IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
EASTERN ZONAL BENCH : KOLKATA

REGIONAL BENCH – COURT NO. 1

Excise Appeal No. 359 of 2012

(Arising out of Order-in-Appeal No. 18/RAN/2012 dated 30.03.2012 passed by the Commissioner (Appeals), Central Excise & Service Tax, 605, Mahabir Tower, Main Road, Ranchi – 834 001)

M/s. Mihar Alloys Private Limited **: Appellant**
Rauta, P.O. – Marar,
District: Ramgarh, Jharkhand

VERSUS

Commissioner of Central Excise and Service Tax **: Respondent**
Central Revenue Building,
5A, Main Road, Ranchi – 834 001

APPEARANCE:

Shri Indranil Banerjee, Advocate for the Appellant
Assisted by Smt. Ankita Mitra, Advocate

Shri B.K. Singh, Authorized Representative for the Respondent

CORAM:

HON'BLE SHRI ASHOK JINDAL, MEMBER (JUDICIAL)
HON'BLE SHRI K. ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NO. 75440 / 2024

DATE OF HEARING: 29.02.2024

DATE OF DECISION: 07.03.2024

Order : [Per Shri Ashok Jindal]

The appellant is in appeal against the impugned order disputing the penalty imposed on them under Rule 15(2) of the CENVAT Credit Rules, 2004 read with Section 11AC of the Central Excise Act, 1944.

2. The facts of the case are that the appellant had taken CENVAT Credit of Rs.32,65,803/- on the strength of fake invoices issued to M/s. Shree Hanuman Trading Company, Howrah and M/s. M.K. Steels, Howrah during the periods April 2005 to June 2005 and 2006-07. During the course of

investigation, Shri Mukesh Agrawal, Director of the appellant-company, stated that for all the eleven invoices issued by M/s. M.K. Steels, CENVAT Credit was taken only after receipt of the goods; he had no idea about the duty payment; he came to know about this fact through the Department, but had immediately reversed the CENVAT Credit along with interest. During the course of investigation, it was admitted by Shri S.K. Gupta, Proprietor of M/s. M.K. Steels, that they have issued invoices without having any proper Central Excise duty paid invoices and no goods ever moved under these invoices. With regard to the invoices issued by M/s. Shri Hanuman Trading Company, it was stated that he had no idea about the same and that the invoices issued by the said dealer were received along with the goods sent by the said dealer; he had no idea about these at the time of taking credit; he came to know about this fact from the Department and immediately paid the entire amount along with interest.

3. Therefore, in these set of facts, the CENVAT Credit availed by the appellant was proposed to be taken as inadmissible CENVAT Credit and the same was recoverable from the appellant along with interest; penalty was also proposed to be imposed under Rule 15(2) of the CENVAT Credit Rules, 2004 read with Section 11AC of the Central Excise Act, 1944. The matter was adjudicated and the demand was confirmed by denying CENVAT Credit to the appellant on the impugned invoices, along with interest, and the same was paid by the appellant during investigation itself. Therefore, the same was appropriated and penalty under Rule 15(1) of the CENVAT Credit Rules, 2004 was confirmed. Against

the non-imposition of penalty by the ld. adjudicating authority under Rule 15(2) of the CENVAT Credit Rules, 2004 read with Section 11AC of the Central Excise Act, 1944, the Revenue filed an appeal before the Ld. Commissioner (Appeals) whereafter the appeal came to be allowed and a penalty of Rs.32,65,803/- under Rule 15(2) of the CENVAT Credit Rules, 2004 read with Section 11AC of the Act came to be imposed on the appellant. Aggrieved from the said order, the appellant is before us.

4. The Ld. Counsel appearing on behalf of the appellant submits that in this case, although the appellant has taken CENVAT Credit on the strength of fake invoices, but the same was reversed along with interest; therefore, no penalty is imposable on the appellant. To support his contention, he relied on the decision of *Commissioner of C.Ex., Cus. & Service Tax v. Juhi Alloys Ltd. [2014 (302) E.L.T. 487 (All.)]* and *Rajan Engineering Works v. Commissioner of C.Ex., Delhi-IV, Faridabad [2012 (279) E.L.T. 306 (Tri. – Del.)]*.

5. On the other hand, the Ld. Authorized Representative appearing on behalf of the respondent supported the impugned order.

6. Heard the parties and considered their submissions.

7. We find that in the case of *Juhi Alloys Ltd. (supra)*, the issue before the Hon’ble High Court of Allahabad was the availment of CENVAT Credit to the manufacturer whereas the invoices had been issued by the registered dealer which were found to be fake. Therefore, it was held that CENVAT Credit could not be denied.

7.1 Further, in the case of *Rajan Engineering Works (supra)*. The demand in the said case was raised only on the basis of the statement of the input supplier, which is not the case in hand as, in this case, the appellant has admitted that they had taken the CENVAT Credit on the strength of fake invoices although it was not known to them; the same has been reversed along with interest and they are seeking immunity from the penalty imposed on them.

8. So, we are not concerned with the merits of the case – we are only concerned with the penalty imposed. As the appellant has already reversed the amount of CENVAT Credit along with interest and contesting the same, in these circumstances, we hold that penalty on the appellant is to be imposed at only 25% of the amount involved. Therefore, in terms of proviso to Section 11AC of the Act, the penalty on the appellant is reduced to 25% of the penalty imposed as the appellant has already reversed the CENVAT Credit along with interest.

9. In these terms, the appeal is disposed of.

(Order pronounced in the open court on **07.03.2024**)

Sd/-	Sd/-
(K. ANPAZHAKAN)	**(ASHOK JINDAL)**
MEMBER (TECHNICAL)	MEMBER (JUDICIAL)

Sdd