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

Excise Appeal No.258 of 2010

(Arising out of Order-in-Original No.01/Commr./Bol./10 dated 12.01.2010 passed by Commr. of Central Excise, Bolpur)

M/s Jai Balaji Industries Ltd.
5, Bentinck Street, Kolkata-700001

Appellant

VERSUS

CCEx., Bolpur
Nanoor Chandidas Road, SIAN, Bolpur, Dist.-Birbhum, Pin-731204

Respondent

Appearance:

Shri S.Mahapatra, G.M. (Taxation) for the Appellant
Shri T.Mondal, Authorized Representative for the Respondent

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

FINAL ORDER NO.77032/2019

DATE OF HEARING : 25.10.2019
DATE OF DECISION : 25.10.2019

PER P.K.CHOUDHARY :

Briefly stated, the facts of the case are that the appellant is having its Unit III, comprising Mini Blast Furnace, Steel Melting Shop and Sinter Plant for manufacture of Pig Iron, M.S.Ingots and Billets at Banskopa, P.O. Ranbahdh, Durgapur, West Bengal. During the impugned period, the appellant was setting up second Mini Blast Furnace, Steel Melting Shop and Sinter Plant at its said Unit III. It is contented by the appellant :-

1.1 That while procuring different plant and machinery, equipment's, instruments appliances from different manufacturers/dealers to implement the said plants, the appellant had procured Gear Boxes of different capacities, Tiling Unit and Dispenser Unit for Desulphurization

Plant and a few other mechanical components/ parts of the plant and machinery installed in the said Sinter Plant and the said Steel Melting Shop from Messrs. Ashok Electrical Stampings (P) Ltd. (hereinafter referred as ‘the said manufacturer supplier’) during the period from May,2007 to Oct.,2007.

1.2 That the appellant’s sister Unit-IV already had regular dealings with the said manufacturer supplier over past many years and they were the approved vendors for the company, their existence from Registrar of Companies, their registration under Central Excise, Sales Tax / VAT Laws had thus stood verified. The copies of certificate of Incorporation after change in their name, PAN Card, Excise Registration Certificate and CST and WBST Registration certificates obtained from the said manufacturer supplier are annexed hereto collectively marked as ANNEXURE-A of the Paper Book.

1.3 That for procurement of such mechanical components / parts of the plant and machinery including gear boxes of different capacities from the said manufacturer supplier, the appellant had either placed fresh purchase orders or issued repeat orders or amendments for increasing / decreasing the ordered quantities. A few specimen copies of such purchase order / repeat orders / amendments are annexed hereto as ANNEXURE-B of the Paper Book.

1.4 That as per its policy and procedure, the appellant had received the supplies of the ordered goods under the cover of the supplier’s Road Challan and excise invoice issued in terms of Rule 11 of Central Excise Rules, 2002 duly signed by the authorized person. Such Road Challans and excise invoices contain all the particulars including the ECC No, CST No., W.B. VAT No. Description of goods alongwith CETH, assessable value and excise duty paid thereon. The copies of the Road Challans collectively marked as ANNEXURE-C of the Paper Book and relevant Excise Invoices together with relevant commercial invoices collectively marked as ANNEXURE-D of the Paper Book for the supplies made by the said manufacturer supplier.

1.5 That on receipt of supplies of the ordered components / parts goods, the appellant invariably prepared Goods Receipt Note (GRN). The copies of the said GRNs for receipt of goods from the said manufacturer supplier collectively marked as ANNEXURE-E alongwith a Statement showing complete detail of the goods so received from the manufacturer supplier including particulars of invoice, Purchase order Reference, place of installation and GRN reference, cenvat credit availed etc. collectively marked as ANNEXURE – F of the Paper Book.

1.6 That on the strength of the excise invoices of the said manufacturer supplier under the cover of which the parts / components were received from them, the appellant had as usual availed the cenvat credit in terms of sub-rule 2(a) of Rule 4 of Cenvat Credit Rules, 2004 to the extent of 50% of the duty suffered thereof in the year of the receipt of the said components / parts i.e. 2007-08 and balance 50% in the ensuing year i.e. 2008-09.

1.7 That the cenvat credit so availed was duly reflected in the ER-1 Returns, full details of duty paying documents including name of the supplier along with their ECC Nos., the amounts of cenvat credit availed and description of goods along with CETH thereof were disclosed in a computerized Register maintained in RG23C Part II format, a hard copy whereof was filed by it with the jurisdictional Central Excise Range Office along with ER-1 Returns for the respective month. While the copies of such Cenvat Credit Availment Register maintained in RG23C Part II format stand seized, the ER-1 Returns for the months of May, Sept and Oct., 2007, are annexed hereto collectively marked as ANNEXURE-G of the Paper Book

1.8 That the bills for supplies of components and parts by the said manufacturer supplier and the [payment of such bills were duly entered in the appellant's books of accounts as and when the transaction had occurred. The entries of such bills and their payments are clearly apparent from the appellant's books of Account. In the context, the appellant annexed hereto a copy of said manufacturer supplier's account appearing in its Ledger as ANNEXURE-H.

1.9 That from time to time the appellant had issued cheques for settling the bills of the said manufacturer supplier in full which comprised the cost of the capital goods, central excise duty and educ. Cess payable thereon and the VAT reflected in the Tax invoice issued under W.B. VAT laws. A few extracts of the bank statements reflecting the payment made by the appellant to the said manufacturer supplier are annexed hereto as ANNEXURE-I of the Paper Book.

1.10 That the appellant had paid to the said manufacturer supplier from time to time for the entire quantity of the capital goods purchased by it from them.

1.11 That all the capital goods in question were installed from time to time in the appellant's plant and almost all of them exist and are in use even as on date. For ready appreciation, a few photographs of the subject capital goods forming part of appellant's plant are annexed hereto as ANNEXURE-J of the Paper Book.

2. Show cause notice dated 05.05.2009 was issued alleging availment of credit of cenvat without actual receipt of the capital goods i.e. machine and mechanical appliances during the period May, 2007 to October, 2007. The Adjudicating Authority confirmed the demand of Rs.79,31,000/- along with applicable interest and imposed an equal amount of penalty and a penalty of Rs.50,000/- under Rule 15 (2) of the Cenvat Credit Rules, 2004 read with Section 11AC of the Central Excise Act,1944. Being aggrieved with the findings of the Adjudicating Authority, the appellant has filed this appeal before the Tribunal.

3. Heard both sides and perused the appeal records.

4. We find that the appellants availed cenvat credit on the basis of invoices issued by the manufacturer having Central Excise Registration Certificate issued by the Central Excise Department. The contention of

the appellants is that they ensured about the existence of the supplier-factory having registration certificate issued by the Central Excise Department. The contention is that they paid the amount by Account Payee Cheques after ensuring the existence and identification of the firm. The Cheques were duly encashed by the supplier-manufacturer. In these circumstances, there was no scope for the applicant to suspect anything wrong with the manufacturer. The contention is that they received the capital goods in their factory under the cover of Central Excise invoices issued by the manufacturer and there could be no suspicion of anything wrong. The contention is that there is no evidence whatsoever in the entire show-cause notice that they know or had the knowledge that the duty paying documents were not proper and valid and any irregularities at the end of the supplier. The contention is that the machines are in existence in their factory. In support of their contention, they also placed reliance on the Tribunal's decision in the case of Sunvik Steels Ltd. Vs. Commr. of Central Excise, Bangalore reported in 2012 (276) ELT 518 (Tri.-Bang.), wherein the appeal of assessee in respect of goods supplied by the same supplier, has been allowed.

5. The Ld.A.R. for the Revenue, reiterated the findings of the Ld.Commissioner.

6. We find that the Department did not submit anything to controvert the contention of the appellant that they availed cenvat credit on the basis of invoices issued by the manufacturer having Central Excise Registration. They have paid the amount by Account Payee Cheques and the machines are in existence in the factory of the appellant. The Tribunal in the case of Sunvik Steels Ltd. (cited supra) has allowed the appeal of the assessee in respect of goods supplied by the same supplier. We also find that this issue was also before the Hon'ble High Court of Allahabad for consideration in the case of CCEx., Cus. & Service Tax Vs. Juhi Alloys Ltd. : 2014 (302) ELT 487 (All.), wherein the Hon'ble High Court held as under :

"***7.*** *In the present case, both the Commissioner (Appeals) and the Tribunal have given cogent reasons to indicate that the assessee had taken reasonable steps to ensure that the inputs in respect of which he has taken the Cenvat credit are goods on which the appropriate duty of excise, as indicated in the documents accompanying the goods, has been paid. Admittedly, in the present case, the assessee was a bona fide purchaser of the goods for a price which included the duty element and payment was made by cheque. The assessee had received the inputs which were entered in the statutory records maintained by the assessee. The goods were demonstrated to have travelled to the premises of the assessee under the cover of Form 31 issued by the Trade Tax Department, and the ledger account as well as the statutory records establish the receipt of the goods. In such a situation, it would be impractical to require the assessee to go behind the records maintained by the first stage dealer. The assessee, in the present case, was found to have duly acted with all reasonable diligence in its dealings with the first stage dealer.*

The view which the Tribunal has taken is consistent with the judgment of the Jharkhand High Court in Commissioner of C. Ex., East Singhbhum v. Tata Motors Ltd. - 2013 (294) E.L.T. 394 (Jhar.), where it was held as follows :-

"... Once a buyer of inputs receives invoices of excisable items, unless factually it is established to the contrary, it will be presumed that when payments have been made in respect of those inputs on the basis of invoices, the buyer is entitled to assume that the excise duty has been/will be paid by the supplier on the excisable inputs. The buyer will be therefore entitled to claim Modvat credit on the said assumption. It would be most unreasonable and unrealistic to expect the buyer of such inputs to go and verify the accounts of the supplier or to find out from the department of Central Excise whether actually

duty has been paid on the inputs by the supplier. No business can be carried out like this, and the law does not expect the impossible."

8. *The judgment of the Division Bench of the Himachal Pradesh High Court in A.B. Tools Limited v. Commissioner of Central Excise - 2010 (256) E.L.T. 382 (H.P.), on which reliance has been placed by the revenue, does not indicate that any contrary view of the law has been taken.*

9. *Ultimately, the issue in each case is whether, within the meaning of Rule 9(3) of the Rules of 2004, the assessee has taken reasonable steps to ensure that the inputs in respect of which he has taken Cenvat credit were goods on which appropriate duty of excise was paid. Once it is demonstrated that reasonable steps had been taken, which is a question of fact in each case, it would be contrary to the Rules to cast an impossible or impractical burden on the assessee.*

10. *For the aforesaid reasons, these appeals do not give rise to any substantial question of law. They are, accordingly, dismissed."*

We find that the ratio of the abovementioned judgment of the Hon'ble High Court is squarely applicable to the facts of the present case.

7. By respectfully following the aforesaid judgement of the Hon'ble High Court of Allahabad, we set aside the impugned order and allow the appeal filed by the appellant.

(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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