IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CEA-65-2014 (O&M)
Date of decision:14.10.2022

(1)

M/s Anurag Alloys & Die Cast (P) Limited
..... Appellant

versus

Commissioner of Central Excise, Faridabad
......Respondent

(2)

CEA-66-2014 (O&M)
Date of decision:14.10.2022

M/s Jagdamba Metal Store
..... Appellant

versus

Commissioner of Central Excise, Faridabad
......Respondent

CORAM : HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA
HON'BLE MR. JUSTICE DEEPAK MANCHANDA

Present:- Mr. Deepak Gupta, Advocate for the appellant(s)
(in both the appeals).

Mr. Tajender K. Joshi, Advocate for respondent(s)
(in both the appeals).

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TEJINDER SINGH DHINDSA, J. (ORAL)

This order shall dispose of CEA No.65 of 2014 titled as ***M/s Anurag Alloys & Die Cast (P) Ltd. Vs. Commissioner of Central Excise, Faridabad*** and CEA No.66 of 2014 titled as ***M/s Jagdamba Metal Store Vs. Commissioner of Central Excise, Faridabad***.

Since both matters are connected, for the sake of brevity, facts have been noticed from CEA No.65 of 2014 (***M/s Anurag Alloys & Die Cast (P) Ltd. Vs. Commissioner of Central Excise, Faridabad).***

Instant appeal has been filed under Section 35G of the Central Excise Act, 1944 seeking quashing of the final order dated 30.08.2013 passed in Excise Appeal No.E-756/2011 in terms of which the Customs, Excise & Service Tax Appellate Tribunal, New Delhi has upheld the demand of duty and levy of 100% penalty upon the appellant (Annexure A-1)

Briefly it may be noticed that the appellant is engaged in the manufacture of aluminium ingots and die castings falling under Chapter 76 of the Central Excise Tariff Act 1985. Appellant is registered with the Central Excise Department having registration No.AAECA6777HXM001.

Appellant also avails of Cenvat credit on inputs.

As per averments on record appellant purchases from first stage dealer and second stage dealer and credit is availed on the basis of invoices issued by both the first stage dealer as also second stage dealer.

Apparently, the Directorate General of Central Excise Intelligence conducted an investigation against M/s Bhagwati Trading Company (first Stage dealer) and M/s Jagdamba Metal Store (second stage dealer). On the basis of such investigation an opinion was formed that the first stage dealer and second stage dealer have passed cenvat credit to the appellant without actual delivery of the goods. Accordingly a show cause notice was issued to the appellant alleging that cenvat credit amounting to Rs.8,74,357/- had been availed of without actually receiving goods. The demand was confirmed by the adjudicating authority vide order dated 01.04.2010. Such demand was confirmed by the Appellant Authority.

Thereafter the final order dated 30.08.2013 (Annexure A-1) has been passed by the Customs Excise & Service Tax Appellate Tribunal, New Delhi and which in turn has led to the filing of CEA No.65-2014.

Suffice it to notice that CEA No.66-2014 is at the hands of 2nd stage dealer i.e. ***M/s Jagdamba Metal Store*** in consonance with the order dated 30.08.2013 (Annexure A-1) passed by Customs Excise & Service Tax Appellate Tribunal, New Delhi and as appended as Annexure A-1 in CEA No.65 of 2014.

We find that in CEA No.65-2014 a specific ground has been taken that the appellant after receipt of goods had manufactured the finished goods and had cleared the same upon due payment of duty. It has further been asserted that in the show cause notice there was no allegation that the appellant had not manufactured and cleared the finished goods without payment of duty from inputs on which Cenvat Credit had been availed of. Categoric averment further has been made that the appellant actually received goods from dealers and cleared finished goods after payment of duty and the same was duly reported in RG-1 register. It is also the contention made by counsel for the appellant today during the course of hearing that the same stood duly reflected in the statutory returns/RG registers concern.

We find that in a similar factual premise, a Coordinate Bench had dealt with ***CEA No.128 of 2006*** titled as ***M/s SMI Electrowire Pvt. Ltd. Vs. Commissioner of C. Ex., Delhi-II*** and had taken following view:-

> *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.

We are of the considered view that the facts of the present case also warrant and justify a remand to the CESTAT for adjudicating the matter afresh and after examining the entire material in the nature of statutory returns/registers in question as also the declaration etc. that had been filed by the appellant.

In view of the above and without opining on the merits of the case the impugned order dated 30.08.2013 passed in CEA No. 65 of 2014 as also impugned order dated 30.08.2013 passed in CEA No.66 of 2014 passed by CESTAT, New Delhi are set aside.

Matter is remanded back to the Tribunal for considering and passing of orders afresh in the light of the observations already made by this Court.

It is clarified that all submissions on either side of the parties shall remain open.

CESTAT, New Delhi, would now inform the parties as regards the actual date of hearing.

Appeals disposed of.

(TEJINDER SINGH DHINDSA)
JUDGE

(DEEPAK MANCHANDA)
JUDGE

14.10.2022
shweta

Whether speaking/reasoned? Yes/No

Whether Reportable? Yes/No