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

REGIONAL BENCH - COURT NO.2

Excise Appeal No.70943 of 2013

(Arising out of Order-in-Appeal No.34/KOL-II/2013 dated 11 June 2013 passed by Commissioner of Central Excise(Appeals), Kolkata-III.)

M/s. Bhawani Alloys & Engineering Company
(P-239, Benaras Road, Belgachia,
Howrah-711108.)

...Appellant

VERSUS

Commissioner of Central Excise, Kolkata-III

.....Respondent

(Kendriya Udpad Shulk Bhawan, 180, Shantipally,
R.B.Connector, Rajdanga, Main Road, 6th Floor, Kolkata-7.)

APPEARANCE

NONE for the Appellant (s)
Shri S.S.Chattopadhyay, Authorized Representative for the Respondent (s)

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

FINAL ORDER NO. 76569/2019

DATE OF HEARING : 24 October 2019
DATE OF DECISION : 24 October 2019

P.K.CHOUDHARY :

None appeared on behalf of the appellant. Since the appeal pertains to an earlier period, the same is being taken up for hearing with the consent of the learned Authorized Representative for the Respondent Revenue.

2. The present appeal is filed by the appellant against Order-in-Appeal No.34/KOL-II/2013 dated 11 June 2013 passed by Commissioner of Central Excise(Appeals), Kolkata-III.

3. The facts of the case in brief are that the appellant is engaged in the manufacture of Motor Vehicle parts and accessories classifiable under Chapter 85 and 87b of the First Schedule to the Central Excise Tariff Act, 1985. The period of dispute is from August 2008 to October 15, 2011. The issue relates to availment and utilization of Cenvat Credit. The appellants purchased the input materials from M/s.Tata Ryerson Limited (M/s.TRL), who sold the said goods as registered dealer. M/s.TRL had received the goods from M/s.Tata Steel Limited (M/s.TSL), a manufacturer thereof, for carrying out certain processes. M/s.TSL cleared the goods to M/s.TRL upon payment of Central Excise duty. On account of price increase, M/s.TSL raised Debit Notes subsequently for its entire sale to M/s.TRL for the differential amounts. M/s.TRL passed on the burden of such Debit Notes, including the differential Central Excise duty element involved to its customer including the appellants, by raising supplementary invoices. The differential duty was paid by M/s.TSL. Show-cause notice dated 13.03.2012 was issued alleging that the appellant had taken Cenvat credit of duty passed on by M/s.TRL, a registered dealer, under supplementary invoices issued by M/s.TRL, which were not considered as eligible documents as per Rule 9(1)(b) of the Cenvat Credit Rules, 2004. Show-cause notice proposed disallowance and recovery of alleged wrongly availed Cenvat credit along with interest and also imposition of penalty. The Adjudicating authority disallowed the Cenvat credit availed and utilized on the supplementary invoices and demanded of Rs.42458/- along with interest and imposed penalty of equal amount under Rule 15 of the Cenvat Credit Rules, 2004 read with Section 11AC of the Central Excise Act, 1944. Hence, the present appeal before the Tribunal.

4. The learned Authorized Representative submitted a copy of the Final Order No.FO/76435/2018 dated 15.05.2018 in respect of Excise Appeal No.75 of 2012, in the case of Pushkar Techno Private Limited wherein the Tribunal on identical facts had decided the appeal in favour

of the assessee. He further submts that the facts of the present case are squarely covered by the aforesaid decision of the Tribunal.

5. We find that the input supplier also issued supplementary invoices to the appellants whereby additional duty was paid. We do not find any reason to hold that the supplementary invoice evidencing payment of additional duty amount should be treated on a different footing vis-à-vis the original invoices evidencing payment of duty on the said goods in as much as both these documents were issued under the same provisions of law. If the appellant were entitled to take credit on their inputs on the strength of the original invoices issued by the supplier, they can validly claim to be entitled to take Cenvat credit of the additional amounts of duty paid on the same goods by the supplier under the supplementary invoices. In any case it was not in dispute that the inputs were received in the appellant's factory. The substantive requirement of Cenvat credit were thus met by the party. The benefit was not liable to be denied on procedural grounds.

6. In view of the above discussions and under the facts and circumstances of the case, the impugned order is set aside and the appeal filed by the appellant is allowed with consequential benefits, if any.

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

SD/

(P.K.CHOUDHARY)
MEMBER (JUDICIAL)

SD/

(BIJAY KUMAR)
MEMBER (TECHNICAL)

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