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

REGIONAL BENCH – COURT NO.2

Excise Appeal No. 75905 of 2018

(Arising out of Order-in-Appeal No.57/DIB/CE(A)/GHY/17 dated 14.09.2017 passed by Commissioner (Appeals), Central Goods and Service Tax & Excise, Guwahati).

M/s. Net Metallics
(Industrial Growth Centre, College Road,
Duliajan, Dist. Dibrugarh, Assam-786003)

Appellant

VERSUS

Commr. of CGST & CX, Dibrugarh
(Milan Nagar, Lane "F", P. O; C. R. Building, Dibrugarh 786003, Assam)

R**espondent**

APPEARANCE :
Shri Suman Chetia, Advocate for the Appellant
Shri S. S. Chattopadhyay, Authorized Representative for the Respondent

CORAM:

HON'BLE MR. RAJEEV TANDON, MEMBER (TECHNICAL)

FINAL ORDER NO.75073/2024

Date of Hearing : 19 January 2024
Date of Pronouncement: 25/01/2024

PER RAJEEV TANDON:

The Appellant has filed the present Appeal assailing the Order-in-Appeal No. 57/DIB/CE(A)/GHY/17 dated 14.09.2017 whereby the Learned Commissioner (Appeals) has set aside the Order-in-Original and allowed the Appeal of the Revenue.

2. The facts of the case are that the Appellant a partnership firm engaged in the business of manufacture of Mild Steel ingots uses sponge iron, waste & scrap and silico manganese as its major raw materials. The Appellant claimed the refund of duty paid in terms of Notification No. 20/2007-CE dated 25/04/2007 in discharge of their

regular functioning. For the period December 2012 to April 2013, the Appellant accordingly, filed a refund claim of Rs. 18,35,534/-, in turn, the Revenue issued a Show Cause Notice seeking to explain why Cenvat Credit of Rs. 35,34,992/- not be recovered under Cenvat Credit Rules, 2004 read with Section 11A of the Central Excise Act as the same was availed on the basis of "diverted invoice" and alleged to be not a proper document for claiming Central Excise refund under Rule 9(1)(a)(i) of the Rules cited supra. During the course of adjudication process, the Learned Additional Commissioner dropped the Show Cause Notice thereby allowing the Cenvat Credit availed by the noticee. The appellant had received sponge iron from M/s N. E. Thermion (P) Ltd. Duliajan on the basis of endorsed invoices issued to M/s. N. E. Thermion (P) Ltd., by the manufacturers of the sponge iron. The Department therefore alleged that the goods in the said invoices were diverted to the noticee. Likewise availment of credit in respect of certain capital goods like C. I. Ingot moulds received from M.s N. E. Thermion (P) Ltd. (who in turn had received them from the manufacturers), on the basis of endorsed invoices were also disputed by the Revenue. As the Revenue in pursuance of their case relied upon Rule 9 (1) (a) of the Cenvat Credit Rules, 2004 the same is reproduced hereunder for sake of ready reference:

> *Rule 9. Documents and Accounts.- (i) The CENVAT credit shall be taken by the manufacturer or the provider of output service or input service distributor, as the case may be, on the basis of any of the following documents, namely:-*
>
> *(i) A manufacturer for clearance of-*
>
> *I. Inputs or capital goods from his factory or depot or from the premises of the consignment agent of the said manufacturer or from any other premises from where the goods are sold by or on behalf of the said manufacturer;*
>
> *II. Inputs or capital goods as such;*
>
> *III. an importer:*

IV. and importer from depot or from the premises of the consignment agent of the said importer if the said depot or the premises, as the case may be l is registered in terms of the provisions of Central Excise Rules, 2002.

V. A first stage dealer or a second stage dealer, as the case may be, in terms of the provisions of the Central Excise Rules, 2002, or

(b) * * *

* * * *

3. The Learned Adjudicating Authority inter alia held that Rule 9 (1) (a) of the Cenvat Credit Rules provides that Cenvat Credit can also be taken on the basis of invoices issued by a manufacturer of inputs or capital goods cleared as such if goods were manufactured by him. Accordingly, it was held that inputs or capital goods as removed by a manufacturer as such, those should be removed from the factory of receipt under cover of an Invoice issued under Rule 11 of the Central Excise Rules was admissible as the invoices were endorsed in favor of the ultimate user of the cenvatable goods. The relevant portion of the Order of the Adjudicating Authority is extracted below:-

4.4 On perusal of the allegation in the instant SCN and the views of the noticee, it is found that the main dispute of the case is wrong availment of Cenvat Credit in question through invoices which were endorsed to the ultimate user of cenvatable goods (Raw material). Therefore, the matter to be discussed before me or to be decided by me is whether the noticee are eligible to avail Cenvat Credit in terms of such endorsed invoices. Normally, an assessee purchases raw materials from a manufacturer and uses cenvatable invoices for availing Cenvat Credit on the receipt of such goods. So in such case, invoices are issued by the manufacturers in the name of receivers of goods who ultimately used such goods for manufacture of their final product and manufacturer uses, such invoices to avail Cenvat Credit. However, in the instant case, the manufacturer of raw material (here in this case the raw material is Sponge Iron) issued the invoices to M/s N. E. Thermion (P) Ltd., Duliajan and received the *raw materials by the noticee and used such invoices for the purpose of availment of Cenvat Credit. In Cenvat Credit Rules, 2004, there is of course no mention about the endorsed invoices. However, it is clearly mentioned that Cenvat Credit shall be taken by the manufacturer on the basis of an invoice issued by a manufacturer for clearance of input or capital goods from his factory or depot or from the premises of the consignment agent of the said manufacturer or from any other premises from where the goods are sold by or on behalf of the said manufacturer [Ref. Rule 9(1) of the Cenvat Credit Rules, 2004]. Moreover, a manufacturer of final products shall be allowed to take cenvat credit paid on any input or capital goods received in the manufacture of final product. It is also found that there is no dispute regarding the receipt of input by the noticee in allegation made in the instant Show Cause Notice where it is simply mentioned that the noticee received raw material (Sponge Iron) from M/s N. E. Thermion (P) Ltd., Duliajan and endorsed by them. There is no mention regarding date of receipt of inputs, date issue of invoces, whether directly received by the noticee from the manufacturer though invoices, whether directly received by the noticee from the manufacturer though invoices were issued in the name of M/s. N. E. Thermion (P) Ltd., Duliajan and whether there is any connection/deals between the noticee and M/s. N. E. Thermion (P) Ltd., Duliajan etc. In this regard, the noticee have submitted various judgements which are relevant to this case. In the case of M/s. Gautam Weaving Mills vs. Commissioner of Central Excise, belapur [2008 (230) E.L.T. 147 (Tri. Mumbai) it was held that credit taken on strength of endorsed invoice is admissible in the light of the judgment of the Hon'ble Bombay High Court. The High Court has held that if there is no dispute regarding the duty paid nature of the inputs and the inputs have undisputedly been received in the factory and the assessee has taken credit, that is sufficient for the purpose of availment of credit and the deficiency in the duty paying document is not to be held against the assessee for the purpose of denying the substantive benefit of Modvat credit. Similarly, in Deepthi insulated Cables Vs. CCE2000(123) ELT 933 (CEGAT), it was held that Cenvat Credit can be taken on endorsed invoice. In UOI Vs. Rajasthan*

Spinning & Weaving Mills 2004 (174) ELT 42 (Raj HC DB), it was held that credit can be taken on basis of endorsed invoice. Merely providing an alternative method or additional method for availing Cenvat Credit does not take away the entitlement to avail Cevat Credit on the basis of original endorsed document evidencing payment of duty on inputs. In Press-Comp International Vs. CCE (2004) 173 ELT 363 (CESTAT 3 member bench), it was held that multiple endorsements on same invoice are permissible. In M/s. Aar Kay Forge (P) Ltd. Vs. CCE, Delhi (Dated March 3, 2011) [2011-TIOL-1485-CESTAT-DEL] it was held that Goods for which invoices were issued in the name of head office diverted to factory in packed condition after endorsement on invoices and when it is admitted fact that the notice have received goods against duty paid invoices in their factory and the same were used in manufacture of final products which were cleared on payment of duty, cenvat credit is not deniable.

4. In appeal proceedings, however the Learned Commissioner (Appeals) while taking cognizance of the plea raised by the appellant and the decision of the Hon'ble Apex Court and the Bombay High Court cited before him, following the law as laid down by the Hon'ble Gujarat High Court in the case of **Commissioner of Central Excise & Customs Vs. Marigold Coatings Pvt. Ltd. [2016 (337) E.L.T. 515 (Guj.),** held that Cenvat Credit on endorsed invoices was not permissible and the view taken by the Learned Adjudicating Authority was liable to be set aside.

5. The decision of the Hon'ble Gujarat High Court referred in Para 4, was based on the decision of the Larger Bench of Tribunal in the case of **Balmer Lawrie & Co. Ltd. Vs. CCE, Kanpur[2000 (116) ELT 364 (Tri.)]** and it was held that after issuance of Notification dated 04/07/1994, invoices can only be issued by a registered dealer alone. Notification No. 32/94 dated 04/07/1994 reads as:-

Modvat Credit- Invoice of registered dealer acceptable

In exercise of the powers conferred by rule 57G of the Central Excise Rules, 1944 and in supersession of notification of the Government of India in the Ministry of Finance, Department of Revenue No. 15/94-C.E (N.T.), dated the 30th March, 1994, the Central Government hereby prescribes the invoice issued by

(i) a manufacturer from the factory or his depot or

(ii) dealer of an excisable goods registered with the Central Excise Officer; or

(iii) an importer from his godown, or

(iv) dealer of an imported goods registered with the Central Excise Officer;

containing the details as are prescribed under rule 57GG of the Central Excise Rules, 1944, as a document for the purpose of rule 57G.

6. It is noted that there is no dispute about the facts of the receipt of the goods and utilization of the finished goods also. It is a fact that the said goods were received on endorsed invoices through their own group company having common partners. The subject question did come up for consideration before the Tribunal in the case of **Schlafhorst Engineering (I) Ltd. Vs. Commr. of C. Ex & Cus. Vadodara-1999 (108) ELT 299 (Tri.),** wherein the Tribunal has held as under:-

4. *I have considered the rival submissions. It is correct that subsequent to 1-4-1994 invoices could not be endorsed. The subject judgements however speak of situations where the goods were despatched by dealers. In such a situation the dealer was required to issue a separate invoice citing the earlier invoice bearing details as required under the procedure prescribed under Rule 57GG. These Judgements would not apply to situations where a sister unit was sending goods to another unit. The cited Judgement in the case of Larsen & Toubro Ltd. would continue to apply in such situations, even where the identity of the duty paying documents has changed from gate passes to invoices. In this judgement the Tribunal has held that there was not even need for an*

> *endorsement in the case of such transfer. This judgement was later followed by the single Member Bench in the case of Commissioner of Central Excise v. Snow Cem India Ltd. [1997 (96) E.L.T. 627]. I also find that the cited notice was issued in 1995 when in a specific situation like the one involved in this case, the trade notice itself permitted an endorsement.*
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> ***5.*** *The Commissioner is correct in observing that after 1-4-1994 the rules were amended there by eliminating the facility of endorsement. However, as observed by him earlier, the amendment would relate to the invoices issued by dealers and exchanges made between two units by a multi-unit manufacture would stand, unaffected.*

7. It may be pertinent to point out that the Hon'ble Rajasthan High Court in the case of **Union of India Vs. Rajasthan Spining & Weaving Mills Ltd.-2004 (174) ELT 427 (Raj.)** in an identical situation has held as under:-

> ***11.*** *The trade notices referred to by the Commissioner (Appeals) clearly indicated that it was not imperative for the intermediary purchaser to have issued a separate invoice, when even the material has not actually reached the godowns to the first purchaser and who has sold to the subsequent purchaser. The seller, in such circumstances can only issue an invoice of the goods in transit and endorse the invoice issued by manufacturer to enable the buyer in transit to take delivery of goods covered under invoice. The presentation of his invoice would also satisfy the requirement of Rule 57G. In fact, the requirement was to produce the gate pass and the invoice issued by the manufacturer evidencing payment of duty on such input as proof of payment of duty on such inputs can be covered by the gate pass issued by the manufacturer or the invoice issued by the manufacturer himself. The endorsement put on it does not take away its value as evidence of payment of duty on such goods.*

8. The Bombay High Court in the case of **Marmagoa Steel Ltd. Vs. Union of India 2005 (192) ELT 82 (Bom)** had held that input credit was not deniable to assessee endorsed in the name of the person claiming the credit. This case law was however in the context of Bill of Entry endorsement, and not that of the invoices issued by a manufacturer, as it was a case pertaining to import. Nonetheless what is material is the said difference in the nature of document would not

alter the situation about the duty paid character of the goods as well as their utilization in the finished product. The Hon'ble Bombay High Court therein had distinguished the Larger Bench's decision in the case of Balmer Lawrie cited supra. Relevant part of the Balmer Lawrie & Co. case referred to in Para 5, is extracted as under:-

> ***9.*** *The language of Rule 57GG, which has been inserted in the statute on the strength of Notification 32/94, dated 4th July, 1994 and of Rule 174 is quite clear, unambiguous and leaves no doubt in ones mind that provisions of these rules are mandatory and do not simply relate to an area of procedure. From the conjoint reading of both these rules, it is quite evident that no one can deal with the excisable goods in any capacity such as trader, dealer, commission agent, broker without getting himself registered under the Central Excises Act. The invoice or invoices under Rule 57G, therefore, can be issued only by a registered dealer after the issuance of Notification No. 32/94 and only then the Modvat credit can be claimed on the strength of the same in respect of the goods mentioned, by the end user and not otherwise.*
>
> ***10.*** *No doubt, the Revenue department, after issuance of the Notification No. 32/94 –C.E., dated 4th July, 1994 and insertion of Section 57GG on its basis in the statute issued instruction bearing No. 76/94-C.E. (N.T.), dated 8-11-1994, authorising the Assistant Collector to accept the invoices issued by those unregistered dealers who subsequently procured registration by 31st December, 1994. But this relaxation obviously was given in order to avoid any genuine difficulty to the end user of the inputs having purchased the same under the invoices issued immediately proceeding the issuance of the Notification No. 32/94-C.E. by an unregistered dealer in claiming the Modvat credit on the strength of those invoices as in the original Notification the last date of registration by the dealer, was not provided. But this relaxation given by the Revenue department, cannot by any logic be interpreted to mean, as contended by the counsel, that the condition of registration of a dealer issuing invoices under Rule 57GG, for claiming Modvat credit, was never intended to make compulsory or mandatory, but only fell within the area of procedure which could even be deviated or violated by the dealer if it was shown by the end user of the goods that the same were intended to be used or had been actually used, in relation to the manufacture of the final product and were duty paid. The words used in Rules 57GG and 174 referred to above are that the dealer of the excisable goods shall get himself registered. Both these rules are thus mandatory in nature, being based on consideration of Policy enacted with a view to eliminate bogus, fictitious, fraudulent, benami traders/dealers and the transactions conducted by them from the commercial market and to avoid misuse of the Modvat scheme not only by them but by the persons deriving title to the goods through them and further to bring transparency in the transactions. These rules being of substantive character and built in with certain objectives cannot, therefore, be called merely a procedural, the deviation of which can be permitted to be made by the dealer of the excisable goods with immunity. The very object of issuance of Notification No. 32/94 referred to above and insertion of Rules 57GG and 174 requiring the registration of the dealer dealing with the excisable goods, would stand defeated and nullified if these are taken to be only procedural and not mandatory/ imperative in character and enforcement.*

9. Distinguishing, the said LB decision of the Tribunal, the Hon. High Court in the case of Marmagoa Steel Ltd., while recording its findings had the following inter alia to state:-

> ***9.*** *Perusal of Rule 57G of the Central Excise Rules, 1944, clearly shows that the credit of duty can be taken on inputs received by establishing that the duty has been paid on the said inputs on the basis of documents such as invoice, AR-1, Bill of Entry, etc. In the present case, it is not in dispute that the appellant had received 3314.159 M.T. of imported shredded steel scrap from M/s. Essar Gujarat Ltd. on which countervailing duty has been paid by M/s. Essar Gujarat Ltd. It is also not in dispute that M/s. Essar Gujarat Ltd. has not taken credit of the duty paid on 3314.159 M.T. of shredded steel scrap which is given on loan to the appellant. It is also not in dispute that the appellant has used the said shredded steel scrap taken on loan from M/s. Essar Gujarat Ltd. as inputs in its factory. The certificate issued by the Superintendent of Central Excise, Surat to the effect that the importer namely M/s. Essar Gujarat Ltd. has not taken credit of duty paid on the said 3314.159 M.T. is not doubted by the Excise authorities. Similarly, the certificate issued by the Superintendent, Central Excise, Panaji, Goa to the effect that the quantity of 3314.159 M.T. shredded steel scrap received by the appellant from M/s. Essar Gujarat Ltd. has been used as inputs in the factory of the appellant is also not doubted by the Excise authorities. In these circumstances, we are of the opinion, that in the facts of the present case, the appellant has established that the credit of duty on receipt of 3314.159 M.T. of imported shredded steel scrap from M/s. Essar Gujarat Ltd. has been taken in accordance with law.*
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> ***10.*** *For availing the credit of duty, what is required to be established under Rule 57G is that the inputs received are in fact duty paid. The procedure set out in Rule 57G of the Central Excise Rules is to ensure that the credit is taken on the basis of duty paid documents. The bill of entry is one such document set out in Rule 57G. The said rule does not require that the bill of entry should be in the name of the person claiming credit of duty. It is not in dispute that the goods imported and cleared on payment of duty by one person can be used as inputs and credit of duty can be claimed by another person by establishing that the imported duty paid goods have been received as inputs and that the importer has not taken credit of that duty. In the present case, it is established that the duty paid goods are received as inputs, however, the credit is denied on the ground that the Bill of entry is not endorsed in the name of the appellant. Rule 57G does not require that for taking credit of duty, the bill of entry should be*

> *endorsed in the name of the claimant. Counsel for the revenue could point out any provision of law in the Act or the Rules regarding the endorsement of bills of entry. <u>In the absence of any provision regarding endorsement on the bill of entry, the credit of duty cannot be denied on the ground that the bill of entry is not endorsed in the name of the claimant. As stated hereinabove, what is required to be established for taking credit of duty is that the goods used as inputs are duty paid and that the credit of duty paid on the said goods has not been taken</u>. In the facts of the present case, the evidence on record i.e. the bills of entry together with the certificates issued by excise authorities at Surat and Goa, clearly show that the goods imported and cleared under the bills of entry on payment of duty were received and utilised by the appellant as inputs in its factory and that the importer has not utilised the credit of duty paid on the said goods. Thus, the appellant has established that the inputs received under the bills of entry were duty paid and, therefore, the authorities below were not justified in denying the credit of duty to the appellant. The two decisions relied upon by the Tribunal do not support the case of the revenue. In the case of Balmer Lawrie & Co. (supra), the issue was not relating to the endorsement on the bills of entry and, therefore, the said decision is distinguishable on facts. Similarly, the decision of the Tribunal in the case of Tata Iron & Steel Co. Ltd. (supra) is also distinguishable on facts as the said decision is based on erroneous concession made by the Counsel for the appellant therein, that in the case of Balmer Lawrie & Co. it is held that the Modvat credit is not available on the basis of endorsed copies of bills of entry. (Emphasis supplied)*

10. In so far as the duty paid character of the goods utilized in the manufacture of finished goods cannot be doubted, I am of the opinion that a substantial benefit cannot be denied merely on the basis of an endorsed invoice. Notification No. 32/94 dated 04.07.94 has been issued in a different context viz. that of invoices issued by registered dealers who were also required to seek registration, as is very clear from the heading of the said notification, and its scope cannot be enlarged to preclude a situation as in the present matter. The said notification does not expressly limit the boundanes of the new Rule 9 of the Cenvat Credit Rules, 2004. Even otherwise a notification cannot be inferred to alternate and circumscribe the provisions of the act & the rules. An invoice depicting payment of duty in law is a substantive

and appropriately recognized document. Its endorsement to a third party without availing of credit cannot in any way disentitle the third party to take credit thereon. Also, there is no provision in the statute that holds that credit on endorsed invoices, in situations where the goods are duly received is not available to the third party.

11. Further, respectfully bowing before the decision of the LB of the Tribunal, in the case of Balmer Lawrie & Co. Ltd. [2000 (116) ELT 364(T)] as well as their Lordship in the case of Marigold Coatings Pvt. Ltd. [(2016 (337) ELT 515 (Guj.)], it is to submit that the said decisions do not pertain to a case of Rule 9 of the Cenvat Credit Rules, 2004 and were decided in the context of the old provisions. The ratio of the said law laid down therefore cannot be applied to decide the issue in altogether distinct circumstances and under new provisions of law. The only requirement in law for availment of credit is an "invoice," that is issued by a "manufacturer," "for clearance of" "inputs or capital goods", "from may be "any other premises where the goods are sold……….", and further what the law mandates is the indication of all particulars as are prescribed under the Central Excise Rules, in the said invoice. There is no dispute about any of the ingredients supra, not being met with in the instant case. For said reasons, the case of Kumar Iron & Steel Co. vs. Commissioner of Customs & Central Excise, Guwahati, relied upon by the Ld. AR is also not applicable in the facts of this case. The period of dispute therein pertaining to prior to the promulgation of the Cenvat Credit Rules of 2004.

12. The said decision of the Hon'ble Bombay High Court in the Marmagoa Steel Ltd. case was upheld by the apex court in the case of **Union of India Vs. Marmagoa Steel Ltd.-2008 (229) ELT 481 (SC).**

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13. I note from the aforesaid discussions, that as long as various ingredients regarding duty paid character of the goods are clearly established and there is no dispute about their utilization in the manufacture of finished goods, thereby indicating the necessary compliance of the act and the rules, no offence can be taken to the legitimate availment of credit. It is further noticed that there are slew of case laws (Gautam Weaving Mills Vs. Commissioner of Central Excise, Belapur-2008 (230) ELT 147, Simplex Mills Co. Ltd. V. CCE, Mumbai-IV-2007 (81) ELT 331 Bom., Akzo Nobel Coatings (India) Ltd. Vs. Commr. of C. Ex, Banglore-2013 (290) ELT 108), allowing credit on the basis of endorsed duty paid document as long as all material particulars required to be incorporated in terms of erstwhile Rule 52A of the Central Excise Rules and the physical receipt of the said goods were clearly established and not in dispute.

14. Under the circumstances, I am of the view that substantial benefit cannot be disallowed for an alleged irregularity as may have been pointed out by the department in the impugned Show Cause Notice. Mere endorsement of an invoice does not amend or alter the key essentials and characteristics of a validly issued inovoice.

15. For the aforesaid reasons, the order of Commissioner (Appeals) is set aside and the appeal is allowed with consequential relief, if any, as per law.

(Order was pronounced in the open court on 25/01/2024.)

Sd/-
(Rajeev Tandon)
Member (Technical)

Pooja