

2014 (2) ECS (201) (Tri. - Ahm.)

In the Customs, Excise & Service Tax Appellate Tribunal

West Zonal Bench, Ahmedabad

M/S. S.S. ALLOYS PRODUCTS PVT. LIMITED

VS.

CCE & S.T., AHMEDABAD & BHAVNAGAR

Date of Hearing: 07.02.2014

Date of Decision: 28.02.2014

Appeal No. : E/457,576,564,510,745,752/2012, E/10801-10802/2013

[Arising out of OIA No. 42to45/2012(Ahd-I)CE/MM/Commr(A)/Ahd dated 28.03.12, 133/2012 (Ahd-II) CE/MM/Commr(A)/Ahd dated 09.4.2012, 67 to70/2012 (BVR)/Commr(A)/RBT/Raj dated 27.07.2012. passed by the Commr. (Appeals) C. Excise & Customs, Ahmd., & Rajkot].

Appearance:

Shri N.K. Tiwari, Shri P.V. Sheth,

Shri Sarju Mehta and Shri N.K.

Oza, Advocates

Shri Manoj Kutty, A.R.

for the appellant

for the respondent

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Hon,ble Mr. H.K. Thakur, Member (Technical)

The proprietor of the first stage dealer and the second stage dealer admitted that for the purpose of passing of cenvat credit only the documents were prepared showing movement from the first stage dealer to second stage dealer without actual movement of inputs. (Para 1)

There were movement of cenvatable documents only, without movement of inputs, right from the first stage dealer to the manufacturer recipients. Appellants have argued that no penalty under Rule 26 of the Central Excise Rules, 2002 can be imposed upon them for the period prior to 01.3.2007 as no penalty was imposable for the earlier period on the first stage dealer or second stage dealer. Second stage dealer has subsequently prepared invoices and provided inputs which he was aware are not the same inputs for which duty was originally paid. Further, this very Bench in the case of CCE, Ahmedabad vs. Navneet Agarwal [2012 (276) ELT 515 (Tri. Ahmd.) has held in Para 6 as follows:-

“6. The view taken by the Hon,ble High Court of Punjab & Haryana was that when a person was concerned in selling and dealing with the goods

which were liable to confiscation under Rule 25(1)(d), Rule 26(1) is also applicable. In this case also, as in the case of M/s. Vee Kay Enterprises, the appellant claimed to have sold goods in respect of which cenvat credit was taken. The Hon,ble High Court observed that a person who proposed to sell the goods cannot say that he was not a person concerned with selling of goods and merely issued the invoices. In view of the decision of Hon,ble High Court of Punjab & Haryana, the decision of the Larger Bench of the Tribunal cannot be followed. Moreover, the decision of the Hon,ble High Court is subsequent to the decision of the Larger Bench decision. Further, the Hon'ble High Court has clearly held that penalty is imposable even prior to amendment of Rule 26 by inserting Rule 26(2) of Central Excise Rules, 2002." (Para 7 & 8)

Per : Mr. H.K. Thakur;

The issue involved in the following appeals is the same, therefore, these are being disposed of by a common order:-

S. No.	Name of Appellant	Appeal No.	OIO No.	OIO No.
(i)	M/s. S.S. Alloys Products Pvt. Ltd	E/457/2012	42to45/2012(Ahd-I) CE/MM/ Commr(A)/ Ahd dated 28.3.2012	10/DC/OA/11 dt. 28.11.11
(ii)	Shri Bansilal S. Kabra, Director of M/s. Bansi Metal & Alloys P. Limited	E/576/2012	-do-	-do-
(iii)	Shri Sunil Natwar Lal Parikh, Prop. of M/s. Jenil Empire	E/564/2012	-do-	-do-
(iv)	M/s. Apex Alloys Steel Pvt. Limited	E/510/2012	133/2012 (Ahd-II) CE/ MM/ Commr(A)/Ahd dated 09.4.2012	23/AC/2011-Demand dtd. 04.11.11, AC, Div-1,Ahmd-II

(v)	M/s. Jenil Empire	E/745/2012	67 to 70/2012 (BVR)/ Commr(A)/RBT/Raj dated 27.7.2012	7/D/2011 dtd. 29.11.11 by AC, Junagarh
(vi)	Shri Bansilal S. Kabra, Director of M/s. Bansi Metal & Alloys P. Limited	E/752/2012	-do-	-do-
(vii)	M/s. Castech Foundries P. Ltd	E/10802/13	-do-	-do-
(viii)	Shri B.M. Thumar, MD of M/s. Castech	E/10801/13	-do-	-do-

Appellants at Serial No. (i), (iv) and (vii) (Manufacturer recipients) above are the recipients of inputs/ documents from appellant mentioned at Serial No. (ii) and (vi) above who is the Director of M/s. Bansi Metal & Alloys Pvt. Limited, Ahmedabad (Second stage dealer). Appellant at Serial No. (iii) above is the proprietor of M/s. Jenil Empire (First stage dealer) mentioned at Serial No. (v) above. Manufacturer recipients took cenvat credit on the basis of invoices issued by second stage dealer. It is the case of the Revenue that both the first stage dealer and the second stage dealer only issued invoices without the movement of inputs. The allegation was based on the verifications done from the RTO, Ahmedabad which revealed that the vehicle numbers mentioned in the transport documents and invoices are not capable of transporting the huge quantities of inputs involved in the present proceedings. The proprietor of the first stage dealer and the second stage dealer admitted that for the purpose of passing of cenvat credit only the documents were prepared showing movement from the first stage dealer to second stage dealer without actual movement of inputs. It is also the case of the Revenue that second stage dealer have passed on the credit to the manufacturers of M.S. Castings, S.S. Castings, C.I. Castings and S.S. Castings (rough) (Manufacturer recipients) without receipt of inputs.

2. Shri P.V. Sheth (Advocate) appearing on behalf of the appellant at Serial No. (vi) & (vii) of Para -1 above, argued that both inputs and duty paying documents were received by manufacturer recipients. That his clients were not aware of non-movements of inputs between the first stage dealer and second stage dealer. That no investigation

was done to establish that inputs received by manufacturer recipients have not moved along with the duty paying documents from the second stage dealer to the manufacturing units. That manufacturer recipients were not aware of any irregularity being done by the first stage dealer and the second stage dealer. That demand is clearly time barred as manufacturer recipients had at no stage any intention to take inadmissible credit and that both inputs and duty paying documents were available at the time of taking cenvat credit. That credit was rightly availed by the manufacturer recipients and no penalty is imposable on any individual of the manufacturer recipients.

3. Shri N.K. Tiwari (Advocate) appearing for appellant at Serial No. (ii) and (vi) of Para 1 above argued that only on the basis of RTO report it can not be said that inputs were not transferred from the first stage dealer to second stage dealer and no investigation has been done by the Revenue suggesting diversions of inputs to hold that only cenvatable documents were issued by the first stage dealer.
4. Shri N.K. Oza and Shri Sarju Mehta (Advocates) appearing on behalf of the other appellants argued that cenvat credit documents and inputs were correctly supplied to the manufacturer recipients. The advocates also borrowed the arguments made by other appellants on the same issue.
5. Advocates of the appellants relied upon the following case laws in support of appellants that neither cenvat credit can be recovered on merits and time bar nor penalty can be imposed upon any of the appellants:-
 - (i) Super Trading Company vs. CCE, Delhi - [2014 (299) ELT 75 (Tri. Del.)]
 - (ii) Shiv Kripa Ispat Pvt. Limited vs. CCE, Nasik - [2009 (235) ELT 623 (Tri. LB)]
 - (iii) CCE, Chandigarh vs. Ansul Steel Scrap Corpn. - [2011 (264) ELT 535 (Tri. Del.)]
 - (iv) Malerkotla Steels & Alloys Pvt. Limited vs. CCE, Ludhiana - [2008 (229) ELT 607 (Tri. Del.)]
 - (v) CCE, Ludhiana vs. Malerkotla Steels & Alloys Pvt. Limited - [2009 (244) ELT 48 (P&H)]
 - (vi) Hiren Aluminium Limited vs. CCE, Valsad - [2009 (245) ELT 386 (Tri. Ahmd.)]
 - (vii) Manaksia Limited vs. CCE, Rajkot - [2008 (232) ELT 497 (Tri. Ahmd.)]
 - (viii) CCE vs. Manaksia Limited & Ors - Hon,ble Gujarat High Court judgment dated 21.04.2010 in Tax Appeal No. 24 of 2009.

- (ix) CCE, Chandigarh vs. Neepaz Steels Limited - [2008 (230) ELT 218 (P&H)]
 - (x) Monarch Metals Pvt. Limited vs. CCE, Ahmd. - [2010 (261) ELT 508 (Tri. Ahmd.)]
 - (xi) Commissioner vs. Dhanlaxmi Tubes & Metal Inds. - [2012 (282) ELT 206 (Guj.)]
 - (xii) Nestle India Limited vs. CCE, Chandigarh - [2009 (235) ELT 577 (S.C.)]
 - (xiii) CCE vs. Fermenta Pharma Biodil Limited - [2009 (234) ELT 609 (H.P.)]
6. Shri Manoj Kutty (AR) appearing on behalf of the Revenue defended the orders passed by the lower authorities and argued that first stage dealer and second stage dealer have admitted that only documents were prepared without movements of inputs between the two. He made the Bench go through Para 5.4 of OIA No. 133/2012(Ahd-II) CE/MM/Commr(A)/Ahd dated 09.04.2012, passed by first appellate authority in the case of Apex Alloys Steel Pvt. Limited to emphasise that cheque payments were made only on record but later equal cash amounts were returned by M/s. Apex Alloys to the second stage dealer. It was thus the case of the Revenue that denial of cenvat credit and imposition of penalties upon all the appellants was justified. He relied upon the following case laws:-
- (i) Ranjeev Alloys Limited vs. CCE, Chandigarh - [2009 (236) ELT 124 (Tri. Del.)]
 - (ii) Ranjeev Alloys Limited vs. CCE, Chandigarh - [2009 (247) ELT 27 (P&H)]
 - (iii) Viraj Alloys Limited vs. CCE, Thane - [2004 (177) ELT 892 (Tri. Mum.)]
 - (iv) CCE Chandigarh vs. Spark Steel Sales - [2010 (256) ELT 134 (Tri. Del.)]
 - (v) Sagar International Pvt. Limited vs. CCE Delhi - [2010 (280) ELT 451 (Tri. Del.)]
 - (vi) Bhagwati Steel Cast Limited vs. CCE, Nasik - [A/687-700/12/EB/C-II]
 - (vii) CCE Mumbai vs. Kalvert Food India Pvt. Limited - [2011-TIOL-76-SC-CX]
 - (viii) Gautam Trades 7 Agencies vs. CCE, ICD, New Delhi - [2011 (274) ELT 408 (Tri. Del.)]
 - (ix) Naresh J. Sukhwani vs. UOI - [1996 (83) ELT 258 (SC)]
 - (x) Vee Kay Enterprises vs. CCE - [2011 (266) ELT 436 (P&H)]

- (xi) Prakash Metal Works vs. CCE Ahmd. - [2007 (216) ELT 660 (SC)]
 - (xii) CCE, Ahmd. vs. Navneet Agarwal - [2012 (276) ELT 515 (Tri. Ahmd.)]
 - (xiii) Nashik Strips Pvt. Limited vs. CCE, Nashik - [2010 (256) ELT 307 (Tri. Mum.)]
 - (xiv) Dr. Writers Food Products vs. CCE, Pune - [2009 (242) ELT 381 (Tri. Mumbai)]
7. Heard both sides and perused the case records. It is the case of the Revenue that in these proceedings there were movement of cenvatable documents only, without movement of inputs, right from the first stage dealer to the manufacturer recipients. Advocates appearing on behalf of the manufacturer recipients argued that both inputs and cenvatable documents were received in the factory of manufacturers and have been properly accounted for and used in the manufacture of the finished goods for which payments were made by cheque. It is observed that no investigation has been done at the end of the manufacture recipients end to the effect that the vehicles used for transport of inputs from second stage dealer to the manufacturers factory were not capable of transporting the inputs received by manufacturer. There is also no evidence on record that manufacturer recipients were aware of the fact that inputs received by them were not the same inputs which were received by the first stage dealer which was sold to second stage dealer without movement of inputs. Except in the case of M/s. Apex Alloys Steel Pvt. Ltd. there is no evidence that cheque payments made were subsequently compensated by the second stage dealer by cash payment after deducting his commission. In the absence of any such evidence cenvat credit can not be denied to the manufacturer recipients and it can not be held that extended period of five years is applicable. There is no evidence on record that manufacturer recipients, other than M/s. Apex Alloys Steel Pvt. Ltd., were aware of the fact that inputs received by them are not the same for which only cenvatable documents were received by the second stage dealer. In view of the case laws relied upon by the appellants it has to be held that cenvat credit is admissible to the manufacture recipients, except in the case of M/s. Apex Alloys Steel Pvt. Limited, on merits as well as time bar. Accordingly, appeals filed by the appellants at Serial Nos. (i) (vii) and (viii) of Para-1 above are required to be allowed. Appeal filed by the appellant at Serial No. (iv) of Para-1 above is required to be rejected.
8. So far as imposition of penalties upon appellants mentioned at Serial Nos. (ii) (iii) (v) and (vi) are concerned, it is observed that enough materials have been produced by the investigation that both, the

first stage dealer and second stage dealers were aware that there was no movement of inputs between them and that only cenvat credit was passed on through documents. Both, Shri Bansilal S. Kabra, Director of M/s. Bansilal Metal and Alloys Pvt. Limited and Shri Sunil Natwarlal Parikh, Proprietor of M/s. Jenil Empire have admitted the facts that there was no movement of inputs between them and that only cenvatable documents were prepared. Appellants have argued that no penalty under Rule 26 of the Central Excise Rules, 2002 can be imposed upon them for the period prior to 01.3.2007 as no penalty was imposable for the earlier period on the first stage dealer or second stage dealer. Second stage dealer has subsequently prepared invoices and provided inputs which he was aware are not the same inputs for which duty was originally paid. Further, this very Bench in the case of CCE, Ahmedabad vs. Navneet Agarwal [2012 (276) ELT 515 (Tri. Ahmd.)] has held in Para 6 as follows:-

"6. The view taken by the Hon,ble High Court of Punjab & Haryana was that when a person was concerned in selling and dealing with the goods which were liable to confiscation under Rule 25(1)(d), Rule 26(1) is also applicable. In this case also, as in the case of M/s. Vee Kay Enterprises, the appellant claimed to have sold goods in respect of which cenvat credit was taken. The Hon,ble High Court observed that a person who proposed to sell the goods cannot say that he was not a person concerned with selling of goods and merely issued the invoices. In view of the decision of Hon,ble High Court of Punjab & Haryana, the decision of the Larger Bench of the Tribunal cannot be followed. Moreover, the decision of the Hon,ble High Court is subsequent to the decision of the Larger Bench decision. Further, the Hon,ble High Court has clearly held that penalty is imposable even prior to amendment of Rule 26 by inserting Rule 26(2) of Central Excise Rules, 2002."

A similar view was earlier taken by CESTAT, Mumbai in the case of Dr. Writers Food Products vs. CCE, Pune-II (supra).

9. In view of the above judicial pronouncements, first appellate authority was justified in upholding penalties against appellants at Serial Nos. (ii), (iii), (v) and (vi) of Para -1 above even for the period prior to amendment of Rule 26 of the Central Excise Rules, 2002. Accordingly, appeals filed by these appellants are required to be rejected.
10. In view of the above observations, Appeals Nos. E/457/2012, E/10801/2013 and E/10802/2013 filed by the appellants are allowed and Appeal Nos. E/576/2012, E/564/2012, E/510/2012, E/745/2012 and E/752/2012 filed by the appellants are rejected.

(Order pronounced in the Court on 28.02.2014)