IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, KOLKATA

EASTERN ZONAL BENCH: KOLKATA

Appeal No. E/455/2009

(Arising out of Order-in-Original No. 25/Commr/CE/KOL-III/2009-10 dated 14/07/2009 passed by Commissioner of Central Excise, Kolkata-III.)

Allied Ceramic Pvt. Ltd. Appellant(s)

Vs.

Commr. of Central Excise- Kolkata-III Respondent (s)

Appeal No. E/564/2009

Commr. of Central Excise- Kolkata-III Appellant(s)

Vs.

Allied Ceramic Pvt. Ltd. Respondent (s)

Appearance

Shri N. K. Choudhary, Adv. for the Appellant
Shri S. S. Chattopadhyay, Suptd. (A. R.) for the Revenue

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

Date of Hearing-20.12.2018
ORDER NO. FO/77183-77184/2018

PER BENCH

The present appeal is against the Order-in-Original No. 25/Commr/CE/KOL-III/2009-10 dated 14/07/2009.

2. The appellant is a manufacturer of Electro Porcelain Insulators falling under Chapter 85 of the Central Excise Tariff Act, 1985. For manufacture of the goods, the appellant procured Furnace Oil/Fuel Oil from First Stage Dealer, namely M/s. T. Paul & Sons. The department, on scrutiny of invoices of Furnace Oil issued by the said dealer, noted that latter had procured such goods from three manufacturers. (i) M/s.

Concast Ispat Ltd. (ii) M/s. Himadri Chemicals & Industries Ltd. and M/s. Shark Detergent and Cakes Products (P) limited. Since the above three suppliers to T. Paul & Sons were not manufacturers of Furnace Oil, the department came to the conclusion that the appellant had availed Cenvat Credit during the period June 2006 to March 2008 on the basis of M/s. T. Paul & Sons invoices irregularly. The department was of the view that such credits were availed in violation of Rule 3 (1) read with Rule 9 of the Cenvat Credit Rules, 2004. This rule makes it mandatory for the First Stage Dealer to procure the goods directly from manufacturers under the manufacturing invoices before transferring such credit along with goods. The Show Cause Notice dated 31/03/2009 was issued proposing to disallow the credit availed on the basis of the invoices issued by M/s. T. Paul & Sons. The Adjudicating Authority, by passing the impugned order, ordered recovery of the Cenvat Credits along with interest. Further, he also imposed penalty equal to Cenvat Credit in terms of Rule 15 of the Cenvat Credit Rules, 2004 read with Section 11AC of the Central Excise Act. The order has been challenged by the appellant as well as Revenue. The appeal filed by the assessee is on the following grounds which were explained at length by Shri N. K. Choudhary, Ld. Advocate:-

(i) The Department has proceeded to disallow the Cenvat Credit on the basis of an assumption that the suppliers of M/s. T. Paul & Sons did not manufacture the Furnace Oil/Fuel Oil. He emphasized that proceedings were initiated against the three suppliers and also against M/s. T. Paul & Sons separately. The Show Cause Notice issued to T. Paul & Sons ultimately was dropped VAT at the level of Commissioner (Appeals). The Commissioner (Appeals), by passing order No. 21/2010 dated 30/03/2010, held that the three suppliers on the basis of whose invoices, T. Paul & Sons availed credit and subsequently transferred the same, were indeed manufacturers and he dropped the proceedings initiated against T. Paul & Sons. The Ld. Advocate submitted that the above order stands accepted by Revenue. As such, on the basis of the findings of the Ld. Commissioner (Appeals), picture that emerges is that the invoices issued by T. Paul & Sons which form the basis for the assessee to avail such Cenvat Credit, are legal and proper and the Cenvat Credit availed cannot be disallowed.

3. The above arguments were refuted by Shri S. S. Chattopadhyay, Ld. DR. In addition, he also explained the grounds of the appeal filed by Revenue against impugned order. The Ld. DR submitted that the Adjudicating Authority has imposed penalty under Rule 15 of the Cenvat Credit Rules, 2004 read with Section 11AC of the Act. It is Revenue's Contention that in addition to penalties as above, the Adjudicating Authority should have imposed penalty under Rule 15 (1). The Revenue's submission is that penalty already imposed is to be considered as penalty imposed in terms of Rule 15 (2).

4. Ld. DR also submitted that the invoices based on which T. Paul & Sons had availed Cenvat Credit have been issued by the three manufacturers for supply of goods without manufacturing the goods in

their respective factories. As such, he supported the findings of the Adjudicating Authority and prayed that the same may be upheld with imposition of penalty in addition to under Rule 15 (1).

5. We propose to decide both appeals through this common order because they are against the same impugned order. The allegation against the assessee is that they have availed Cenvat Credit on the basis of invoices issued by M/s. T. Paul & Sons, who is registered as a First Stage Dealer. As per Rule 3(1) read with Rules 9 of the Cenvat Credit Rules, 2004 a, First Stage Dealer is required to procure the goods directly from a manufacturer and is allowed to availed Cenvat Credit of Duty paid by the manufacturers and subsequently, transfer the same by issue of their invoices along with goods. The allegation is that M/s. T. Paul & Sons has availed the credit on the basis of invoices issued by three suppliers who are no doubt manufacturers. But Revenue is of the view that these manufacturers issued such invoices for supply of goods which they did not manufacture, but have supplied them from their factory as such. The Revenue appears to have initiated separate proceedings against M/s T. Paul & Sons for ir-regular issuing Cenvat invoices to the assessee and others, but the proceeding initiated against them appears to have achieved finality with dropping the proceedings. A copy of the order passed by the Commissioner (Appeals) in this regard, in favour of T. Paul & Sons has been submitted by Ld. Advocate.

6. After perusal of the same, we note that the allegation that T. Paul & Sons have transferred Cenvat Credit on the basis of ir-regular invoices stand dropped. The only reason for disallowing the credit availed by the

assessee in the present case is that the invoices issued by T. Paul & Sons are not backed by manufacturer's invoices. These grounds appear to pale in the light of the decision passed by the Commissioner (Appeals). We also note that the Revenue has not brought on record any other evidence to support the ground that the three suppliers of goods to M/s. T. Paul & Sons were not manufacturers or have issued such invoices for goods not manufactured by them.

7. In view of the above, we find no reason to disallow the Cenvat Credit. The impugned order is set aside and appeal filed by M/s. Allied Ceramic Pvt. Ltd. is allowed. Consequently, the appeal filed by Revenue is rejected.

(Dictated and Pronounced in the Open Court)

Sd/-
(P. K. CHOUDHARY)
MEMBER (JUDICIAL)

Sd/-
(V. PADMANABHAN)
MEMBER (TECHNICAL)

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