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

REGIONAL BENCH – COURT NO.2

Excise Appeal No.77871 of 2018

(Arising out of Order-in-Appeal No.691/HWH/CE/2017-18 dated 23.03.2018 passed by Commr. (Appeals) of Central Excise, Kolkata II)

M/s Mahendra Traders
14/2, Old China Bazar Street, 3rd Floor, Room No.223, Kolkata-700001

Appellant

VERSUS

CGST & Excise, Howrah
15/1 Strand Road, Kolkata-700001

Respondent

APPERANCE :

Shri Shyamal Dey, Advocate for the Appellant
Shri S. Mukhopadhyay,Authorized Representative for the Respondent

CORAM:
HON'BLE MR. P.K.CHOUDHARY, MEMBER (JUDICIAL)

FINAL ORDER NO…75117/2020

DATE OF HEARING : 22.01.2020
DATE OF DECISION : 22.01.2020

PER P.K.CHOUDHARY :

Heard both sides and perused the appeal records.

2. I find that M/s Steel Authority of India Ltd.- Bokaro Steel Plant had manufactured the goods and appointed M/s Steel India as their consignment agent. M/s Steel India delivered the goods to M/s BMP Metal and sold to M/s Mahendra Traders i.e. the appellant. However, from the copy of MoU signed by both M/s SAIL, Bokaro Steel Plant and M/s Steel India dated 4th April, 2005 (valid from 01.04.2005 to 31.03.2007), it was stated that the contract will be entered between the parties to MoU for supply of the same for direct dispatch. I further find that the lower appellate authority has discussed the issue in detail in respect of MoU between M/s SAIL, Durgapur and M/s Mahendra Steel Traders Pvt. Ltd. dated 29.04.2005 (valid from 01.04.2005 to

31.03.2008). In this connection, Para 7 of the Order-in-Appeal dated 23.03.2008 is reproduced below :

> *"7. Regarding the invoices issued by M/s Bengal Steel Co. wherein M/s SAIL,DSP, Durgapur was manufacturer of the impugned goods, the lower authority found that the goods were actually sold by the manufacturer to dealer M/s Mahendra Steel Traders (P) Ltd. and the said dealer sold those to M/s Bengal Steel Co. who thereby, considered as second stage dealer. The appellant claimed that M/s Mahendra Steel Traders (P) Ltd. was consignment agent of M/s SAIL but the lower authority ascertained from their PAN both that they were not related. But I find this conclusion not reasonable. Further, from the copy of MoU signed by both M/s SAIL and M/s Mahendra Steel Traders (P) Ltd. dated 29.04.2005 (valid from 01.04.05 to 31.03.08), I find that it was stated that contracts will be entered between parties to the MoU for supply through direct dispatch. While considering the definition of consignment dealer, the Board's Circular No.59/8/2003-ST dated 20.06.2003 may be considered wherein it is stated that : "A consignment agent's job is to receive the goods from the principal and dispatch them on the directions of the principal……." Further in the case of M/s Style Cell Vs. CCE, Mangalore [2007(8) STR 176 (Tri.-Bang.), it is discussed that :*
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> *"The Commissioner (Appeals) has examined the definition of the terms 'Consignment Sale' in terms of Blacks Law Dictionary which defines that it is sale of an owner's property by a third party entrusted to make the sale."*
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> *Hon'ble Tribunal also accepted the above view while deciding the case. Though the above citing are related to service tax, I think those are applicable here too define the act and doing of M/s Mahendra Steel Traders (P) Ltd. and I do not accept that they acted as a first stage dealer while selling goods on behalf of M/s SAIL to M/s Bengal Steel Co. who is a dealer. Therefore, the assumption of the lower authority to consider the later one as second stage dealer appears to be not justifiable. The invoices in*

question issued by M/s Bengal Steel Co. to the appellant are not ineligible for passing on credit to their buyers."

3. In view of the above discussion, the impugned order is set aside and the appeal filed by the appellant is allowed with consequential relief, if any.

(Dictated and pronounced in the open court.)

Sd/

(P. K. Choudhary)
Member (Judicial)

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