IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, WEST ZONAL BENCH AT MUMBAI

Appeal No. E/85467 & 85732/2017

(Arising out of Order-in-Appeal No. SK/24-25/M-I/2017 dated 16.02.2017 passed by Commissioner of Central Excise (Appeals), Mumbai)

Nakoda Ferromet **Appellant**
Heeralal Kanungo

Vs.

Commissioner of Customs **Respondent**
Mumbai

Appearance:

Shri Stebin Mathew, Advocate for appellant
Shri H.M. Dixit, Asst. Commr (AR) for respondent

CORAM:

Hon'ble Mr. S.K. Mohanty, Member (Judicial)

Date of Hearing & Decision: 30.05.2018

FINAL ORDER NO................................

Per: S.K. Mohanty

These appeals are directed against the impugned order dated 16.02.2018 passed by the Commissioner of Central Excise (Appeals), Mumbai-I.

2. Brief facts of the case are that M/s Nakoda Ferromet (Appellant No.1) is engaged in trading of defective S.S. Scrap and is also registered with the Central Excise Department as a

1st stage dealer. The DGCEI Officers gathered intelligence that one M/s Twenty First Century Wire Rods Ltd., (TFCWRL) is engaged in availing fraudulent CENVAT Credit on the basis of invoices issued by the dealers, including the appellant No.1 herein. On the basis of such intelligence, the department investigated the matter and initiated proceedings against the appellant and also on M/s TFCWRL for denial of Cenvat benefit, confiscation of goods and for imposition of penalties. The show-cause notice dated 01.09.2014 issued by the department was adjudicated vide order dated 23.03.2015. Vide the said order, CENVAT Credit amounting to Rs.1,50,248/- was denied under Rule 14 of the Cenvat Credit Rules, 2004, the goods covered under invoices were confiscated under Section 119 of the Customs Act, 1962, with option to redeem the same on payment of fine of Rs.3,68,042/-. The said order also imposed penalties of Rs.1,50,248/- each on the appellants No. 1 & 2 under Rule 26 of the Central Excise Rules, 2002. On appeal against the said adjudication order, the learned Commissioner (Appeals) vide impugned order has upheld the adjudged demands confirmed against the appellants. Hence, these appeals were preferred before this Tribunal.

3. Learned Advocate appearing for the appellants submit that Rule 14 of the Cenvat Credit Rules, 2004 cannot be invoked

against the registered dealer for denying the CENVAT Credit. Thus, he submits that denial of CENVAT Credit by the authorities below is not proper and justified. With regard to confiscation of seized goods and imposition of redemption fine, he submits that the provisions of Section 119 of the Customs Act, 1962 are not applicable in the case of the appellants inasmuch as no other goods were used for concealing the offending goods, described in the panchanama. He also submits that penalties cannot be imposed on the appellants under Rule 26 of the Central Excise Rules, 2002.

4. On the other hand, learned D.R. appearing for Revenue reiterates the findings recorded in the impugned order and further submits that since the appellants have wrongly issued the invoices in respect of the goods, which were actually not supplied to the buyer, the appellants are exposed to the penal consequences provided in the statute and that denial of credit/confiscation of goods by the authorities below are in conformity with the statute provisions.

5. Heard both sides and perused the records.

6. Rule 14 of the Cenvat Credit Rules, 2004 deals with the provisions for recovery of wrongly availed CENVAT Credit. The

said statutory provisions mandate that where the CENVAT Credit has been taken or utilized wrongly, the same along with interest shall be recovered from the manufacturer or provider of the output service. On reading of the said statutory provisions, it transpires that proceedings can only be initiated against the manufacturer or the service provider. In this case, the appellant No.1 is not confirming to either of the persons/entity mentioned in the said rule. Thus, I am of the considered view that provisions of Rule 14 *ibid* cannot be invoked for denial of CENVAT Credit to the appellants. Accordingly, the impugned order upholding denial of CENVAT Credit is set aside.

6.1 Section 119 of the Customs Act, 1962 provides for confiscation of smuggled goods, when any other goods were used for concealing the same. It is not the case of Revenue that the appellant had used any other goods to conceal the offending goods i.e. "scrap in pressed bundle or loose scraps". Thus, confiscation of goods under Section 119 *ibid* is not proper and justified and accordingly, imposition of redemption fine will not stand for judicial scrutiny. Therefore, the impugned order upholding imposition of redemption fine is also set aside.

6.2 The provisions of Rule 26 of the Central Excise Rules, 2002 are applicable in case of both the appellants herein for imposition of penalty inasmuch as wrong invoices were issued by them, facilitating of availment of ineligible Cenvat benefit to the buyer of the goods. However, considering the fact that the buyer M/s. TFCWRL has not availed any credit based on the invoices issued by the appellants; I am of the view that in the interest of justice, penalties imposed on the appellants can be reduced. Accordingly, the impugned order, to the extent it imposed penalties of Rs.1,50,248/- each on both the appellants are reduced to Rs.50,000/- each.

7. The appeals are disposed of in above terms.

(Order dictated in Court)

(S.K. Mohanty)
Member (Judicial)

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