CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI
REGIONAL BENCH

Excise Appeal No. 86741 of 2016

(Arising out of Order-in-Appeal No. SK/19 & 20/M-I/2016 dated 31.03.2016 passed by Commissioner of Central Excise (Appeals), Mumbai-I)

M/s. J.V. Seamless India **Appellant**
11B, 52-54, 2nd floor,
C.P. Tank, Mumbai 400 004.

Vs.

Commissioner of Cen. Ex., Mumbai-I **Respondent**
115, New Cen. Ex. Bldg.,
Maharshi Karve Road,
Mumbai 400 020.

WITH

Excise Appeal No. 86867 of 2016

(Arising out of Order-in-Appeal No. SK/19 & 20/M-I/2016 dated 31.03.2016 passed by Commissioner of Central Excise (Appeals), Mumbai-I)

Shri J. Hadee Adhiya **Appellant**
11B, 52-54, 2nd floor,
C.P. Tank, Mumbai 400 004.

Vs.

Commissioner of Cen. Ex., Mumbai-I **Respondent**
115, New Cen. Ex. Bldg.,
Maharshi Karve Road,
Mumbai 400 020.

Appearance:

Shri Stebin Mathew, Advocate, for the Appellant
Shri D.S. Chavan, Authorised Representative for the Respondent

CORAM:

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

FINAL ORDER NO. A/**88516-88517/2018**

Date of Hearing: 11.10.2018
Date of Decision: 11.10.2018

Briefly stated, the facts of the case are that M/s. J.V. Seamless India, the appellant No.1 herein, is a partnership firm, engaged in trading of scrap. The said appellant is registered with the Central Excise Department as a dealer of excisable goods. The appellant No.1 issues dealer invoices in passing out the cenvat benefit to the customers. Shri J. Hadee Adhiya is the authorized signatory of the appellant No.1. During the disputed period, the officers of DGCEI carried out searches at the factory premises of one M/s. Harrison Steel on 27/28.06.2013. During the course of search operation, the officers found a truck bearing registration No. MH 06 K 5673, loaded with scrap weighing about 9070 kgs. An invoice No.90 dated 25.06.2018 having description of goods as “SS UM Waste & Scrap”, issued by appellant No.1 was found in the possession of the driver of the said truck. On examination, it was found that the goods actually contained in the said truck was not as per the description mentioned in the invoices and were locally procured scrap, on which no central excise duty was paid. Accordingly, the department issued the show cause notice dated 24.12.2013, proposing to deny the cenvat credit amounting to Rs.1,77,993/-. The said notice also proposed confiscation of the goods and for imposition of penalties on the appellants. The matter was adjudicated vide order dated 10.02.2015, wherein the adjudicating authority has confirmed the proposals made in the show cause notice. On appeal, the learned Commissioner (Appeals) vide the impugned order dated 31.03.2016 has upheld the adjudged demands confirmed on the appellants. Feeling aggrieved with the impugned order, both the appellants have preferred these appeals before the Tribunal.

2. Learned Advocate appearing for the appellant submitted that the provisions of Rule 14 of the Cenvat Credit Rules, 2004 cannot be invoked in case of a dealer of excisable goods. He also submitted that the provisions of Section 119 of the Customs Act, 1962 are not applicable in the case of the appellants inasmuch as the local scrap seized by the department was not concealing in goods. The learned Advocate further submitted that the provisions of Rule 25 and 26 of the Central Excise Rules, 2002 cannot be applicable for imposition of penalties on the appellants. To strengthen the above submissions, the learned Advocate has relied upon the final order No. A/86822-86823/2018 dated 30.05.2018 passed by this Tribunal in the case of Nakoda Ferromet and also final order No. A/86179-86182/2018 dated 13.03.2018 passed by this Tribunal in the case of Sunrise Metal Corporation Ltd.

3. On the other hand, the learned AR appearing for Revenue reiterated the findings recorded in the impugned order.

4. Heard both sides and perused the records.

5. It is an admitted fact on record that the appellant No.1 in this case is a registered dealer, engaged in the activity of trading of goods. Insofar as Rule 14 *ibid* is concerned, the said rule mandates for recovery of cenvat credit and payment of interest, in the eventuality, where credit has been taken or

utilized wrongly. On reading of the statutory provision, it transpires that the said rule can only be applicable for initiation of proceedings against the manufacturer or the service provider. In this case, since the appellant No.1 is neither a manufacturer of excisable goods nor a service provider, engaged in providing taxable service, the provisions of Rule 14 *ibid* cannot be invoked for recovery of the cenvat credit and for payment of interest. With regard to invocation of Section 119 *ibid* is concerned, it is not the case of Revenue that the appellant No.1 had used any other goods to conceal the offending goods i.e. scrap. Thus, confiscation of the said goods is not proper and justified and accordingly, redemption fine cannot be imposed on the appellant. Since the goods are not liable for confiscation, the provisions of Rule 25 *ibid* will also not be attracted for imposition of penalty on the appellants. As regards applicability of the provisions of Rule 26 *ibid* is concerned, I am of the view that such statutory provisions have correctly been invoked on the appellant No.2 for imposition of penalty inasmuch as he was instrumental in issuance of the wrong invoices to the customers, facilitating availment of ineligible cenvat benefit. However, considering the overall facts and circumstances of the case, I am of the view that the quantum of penalty can be reduced in the interest of justice on the appellant No.2. Accordingly, the penalty imposed on the appellant No.2 is reduced from Rs.1,77,993/- to Rs.50,000/-.

5. In view of the above discussions, both the appeals are disposed of in the following terms:-

(i) Appeal filed by the appellant No.1 is allowed by setting aside the impugned order.

(ii) The impugned order is modified to the extent of reducing the quantum of penalty imposed under Rule 26 *ibid* on the appellant No.2 to Rs.50,000/-.

(Pronounced in the open court)

(S.K. Mohanty)
Member (Judicial)

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