M/s Jaideep Ispat and Alloys Pvt. Ltd. And Ors. Vs C.C.E. And S.T. Indore

Court: Customs, Excise And Service Tax Appellate Tribunal Principal Bench, New Delhi

Date of Decision: March 17, 2016

Acts Referred: Central Excise Tariff Act, 1985 â€" Chapter 72
Cenvat Credit Rules, 2004 â€" Rule 15(2), 3(1)

Hon'ble Judges: S.K. Mohanty, J

Bench: Single Bench

Advocate: Priyanka Goel, Vaibhav Bhatnagar

Final Decision: Allowed

Judgement

1. These appeals are directed against the impugned order dated 12.07.2012 passed by the Commissioner (Appeals) Customs, Central Excise and

Service Tax, Indore.

2. Brief facts of the case are that the appellant is engaged in the manufacture of MS Ingot falling under Chapter 72 of the Central Excise Tariff Act,

1985. The appellant avails cenvat credit of Central Excise duty and Service Tax paid on the input and input services used in or in relation to

manufacture of the final product. During the disputed period, the appellant had availed cenvat credit on the strength of Commercial/ Tax invoices

issued by M/s Nathani Industrial Services Pvt. Ltd., Mumbai on the service tax paid on he taxable services namely, Ã¢â‚¬Ëœ Clearing and ForwardingÃ¢â‚¬â„¢

and Ã¢â‚¬Ëœ Inland Haulage ChargesÃ¢â‚¬â„¢. Taking of cenvat credit on the said services were objected to by the Central Excise Department on the ground

that the appellant had purchased the goods from M/s. Nathani Industrial Pvt. Ltd. Indore, whereas such services were provided to such supplier by its

Mumbai office. Since the said services have not been provided by the service provider to the appellant, taking of cenvat credit of service tax paid on is

not available to the appellant. The adjudged demand confirmed against the appellant by the Department was upheld in the impugned order, against

which the present appeal has been preferred by the appellant.

2. Ms. Priyanka Goel, the Ld. Advocate appearing for the appellant submits that the Disputed services provided by the service provider relates to the

goods procured by the appellant from Nathani Industrial Pvt. Ltd, and as such, the said services are indirectly related to the manufacturing activity

undertaken by the appellant and should be considered as input service for the purpose of taking cenvat credit. Thus, according to the Ld. Advocate,

Cenvat Credit taken on the disputed services is in conformity with the Cenvat statute. She further submits that in absence of any fraud, collusion,

suppression etc. on the part of the appellant, to defraud Government revenue, the provisions of sub-rule (2) of Rule 15 of the Cenvat Credit Rules,

2004 cannot be invoked for imposition of penalty against the appellant.

3. On the other hand, Sh. Vaibhav Bhatnagar, the Ld. DR appearing for the Respondent reiterates the findings recorded in the impugned order and

further submits that the disputed services are not the input service for the appellant and since those services have not been received by the appellant,

taking of cenvat credit is outside the scope and purview of sub rule (1) of Rule 3 of the Cenvat Credit Rules, 2004.

4. I have heard the Ld. Counsel for both the sides and perused the records.

5. The appellant had entered into the agreement with M/s Nathani Industrial Pvt. Ltd. Indore for supply of goods. The goods were supplied by the

supplier from its Indore depot in the capacity of a registered dealer. The supplierÃ¢â‚¬â„¢s Mumbai office had imported the goods and filed the bill of

entry in its name. The service tax on Ã¢â‚¬ËœClearing and ForwardingÃ¢â‚¬â„¢ service and Ã¢â‚¬ËœInland Haulage ChargesÃ¢â‚¬â„¢ service paid by the supplierÃ¢â‚¬â„¢s

Mumbai office were passed on to the appellant under the cover of Commercial/ tax invoice, on which the appellant had taken the cenvat credit. It is

an admitted fact on record that the appellant had not entered into any agreement with Nathani Industrial Pvt. Ltd for providing the disputed taxable

services. Since the agreement was confined only to supply of goods and in fact the disputed taxable services have not been provided by Nathani

Industrial Pvt. Ltd to the appellant, taking of cenvat credit on the strength of disputed invoices issued by the supplier is not in conformity with the

cenvat statute. Thus, I do not find any infirmity in the impugned order passed by the Ld. Commissioner (Appeals) so far as denying the cenvat benefit

to the appellant.

6. However, I find that taking of cenvat credit of service tax paid on the disputed services is not attributable to fraud, collusion, suppression etc. The

said fact is evident from the records that credit in this case has been taken by the appellant based on the valid and proper invoice issued by the service

provider. Since the issue relates to interpretation of the statutory provisions as to whether the appellant is eligible to take cenvat credit on the disputed

service, in my view, the allegation cannot be leveled that fraud, collusion or suppression is involved to defraud the Government Revenue. Therefore,

penalty imposed by the authorities below in terms of Rule 15(2) of the Cenvat Credit Rules, 2004 is not proper and justified.

7. Therefore, the impugned order is set aside and the appeals are allowed to the extent of imposition of penalty alone.

(Dictated and pronounced in open court)