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

REGIONAL BENCH – COURT NO.1

Excise Appeal No.594 of 2009
(On behalf of Appellant)

(Arising out of Order-in-Original No.30/Commr./CE/Kol.V/Adjn/09 dated 12.08.2009 passed by Commissioner of Central Excise, Kolkata V)

M/s Saha Industries
Budge Budge Trunk Road, Chakmirm Maheshtala, Kolkata-700141

Appellant

VERSUS

Commissioner of Central Excise,Kolkata V
180, Shantipally, Rajdanga Main Road,Kolkata-700107

Respondent

APPERANCE :

Shri N.K.Chowdhury, Advocate for the Appellant
Shri S.Mukhopadhyay, Authorised Representative for the Respondent

WITH

Excise Appeal No.663 of 2009
(On behalf of Appellant)

(Arising out of Order-in-Original No.30/Commr./CE/Kol.V/Adjn/09 dated 12.08.2009 passed by Commissioner of Central Excise, Kolkata V)

Commissioner of Central Excise,Kolkata V
180, Shantipally, Rajdanga Main Road,Kolkata-700107

Appellant

VERSUS

Sri Jayanta Kumar Saha, Proprietor of M/s Saha Industries
BBT Road, Maheshtala, Chakmir, Dist.-24 Parganas (South),West Bengal

Respondent

APPERANCE :

Shri S.Mukhopadhyay, Authorised Representative for the Appellant
Shri N.K.Chowdhury, Advocate for the Respondent

AND

Excise Appeal No.664 of 2009
(On behalf of Appellant)

(Arising out of Order-in-Original No.30/Commr./CE/Kol.V/Adjn/09 dated 12.08.2009 passed by Commissioner of Central Excise, Kolkata V)

***Excise* Appeal Nos.594,663,664 of 2009**

Commissioner of Central Excise,Kolkata V
180, Shantipally, Rajdanga Main Road,Kolkata-700107

Appellant

VERSUS

M/s Saha Industries
Budge Budge Trunk Road, Chakmirm Maheshtala, Kolkata-700141

Respondent

APPERANCE :

Shri S.Mukhopadhyay, Authorised Representative for the Appellant
Shri N.K.Chowdhury, Advocate for the Respondent

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

FINAL ORDER NO...77471-77473/2023

DATE OF HEARING : 26.09.2023

DATE OF PRONOUNCEMENT : 09.11.2023

Per Ashok Jindal :

Both sides are in appeals against the same impugned order.

2. The facts of the case are that on 30.01.2008, the Central Excise Anti-evasion Team visited the registered premises of the appellant, admeasuring 300 sq.ft.,which was used by M/S BDS Control Systems for manufacturing their own products, in terms of a contract with the appellant and no activity, nor any raw materials or finished products of the appellant assessee in the said premises was sighted. The statements of Shri Dipak Das, supervisor of M/S BDS Control Systems and Shri Dilip Dey, partner of M/S BDS Control Systems revealed that said M/S BDS Control Systems was engaged in the manufacture & production in the said premises since May, 2007 and the appellant assessee had no activity therein since then.

2.1 Further, Shri Jayanta Saha is the proprietor of M/s Saha Industries. The appellant assessee was engaged in the manufacture of rolling machine, wire drawing machine, ash handling plant, coal handling plant etc. from their Central Excise registered premises. The main inputs requires were MS Steel, MS Angle, MS Channel, MS Rod, MS Nuts & Bolts, MS Plates and Welding Rods etc..

2.2 The statement of Shri Dipak Das, Supervisor of M/S BDS Control Systems was recorded. Shri Das stated that on the said premises, all the persons working there were the workers of M/S BDS Control Systems and the works performed there were for M/S BDS Control Systems and no activity of work of M/s Saha Industries was going on.

2.3 The statement of Shri Dilip Dey, partner of M/S BDS Control Systems was also recorded. Shri Dey stated that all the raw materials and the semi finished goods were lying on the above premises on that date belonged to M/S BDS Control Systems and no materials of M/s Saha Industries was available there and no materials on account of M/s Saha Industries has been received and dispatched for the last two months. It was also stated that the manufacturing activity of M/S BDS Control Systems was going on.

2.4 Further, the statement of Shri Jayanta Kumar Saha was also recorded and during the course of investigation, the Daily Stock Account was not there and it was stated that Shri Bimal Sarker is the Accountant and he shall produce all the records within 7 days, but no evidences have been produced by Shri Jayanta Kumar Saha or his Accountant, Shri Bimal Sarkar and Shri Bimal Sarkar was not found on the postal address given by Shri Jayanta Kumar Saha.

2.5 Further, an investigation was conducted and on the basis of the said investigation, it was alleged that in the show-cause notice, the appellant assessee is engaged in the activity of paper transaction availing cenvat credit and on the basis of invoices supplied by the supplier of raw materials and further issuing invoices without supplying any goods enabling the persons to take cenvat credit without actual receipt of the goods. Therefore, the cenvat credit availed by the appellant assessee during the period July, 2007 to January, 2008 was sought to be denied and the matter was adjudicated.

2.6 During the course of adjudication, the appellant assessee defended their case producing various documents and the demand was confirmed and interest was also demanded. Penalties on the Appellant Assessee were also imposed.

2.7 Aggrieved from the said order, the appellant assessee and the Revenue are before us.

3. The ld.Counsel for the appellant assessee submitted that the appellant assessee has procured the goods from the manufacturer or supplier and manufactured the finished goods and cleared the same on payment of duty. It is his contention that the appellant assessee has paid the duty more than the amount of credit taken by them. The input supplier and the recipient of the finished goods have not made parties to the proceedings.

3.1 He further submits that the report submitted from different Commissionerates, established the fact that the inputs were received by the appellant assessee and the finished goods were cleared on payment of duty. The payments were made by Account Payee Cheques. The appellant assessee made payments of inward transportation of the goods and outward transportation charges of the goods were paid by the recipient of the goods. He further submits that the infrastructure was sufficient for the appellant assessee to manufacture of goods. The Chartered Engineer's Certificate does not say about the impossibility of manufacturing, but assumed only that such huge quantity of manufacturing is not possible. The said observation has been made on examination of various records maintained by the appellant assessee, but not on the study and verification of machines and machineries.

3.2 He further submits that the electricity consumption was sufficient since they were only doing cutting and joining of iron and steel items part by part. The cutting of huge size of material was being done from outside. The stock of material was not found on the day of visit of the officers since at that time due to high price of iron and steel, the appellant assessee did not give anything after exhausting the stock.

3.3 It is his submission that if there is no manufacturing of goods, the appellant assessee was not required to pay any duty. The appellant assessee has been treated as the manufacturer of the goods. The inputs have not been procured and the manufacture of finished goods would not have been possible. He submits that there is no evidence of procurement of inputs from any other sources. The Department has accepted the position of payment of duty and in such circumstances, question of recovery of credit does not and cannot arise.

3.4 He further submits that the circumstantial evidences are not sufficient to deny the statements made by other persons.

3.5 It is his submission that the cenvat credit has been demanded from the appellant assessee and at the same time, demand has also been raised against the recipient of the goods and proposing penalty on the appellant assessee. There cannot be any double demand for the said transaction and for that reason, proceedings against the appellant assessee cannot be maintainable in law and is ab-initio.

3.6 He further submits that the prosecution case against the appellant assessee filed by the Department, cannot prove their case and the appellant assessee was acquitted from the prosecution case.

3.7 He further submits that the proceedings were conclusive/pre-judged since the show-cause notice was containing the discussions and findings.

3.8 It is his submission that the Chartered Engineer's report was taken by the Department to justify their stand, but the said report is only presumptive and cannot be the basis for arriving at an adverse conclusion since the said report was lacking consideration of the capacity of the machines in the said report.

3.9 He further submits that the appellant assessee has paid the duty and even if there are any irregularities, the said payment of duty is amounting to reversal of the cenvat credit.

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

5. Heard both the parties and considered the submissions.

6. Ongoing through the facts placed before us and the arguments advanced by both sides and the relied upon case laws relied by both sides, we find that in this case, it is fact on record that the premises of

the appellant assessee is only 300 sq.ft., which was rented out entirety to M/S BDS Control Systems on monthly rent of Rs.300/ for manufacture of the latter's products with effect from 2.5.2007 onward, the claim of the appellant assessee that there was simultaneous production in the said premises by the appellant assessee was not supported either by the statements of Shri Dilip Dey, Partner and Shri Dipak Das, Supervisor of M/s BDS Control Systems.

6.1 On 30.01.2008, no employees and Labours were found during visit of the Revenue Officers. These facts are not in dispute. Neither any stock of raw material nor any finished goods or machineries was there at site.

6.2 Shri Jayanta Saha has stated that owing to labour trouble, the appellant assessee have no production or clearance during December, 2007 and January, 2008 and the production and clearances declared by the appellant assessee were only paper transactions. Shri Saha has also stated that barring only 3 permanent employees, he has no labour or employee and that he was managing production and clearances with contract labour. The fiction of labour trouble made out by Shri Saha is not borne out by either Shri Dipak Das or by Shri Dilip Dey. On the contrary, their statements established beyond doubt that from May, 2007 onward, the impugned premises were used exclusively for the manufacture of M/S B.D.S Control System's products with their labour and employees only and Appellant company was not involved at all, even though Shri Saha happened to be one of the partners of M/S BDS Control Systems.

6.3 The information received from electricity Department, it is evident that the consumption of electricity by the appellant assessee in the said premises during 2006-07 was a meagre 5376 units for Rs.18,310/- at average monthly consumption of 448 units at the rate of Rs.1526/- only per month, according to the Chartered Engineer, for manufacture of Machineries as declared by Shri Saha, minimum Power consumption per month in a single shift of 8 Hrs should be 10,400 units, as against average consumption per month in 2006-07 shown as 448 units only. Be that as it may, the audited balance sheet of the appellant assessee for the aforesaid period showed an expenditure of Rs.1,38,280/- toward electricity charges which was clearly in conflict with the actual consumption figure as reported by electricity Department.

6.4 Further, as per audited balance sheet for 2006-7, expenditure toward fuel consumption was Rs.97,050/- though the Revenue found no generator as commissioned by the appellant assessee on the date of visit of the premises nor any evidences were produced by Shri Saha to support the said balance sheet figure.

6.5 Further, the Trial Balance Sheet of the appellant assessee for 2007-08 (up to 31st December, 2007) showed expenditure toward plant and machinery as Rs.20,95,202/- whereas no such plant and machinery were found at the time of visit on 30.01.2008. The appellant assessee failed to explain this anomaly.

6.6 Further, the invoices produced by the appellant assessee, it is seen that during 2006-07, they sold waste and scraps of iron and steel to the tune of 2307.625 MT, valued at Rs.2,61,41,630 (ex-duty) whereas their audited balance sheet for the same period showed the turnover from the sale of waste & scraps as Rs.56,100/- only.

6.7 As per the statement of Shri Saha, the appellant assessee brought C.R.Coils to factory but had no cutting facility nor facility to handle equipment like long joist.

6.8 Further, Purchase orders from different parties produced by Shri Saha showed that transport charges were on account of the appellant assessee, whereas the audited balance sheet indicated that the appellant assessee on account of transportation incurred no expenditure. Shri Saha also informed the Revenue that he did not make any payment toward outward freight. The appellant assessee's customers, be it their suppliers or buyers, denied having incurred any expenditure toward transportation of goods to or from the appellant assessee. Therefore, the question arose, who paid the transportation charges ?

6.9 On an enquiry from the transporter, it was found that M/s Essel Transport was non-existent at the given address. Likewise (i) Shree Shyam Roadways, (ii) Rishabh Carriers Road, (iii) Shree Lakshmi Carriers were found to be non-existent at the given addresses. But at the given address, only Pawan Cargo Carriers admitted to have transported goods of Saha Industries through Jamshola Ghat Check gate, but on verification from the said check post, the claim was found to be bogus. Golden Roadways Corporation denied transportation and delivery of Saha Industries goods to Corporate Ispat Alloys Ltd, Orisha, as shown on 19 Invoices. Check post verification was also confirmed the above denial. In some of the cases, it is found that huge machineries were transported on two wheelers, which is ex-facie bogus.

6.10 The Chartered Engineer engaged by the Revenue, concluded that based on comprehensive analysis and scrutiny of available records, the infrastructure available at the site appeared to be a mini-repairing workshop in terms of its various parameters.

6.11 Therefore, the relied upon decision of the Hon'ble Apex Court in the case of Collector Vs. D.Bhoormull reported in 1983 (13) ELT 1546 (S.C.), the Revenue has been able to make out a case on the basis of available records, are not required to prove beyond doubt, but preponderance of probability. It is proved that it is a case of non-receipt of inputs by the appellant assessee as the appellant assessee is not having for manufacturing facility in their premises and the appellant assessee was not maintaining records in terms of Rule 10 of the Central Excise Rules, 1944.

6.12 In that circumstances, on the basis of evidences placed by the Revenue on record, we hold that the appellant assessee was involved only in paper transactions by taking invoices without any receipt of the goods in their premises and thereafter, enabling the recipient of the appellant assessee to take cenvat credit without proper receipt of the goods.

6.13 In that circumstances, we hold that the Revenue has made out a case for denial of cenvat credit to the appellant assessee.

6.14 In view of the above, we do not find any infirmity in the impugned order and the same is upheld.

6.15 In the result, the appeal filed by the appellant assessee is dismissed and the appeals filed by the Revenue are allowed.

(Pronounced in the open court on **09.11.2023**)

Sd/

(Ashok Jindal)
Member (Judicial)

Sd/

(K.Anpazhakan)
Member (Technical)

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