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

REGIONAL BENCH – COURT NO.2

Service Tax Appeal No.4 of 2010

(Arising out of Order-in-Original No.02/Commr./CE/SLG/09-10 dated 07.10.2009 passed by Commissioner of Central Excise & Service Tax, Siliguri)

M/s Sapphire Papers Mill
Jagannathpur, Bidhan Nagar, Dist.-Darjeeling

Appellant

VERSUS

Commissioner of Central Excise & Service Tax, Siliguri
C.R.Building,4th Floor,Haren Mukherjee Road, Hakimpara,Siliguri-734001

Respondent

APPERANCE :

Shri N.K.Chowdhury, Advocate of the Appellant
Shri J.Chattopadhyay, Authorized Representative for the Respondent

CORAM:
HON'BLE MR.ASHOK JINDAL, MEMBER (JUDICIAL)
HON'BLE MR.K.ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NO...76075/2023

DATE OF HEARING : 11 .07.2023

DATE OF PRONOUNCEMENT: **14.07.2023**

Per Ashok Jindal :

The appellant is in appeal against the impugned order wherein the cenvat credit has been denied to the appellant for the period 01.03.2005 to 05.08.2005.

2. The facts of the case are that an investigation was conducted by the Department in the premises of one M/s Ashoke Electrical & Stampings Pvt. Ltd. on 2nd March, 2006 and it was found that they have no sufficient manufacturing infrastructure available in the factory to manufacture Electric Motors, Control Pannels, Transformers etc.

reflected in their statutory records and returns. There was no stock of inputs or finished goods in the factory cum office premises.

2.2 On the basis of the investigation conducted against M/s Ashoke Electrical & Stampings Pvt. Ltd., it was alleged that the capital goods cleared by the said M/s Ashoke Electrical & Stampings Pvt. Ltd. to the appellant, are not their manufactured goods. Therefore, the appellant has taken cenvat credit on the invoices issued by M/s Ashoke Electrical & Stampings Pvt. Ltd. is not available to the appellant as it is merely a paper transaction. The capital goods have not been received by the appellant through M/s Ashoke Electrical & Stampings Pvt. Ltd..

2.3 On the basis of that, a show-cause notice dated 12.06.2009 was issued to the appellant for recovery of the cenvat credit along with interest and to impose penalty alleging that the invoices issued by the manufacturer were not genuine and the appellant has indulged in paper transaction without bringing the capital goods in their factory in connivance with the supplier.

2.4 The matter was adjudicated. The demand on account of denial of cenvat credit was confirmed along with interest and an equal amount of penalty was imposed on the appellant . Against the said order, the appellant is before us.

3. The ld.Counsel for the appellant, submits that the appellant has received the capital goods along with invoices and the payment thereof has been made through A/c Payee Cheques and the capital goods are installed in their factory and were available during the said period for manufacture of their final product and were also used for manufacture of their final product. As the appellant has availed the cenvat credit on

the basis of invoices issued by the manufacturer and the suppliers were maintaining all records and submitted ER-1 Returns and the appellants have no knowledge on duty paying documents properly. In that circumstances, the cenvat credit cannot be denied to the appellant as they have paid duty on capital goods installed in their factory. Therefore, the impugned order is to be set aside and also the demand is barred by limitation. To support, he relied on the decisions of this Tribunal in the case of Sunvik Steels Limited : 2012 (276) ELT 518 (Tri.-Bang.) and Dhakad Metal Corporation : 2015 (330) ELT 561 (Tri.-Ahmd).

4. On the other hand, the ld.A.R. for the Revenue drew our attention to the fact that the supplier/manufacturer of the capital goods, on which the appellant has taken cenvat credit, was not having manufacturing facility in their premises. Therefore, the said capital goods have not been received by the appellant. In that circumstances, the cenvat credit has rightly denied.

5. Heard the parties and considered the submissions made from both the sides.

6. On careful consideration of the submissions made from both the sides, we find that in this case the short issue involved whether the appellant is entitled to take the cenvat credit on the strength of the duty shown in the invoices by the supplier of the capital goods or not ?

7. It is the fact on record that the appellant has availed cenvat credit on capital goods procured from the supplier/manufacturer against duty paying documents, who was having Central Excise Registration. In that circumstances, the cenvat credit cannot be denied to the appellant as

held by this Tribunal in the case of Sunvik Steels Limited (supra), wherein this Tribunal has observed as under :

> *"**4.** I have considered the submissions made by both the sides. The Cenvat credit has been denied and penalty has been imposed on the ground that the supplier did not have the infrastructure for manufacture of the goods. According to the facts that emerge from the adjudication order of the Commissioner, the supplier M/s. Ashok Electrical Stampings Pvt. Ltd. had availed cenvat credit of Rs. 18,11,28,784/- during the period from November 2002 to August 2007. It also emerges that during the period supplier was a registered central excise assessee and was paying duty on the goods supposed to have been manufactured by them and there is no indication that the duty paid by the supplier was less than the Cenvat credit availed. Therefore it is not even the case of the department that whole operation has been undertaken to pass on ineligible Cenvat credit. Further, the order also reveals that during the investigation the suppliers of raw materials had admitted that they had supplied raw materials to M/s. Ashok Electrical Stampings Pvt. Ltd. Further, the Chartered Engineer's certificate produced also shows that the supplier was operational for 15 years. It is also not the case of the Department that the supplier did not have a factory at all. Admittedly 40 machines/machineries had been installed during 1992-2004 by the supplier. The supplier had also produced a Chartered Engineer's certificate to the effect that the machines were in working condition. In any case the facts that emerge from the adjudication order are that supplier held a registration certificate issued by Central Excise Department; was availing substantial amounts of Cenvat credit which is reflected from the figures of duty demanded for five years; it is also not the case that the*

supplier had not paid any duty from PLA; it is also not the case that the supplier had not received any raw material. Since the supplier was a registered unit, and had paid duty from PLA as well as the Cenvat credit and the department itself had failed to notice the fact that no goods were manufactured by the supplier for a period of five years, it is difficult to expect an assessee located in Karnataka to go and verify whether the manufacturer had the facility and whether he had really manufactured the goods before purchasing the same. The very fact that the supplier was in existence for 15 years, had availed Cenvat credit of more than Rs. 18 crores would show that the supplier did have some standing in the market. Since the Cenvat credit availed by the appellant is reflecting the duty paid on the goods by the supplier for which no evidence is available to show to the contrary and in view of the above circumstances, it will not be appropriate to demand duty and deny the Cenvat credit from the appellant. Moreover I find myself in agreement with the view canvassed by the learned advocate that once it is held that there was no suppression or mis-declaration on the part of the appellants and no penalty is imposed on them, duty demand invoking extended period also cannot be sustained if challenged. Thus on merit as well as on limitation, the appellants succeed. Accordingly, appeal filed is allowed with consequential relief to the appellant."

8. Further, in the case of Dhakad Metal Corporation (supra), again this Tribunal, has observed as under :

*"**6.** Heard both sides and perused the case records. The issue involved in the present appeals is whether appellant M/s. Dhakad Metal Corporation is eligible to credit on the basis of documents which are claimed to have been received along with inputs issued by the registered dealer*

when original manufacturer M/s. Prasun Ferro Alloys & Metal Casting Pvt. Limited had no facility for manufacturing the goods on which ultimately credit was taken. There is no evidence on record that appellant M/s. Dhakad Metal Corporation did not receive the inputs along with cenvatable invoices issued by M/s. Bhavna Metal Company. It is also not on record whether M/s. Dhakad Metal Corporation was aware that the inputs received had been shown manufactured by M/s. Prasun Ferro Alloys & Metal Casting Pvt. Limited which had no facility for manufacturing of such inputs. It is beyond comprehension that a man will get invoices without inputs and separately acquire inputs clandestinely from other sources to manufacture his goods. There is no whisper about M/s. Dhakad Metal Corporation to be indulging in clandestine removal of finished goods in these proceedings. It is now well settled legal position that a case cannot be established on the basis of few confessional statements without other corroborative evidences like shortage of raw materials, cash transactions, alternative procurement of raw materials. Appellant requested for cross-examination of the persons whose statements are relied upon but the same was not extended. It is now well settled law that cross-examination of the persons whose witness are relied upon by the Revenue should be extended to the appellant and in the absence of such cross-examination extended, the statements of such persons cannot be relied upon as evidence. It is also observed that Revenue has not contested with any documentary evidence to show that M/s. Dhakad Metal had knowledge that the inputs received alongwith invoices, at the time of taking credit, was from M/s. Prasun Ferro Alloys & Metal Casting Pvt. Limited who had no facility for manufacturing such inputs. In the above factual matrix, appellant M/s. Dhakad Metal Corporation cannot be held to have any mala fide intention to take wrong credit and extended period of *demand cannot be invoked in the present case against them. In this case, the demand is for the period 2005-06 whereas the show cause notice was issued on 20-2-2009. As the extended period is not invokable, therefore, the demand is also time barred in addition to credit being admissible on merits. Accordingly appeal filed by M/s. Dhakad Metal Corporation is required to be allowed."*

9. Further, in the case of R.S.Industries : 2003 (153) ELT 114 (Tri.-Del.), this Tribunal examined this issue and observed as under :

*"**5.** We have considered the submissions of both the sides. The Revenue has not challenged the findings contained in the impugned Order to the effect that the allegation of non-receipt of goods by the Appellants has not been established beyond doubt in view of the fact that Prerna Metal Inds. had bought material from Delhi Aluminium Corporation which was substantial in nature. Once the Revenue is not disputing the receipt of goods under the cover of invoices by the appellants which contained duty paying particulars the Modvat credit cannot be denied to the appellants. As far as the appellants are concerned they have purchased the goods which are dutiable on the strength of the invoices carrying duty payment particulars. Moreover the Revenue has confirmed the demand of duty against Prerna Metal Inds. in respect of goods removed by them by utilizing wrongly availed Modvat credit. We also observe that Rule 57-I of the Central Excise Rules, 1944 at the time when the show cause notice was issued, provided for the recovery of Credit taken on account of error, omission or misconstruction on the part of officer or manufacturer or an assessee. As far as the appellants are concerned there was neither any error nor any misconstruction on their part. We also do not find any substance in the submission of the learned SDR that larger*

> *period of limitation will be invokable irrespective of the fact that fraud has not been committed by the appellants. It is evident from the impugned Order that the appellants have not committed any fraud, suppression, or wilful mis-statement as the Commissioner has given specific finding that no evidence has been brought on record to suggest active involvement of the appellants. Rule 57-I(1)(ii) clearly provides that where a manufacturer has taken a credit by reason of fraud, wilful mis-statement, collusion or suppression of fact or contravention of any of the provisions of the Act or the Rules with intent to evade payment of duty extended period of 5 years will be available for issuing show cause notice. It is apparent from the wordings of clause (ii) that fraud etc. has to be committed by the person against whom the show cause notice is being issued and not by the person at large. We, therefore, set aside the disallowance of the Modvat credit and recovery of the said amount from the appellants. All the appeals are thus allowed."*

10. In view of the above discussions and cited decisions, we hold that as the appellant has taken cenvat credit on the procurement of capital goods on the strength of duty paying documents, therefore, the cenvat credit cannot be denied. Hence, we set aside the impugned order and allow the appeal with consequential relief, if any.

(Pronounced in the open Court on **14.07.2023**)

Sd/
(Ashok Jindal)
Member (Judicial)

Sd/
(K.Anpazhakan)
Member (Technical)

mm