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

Ex. Appeal No.517 of 2009

Arising out of Order-in-Appeal No.58-60/JSR/2009 dated 30.06.2009 passed by Commr. (Appeals) of Central Excise & Service Tax, Ranchi

M/s Bhawani Press Metal & Body Building Pvt. Ltd.
VIth Phase, Adityapur Industrial Area,
Gamharia,
Jamshedpur-831001.

APPELLANT

VERSUS

CCEx. & S.Tax, Ranchi
143, New Baradwari,
Sakchi,
Jamshedpur-831001.

RESPONDENT

APPEARANCE

Shri S. Bagaria, Advocate & Shri I.Banerjee, Adv. for the Appellant
Shri D. Halder, Authorized Representative for the Respondent

CORAM:

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

DATE OF HEARING : 03.07.2019
DATE OF PRONOUNCEMENT : 30.07.2019

FINAL ORDER NO.75933/2019

Per Shri P. K. Choudhary :

Heard both sides and perused the appeal records.

2. The disputes in the present appeal can be summarized as under :

(a) Modvat credit sought to be denied on the basis of supplier's private register – Rs.91,497/- ;

(b) Modvat credit sought to be denied alleging short receipt of inputs vis-à-vis figures shown in invoices evidenced by so called private register of M/s Vinayak Metal & Chemicals – Rs.24,921/- ;

(c) Modvat credit sought to be denied alleging non-entry of receipt of goods on the basis of appellant's gate register – Rs.2,20,903/- ;

Total Modvat credit denied of Rs.3,37,321/-

3. The Ld.Advocate appearing on behalf of the appellant made the Bench go through at page 3 in Para 4.1 of the Show-Cause Notice dated 28.04.2003, wherein it is mentioned that modvat credit to the tune of Rs.91,497/- was availed on the basis of invoices issued by M/s Vinayak Metal & Chemicals, Bokaro. It is also recorded that the private documents containing the details of sale of M/s Vinayak Metal & Chemicals, Bokaro, for the period 2000-2001, was seized by the Officers of DGCEI, Regional Unit, Jamshedpur, on 12.01.2001. It has been alleged that no sale was recorded in the private register in respect of the invoices. However, the details of the invoices were recorded in RG 23D. It has been further observed that there is nothing on record to show that who has authored the private/rough register. No statement has been recorded from the author of the private/rough register and further it has not been ascertained that who has authored the same. The proprietor of M/s Vinayak Metal & Chemicals, during the course of investigation, in his statement, has submitted that the purchase and sale of goods are duly recorded in RG23D and on that basis, the excise invoices are issued.

4. Regarding next issue, on going through Para 5 of the Show-Cause Notice, I observe as follows :

Sl.No.	Invoice No.	Quantity as per Private documents (MT)	Quantity (MT)
1.	07 dt.29.06.2000	9.420	21.220
2.	09 dt.04.08.2000	20.83	21.150
3.	10 dt.05.08.2000	18.250	18.320

5. Here, in the above matter, I observe that the transporter's statement has not been recorded.

6. Regarding third issue, it has been discussed at page 5 in Para 6 of the Show-Cause Notice, which refers to the statement of Shri Sunil Kumar Agarwal, Director of the Appellant Company, recorded on 22.11.2001.

7. Regarding maintenance of Gate Register, I find that it is not a statutory register and is being maintained by the Guard at the Gate. The Guards were mostly illiterate and they record the details in a very casual manner and sometimes do not record at all. It is further observed that the allegation raised by the Department regarding availment of modvat credit of Rs.91,917/- is on the basis of investigation of the third party documents. I also find that during course of such operation, the Department had seized all the documents evidencing to receive the materials at the factory premises of the appellant and there is no dispute regarding genuineness of all the documents and accordingly, it cannot be held that the modat credit has wrongly been availed.

8. Here, as per the table above, the Department has tried to compare the private documents of M/s Vinayak Metal & Chemicals, Bokaro with the statutory records of the appellant and have arrived at a differential quantity and consequently, the modvat credit has been disallowed. On going through the above Table, I do not find any discrepancies in the invoices dated 04.08.2000 and 05.08.2000. However, if the invoices are tallying with the statutory register, there is no occasion to rely on the rough jottings/ private register of the third party to ascertain the eligibility of modvat credit in the appellant case. There is no dispute that the goods have not been consumed or sought consumed.

9. Regarding the last final dispute, where the short receipt of materials has been alleged on the basis of gate register maintained at the gate of the factory premises of the appellant by the security guard. It is observed that the security guard of the Company are not educated and during change of shift etc., there is every possibility of any entering the details in the gate register. Further, all the documents evidencing the receipt of materials, such as, transport receipt, bills, challans etc. of materials, were available with the appellants and most of these documents were already seized by the Department. Thus, the denial of benefit of modvat credit merely on the basis of non-recording of entries in the so-called gate register maintained by the security guard at the gate, is not justifiable. It is

further pointed out that to avail modvat credit, the following conditions are required to be complied with :

(1) The goods i.e. inputs should be received ;

(2) The goods i.e. inputs received should be supported with proper documents ;

(3) The inputs should be consumed to manufacture the final products.

10. I find from the record that the Department has not pointed out any instance of non-receipt of materials, non-uses of materials for final production or manufacture and has not disputed the documents supporting the receipt of materials. Since the gate register is not a prescribed document in terms of Cenvat Credit Rules, 2004 and the purposes of which is only to show the receipt of the materials at the factory gate, it cannot be held to be a conclusive evidence so as to arrive at the finding of the non-receipt of the goods. Further, when the goods have been entered in the statutory records, modvat credit cannot be denied. When the details of inputs stand entered into the statutory register, non-entry of the same in the private record maintained by the third party, will not dis-entitle the appellant assessee to avail credit, specially, when there is no allegation or evidence showing non-receipt of such inputs. As such, I find no merit in the Revenue’s contention.

10. In view of the above discussion, the impugned orders are set aside and the appeal filed by the appellant is allowed.

(Pronounced in the open Court on 30.07.2019)

Sd/

(P. K. CHOUDHARY)
MEMBER (JUDICIAL)

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