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

REGIONAL BENCH - COURT NO. 02

Excise Appeal No. 88004 of 2017

(Arising out of Order-in-Appeal No. PK/16-18/Appeal Thane/TR/2017-18 dated 08.09.2017 passed by Commissioner of CGST & Central Excise (Appeals), Thane)

M/s Sarvom Steels Pvt. Ltd. **.....Appellant**
Survey No. 28/1/1, 1/2, 1/3, 30/1/2 at Sarshi, Post-Kone, Tal-Wada, Distt-Palghar 421303

VERSUS

Commissioer of C.G.ST-Thane Rural **.....Respondent**
C-24, Sector-E, Bandra Kurla Complex, Bandra (E), Mumbai-400051

WITH

Excise Appeal No. 88005 of 2017

(Arising out of Order-in-Appeal No. PK/16-18/Appeal Thane/TR/2017-18 dated 08.09.2017 passed by Commissioner of CGST & Central Excise (Appeals), Thane)

M/s Novelty Power & Infratech Ltd. **.....Appellant**
Nuri Villa, 22-Dargah Street, Mahim, Mumbai-400016

VERSUS

Commissioer of C.G.ST-Thane Rural **.....Respondent**
C-24, Sector-E, Bandra Kurla Complex, Bandra (E), Mumbai-400051

AND

Excise Appeal No. 88006 of 2017

(Arising out of Order-in-Appeal No. PK/16-18/Appeal Thane/TR/2017-18 dated 08.09.2017 passed by Commissioner of CGST & Central Excise (Appeals), Thane)

M/s Owais Shakeer Nuri **.....Appellant**
Nuri Villa, 22-Dargah Street, Mahim, Mumbai-400016

VERSUS

Commissioer of C.G.ST-Thane Rural **.....Respondent**
C-24, Sector-E, Bandra Kurla Complex, Bandra (E), Mumbai-400051

Appearance:

Shri Sunil Agarwal, Advocate for the Appellant
Shri A.B. Kulgod, Authorized Representative for the Respondent

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

FINAL ORDER NO. A/85978-85980/2019

Date of Hearing: 15.01.2019
Date of Decision: 30.05.2019

Per: S.K. MOHANTY

Feeling aggrieved with the impugned order dated 08.09.2017, M/s Sarvom Steel Pvt. Ltd. (Appellant No.1), Shri Owais Shakir Nuri (Appellant No.2) and M/s Novelty Power & Infratech Ltd. (Appellant No.3) have filed these appeals before the Tribunal.

2. Brief facts of the case are that the Appellant No.1 was engaged in the manufacture of M.S. Ingots, falling under Chapter 72 of the Central Excise Tariff Act, 1985. Based on intelligence, the officers of DGCEI visited the factory premises of the Appellant No.1 for conducting investigation. On scrutiny of the finished product register for the period 22.08.2010 to 14.11.2010 and Gate Register for the period 10.08.2010 to 20.11.2010 vis-a-vis the Cenvat invoices, it was observed that the Appellant No.1 had purchased scrap from various suppliers and camouflage the said purchase with invoices of Appellant No.3; that the Appellant No.1 had purchased M.S. Scrap from various suppliers, who were not registered with Central Excise Department and therefore, did not pass any Cenvat Credit to it. It has further been observed by the officers of DGCEI that the appellant had obtained pre-fabricated structure, considering the same as capital goods from the Appellant No.3 and availed Cenvat Credit on the same. During the course of investigation, statement of transporters and local scrap suppliers were recorded by the department under the provisions of Section 14 of Central Excise Act, 1944. Based on the investigation report, the department initiated show cause proceedings against the appellants, which culminated into the order dated 10.12.2017, wherein the adjudicating authority has confirmed Cenvat

demand of Rs.19,34,116/- along with interest and imposed equal amount of penalty on the Appellant No.1. Besides, the said order also imposed penalty of Rs.5,00,000/- each on the Appellant Nos. 2 & 3. On appeal, the Learned Commissioner (Appeals) vide the impugned order dated 08.09.2017 has upheld the adjudication order and rejected the appeals filed by the appellants.

3. The Learned Advocate appearing for the appellant submitted that the Appellant No.3 had paid the duty on the scrap items specified in the invoices and that no allegations have been made that the said items have been diverted to some other party. He further submitted that the allegation of receipt of goods from unregistered scrap dealers and availment of credit on the basis of the invoices of Appellant No.3 is baseless. He also submitted that the show cause notice had not brought on any evidence regarding all the 36 vehicles, which were not capable of carrying the consignment in question. With regard to pre-fabricated structures, he submitted that the said goods were received and accounted for under the head “inputs” in the books of accounts maintained in the factory. Thus, he submitted that the adjudged demands confirmed on the appellants would not be sustained.

4. On the other hand, the Learned AR appearing for the Revenue reiterated the findings recorded in the impugned order and further submitted that since the department had confirmed the adjudged demands based on proper investigation into the matter regarding non-receipt of the duty paid goods in the factory of the Appellant No.1, the impugned order cannot be interfered with and sustains in the eyes of law.

5. Heard both sides and perused the records.

6. The material evidences available in the file for consideration of the dispute are summarized herein below:-

(i) In the statements recorded under summon, the transporters have denied having transported any material in respect of the disputed invoices from the factory of the

Appellant No.3 and receipt of any payment for transportation from the Appellant No.1.

(ii) The laden capacity of the vehicle bearing Registration No. MH04AL2008, owned by Shri Jamal Ahmed Rawab Ali Khan was 10 MT, whereas the quantity of material shown to have been transported in the invoice was 13.040 MT.

(iii) Vehicle bearing Registration No. MH04AC2008, owned by Shri Shivnath Atmaram Bhagat was a Maruti 800, which was not capable of transporting the subject goods. Further, the transporter had also denied even knowing the Appellant No.1 & 3.

(iv) Neither the transporters nor the scrap dealers, whose statements were recorded under summon, had retracted such voluntary statements.

(v) Pre-fabricated structures have never been transported to the factory of the Appellant No.1 as per the statement of scrap dealer Shri Naushad Alam Khan Proprietor of M/s Naushad Bhangarwala.

7. I find that the above facts and evidences mentioned in the orders passed by the lower authorities were not disputed by the appellant. The submissions of the Learned Advocate that the department had not conducted the proper enquiry inasmuch as in some of the cases, the quantities of goods did not match and wrong mention of vehicle nos. in some other cases, I do not find credence in such submissions. The investigation conducted by the department and the material evidences brought on record were not disputed by the appellants at any point of time, either at the adjudication or the first appeal stage. The law in this context in well settled by the Hon'ble Supreme Court in the case of D.Bhoormal – 1983 (13) ELT 1546 (S.C.) that the department is not required to prove a case of mathematical precision and is required to prove a case with the pre-ponderance of probabilities. In this case, I find that the Learned Commissioner (Appeals) has thoroughly examined the case and vide paragraph 7 and 7.1 has concluded that the Cenvat demand has been correctly disallowed to the appellant. Thus, I do not find any justifiable reason to differ with the findings in the impugned

order, so far as it confirmed the Cenvat demand and imposed penalty on the Appellant No.1.

8. So far as imposition of penalty on the Appellant No.3 is concerned, I find that vehicle nos. were incorrectly entered by it in the invoices, facilitating the Appellant No.1 to avail the fraudulent Cenvat Credit. Further, it is also evident that the vehicles were not used for transportation of the subject goods for delivery at the factory of the Appellant No.1. Therefore, I am of the considered view that the Appellant No.3 is exposed to the penal consequences provided under Rule 26 of the Central Excise Rules, 2002.

9. With regard to imposition of penalty on the Appellant No.2, Shri Owais Shakir Nuri, Director of Appellant No.1 company, I find that neither the original nor the impugned orders have specifically discussed about the role played by the said appellant in the clandestine activities indulged into by the other appellants. Thus, in absence of proper substantiation of the case, I am of the view that impositions of penalty on the Appellant No.2 cannot be legally sustained.

10. In view of the foregoing discussions, the impugned order sustains, so far as it denied the Cenvat Credit, with interest, imposed penalty on Appellant No.1 and penalty on the Appellant No.3. Accordingly, the appeals filed by the Appellants No. 1 & 3 are dismissed. However, the impugned order is set aside and the appeal is allowed in favour of the Appellant No.2.

11. In the result, the appeal is partly allowed.

(Order pronounced in the open court on 30/05/2019)

(S.K.Mohanty)
Member (Judicial)

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