

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CEA-128-2006

Pronounced on: 23rd January, 2015

M/s SMI Electrowire Pvt. Ltd.

..... Appellant

VERSUS

**The Commissioner of Central Excise,
Delhi II Commissionerate, Faridabad**

..... Respondent

**CORAM: HON'BLE MR. JUSTICE RAJIVE BHALLA
HON'BLE MR. JUSTICE AMIT RAWAL**

Present: Mr.Manoj Kumar Sood, Advocate, for the appellant.

Mr.Kamal Sehgal, Advocate, for the respondent.

RAJIVE BHALLA, J.

The appellant challenges show cause notice dated 15.01.2002, order dated 06.08.2002, passed by the Commissioner Central Excise (Appeals), Delhi-II, order dated 29.04.2003, passed by the Customs, Excise & Gold (Control) Appellate Tribunal, New Delhi and order dated 02.07.2004, passed by the Customs, Excise & Service Tax Appellate Tribunal, New Delhi (hereinafter referred to as the 'CESTAT').

The appellant is engaged in the manufacture of copper wire and availed modvat/cenvat credit on duty paid inputs namely CC copper rod. During 2000-01, the appellant allegedly purchased CC copper rods from M/s R.K. Enterprises through its proprietor Shri R.K.Gupta. The premises of Shri R.K.Gupta were raided. Shri

R.K.Gupta made a statement on 16.01.2001 that he had not delivered goods but had only facilitated parties in obtaining fraudulent modvat/cenvat credit. The detailed statement by Shri R.K.Gupta was preceded by recovery of bill books and rubber stamps of the department etc. The appellant, who was found to have received modvatable/cenvatable goods and claimed modvat/cenvat credit thereon was served with a notice dated 15.01.2002, requiring it to show cause as to why it had wrongly availed modvat/cenvat credit of Rs.6,73,219/-. The appellant filed a reply refuting the allegations in the show cause notice by stating that they had, in fact received goods from M/s R.K. Enterprises and referred to invoices which were duly entered in RG-23A register and were sent to the range office for defacement with RT-12 returns thereby proving that goods received from M/s R.K. Enterprises were consumed as recorded in RG-1 register. The appellant also averred that M/s R.K. Enterprises received payments through account payee cheques. The Commissioner Central Excise, Delhi-II, (adjudicating authority) vide order dated 28.03.2002, rejected the appellant's explanation, raised a demand of Rs.6,73,219/- as cenvat credit and imposed 100% penalty.

Aggrieved by this order, the appellant filed an appeal before the Commissioner of Central Excise (Appeals), New Delhi, which dismissed the appeal on 06.08.2002.

The appellant thereafter filed an appeal before the

CESTAT, which was dismissed on 29.04.2003, by upholding the disallowance of cenvat credit but by reducing the penalty to Rs. 1 lac. The appellant thereafter filed an application for rectification which was dismissed for non-prosecution on 02.07.2004 but pursuant to an order passed in a writ petition, the rectification application was reconsidered by the CESTAT and eventually dismissed on 29.04.2005.

Counsel for the appellant submits that a perusal of the show cause notice, the order in original, the order passed by the appellate authority as well as the order passed by the CESTAT reveals that apart from the statement made by Shri R.K.Gupta, proprietor M/s R.K. Enterprises, no other incriminating material is referred to or available on record. The mere fact that Shri R.K.Gupta may have been guilty of enabling parties to avail fraudulent modvant/cenvat credit, would not raise an inference that the appellant was party to the misdeeds of Shri R.K.Gupta. The statement made by Shri R. K.Gupta does not implicate the appellant and in fact records that the transactions with the appellant were genuine. The statement also records that transactions below six tonnes, are legal and valid. It is further argued that payments to Shri R.K.Gupta were made by cheque and as all relevant forms and invoices, as required by the respondent, were duly filed before the respondent and accepted, the impugned orders are factually and

legally flawed. The onus, therefore, lay upon the revenue to produce material evidence to prove that the appellant had not received the goods but had claimed modvat/cenvat credit on the basis of paper transactions. The fact that Shri R.K.Gupta had no godown to store the goods, is entirely irrelevant as one may supply goods directly from a factory or from someone else's godown and earn commission. The appellant has been falsely implicated by misreading the statement made by Shri R.K.Gupta.

Counsel for the revenue submits that the impugned orders are legal and valid and as the appellant claimed modvat/cenvat credit without any actual transaction, the impugned orders may be affirmed and the appeal may be dismissed.

We have heard counsel for the parties, perused show cause notice dated 15.01.2002, order dated 06.08.2002, passed by the Commissioner Central Excise (Appeals), Delhi-II, order dated 29.04.2003, passed by the Customs, Excise & Gold (Control) Appellate Tribunal, New Delhi, and order dated 02.07.2004, passed by the CESTAT.

The respondent, unearthed a huge fraud allegedly perpetuated by one Shri R.K.Gupta, proprietor of M/s R.K.Enterprises. The *modus* adopted by Shri R.K.Gupta was to issue invoices without any actual delivery of goods enabling the alleged consignor to obtain fraudulent modvat/cenvat credit. A search of the

residential premises of Shri R.K.Gupta led to recovery of voluminous incriminating evidence in the shape of slips, fake GR books, numbering machines, blank cheques, stamps of various officers of the department. It also transpired that the alleged office in Faridabad was a single room taken on rent by Shri R.K.Gupta without any godown from where he could have supplied these goods. Mr. R.K.Gupta, however, did not implicate the appellant for availing fraudulent modvat/cenvat credit but as is apparent from his statement which has been placed on record, gave an explanation by stating as follows: -

“..... One cheque pertaining to M/s S.M.I. Electrowire Pvt. Ltd. and was in the favour of my firm was for the sale made by my firm where the goods were physically sold.”

Mr. R.K.Gupta also stated that transactions above six tonnes were not genuine, thereby inferring that transactions below six tonnes were genuine. The appellant received less than six tonnes of material from Shri R.K.Gupta. The statement by Shri R.K.Gupta tends to exonerate the appellant but the impugned orders have relied upon the *modus operandi* detailed in the statement made by Shri R.KL.Gupta, which reads as follows

“.... Some of my buyers very occasionally used to demand only invoice (Modvatable) without actual delivery of the goods they promise me to pay commission at rate of ranging from 25 paisa to 50 paisa on all such bogus modvatable invoices. I fell in their trap and agreed to issue bogus modvatable invoices.

Thus in Feb. 1999, I got my firm registered with Central Excise as dealership firm since then I started issuing a few bogus modvatable invoices also gradually the number of such

transactions that is issue of bogus modvatable invoices increased and in the year 2000-2001 almost 50% of the invoices (Modvatable) issued by my firm were bogus. That is actual delivery of the goods covered in the invoices never affected. In order to give authenticity and credibility to each transaction I got printed the aforesaid mentioned G.R. Books in the name of various transport cos. I once again clarify that these companies are fictitious and are my creation and that do not exist.”

A perusal of the show cause notice and the order in original reveals that the adjudicating authority, while holding the appellant liable, has placed sole reliance upon the statement made by Shri R.K.Gupta that transport companies mentioned in GR books are fictitious, the description of goods in the invoices differs from purchase invoices and in some invoices the mode of transport is different from the purchase invoices, without referring to that part of the statement that exonerates the appellant or referring to invoices and documents relating to the appellant. The statement by Shri R.K.Gupta has to be read in its entirety, including the portion exonerating the appellant alongwith a detailed reference to the bills, invoices, receipts, cheques and various forms and declarations etc. filed by the appellant before the department but unfortunately have not received due consideration.

The rejection of the account payee cheque, by holding that as Shri R.K.Gupta has accepted that an equal amount of cash was returned, the cheque proves that the appellant did not receive any goods against which they have claimed modvant/cenvat credit, is

a general presumption without reference to the bills, invoices and the cheque pertaining to the appellant.

An allegation of fraud must necessarily be proved by the person who levels such an allegation. Where, however, the department succeeds in prima-facie proving its allegation of fraud, the onus would shift to the assessee to prove the genuineness of the transaction. The department relies upon the statement made by Shri R.K. Gupta, the cheque signed by the appellant company recovered from the premises of Shri R.K.Gupta, the alleged discrepancies in description of goods in invoices and purchase invoices, the different mode of transport mentioned in purchase invoices, various documents i.e. fraudulent GR books/receipts, rubber stamps etc. recovered from the office of Shri R.K.Gupta but without a detailed reference to the appellant's transactions, part of the statement by Shri R.K.Gupta exonerating the appellant and without examining for RG 23-A part I, RG 23-A part II, details in cenvat return filed under Rule 57 A(c) of the Central Excise Rules, 1944 and RG 12 submitted to the Central Excise Department, Faridabad. The mere fact that the appellant purchased goods from Shri R.K.Gupta, would not by itself raise an inference of culpability or wrong doing.

We, therefore, allow the appeal, set aside the order passed by the CESTAT and remit the matter to the CESTAT for adjudication afresh after examining the statement made by Shri

R.K.Gupta, bills, invoices, receipts, cheques and various forms and declarations etc. filed by the appellant before the department.

Parties are directed to appear before the Customs, Excise & Service Tax Appellate Tribunal, New Delhi, on 27.02.2015.

[RAJIVE BHALLA]
JUDGE

23rd January, 2015
Shamsher S.Sabharwal

[AMIT RAWAL]
JUDGE