IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CEA No. 95 of 2011 (O&M)

Date of Decision: 3.3.2016

M/s Vijay Enterprises, Faridabad

....Appellant.

Versus

Commissioner of Central Excise, Panchkula

...Respondent.

1. Whether the Reporters of the local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

CORAM:- HON'BLE MR. JUSTICE AJAY KUMAR MITTAL.
HON'BLE MRS. JUSTICE RAJ RAHUL GARG.

PRESENT: Mr. Jagmohan Bansal, Advocate for the appellant.

Mr. Sukhdev Sharma, Advocate for the respondent.

AJAY KUMAR MITTAL, J.

1. This order shall dispose of a bunch of six appeals bearing CEA Nos. 92 to 96 and 109 of 2011 as according to the learned counsel for the parties, the issue involved in these cases is identical. For brevity, the facts are being extracted from CEA No. 95 of 2011.

2. This appeal has been preferred by the assessee under Section 35G of the Central Excise Act, 1944 (in short “the Act”) against the order dated 12.7.2011 (Annexure A-3) passed by the Customs, Excise and Service Tax Appellate Tribunal, New Delhi (hereinafter referred to as “the Tribunal”) claiming the following substantial questions

of law:-

(a) Whether it is justified to impose penalty equivalent to the amount of Cenvat Credit when the same amount of penalty has been imposed upon the user of Credit?

(b) Whether the Ld. Tribunal is justified to impose equal amount of penalty when in identical facts, 10% of the credit availed has been imposed?

(c) Whether the impugned order is perverse and contrary to the facts and evidences?

3. A few facts necessary for adjudication of the instant appeal as narrated therein may be noticed. During the year 2002-03, the appellant purchased only invoices from the manufacturer without actually buying inputs. As there was no transportation of inputs, there was no question of further sale to manufacturer. The appellant took credit in books of account and issued invoices passing on credit. The object was to facilitate the manufacturer to take cenvat credit. In February, 2005, the officers of Directorate General of Central Excise (Intelligence), New Delhi initiated an investigation against various dealers, manufacturers and brokers pleading that they were not actually supplying the material but invoices were supplied and manufacturers were taking credit without actual receipt of material. Accordingly, a show cause notice dated 30.3.2006 was issued to the appellant for imposing penalty under Rule 25 of the Central Excise Rules, 2002 (for brevity "the Rules"). The appellant filed reply to the said show cause notice. The respondent vide order dated 19.1.2009 (Annexure A-1) imposed penalty equivalent to the amount of credit passed, i.e. ₹ 7,26,885/-. Feeling aggrieved, the

appellant filed an appeal along with stay application before the Tribunal. Various other dealers and brokers also filed appeals before the Tribunal. The Tribunal vide a common order dated 4.9.2009 (Annexure A-2) rejected all the appeals. Against the order, Annexure A-2, the appellant filed an appeal before this Court and this Court vide order dated 17.3.2011 (Annexure A-4) remanded the matter to the Tribunal on the question of quantum of penalty. In pursuance thereto, the Tribunal vide order dated 12.7.2011 (Annexure A-3) dismissed the appeal. Hence, the present appeals.

4. Learned counsel for the appellant submitted that it did not take cenvat credit itself and only issued invoices on the basis of which the manufacturers took the cenvat credit. It was further submitted that the appellant had got enriched only to the extent of 1 to 3% of credit passed on and, therefore, imposition of 100% of cenvat credit passed as penalty was unreasonable and harsh. It was also urged that the impugned order does not satisfy the test of being a reasoned and speaking order and was, thus, liable to be quashed.

5. On the other hand, learned counsel for the revenue supported the order passed by the Tribunal.

6. We have heard learned counsel for the parties.

7. A show cause notice dated 30.3.2006 was issued to the appellant for imposing penalty under Rule 25 of the Rules. The respondent vide order dated 19.1.2009 (Annexure A-1) imposed penalty equivalent to the amount of credit passed, i.e. ₹ 7,26,885/-. Feeling aggrieved, the appellant and other dealers and brokers filed appeals before the Tribunal. The Tribunal vide a common order dated 9.9.2009 (Annexure A-2) rejected all the appeals. Against the order, Annexure A-

2, the appellant filed an appeal before this Court and this Court vide order dated 17.3.2011 (Annexure A-4) remanded the matter to the Tribunal on the question of quantum of penalty. In pursuance thereto, the Tribunal vide order dated 12.7.2011 (Annexure A-3) dismissed the appeal.

8. Learned counsel for the assessee has relied upon a decision of this Court in **CEA No. 125 of 2010 (Commissioner of Central Excise, Chandigarh-I v. M/s Lalit Steel and Agro Industries)** decided on 5.7.2010 wherein this Court had upheld levy of 100% penalty on the assessee who had wrongly claimed the benefit of cenvat credit and 10% in the cases of the assessee who had issued invoices to the main assessee.

9. A perusal of the impugned order shows that it has only been mentioned that in the cases in hand, undisputedly, the credit was sought to be passed on without invoices being accompanied by the goods. Further, it was noticed by the Tribunal that such an action is certainly a major violation of the provisions of law and being so, the question of exercise of any discretion in favour of the offender or showing any leniency to the offenders could not arise. This would not satisfy the test of being a speaking order which is a *sine qua non* for deciding the appeals. No legally justified reasons have been recorded by the Tribunal for dismissing the appeal of the assessee. The Tribunal being a final fact finding authority was required to deal with all aspects of facts and also law and then record its conclusions based thereon.

10. In view of the above, the matter requires to be remanded. Accordingly, the appeals are allowed and the impugned orders passed by the Tribunal are set aside. The matter is remitted to the Tribunal to

decide the same afresh and for passing a well reasoned speaking order after affording an opportunity of hearing to the parties in accordance with law.

(AJAY KUMAR MITTAL)
JUDGE

March 3, 2016
gbs

(RAJ RAHUL GARG)
JUDGE