IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

CENTRAL EXCISE APPEAL NO.95 OF 2015

Harisons Steel Pvt. Ltd. .... Appellant
Vs.
Union of India & Others .... Respondents

Mr. Hemant G. Dharmadhikari with Mr. D.A. Bhalerao for the Appellant.

Ms P.S. Cardozo with Mr. Vipul Bajpayee for the Respondents.

CORAM: S.C. DHARMADHIKARI &
PRAKASH D. NAIK, JJ.

DATE : APRIL 17, 2017

P.C:

1. This appeal of the assessee challenges the order passed by the Customs, Excise & Service Tax Appellate Tribunal, West Zonal Bench, Mumbai on 24-3-2014.

2. The Tribunal had before it an appeal of the appellant before us. That was directed against the confirmation of demands under the order-in-original. That order was passed on

30-4-2008 by the Commissioner of Central Excise, Thane-I.

3. It is submitted that the present appeal raises substantial questions of law and particularly those which have been formulated at pages 10 and 11.

4. On a perusal of the entire paper-book, we are unable to agree that these are substantial questions of law. Far from being substantial, they are not questions of law at all. The attempt is to seek a reappreciation and reappraisal of the factual findings.

5. The first question relates to the alleged violation of the principles of natural justice by not allowing the cross-examination of the supplier / manufacturer / dealer / transporters whose statements were relied upon while adjudicating the show cause notice.

6. This ground is worded in as beautifully vague a manner in which the submission about non-compliance with the principles of natural justice was canvassed before the Tribunal.

A vague plea without any specific statement or the maker thereof being named, we do not think that the Tribunal was in error in rejecting such ground. The Tribunal has found that beyond making a vague and general statement in the written statement (reply) to the show cause notice, the record of the proceedings before the adjudicating authority would indicate that at no stage any request was made to summon a particular person for cross-examination whose statement was attempted to be used by the Revenue. In such circumstances, the reasons assigned so as to confirm the finding of the adjudicating authority cannot be termed as perverse or vitiated by any error of law apparent on the face of the record. The reasoning in para 19, therefore, does not raise any substantial question of law.

7. Insofar as the availment of cenvat credit is concerned, the grievance is that it was not to the knowledge of the appellant. The appellant did not play any role inasmuch as it purchased the scrap from a third party. If that third party had perpetrated a fraud on the Revenue and has done some wrongful or illegal act, then, the consequence thereof cannot be

visited on the appellant before us. Even on this count we are unable to agree with the learned counsel. The Tribunal has found that during the course of the arguments it was contended that the demands were confirmed after denying the credit. The credit was denied to the appellant on the ground that it availed cenvat credit on the strength of invoices without receiving duty paid scrap under the invoices. The provisions of the Cenvat Credit Rules, 2002 enables a manufacturer to avail of the credit of the duty paid on inputs received in the factory of the manufacturer which are used in or in relation to the manufacture of excisable goods on the strength of duty paid documents. The appellant availed credit on the strength of 124 invoices issued by one registered dealer. That registered dealer has been named specifically as M/s. Scor Taur Impex ("M/s. STI", for short). This M/s. STI, in turn, purchased the scrap from one M/s. New Siddhivinayak Rerolling Mills. On investigations being conducted, it was found that M/s. New Siddhivinayak Rerolling Mills stopped manufacturing activities in June, 2001 due to disconnection of electric supply. Despite this, they issued only invoices to registered dealer and on the strength of these invoices the registered dealer further issued invoices to the appellant. Local scrap which is non duty paid was purchased from the open market and was supplied to the appellant. The inputs covered under the invoices on the strength of which credit was claimed were never received in the factory of the appellant. The Tribunal, as a finding of fact, observed that the invoices of M/s. STI were recovered from the office of the appellant. They were accompanied with the challans of local scrap suppliers and weigh bridge slips of various weigh bridges located in Bhiwandi and Ulhasnagar, etc.. That is how it is established and proved that the appellant received bazar scrap and not scrap under the invoices. The names of those entities who supplied the bazar scrap are also set out in the Tribunal's order. The investigations were carried out by searching and visiting their premises. All such local scrap dealers disclosed that they were approached by the representative of M/s. STI to supply bazar scrap to the appellant. These statements were not retracted at any stage. It is in these circumstances that the appellant's role has been pinpointed and with specific details.

8. It is in these circumstances that we do not think that questions (b), (c) and (d) at pages 10 and 11 are substantial questions of law.

9. The reliance on the Judgment of the High Court of Judicature at Allahabad is entirely misplaced. The High Court of Judicature at Allahabad was concerned with the case where the assessee before it had been a registered dealer. It procured raw materials through M/s. MK Steels (P) Ltd.. It is those very inputs and covered by the very invoices raised by M/s. MK Steels (P) Ltd., which were received by the assessee and the details thereof were entered in the cenvat credit account. These inputs were used for the manufacture of final products which were cleared against the payment of duty. It is in these circumstances that the High Court of Judicature at Allahabad dismissed the Revenue's appeal by rendering a finding of fact that from where the inputs were acquired is a burden which could not be discharged by the respondent before that Court. Merely because

the original manufacturer of MS Ingots, Sarla Ispat (P) Ltd., Durgapur was non-existent, does not mean that the duty paid inputs were never received or procured. It is in these circumstances that the adjudication order was rightly set aside.

10. We do not think that the facts obtaining from the record of the High Court of Judicature at Allahabad and before us are identical. We have outlined the clear role of the appellant in not accounting for those inputs which are mentioned in the invoices while availing of the cenvat credit. The bazar scrap was passed off as those inputs covered by the invoices. This was a systematic fraud and detected during the course of the investigation in which the appellant was clearly involved. The role was clearly spelt out. In such circumstances, we do not think that the findings of fact are perverse or vitiated by any error of law apparent on the face of the record raising any substantial question of law. The appeal is, therefore, devoid of merits and is dismissed.

(PRAKASH D. NAIK, J.) (S.C. DHARMADHIKARI, J.)