IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL,
EAST REGIONAL BENCH : KOLKATA

Appeal Nos.E/76668/2017 & CO-76098/2017, E/77072-74/2017

Arising out of Order-in-Appeal No. 42-45/KOL-IV/2017-18 dated 12.06.2017 passed by the Commissioner of Central Excise, (Appeals-II), Kolkata.

Commissioner of Central Excise, Kolkata-IV
Commissioner of GST & Central Excise, Howrah.
...APPELLANT(S)

VERSUS

1. M/s. Bindawala Cables and Conductors Ltd.
2. M/s. Bindawala Electricals Industries Ltd.
4. M/s. Kritika Wires Pvt. Ltd.
3. Mr. Bhagwandas Bindawala, Direcotor.

...RESPONDENT (S)

APPEARANCE
Shri S. Guha, A.C. (AR) for the Appellant (s)
Shri K. P. Dey, Advocate & Shri Harendra Kr. Pandey, Advocate, Shri B. N. Chattopadhyay, Consultant for the Respondent (s)

CORAM:
SHRI P. K. CHOUDHARY, HON'BLE JUDICIAL MEMBER

DATE OF HEARING:-.04.04.2018

DATR OF PRONOUNCEMENT:- 12.06.2018

ORDER NO.FO/A/76235-76238/2018

Per Shri P. K. Choudhary :

Briefly stated the facts of the case are that M/s. Bindawala Cables & Conductors Limited (the assessee), Respondent No. 1 is engaged in the manufacture of various grades of Alluminium Conductors and availed CENVAT Credit under the provisions of CENVAT Credit Rules 2004. In course of investigation against the assessee, it was found that the assessee had availed CENVAT Credit wrongly on M.S. Wire/ Wire Rod showing the purchase of the said goods under the invoices issued by M/s. Kritika Wires Private Limited, M/s. Shivam India Limited without receiving the inputs in their factory. After thorough investigation, a Show Cause Notice dated 16.09.2015 was issued proposing denial of CENVAT Credit along with interest and to impose penalty on the assessee and other persons. The Adjudicating authority disallowed the CENVAT Credit of Rs.20,18,930/- alongwith interest against the assessee and also imposed penalty of equal amount of CENVAT Credit on the assessee, Respondent No. 1 herein. It has also imposed penalty of equal amount of CENVAT Credit on M/s. Bindawala Electricals Industries Limited and penalty of Rs.20,18,930/- on Shri Bhagwan Das Bindawala, Director of the Assessee Company, penalty of Rs.18,12,724/- on M/s. Kritika Wires Private Limited and penalty of Rs.2,06,206/- on M/s. Shivam India Limited. By the impugned Order the Commissioner (Appeals) upheld the Adjudication Order only to the extent of confirmation of demand of

Rs.20,18,930/- alongwith interest and set aside the penalties on the Respondents herein. It is observed that since the assessee had already reversed the CENVAT Credit of Rs.20,18,858/- alongwith interest amounting to Rs.3,698/- the same is accordingly adjusted against the quantum of confirmed demand. Hence, Revenue filed these appeals against the setting aside of penalties on the Respondents.

2. The Learned A.R. for the Revenue reiterates the Grounds of Appeal filed by the Revenue. It is further stated that it is a case of fraudulent availment of CENVAT Credit on the basis of fake invoices and the demand of CENVAT Credit was upheld by the Commissioner (Appeals) and therefore imposition of penalties warranted. It is also submitted that this Tribunal on the identical situation in the case of M/s. Steel Centre & Others Vs. Commissioner of Central Excise, Patna vide Order No. FO/77411-77415/2017 dated 21.09.17 upheld the penalty on the assessee and also reduced the amount of penalty on the co-appellants.

3. The Learned Counsel for the Respondents submitted that the assessee placed Orders for M.S. Wire Rods to various Manufacturers/Sellers, M/s. Kritika Wires Private Limited and Shivam India Limited and the payments were made. The goods were received between September 2010 to March 2011 in a routine manner and the goods were received in their factory and utilized in the manufacture of final products. It is submitted that the assessee found M.S. Wire Rods unviable for M.S. Wire production and the credit taken on the goods before utilization was reversed by them on 31.03.2011. Thereafter, the Central Excise Audit party on or around 17.04.2013 raised the dispute of wrongful availment of credit. It is submitted that the Commissioner (Appeals) rightly set aside the penalties as the Revenue failed to produce any evidence of non receipt of goods by the Respondents. The Learned Counsel also referred to the Case Laws.

4. Heard both sides and perused the appeal records.

5. I find that the assessee is engaged in the manufacture of various grades of Alluminium Conductor. It has been alleged that they have wrongly availed

CENVAT Credit on M.S. Wire and Wire Rod on the basis of the invoice issued by the two companies without actual receipt of the goods from the Suppliers concerned. It has been further alleged that there are only paper transactions. On perusal of the Adjudication Order, it is seen that Shri Bhagwan Das Bindawala, Director of the assessee in his statement dated 05.08.2015 had not seriously refuted the allegation of non-receipt of goods. In any event, it is noticed that the assessee is not disputing the demand of duty, which they have already paid prior to issuance of the Show Cause Notice. The Learned Counsel argued the matter at length in so far as the assessee received the goods at their factory.

6. In my considered view, it is not necessary to go on this issue as the Noticee had already reversed the credit. The case of the Revenue is that the assessee availed the credit in a fraudulent manner and therefore imposition of penalty is warranted under the provisions of Section 11AC of the Central Excise Act.

7. I find that the Commissioner (Appeals) set aside the penalty that there is no evidence produced by the Revenue

to substantiate the fact that the assessee has procured the inputs from elsewhere. It is observed that the allegation of the Revenue, that the assessee was not entitled to avail the CENVAT Credit, since they have only resorted to paper transaction without actual receipt of the impugned goods, to be devoid of merit. The Commissioner (Appeals) proceeded on the basis that the assessee reversed the credit before the issuance of the Show Cause Notice and therefore there was no mala fide intent on the part of the assessee. I am unable to accept such findings of the Commissioner (Appeals). It is evident from the record that the Assessee reversed the credit availed on the basis of the invoices issued by the two supplier companies. It was found that the credit was availed on the basis of the invoices without actual receipt of the goods. Apparently, fact of reversal of credit is linked with non-receipt of the inputs and no other conclusion can be drawn. Hence, the Order of the Commissioner (Appeals) regarding the setting aside of the penalties cannot be sustained. The Tribunal in the identical situation in the case of M/s. Steel Centre (Supra) upheld the demand of CENVAT Credit along with interest and imposition of penalty on the assessee and reduced the penalties on the co-noticees. The relevant portion of the said Order is reproduced below:-

> "4) The findings of the Adjudicating Authority has been challenged by the various appellants mainly on the ground that by claiming that the material covered by the invoices issued by BSE as well as M/s. Steel Centre were received by MCU. Further, the payments for the same had been made by MCU by Account Payee Cheque or through RTGS. It has also been argued that some of the registration numbers of the vehicles indicated in the consignment notes might have been recorded by mistake.
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> 5) It has been argued on behalf of the BSC that penalties may not be imposed on BSC as well as on the partner Shri Bimal Kr. Kheria.
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> 6) The CENVAT Credit availed by MCU on the basis of invoices issued by BSC as well as M/s. Steel Centre. The goods from BSC as well as Steel Centre have been claimed to be transported by UFC and have been accompanied by their consignment notes but the investigation undertaken at the end of UFC has established, through the statement of Shri Bithal Agarwal, that UFC has never undertaken transportation of goods covered by the invoices, issued by the two suppliers. It has been admitted that the consignment notes have been issued only in return of 2% commission. Further, the Department undertook verification of vehicle numbers in the consignment notes of UFC in respect of the both suppliers. But the vehicles shown to have been used for transportation of goods by UFC, were found to be light motor vehicles, Maruti Car, Bajaj Scooters etc. which were not capable of carrying the load as indicated in the consignment notes.

7) Verification of the bills filed at the end of MCU has further established that the invoices and consignment notes attached to goods supplied by BSC, as well as Steel Centre, do not have the weighment slips, Sales Tax, Road permission etc. The enquiry with the Commercial Taxes Authorities of Bihar has further revealed that the relevant forms are required to be issued under Bihar Sales Tax Rules for movement of consignments.

8) On the basis of the above evidences, it is clearly established that no goods accompanied invoices by those two dealers BSC and Steel Centre. Consequently, the CENVAT Credit availed by MCU on the basis of such invoices are irregular and needs to be disallowed.

9) We find that a similar issue of fraudulent CENVAT Credit availment on the invoices issued by first stage dealers came up before the Mumbai Bench of the Tribunal in the case of Bhagwati Steel Casts Ltd. Vs. CCE, Nasik [2013 (293) ELT 417 (Tri-Mumbai) in which Tribunal, vide three Member Bench decision, upheld the order and disallowed the CENVAT Credit on the basis of dealer's invoices which were accompanied by consignment notes in which vehicle numbers were found to be incapable of transporting goods. The above decision is also followed by the Tribunal in the final order No. of Ankit Exim Pvt. Ltd. & others Vs. CCE, New Delhi in final order No. 53839-53841/2017-Ex [DB] dated 09.06.2017.

10) In view of the above discussions, recovery of CENVAT Credit alongwith interest as well as penalty of Rs.1,16,03,673/- imposed against MCU, are upheld.

11) We conclude that the CENVAT Credit availed by MCU on the basis of such fraudulent invoices issued by the two dealers, is required to be reversed alongwith interest. BSE and Steel Centre have issued invoices fraudulently without transacting any goods. UFC has also facilitated such

fraudulent availment of credit. Consequently, we upheld all the penalties imposed in the impugned order for the reasons mentioned therein against various persons. However, in the peculiar facts and circumstances of the present case, we are of the view that the penalties levied on the following persons are too high and merit reduction. Hence we reduce the penalties as follows:

i) Shri Bimal Kr. Kheria, Chairman, MCU from Rs.1,16,03,673/- to Rs.50.00 Lakhs.

ii) Imposition of Penalty reduced to Rs.50.00 Lakhs on M/s. Steel Centre .

iii) Penalty set aside on Shri Bishan Kumar Kheria.

Since penalty has been imposed on M/s. Bhagwati Steel Centre, we feel that no separate penalty is required to be imposed on Shri Bimal Kr. Kheria, partner of M/s. Bhagwati Steel Centre."

7. After considering the facts and circumstances of the case and the ratio of the case laws, the imposition of penalty on Shri Bhagwan Das Bindawala, Director of the Assessee is required to be set aside. However, the Respondents namely M/s. Bindawala Electricals Industries Ltd and M/s Kritika Wires Pvt. Ltd. were involved in the offence and facilitated the assessee to avail the irregular Cenvat Credit in a fraudulent manner and therefore the imposition of penalty is justified.

In view of the above discussion, the impugned Order passed by the Commissioner (Appeals) is modified as under:-

i) Penalty imposed on M/s. Bindawala Cables & Conductors Limited is upheld subject to the option of payment of 25% of duty within 30 days under Section 11AC would be allowed.

ii) Penalty imposed on Shri Bhagwandas Bindawala is set aside.

iii) Penalties imposed on M/s. Bindawala Electricals Industries Ltd. and M/s. Kritika Wires Pvt. Ltd. are reduced to Rs. 2 Lakhs each.

8. All the appeals as filed by the Revenue are disposed off in the above terms. Cross objection filed by M/s Bindawala Cables & conductors Ltd. is also disposed of.

(Pronounced in the open Court on.12.06.2018...)

(P. K. CHOUDHARY)
MEMBER (JUDICIAL)

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