IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, KOLKATA
EASTERN ZONAL BENCH: KOLKATA

Appeal No.E/75114/2018, CO-75426/2018

(Arising out of Order-in-Appeal No.157/HWH/CE/2017-18 dated 27.09.2017 passed by the Commissioner of CGST & Central Excise (Appeals-II), Kolkata)

Commissioner of CGST & Central Excise, Howrah
Applicant (s)/Appellant (s)

Vs.

M/s. SKF India Ltd.

Respondent (s)

Appearance:

Shri S.S.Chattopadhyay, Suptd. (AR) for the Appellant (s)
Shri Archit Agarwal, C.A. for the Respondent (s)

CORAM:

Hon'ble Shri P.K.Choudhary, Member (Judicial)

Date of Hearing/Decision:- 28.03.2018

ORDER NO.FO/76060/2018

Per Shri P.K.Choudhary

1. The respondent herein is engaged in the business of manufacturing excisable goods classifiable under Chapter 84 of the First Schedule to the Central Excise Tariff Act 1985. The respondent has manufacturing units located at Pune, Hooghly and Bangalore. They had their depot in Taratala, Kolkata which was subsequently shifted to Dankuni, Hooghly. During the course of scrutiny of their records and documents for the year 2011-2012, it was observed that the respondent had received cenvatable invoices of their Bangalore/Pune unit on stock transfer basis which were addressed to their Taratala Depot, but the goods were actually received in their Dankuni Unit. Show Cause Notice dated 23.03.2013 was issued proposing imposition of

penalty under Rule 26 for abetting the receipt of excisable goods against invalid documents and passing on irregular cenvat credit to their customers. The Adjudicating Authority imposed penalty of Rs.21,34,032/- under Rule 26(2) of the Central Excise Rules, 2002. On appeal, the Commissioner (Appeals), vide the impugned Order, set aside the adjudication order and allowed the appeal filed by the assessee. Now the revenue is in appeal before the Tribunal. Respondent assessee have filed cross-objection.

2. Ld. DR reiterates the grounds of appeal and submits that the goods were consigned to their Taratala Depot, but were received at their Dankuni Depot which is in contravention to statutory provision and accordingly the order of the Commissioner (Appeals) should be set aside.

3. Ld. Counsel for the respondent filed a compilation of case laws and copies of the statutory provisions and submits that the assessee is using ERP system and though the Taratala Depot was already shifted to Dankuni premises, the necessary amendments in the ERP system were not carried out till then and accordingly the invoices issued by the Bangalore/Pune Units reflected that the goods were dispatched to Taratala Depot. Copies of the tax invoices have been filed. Ld. Counsel have also filed copies of the safe express logistic which shows the consignee’s address at Dankuni, Hooghly. He further submits that there is no violation of Rule 11(2) as alleged in the show cause notice and the penalty imposed under Rule 26(2) is not tenable in the eye of law. He further submits that show cause notice mentioned only Rule 26 and no sub-clause had been mentioned, but the Adjudicating Authority has imposed penalty under Rule 26(2) and in view of the settled legal position, such penalty cannot be imposed. In support of his submission he relied upon the following decisions;-

i) Amrit Food vs. Commr. Of C.Ex, U.P. [2005(190) ELT 433 (SC)]

ii) Commr. Of C.Ex, Madurai vs. Fenner (India) Ltd. [2014(313) ELT 3(Mad.)]

(iii) United Telecom Ltd. vs. Commr. Of C.Ex, Hyderabad[2011(21)STR 234(Tri.Bang.)]

(iv) M/s. Bank of Baroda vs. Commr. C.Ex, Jaipur-I [2014(3) TMI 653-Cestat, New Delhi]

4. Heard both sides and perused the appeal records.

5. On perusal of records, I find that it is not in dispute that the goods covered by the invoices were received at Dankuni depot. Only some of the goods that were addressed to Taratala depot were received at Dankuni depot due to the transition of depot operation of the assessee.

6. As per Rule 11(2) of the said Rules, which reads as follows:

> *"The invoice shall be serially numbered and shall contain the registration number, address of the concerned Central Excise Division name of the consignee, description, classification, time and date of removal mode of transport and vehicle registration no., rate of duty, quantity and value of goods and the duty payable thereon."*

It is clear that the invoice should bear the name of the consignee, which in the instant case has been recorded correctly and the same has not been disputed by the department.

7. Rule 26(2) of the Rules, reads as under:

> *"26(2) Any person, who issues-*
>
> *(i) An excise duty invoice without delivery of the goods specified therein or abets in making such invoice; or*
>
> *(ii) Any other document or abets in making such document, on the basis of which the user of said invoice or document is likely to take or has taken any ineligible*

> *benefit under the Act or the rules made thereunder like claiming of CENVAT credit under the CENVAT Credit Rules, 2004 or refund, shall be liable to a penalty not exceeding the amount of such benefit or five thousand rupees, whichever is greater."*

I find that penalty under Rule 26(2) of the Rules is imposable on a person if he (i) issues any invoice without delivery of goods, (ii) issues any document or abets in making such document on the basis of which the recipient of the document avails any ineligible benefit.

8. In the instant case, the assessee had not issued invoices without delivery of goods or that such invoices had enabled their customers to avail any inadmissible credit of duty. Therefore, Rules 11(2) and 26(2) of the Rules are not applicable to the instant case.

9. In view of the above discussion, I find no reason to interfere with the order of the Commissioner (Appeals). Accordingly, the appeal filed by the appellant Revenue is dismissed and the cross objection is disposed of.

(Operative portion of the order already pronounced in the open court)

S/d.
(P.K.Choudhary)
MEMBER (JUDICIAL)

Ss