IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

C.E.A. No. 23 of 2017 (O&M)
Date of Decision: 20.11.2019

Principal Commissioner of Central Excise, Jalandhar
.... Appellant

Versus

Sheel Auto Industries Pvt. Ltd., Ludhiana, Punjab
.... Respondent

CORAM: HON'BLE MR. JUSTICE JASWANT SINGH
HON'BLE MR. JUSTICE LALIT BATRA

Present: Mr. Tajender K. Joshi, Sr. Standing Counsel, Central Excise Deptt. for the appellant.

Mr. Jagmohan Bansal, Advocate for the respondent.

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JASWANT SINGH, J.

1. The Appellant-Principal Commissioner of Central Excise through instant Appeal under Section 35G of Central Excise Act, 1944 is seeking quashing of order dated 23.8.2016 **(Annexure A-II)**, whereby Customs Excise and Service Tax Appellate Tribunal, Chandigarh (for short 'Tribunal') has allowed appeal of the respondent.

2. The appellant has raised following questions of law for the consideration of this Court:

i) Whether the Ld. Tribunal was justified in ignoring the records of the two diaries resumed from the drawer of Sh. Surinder Singh, Security advisor during the search of the factor premises of the respondent which have admittedly been authored by him wherein he has himself in his statement dated 19.05.2016 explained that the same contained the details regarding the receipt of HR/CR sheets and also dispatch of scrap as well as some finished goods?

ii) Whether the Tribunal was justified in allowing the appeal of the respondent when the case of the appellant is based on the statements of the Managing Director, the DGM (Production), the Purchase Officer and the accounts officer of the respondent before the Central Excise Department which are corroborated evidence?

3. As per facts emerging from record, the respondent, a Private Limited Company, is having two manufacturing units at Ludhiana and Gurugram. The respondent is engaged in the manufacture of motor vehicle parts. On 19.5.2006, officers of Directorate General of Central Excise Intelligence, New Delhi (for short 'DGCEI'), on the basis of intelligence that respondent is taking credit on the basis of invoices of HR/CR coils which are not actually received by respondent, searched both manufacturing units of the respondent. During search some shortage of inputs was found which respondent admitted and reversed credit ₹ 3,62,447/- which is not disputed by respondent. The DGCEI resumed two pocket diaries and during the course of investigation recorded various statements. The DGCEI concluded that the Ludhiana unit and Gurugram units have availed Cenvat Credit without actual receipt of goods and further Ludhiana unit has cleared scrap without payment of excise duty. The DGCEI issued show cause notice which was adjudicated by Commissioner of Central Excise, Ludhiana vide Order-in-Original dated 15.5.2009 **(Annexure A-1)**. The Adjudicating Authority confirmed demand of Central Excise duty amounting to ₹ 86,61,875/- against Ludhiana unit holding wrong availment of Cenvat Credit on HR coils and clandestine removal of scrap and ₹ 17,60,447/- against Gurugram unit holding wrong availment of Cenvat Credit on HR

coils. The respondent filed two appeals against the Order-in-Original before Tribunal, which vide impugned order dated 23.8.2016 **(Annexure A-II)** set aside demand to the extent of ₹ 1,00,46,362/- and confirmed demand of ₹ 3,75,960/- and thus modified the impugned Order-in-Original dated 15.05.2009, while disposing of the appeals. The Department has filed present appeal assailing said order of Tribunal / CESTAT, Chandigarh Bench.

4. The Tribunal *qua* the demand of duty on alleged clearance of scrap accepted contention of respondent that they as certified by chartered engineer could not manufacture such a huge scrap during the period involved and dropped the demand. On the question of demand on alleged non-receipt of coil, Tribunal has held that there is no statement of transporter and supplier has admitted supply of coils which as per job work challans submitted during adjudication were got cut/slit from job worker. Tribunal has recorded its findings in Para 10-11 which are reproduced below:

> *" 10. To deal with the issue of clandestine clearance of the scrap based on slip pad received from, security supervisor and the statement of Shri Amajit Singh Bajaj who initially stated that he has received the scrap on the basis of entries made in the slip pad recovered from security supervisor. We have seen the statement of Shri Amajit Singh Bajaj and Shri Surinder Singh were recorded on 19.05.2006. Both the statements were retracted on 21.05.2006 but later on retracted statements were withdrawn. Therefore, it is alleged that the scrap has been cleared without payment of duty. The contention of the appellant is that they are not capable of manufacture such huge quantity of scrap. To support his contention, they have produced a certificate issued by chartered engineer certifying that the factory of the appellant is not able to manufacture such huge scrap during the*

impugned period. We also take note of the fact that during the course of cross examination of Shri Amajit Singh Bajaj has denied of purchasing scrap from the appellant. Moreover he has admitted that he has supplied only tempo for transportation of the scrap and received transportation charges from the appellant. No contrary evidence to this defence has been produced by the Revenue in support of their contention. Moreover, to generate such huge quantity of scrap, there need to be purchased excess raw material an manufacturing thereafter finished goods and clearance of the finished goods without payment of duty and transportation thereof, all these evidence have not been produced by the Revenue. In the absence of such evidence, the evidence produced by the appellant are having evidentiary value and the benefit of doubt goes in favour of the appellant. As contended by the appellant that they are not capable of to manufacture such huge quantity of scrap has been certified by the chartered engineer and no evidence of procurement of excess inputs and clearance of excess finished goods is on record. In these circumstances, the demand on account of clandestine clearance of scrap is not sustainable, therefore the same is set aside.

11. Denial of credit on the allegation that the appellant has received the invoices and not inputs. To allege that such allegation, the sole ground is that the appellant has procured HR/CR coil having no facility to manufacture the same in their factory, therefore, they have not received such quantity of scrap. We have seen that total 80 invoices are in dispute and out of this in 6 invoices the description shown in CR sheets and in 40 invoices the description is HR coils slitted and 34 invoices, the description shown as HR coil. It is evident from the list only against invoices 34 invoices, the appellant has received HR/CR coils. With regard to these, the appellant has taken the defence that these HR/CR Coil has been sent to job work for cutting/sitting. The job charges have been paid and the goods have been received from the job *worker against job work challan. These evidences had not been given credence by the adjudicating authority during the course of adjudication. The adjudicating authority has only relied on the statement that the appellant has not received HR/CR coil. It is admitted position that the appellant has not received HR/CR coil in the factory and the same has been sent to the job worker directly for cutting/slitting/ These facts have not been considered by the adjudicating authority. We also find that there is statement of supplier of coil that they have supplied these coils to the appellant but no statement of the transporter has been recorded to find out the truth. In the absence of such positive evidence, the evidence produced by the appellants are having evidentiary value. Therefore, the credit on HR/CR coil cannot be denied to the appellant. In the circumstances, we hold that the appellants are entitled to avail credit on HR/CR coils in the absence of any contrary evidence produced by the appellant. Therefore, the demand on account of denial of credit on the allegation that the inputs have not been received only invoices is set aside. "*

5. Having heard counsel for both sides and scrutinized record of the case, we find that concededly the respondent is having two units which are independently registered with different Commissionerate. The matter was investigated by DGCEI against both the units and a common show cause notice was issued even though both the units are addressed as Noticee No. 1 and 2. If demand of both the units is considered independently, it is below the monetary limit fixed vide Board Circular dated 22.8.2019, however if demand is clubbed it comes to ₹ 1,00,46,362/- i.e. slightly above the monetary limit of ₹ 1 Crore.

Both the units were separately registered and filing their returns. Both were separately assessed and governed by two different Commissionerate, hence we find some force in the argument of counsel for the respondent that present appeal falls within monetary limit, nevertheless we deem it appropriate to take stock of merits of the case.

6. In the case in hand, dispute revolves around allegation of receipt of invoices of HR coil, whereas respondent-Assessee has used sheet to manufacture its final product. The appellant is not disputing receipt and use of sheets. Simple cutting of coil results into sheet and Assessee during adjudication has submitted copy of job work challans to indicate that coil was got cut from job workers. The rate of duty is same in case of coil and sheet. Tribunal after appreciating evidence led by both sides has concluded in favour of Assessee. On the question of scrap, Tribunal has concluded that there is no evidence of excess purchase of raw material and unaccounted manufacture/sale of finished goods which is necessary to generate/sale of excess scrap, thus evidence led by Assessee that do not have even capacity to manufacture such a huge quantity of scrap is acceptable.

7. We are not oblivious of the fact that Tribunal is final fact finding authority and in matters such as present, an appeal lies from the final order of the CESTAT to this Court, only on substantial questions of law. Matters ordinarily involving appreciation of evidence would not involve substantial question of law. This Court in exercise of its power conferred by Section 35G of the Central Excise Act, 1944 is not empowered to re-appreciate evidence, which has already been appreciated by the CESTAT / Tribunal. This Court can interfere only where the appreciation of evidence by the CESTAT is perverse, to the extent that no reasonable man conversant with the law would arrive at the said conclusion.

8. We are not convinced that the manner in which evidence has been appreciated by the CESTAT, in the present case, suffers from such perversity as would justify interference by us. No question of law much less substantial question of law arise, consequently, present **appeal** stands **dismissed**.

(JASWANT SINGH)
JUDGE

November 20, 2019 **(LALIT BATRA)**
'dk kamra' **JUDGE**

Whether Speaking/reasoned	*Yes/No*
Whether Reportable	*Yes/No*