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

Appeal No. E/98/2009

(Arising out of Order-in-Original No. 15/Commr/BOL/2008 dated 04.11.2008 passed by the Commissioner of Central Excise, Bolpur.

M/s. Jai Balaji Industries Ltd.

Appellant (s)

Vs.

Commissioner of Central Excise, Bolpur

Respondent(s)

Appearance:
Shri S. Mohapatra, GM (Taxation) for the Appellant (s)
Shri S. Mukhopadhyay, Suptd. (A. R.) for the Revenue

CORAM:
HON'BLE SHRI P. K. CHOUDHARY, MEMBER (JUDICIAL)
HON'BLE SHRI BIJAY KUMAR, MEMBER (TECHNICAL)

Date of Hearing: -14.06.2018
ORDER NO. FO/76613/2018

SHRI P.K.CHOUDHARY

The facts of the case in brief are that the appellant is engaged in the manufacture of Pig Iron, Sponge Iron, MS Billet and Re-Rolled products, classifiable under Chapter 72 of the First Schedule to the Central Excise Tariff Act, 1985. The appellant's factory is an integrated Steel Plant. The principal Raw-Materials which are Sponge Iron, M. S. Ingot etc. have been procured from different customers as well as from the sister unit of the appellant, namely M/s. Jai Balaji Sponge Ltd., Durgapur. A Show Cause Notice dated 30/05/2007 was issued alleging under valuation.

2. The Adjudicating Authority confirmed the demand of Cenvat Credit along with interest and also imposed equal penalty under Rule 15 (2) of Cenvat Credit Rules, 2004 read with Section 11 AC of the Central Excise Act, 1944. Hence, the present appeal before the Tribunal.

3. The General Manager (Taxation) appeared on behalf of the appellant Company and filed an extract of the Sale Bill Register and a compilation of relied upon decisions and written submissions.

4. It is his submission that the Appellant Company had availed Cenvat Credit on the basis of two supplementary invoices both dated 30/06/2006, issued by M/s. Jai Balaji Sponge Limited in terms of Rule 9 read with Rule 8 of the Central Excise Valuation Rules, 2000.

5. The Ld. Representative further submits that the transaction value of Non-Alloy Steel ingots on which M/s. Jai Balaji Sponge Limited (Unit-II) paid duty was at @ of Rs.12,500/- per MT. It is the case of the Department that they should have paid the duty by taking 110% of the price shown in CAS-4, being assessable value in terms of Rule 9 read with Rule 8 of the Central Excise Valuation Rules, as M/s. Jai Balaji Sping Ltd. (Unit-II) is a related party of the appellant company. The assessable value of Non-Alloy Steel Ingots @ 110% comes to Rs.14,823.42/- Per MT. On being pointed out, M/s. Jai Balaji Sponge Ltd. (Unit-II) paid the differential duty on the differential value and accordingly, issued supplementary invoices to

the appellant company. Now, it is the stand of the Revenue that in terms of the Rule 9 (1) (b) of Cenvat Credit Rules, 2004, supplementary invoices are not valid documents to avail the Cenvat Credit where the differential/additional amount of duty becomes recoverable from the manufacturer or importer of Inputs or Capital Goods, on account of non-levy or short levy by reason of fraud, collusion or any willful misstatement or suppression of facts.

6. The Ld. Representative strongly argued on the following points:

(i) That it is a case of sale of goods to a related buyer. The duty was paid independently and accordingly, supplementary invoices were issued by M/s. Jai Balaji Sponge Ltd. (Unit-II).

(ii) That the duty paying documents were duly submitted to the Department along with monthly returns.

(iii) That it is merely a case of stock transfer of goods from one factory to another factory of the same manufacturer and under the same Commissionerate.

(iv) That the goods were duly received in the factory of the appellant and duty was duly paid by the sister concern i.e. M/s. Jai Balaji Sponge Iron Ltd. (Unit-II).

(v) That Jai Balaji Sponge Iron Ltd. (Unit-II) cleared the goods to the outside parties or to its sister concern for active consumption and were initially discharging the duty of the goods cleared on stock transfer basis to the appellants M/s. Jai Balaji

Industry Limited (Previously known as M/s. Ramrupai Balaji Steel Ltd.) on the basis of sales price to independent buyers. In support of his submissions, he relied upon various decisions.

7. The Ld. DR reiterates the discussions and findings of the Adjudicating Authority.

8. Heard both sides and perused the appeal records.

9. We find that M/s. Jai Balaji Sponge Ltd. (Unit-II) were initially discharging the duty on the goods cleared to their sister concern on stock transfer basis, on the basis of sales price to independent buyers during the relevant period. However, at the instance of the Department, M/s. Jai Balaji Sponge Ltd. (Unit-II) discharged differential duty on the revised assessable value taking into consideration 110% of the cost of manufacture of the goods as per Rule 9 Read with Rule 8 of the Central Excise Valuation Rules, 2000. This has resulted in payment of differential duty. After discharging differential duty, they had issued supplementary invoices in favour of the appellant Company on which the appellant had availed Cenvat Credit.

10. We also find that Rule 9(1) (b) of the Cenvat Credit Rules, 2004 prescribes that Cenvat Credit on supplementary invoices involving sale of goods is denied in the circumstances where suppression of facts, mis-statements etc. are involved.

11. We observe that in the present case, there is no sale of goods, but the differential duty was paid on the stock-transfer of goods by M/s. Jai Balaji Sponge Ltd. to the appellant.

12. We find that the issue is covered by the judgment of the Hon'ble Karnataka High Court in the case of Karnataka Soaps & Detergents Ltd. Vs. CCE, Mysore reported in 2010 (258) ELT 62 (Karnataka).

13. We also observe that the entire exercise is revenue-neutral and therefore, we hold that the Cenvat Credit cannot be denied on the supplementary invoices issued to the sister concern for the differential duty paid.

14. In view of the above discussions, the impugned order is set aside and the appeal filed by the appellant is allowed.

(Operative part of the order was pronounced in the open court.)

Sd/-	Sd/-
(BIJAY KUMAR)	**(P.K. Choudhary)**
Member (Technical)	**Member (Judicial)**

Pooja