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

REGIONAL BENCH – COURT NO.2

<u>Excise Appeal No.194 of 2012</u>

(Arising out of Order-in-Original No.54/Commr./2011 dated 30.12.2011 passed by Commissioner of Central Excise & Service Tax, Jamshedpur)

M/s Anvil Cables Private Limited
Large Sector, Kandra Main Road, IOC More, Gamharia, Jamshedpur

Appellant

VERSUS

Commissioner of Central Excise & Service Tax, Jamshedpur
143, New Baradwari, Sakchi, Jamshedpur-831001

Respondent

<u>APPERANCE :</u>

Shri Kartik Kurmy, Advocate for the Appellant
Shri P.K. Ghosh,Authorised Representative for the Respondent

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

FINAL ORDER NO…76303/2023

<u>DATE OF HEARING : 28.07.2023</u>
<u>DATE OF DECISION : 28.07.2023</u>

<u>Per Ashok Jindal :</u>

The appellant is in appeal against the impugned order.

2. The facts of the case are that the appellant is a manufacturer of aluminium conductors and their factory is located at Gamharia in the State of Jharkhand, which is registered under Central Excise Act. The appellant uses aliminium wire rod and steel wire as raw materials for manufacture of aluminium conductors. They are also having a godown at Liluah, Howrah, West Bengal. The appellant has also a registered office at Ballygunge, Kolkata, which was shifted to AJC Bose Road, Kolkata. The appellant was initially carrying out its manufacturing activities at Liluah, Howrah, which was dis-continued from 18.06.2003.

The appellant purchased the raw materials for Gamharia Unit, Jamshedpur, against 54 Excise invoices, in which address of Liluah, Howrah/Ballygunge,AJC Bose Road, Kolkata, was mentioned as the purchase orders were placed from those places by the appellant on their suppliers. The appellant took cenvat credit of the said invoices at their Gamharia factory, which was used in the manufacture of their final product, which has been cleared on payment of duty. Audit was conducted and the audit objection was raised as the invoices were in the name of Liluah/Ballygunge address whereas the cenvat credit has been taken by the unit at Gamharia.

2.1 Therefore, a show-cause notice was issued on 29.12.2010 by invoking extended period of limitation to deny cenvat credit availed by them during the period 01.04.2005 to 3 1.03.2009 alleging that as the invoices are not at the address of appellant and therefore, they are not entitled to avail the cenvat credit.

2.2 The matter was adjudicated. The Cenvat credit was denied. Consequently, the order for recovery of the same and the demand proposed in the show-cause notice, was confirmed along with interest and penalty was also imposed.

2.3 Against the said order, the appellant is before us.

3. The ld.Counsel appearing on behalf of the appellant, contended that the show-cause notice is not sustainable as the same has been issued by invoking extended period of limitation. Moreover, although the invoices were having address at Liluah and Ballygunge Circular Road/AJC Bose Road, but no manufacturing activity was taken by the appellant on the said premises and the appellant is having only one

factory at Gamharia where all the goods have been received by the appellant under duty paying document and availed cenvat credit. This fact has not been disputed by the Revenue. He, therefore, submits that the cenvat credit cannot be denied. To support his contention, he relies on the following case laws :

(i) Larsen & Toubro Ltd. Vs. CCE : 1994 (72) ELT 948 (Tri.)

(ii) Hero Cycle Ltd. Vs. CCE : 2011 (266) ELT 110 (Tri.)

(iii) CCE Vs. Biocon Limited : 2014 (309) ELT 66 (Kar.)

(iv) CCE Vs. DNH Spinners : 2009 (16) STR 418 (Tri.)

(v) Modern Petrofils Vs. CCE : 2010 (20) STR 627

3.1 He further submits that on the similar ground, a show-cause notice was issued to the appellant on 24.07.2015 for the period 2010-2011 and the said show-cause notice has been dropped by the adjudicating authority and the same has been accepted by the Department. He, therefore, submits that the appellant is entitled for cenvat credit.

4. On the other hand, the ld.A.R. for the Revenue, supports the impugned order.

5. Heard the parties and considered the submissions.

6. We find that the only dispute with regard to the impugned matter is that the address in the invoices is not mentioned of their Gamharia Unit and in the invoices, the address is mentioned of the Head Office. Therefore, the cenvat credit sought to be denied. The said issue has been dealt by the adjudicating authority in their own case for the subsequent period, wherein the adjudicating authority has observed as under :

"I further find that all the questioned invoices are addressed to M/s Anvil Cables Pvt. Ltd., 52/53, N.S. Road, Liluah, Howrah Unit, but in the invoices, it clearly mentioned the R.C.No.AACCA9943KXM002 that of M/s Anvil Cables Pvt. Ltd., Large Sector (IOC More), Tata Kandra Main Road, Gamharia, Seraikeila-Kharsawan, (Jharkhand) i.e. Jamshedpur Unit. The goods thereof were diverted by Liluah Unit to Jamshedpur Unit by way of making necessary endorsements on the reverse of the invoices on address to Jamshedpur Unit under cover of Transport Permit and Transportation documents, as the same meant for use in manufacture of finished product at Jamshedpur Unit. This is a technical error on part of the consigner who is still maintaining old address in their record. As also the entire materials under questioned invoices have been actually received and utilized for manufacture of finished product at Jamshedpur Unit. The Jamshedpur Unit also certified that under these invoices, Cenvat Credit has been availed and utilized on the goods diverted and endorsed to them by Liluah Unit. This demonstrates that the Cenvat Credit has been correctly availed & therefore, the same is required to be allowed.

I also find that on similar nature of case, but of a different assessee, has been decided in their favour vide Order-in0Original No.11-13/Addl.Commr./2014 dated 29.10.2014, under para-1 (P/61) of the Order the Ld. Adjudicator has observed, to quote-

"Since all the goods are covered by duty paying documents involved in Show Cause Notice have been duly received in the premises of the Noticee, which is not the matter of dispute as well, under respective documents, where utilities manufacture of dutiable goods, hence the error in address and ECC No. mentioned in duty paying documents is technical in nature and therefore condonable.

Also, in this case the Show Cause Notice has been raised based on the CERA objection, which has been settled by them". To unquote."

Hence, the Ld. Adjudicator dropped the proceedings and same has been accepted by the Commissioner, Central Excise & Service Tax, Jamshedpur on 03.02.2015.

I also find that once the Inputs have been used in the manufacture of final products, credit cannot be denied despite the technical infirmities.

In the present case the entries have been found in the RG-23, Part-I supported by copies of Transportation Documents and Transport Permit under which goods under disputed invoices have been received at Jamshedpur Unit as proof of receipt and utilization of the said inputs by the assessee during the material period. The goods receipt note, which establish that the goods have in fact been received and used by the assessee at Jamshedpur. Hence, the credit is required to be allowed.

The technical infirmity relying on Rule 9(2) of Cenvat Credit Rules, 2004, has been agitated by the department. The relevant portion of the said rule applicable in the present case is reproduced below:-

"As per Rule 9(2) of Cenvat Credit Rules, 2004 no CENVAT CREDIT under sub-Rule(1) shall be taken unless all the particulars as prescribed under the Central Excise Rules, 2002 or the Service Tax Rules, 1994, as the case may be are contained in the said document;

Provided that *if the said document does not contain all the particulars but contains the details of duty or service tax payable, description of the goods or taxable service, assessable value, Central Excise or Service Tax Registration No. of the person issuing the invoice, as the case may be, name and address of the factory or warehouses or premises of first or second stage dealers or provider of the taxable service, and the Deputy/Assistant Commissioner of Central Excise, as the case may be is satisfied that the goods or services covered be the said document have* *been received and accounted for in the books of the account of the receiver, he may allow the CENVAT CREDIT.*

Hence, I find that there is force to rely on this rule while waiving the minor technical infirmity."

I find that the facts and circumstances of this case are exactly similar to the case as discussed in previous paras.

Since, all the goods are covered by duty paying documents involved in Show Cause Notice which have been duly received in the premises of the assessee and has been accounted for under respective documents, where utilities manufacture of dutiable goods, hence the error in address mentioned in duty paying document only is technical in nature and therefore condonable.

7. Further, it is an admitted fact that although the invoices were in the name of their Head Office, but the goods have been received in the factory at Gamharia Unit, which is registered with the Central Excise Department and the same has been used by the appellant for manufacture of their final product, which suffered duty.

8. In that circumstances, we hold that the appellant has correctly taken the cenvat credit on the impugned invoices.

9. In view of the above, we do not find any merit in the impugned order and the same is set aside and the appeal is allowed with consequential relief, if any.

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

Sd/-
(Ashok Jindal)
Member (Judicial)

Sd/-
(K.Anpazhakan)
Member (Technical)

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