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

Appeal No. E/85985/2018

(Arising out of Order-in-Appeal No. NA/GST A-III/MUM/219/17-18 dated 28.11.2017 passed by Commissioner of GST and CX (Appeals), Mumbai)

Omega Rolling Mills P. Ltd. **Appellant**
Vs.

C.C.G.ST. Palghar **Respondent**

Appearance:

Shri Hemant Kapadia, C.S for appellant
Shri A.B. Kulgod, Asst. Commr (AR) for respondent

CORAM:

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

Date of Hearing & Decision : 25.07.2018

FINAL ORDER NO. **A/88426 / 2018**

Per: S.K. Mohanty

This appeal is directed against the impugned order dated 28.11.2017 passed by the Commissioner (Appeals) GST & CX, Mumbai.

2. Brief facts of the case are that the appellant, having its factory in Tarapur Industrial Area, Dist. – Thane, Maharashtra, is engaged in the business of manufacture of copper bars, copper rods, copper wire and copper strips, falling under Chapter 74 of the First Schedule to the Central Excise Tariff Act, 1985. The appellant avails CENVAT Credit of Central Excise duty paid

on the inputs namely, copper ingots, copper scraps, copper cathodes etc., under Rule 3 of the Cenvat Credit Rules, 2004. Based on intelligence, the Officers of the DGCEI, New Delhi visited the factory premises of one M/s. V.K. Metal Works (VKM) and upon investigation, had observed that the said party had set up the unit in Jammu with a mala fide intention to avail area based exemption provided under Notification No. 56/2002-CE dated 14.11.2002 and to pass on the Cenvat credit to the buyers of copper ingots. In respect of the present appellant, the case of the department is that it had merely received the invoices without receipt of inputs and thus, availment of credit on the basis of the invoices is not proper and justified. Accordingly, the department proceeded against the appellant for denial of fraudulent Cenvat benefit availed by it. The matter was adjudicated vide order dated 11.01.2017, wherein Cenvat Credit amounting to Rs.19,11,382/- was disallowed and interest liability was confirmed on the appellant. Besides, the said order also imposed equal amount of penalty on the appellant. On appeal, the learned Commissioner (Appeals) has upheld the adjudged demands confirmed on the appellant.

3. Learned Consultant appearing for the appellant submits that the matter adjudicated against M/s VKM and Ors. in confirming the demands were appealed against before the Tribunal, which were disposed of vide final order No. 51982-51997/2018 dated 23.05.2018 in favour of the appellants, holding that the department has not substantially proved the fact regarding non-manufacture of copper ingots by them. Thus, the learned Consultant submits that since based on the investigation conducted by the DGCEI in the premises of the VKM, show cause proceedings were initiated against the appellant, confirmation of the adjudged duty demand cannot be sustained in view of the order dated 23.05.2018 of the Tribunal.

Further, learned Consultant also submitted the consignment notes in support of the claim of the appellant regarding movement of goods from the State of Jammu & Kashmir to Tarapur, Maharashtra. Thus, learned Consultant submits that since the disputed goods were received, accounted for and utilized in the manufacture of final product, Cenvat benefit cannot be denied to the appellant.

4. On the other hand, learned D.R. appearing for the respondent reiterates the findings recorded in the impugned order.

5. Heard both sides and perused the case records.

6. On perusal of the documents submitted by the learned Consultant, I find that the consignment note issued by the transporter contained the reference of the invoice, quantity, description of goods etc. I also find that the transport documents, evidencing movement of goods from the State of J & K to destination point has also been endorsed with proper certification. Thus, it is not the case of Revenue that the goods in question, during the disputed period were not transported from the factory of M/s VKM to the appellant's manufacturing unit. Further, I also find that based on the investigation conducted by the DGCEI in the premises of M/s VKM, the proceedings were initiated against the appellant, alleging fraudulent availment of Cenvat credit. Since, the order confirming the demands against M/s VKM has already been set aside by the Tribunal vide order on 23.05.2018 on the ground that it had manufactured the impugned goods in its factory, I am of the view that the adjudged demands confirmed against the appellant cannot be sustained for judicial scrutiny.

7. Therefore, I do not find any merits in the impugned order. Accordingly, after setting aside the same, the appeal is allowed in favour of the appellant.

(Order dictated in Court)

(S.K. Mohanty)
Member (Judicial)

nsk