducted at the premises; the said submissions were made before the Adjudicating Authority but it was not considered in it is correct perspective.

4. Learned Departmental Representative reiterates the findings of the lower authorities and supports the order.

5. On careful consideration of the submissions made, we find that the facts are not much in dispute. It is the case of the Revenue that the main appellant had availed CENVAT credit wrongly as they are able to explain as to why and how the description of the goods actually received do not tally with the cenvatable invoice issued by manufacturer of the goods and the statements given by the dealers leads to irresistable conclusion is that the goods received are not supported by cenvatable invoices issued by manufacturer of said goods.

6. As we find on perusal of the documents produced by the appellant's counsel as to the receipt of the goods from the trader whose registered dealer, there is a correlation between the goods ordered, delivery challan, commercial invoices and the first stage registered dealer invoice conforms of mentioning the purchase orders and the invoice numbers. The description given in the registered dealer invoice in the column of manufacturer tallies in the description given in the excise invoice in the registered dealers invoice and the description given in the commercial invoice is in accordance with the purchase order number reflected on all the documents. We find that appellant cannot be put to any further strict proof as to call for the documents received by the dealer from the manufacturer and tally the description mentioned in the invoices raised by the registered dealer etc. This law is now fairly settled by the judgment of Hon'ble High Court of Allahabad in the case of *Juhi Alloys Ltd.,* (supra) and various other decisions of the Tribunal as mentioned herein above. On this point itself, the impugned order needs to be set aside.

7. As regards the limitation, we find that the Adjudicating Authority in the impugned order in paragraph No. 35 has recorded that even if the records are audited, audit party will confine its findings to the cenvatable invoice and would not go into the documents like inward register and delivery challan and the audit party presumed that CENVAT invoice would tally with the physical description of the

goods. Suffice to say that these findings are not in consonance with the law as laid down by the Hon'ble High Court of Karnataka in the case of Commissioner of Central Excise, Bangalore-I Vs. MTR Foods Ltd., [2012 (282) ELT 196] and followed by Trans Engineers India Pvt. Ltd., [2015 (40) STR 490 (Tri. – Mum)], we hold the question of limitation has to be held in favour of the main appellant herein. In view of the foregoing, we find appeal is acceptable on merits as well as on limitation, accordingly, we hold that the demands raised on the main appellant are unsustainable and liable to be set aside and we do so. Since we are set aside the demands, question of imposing any penalty on the individual or the main appellant does not arise.

8. In view of the foregoing, the impugned order is set aside and the appeals are allowed.

(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….