CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

NEW DELHI

PRINCIPAL BENCH – COURT NO. – IV

Excise Appeal No. 55041 of 2023 [SM]

[Arising out of Order-in-Appeal No. 14.03.2023 dated 14.03.2023 passed by the Commissioner of Central Excise & CGST, Jaipur]

M/s. National Engineering Industries Limited **...Appellant**
Khatipura Road, Jaipur,
Rajasthan - 302006

VERSUS

Commissioner of CGST & Central Excise, Jaipur **...Respondent**
NCR Building, Statue Circle,
Jaipur, Rajasthan - 302005

APPEARANCE:
Shri Dhruv Tiwari and Ms. Aarushi Prabhakar, Advocates for the Appellant
Shri Rohit Issar, Authorized Representative for the Respondent

CORAM: HON'BLE DR. RACHNA GUPTA, MEMBER (JUDICIAL)

DATE OF HEARING: 22.04.2024
DATE OF DECISION: **22.08.2024**

FINAL ORDER No. 58084/2024

DR. RACHNA GUPTA

The appellant M/s. National Engineering Industries Ltd., Jaipur, was holding Central Excise registration No. AAACN9969LXMO02 being engaged in the manufacture of Bearing, Bearing Components, Machines and was also holding service tax registration for providing the services as Business Auxiliary Service, Consulting Engineering Service, etc. During the course of audit and verification of Cenvat records of input services maintained by the appellant, it was observed that they have wrongly availed Cenvat credit of input service on the basis of invoices which are not prescribed documents as per Rule 4(7) and 9 of Cenvat Credit Rule,

2004. In view of the above facts, it also appeared to the department that above discrepancies have come to notice during the audit else the facts might not have come to knowledge of the department. Thus the appellant is alleged to have suppressed the facts from the department with intent to evade payment of Central Excise duty. Therefore, wrongly taken Cenvat credit of Rs.12,62,017- on input services was proposed to be recovered with proportionate interest and appropriate penalties vide Show Cause Notice No. 2152 dated 04.11.2019. The proposal has been confirmed vide Order-in-Original No. 01/2021-22 date 30.06.2021. The appeal against the said order is dismissed vide Order-in-Appeal No. 15/2023 dated 14.03.2023. Being aggrieved the appellant is before this Tribunal.

2. I have heard Shri Dhruv Tiwari and Ms. Aarushi Prabhakar, learned Advocates for the appellant and Shri Rohit Issar, learned Authorized Representative for the department.

3. Learned counsel for the appellant foremost has raised the jurisdiction issue as the authority issuing show cause notice is different from adjudicating authority. He has submitted that the appellant has correctly availed Cenvat credit of Rs.12,62,017/- in terms of Rule 9(1) of the Credit Rules and Rule 9(2) *ibid*. In this regard, it is submitted that the invoices issued by the service providers contain all the details as specified under Rule 9(1)(f) of the Credit Rules, read with Rule 4A(1) of the Service Tax Rules. The only objection raised in the show cause notice and endorsed by both the lower authorities below, is that the invoices do not contain the correct address of the Appellant and thus, these invoices fail to

satisfy the requirement of Rule 4A(1) of the Service Tax Rules. In this regard, it is submitted by the learned counsel that no dispute has been raised in the present proceedings regarding receipt of eligible input services as well as tax paid on such services. Once there is no dispute on usage of said input services in or in relation to manufacture of final product cleared by the appellant as well as tax paid, substantive benefit of Cenvat credit provided in Rule 3 of the Cenvat Credit Rules, 2004 (CCR, 2004) cannot be denied by resorting to procedural requirements under Rule 4A of the Service Tax Rules, with Rule 9 of the Credit Rules.

3.1 It is further submitted that the suppliers have inadvertently mentioned the incorrect address of the appellant in the manner that although the services were received at Jaipur unit, however, address of Chennai unit, Vadodara unit and Delhi unit is mentioned. The Appellant has accounted for such invoices in its books of accounts and has made payment to the service providers. The appellant has also enclosed a certificate from Chartered Accountant to submit that non other units of the appellant have availed credit on the basis of such invoices and such invoices have been accounted for by the appellant in its books of accounts and made payment to the service providers.

3.2 As regards the Cenvat credit of Rs. 72,769/- which is denied on the ground that the same has been availed on the basis of print outs of emails, it is submitted that the basis of demand is itself incorrect since the documents considered by the department for denial of Cenvat credit are letters of internal communication of the appellant. The subject input services of inspection were provided

by RITES Ltd. (service provider) to the appellant and all the invoices have been validly issued by RITES Ltd. to the appellant based on which the Cenvat credit was availed. Thus, the appellant has correctly availed credit on the basis of valid documents. With respect of the amount of Rs.1,34,261/- in respect of clearance made to Baynee Traders and Ashoka Services, it is mentioned that the appellant has already paid central excise duty. Thus, in terms of the above submissions and supporting evidence of payment of central excise duty, the demand of central excise duty of Rs.1,34,261 is submitted as unsustainable and is prayed to be set aside.

3.3 Finally submitting that substantive benefit of Cenvat credit cannot be denied merely on technical/procedural lapses and that the extended period of limitation is not invokable, penalty is not imposable and interest is not recoverable. This order is accordingly prayed to be set aside and appeal is prayed to be allowed.

4. While rebutting on the issue of jurisdiction on the ground of show cause notice being issued by Assistant Commissioner, CGST Audit, Jaipur but adjudicated by Deputy Commissioner, CGST Division, Jaipur but learned Departmental Representative has referred to Circular No. 985/09/2014-CX dated 22.09.2014 Para 5.3 thereof. While submitting on merits, learned Departmental Representative has mentioned that on verification of sample invoices submitted by the appellant it was found that invoices were not part of Annexure-A of show cause notice/audit objection. Other sample invoices submitted by appellant doesn't seems genuine. Appellant is admitting that invoices were issued in the name of

other plants/unit of the appellant. Hence, name and address of the person receiving the taxable service was not of NEI, Jaipur, the appellant but to other plants of NEI at Vadodara, Newai, Manesar etc. the Cenvat credit is rightly been denied.

4.1 As per Rule 9(5) of Cenvat Credit Rules, 2004, burden of proof regarding the admissibility of the Cenvat credit shall lie upon the manufacturer or provider of output service taking such credit. From O-I-O and O-I-A, it appears that going through appellant submission both the authorities observed that the input invoices are not having the address of the appellant and the invoices were for their other plants and no clarification is provided by the appellant. The case law submitted by the appellant has been distinguished holding that their is no dispute on receipt and utilization of said input. In present case, it has been observed that audit enquiry was related to appellant only that is NEI, Jaipur. Input invoices were not meant for appellant since the address mentioned was of some other units of NEI. Receipt and utilization was not investigated as invoices pertains to other manufacturing units at Vadodara, Newai, Manesar which were not under investigation. Due to these reasons it has been held that input services on which credit is availed have not been received by the unit in question i.e. NEI, Jaipur. Further, Rule 9(5) of Cenvat Credit Rules, 2004. Finally it is impressed upon that the burden of proof regarding the admissibility of the Cenvat credit shall lie upon the manufacturer or provider of output service taking such credit which appellant has failed to clarify. Hence, there is no infirmity in the order under challenge. Appeal is prayed to be dismissed.

5. Having heard the rival contentions and perusing the entire records, I observe and hold as follows:

5.1 Foremost the appellant has alleged that show cause notice was issued by Assistant Commissioner, Circle-Jaipur B, CGST Audit Commissionerate, Jaipur and thus, its adjudication by Deputy Commissioner, CGST, Division-G, Jaipur, i.e. adjudicating authority, is without jurisdiction. Since learned Departmental Representative has relied upon the department's circular dated 22.09.2014, it is observed that the same is with respect to the guidelines regarding structure, administrative set up and functions of the audit commissionerates. Para 5.3 thereof reads as follows:

> *"5.3 Audit Commissionerate shall issue the show cause notice, wherever necessary, after the audit objections are confirmed in the MCMs. The show cause notice shall be answerable to and adjudicated by the Executive Commissioner or the subordinate officers of the Executive Commissionerate as per the adjudication limits prescribed the Board. Audit function will end with the issuance of show cause notice and further action including adjudication and follow-up shall be the responsibility of Executive Commissioner."*

5.2 In view of this, it is clear that the aforesaid allegation challenging the jurisdiction is not sustainable. The adjudication authority despite being different from one which issued the said show cause notice is held to have the competent jurisdiction.

5.3 Now coming to the merits of the present case, it is observed that Commissioner (Appeals) has confirmed the demand based on following findings:

> *(i) I find that the audit during the audit observed that the documents on the basis of which the assessee has availed the credit were not meant for them, means these documents are not*

having the address of the assessee and these were for their other plants.

(ii) The assessee has submitted some of the invoices issued by M/s. RITES. It has been observed that the service tax amount has not been mentioned against the "Total tax (GST)'. Moreover, these invoices pertains to year 2015 when the GST (Goods and Service Tax) was not implemented, therefore the same appears to be not genuine and the assessee got these documents after conducting audit.

(iii) I find that nerther the assessee submitted ER-1 showing that the said duty discharged by them nor challan bearing No.00093 dated 04.12.20214 showing that they had deposited the said amount after audit being conducted or after issuance of show cause notice.

(iv) I find that the discrepancies have been noticed during the audit by the Audit team. The facts come to the notice of the department only the audit was conducted of the assessee otherwise the facts might have not come to knowledge of the department. Thus, the assessee have suppressed the facts from the department, that have wrongly availed the Cenvat credit of Rs.12,62,107/- and not discharge the Central Excise duty of Rs.1,34,261/-, with intent to evade payment of central excise duty.

5.4 I have perused Rule 3 of the Credit Rules which provides that a manufacturer shall be allowed to take Cenvat credit of the central excise duty and service tax paid on any input or capital goods and any input service received by the manufacturer. Admittedly there is not dispute on use of said input services in or in relation to manufacture of final product cleared by the appellant. Hence I hold that substantive right provided for in Rule 3 cannot be denied by resorting to procedural requirements under Rule 9, as has been done in the instant case. It is important to now peruse Rule 9 of the Credit Rules, which specifies the documents on basis of which credit can be taken. It reads as under:

RULE 9. Documents and accounts. *- (1) The CENVAT credit shall be taken by the manufacturer or the provider of output service or input service distributor, as the case may be, on the basis of any of the following documents, namely:-*

(a) an invoice issued by -

(i) a manufacturer or a service provider for clearance of-

(l) inputs or capital goods from his factory or depot or from the premises of the consignment agent of the said manufacturer or from any other premises from where the goods are sold by or on behalf of the said manufacturer;

(ll) inputs or capital goods as such;

(ii) an importer;

(iii) an importer from his depot or from the premises of the consignment agent of the said importer if the said depot or the premises, as the case may be, is registered in terms of the provisions of Central Excise Rules, 2002;

(iv) a first stage dealer or a second stage dealer, as the case may be, in terms of the provisions of Central Excise Rules, 2002; or

……..

(2) No CENVAT credit under sub-rule (1) shall be taken unless all the particulars as prescribed under the Central Excise Rules, 2002 or the Service Tax Rules, 1994, as the case may be, are contained in the said document:

Provided that *if the said document does not contain all the particulars but contains the details of duty or service tax payable, description of the goods or taxable service, assessable value, Central Excise or Service Tax registration number of the person issuing the invoice, as the case may be, name and address of the factory or warehouse or premises of first or second stage dealers or provider of output service, and the Deputy Commissioner of Central Excise or the Assistant Commissioner of Central Excise, as the case may be, is satisfied that the goods or services covered by the said document have been received and accounted for in the books of the account of the receiver, he may allow the CENVAT credit:*

5.5 In view of above, an invoice issued by the service provider is sufficient to prove the admissibility of Cenvat credit of input services. Further, reference is also made to Rule 4A of the Service Tax Rules, which provides that any person who provides taxable

service, on completion of the said service, shall issue an invoice or bill not later than thirty days from the date of completion of such taxable service or receipt of payment, whichever is earlier. The relevant extract is as under:

> ***RULE 4A. Taxable service to be provided or credit to be distributed on invoice, bill or challan. -*** *(1) Every person providing taxable service shall, not later than thirty days from the date of completion of such taxable service or receipt of any payment towards the value of such taxable service, whichever is earlier, issue an invoice, a bill or, as the case may be, a challan signed by such person or a person authorized by him in respect of such taxable service provided or agreed to be provided* ***and such invoice, bill or, as the case may be, challan shall be serially numbered and shall contain the following, namely :-***
>
> *(i) the name, address and the registration number of such person;*
> *(ii) the name and address of the person receiving taxable service;*
> *(iii) description and value of taxable service provided or agreed to be provided; and*
> *(iv) the service tax payable thereon:*

5.6 The above provisions says that, an invoice shall contain the following:

(i) Name, address and registration number of service provider;

(ii) Name and address of the person receiving the taxable service;

(iii) Description and value of taxable service provided; and

(iv) Service Tax payable.

5.7 Thus, it is prescribed in the Credit Rules, that Cenvat credit shall be taken on the basis of an invoice issued by the service provider. Further, Rule 9(2) provides that the Cenvat credit shall be allowed only when all the particulars are mentioned in the

invoice issued by the service provider as per the Rules prescribed in this behalf. Thereafter, an exception is carved out, wherein if certain details, but not all, are provided in the invoice, credit shall be allowed, if the Assistant / Deputy Commissioner is satisfied that that the goods/services are received and accounted for in the books of accounts.

5.8 In the present case, apparently the invoices were issued in the name of other plants of the appellant instead of being in favour of appellant. But it is also an admitted fact that the invoices were found accounted in the books of appellant, NEI Jaipur. Revenue has produced no evidence to prove that the units whose name were mentioned on the invoices had accounted those invoices in their books of accounts. Revenue has also failed to produce any evidence to prove that the input services were received by other units of NEI that the Jaipur unit. The burden was of the Revenue/department. I draw my support from the decision in the Case of **Radha Madhar Corporation Ltd. Vs. Commissioner of Centra Excise Daman reported in 2012 (284) ELT 369.**

5.9 I further observe that appellant had placed on record the Chartered Accountant (CA) certificate but the authorities below have not considered the same. It is settled law that books of account, balance sheet and CA certificate are sufficient admissible documents for the proof of contents of the concerned document unless rebutted. I draw my support from the decision in the case of **Akasaka Electronics Ltd. Vs. Commissioner of Customs, Mumbai reported as 2016 (343) ELT 362.** Their no rebuttal produced by the department/Revenue.

5.10 In the light of above discussion, the deficiency noticed in the invoices is held to not be enough to deny the benefit of Cenvat credit in view of the proviso to Rule 9(2) of the Credit Rules. The invoices on record have all such details as mentioned above. Inasmuch as in the present case, the invoices with incorrect address issued by the input service providers contain all the requisite particulars as required under the proviso to Rule 9(2), therefore, Cenvat credit cannot be denied to the appellant. In fact, Rule 9(2) nowhere requires mentioning the address of service recipient. The proviso to Rule 9(2) of Credit Rules kicks in only when the conditions under Rule 4A of Service Tax Rules, 1944 read with Rule 9 of the Credit Rules, are not fulfilled entirely. Thus, denial of credit is not sustainable. In support, reliance is placed on the following decisions:

(i) Novozymes South Asia Pvt. Ltd. v. Commissioner of C. EX., Bangalore, 2015 (38) S.T.R. 204 (Tri.-Bang.)

(ii) Bhalla Techtran Industries Ltd. v. CCE, Noida, 2015 (7) TMI 1175- CESTAT New Delhi.

5.11 Above all, in the absence of any evidence from department that the units mentioned in the invoices are the service recipient or that those units have accounted those invoices in their account or that any other unit than appellant's name in the invoices based whereupon appellant has availed Cenvat credit is nothing but a procedural lapse, substantial benefit cannot be denied. Hon'ble Supreme Court in the case of **Udai Shankar Triyar Vs. Ram Kalewar Prasad reported in 2005 AIR SCC 585** wherein it has

been held that procedure is the hand maiden to justice. It should never be made a tool to deny justice or to perpetrate injustice.

5.12 Another fact apparent on record is that as soon as the appellant realized that the subject invoices had address of its other plant, it proceeded to get the same rectified. The appellant requested its vendors to issue correct invoices mentioning the address of the appellant. In pursuance thereof, certain vendors acquiesced to the request of the appellant and proceeded to issue corrected invoices. Order-in-Original has held that the appellant submitted invoice no. JCR/2017-18/001 dated 28.04.2017 and JCR/2017-18/2002 dated 24.05.2017 issued by Jagdish Chander Raja wherein Service Tax of Rs.25,500/- was charged in each invoice. That on perusal of invoices in Annexure-A to SCN, the said invoices are not mentioned by the audit and the said invoices do not pertain to the audit objection. But I observe that in the show cause notice neither the invoice no. nor the invoice date is mentioned. Annexure-A to show cause notice simply notes the posting date of invoice and the amount of service tax, of which Cenvat credit is availed and the aforementioned invoice is recorded. There is no evidence to the contrary, otherwise. It is held that the invoices submitted by the appellant pertain to the subject matter at hand and the demand of Cenvat credit is not sustainable. Rejection of these documents in the impugned proceedings is without appreciating the correct facts and thus, liable to be discarded.

5.13 Appellant has also placed on record the CA certificate issued by Ashok Kanodia & Co., wherein it is certified that the Cenvat credit of Rs.12.62,017 was only availed by the appellant and not by

any other unit of NEI. It is already held above that it is an admissible evidence. As a settled law, credit is a indefeasible and vested right, once there is no dispute on its entitlement. In this regard, reliance is placed on the following decisions:

(i) Eicher Motors Limited Vs. Union of India reported as 1999 (106) ELT 3 (SC)

(ii) CCE, Pune Vs. Dai Ichi Karkaria Limited reported as 1999 (112) ELT 353 (SC)

6. In view of above discussion, order under challenge is set aside and appeal is allowed with consequential benefits to the appellant.

[Order pronounced in the open court on **22.08.2024**]

(DR. RACHNA GUPTA)
MEMBER (JUDICIAL)

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