

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

1. CEA-88-2010

Pronounced on: 24th December, 2014

Commissioner of Central Excise, Panchkula **..... Appellant**

VERSUS

M/s Vardhman Strips (P) Ltd. **..... Respondent**

2. CEA-90-2010

Commissioner of Central Excise, Panchkula **..... Appellant**

VERSUS

Deepak Kumar Jain **..... Respondent**

CORAM: HON'BLE MR. JUSTICE RAJIVE BHALLA
HON'BLE MR. JUSTICE B. S. WALIA

Present: Mr.D.D. Sharma, Advocate, for the appellant.

Mr.Deepak Gupta, Advocate, for the respondent.

RAJIVE BHALLA, J.

By way of this order, we shall decide CEA-88-2010 and CEA-90-2010. For the sake of convenience, facts are being taken from CEA-88-2010.

The appellant challenges orders dated 27.07.2009, passed by the Customs, Excise & Service Tax Appellate Tribunal, Principal Bench (hereinafter referred to as the 'CESTAT') on the following substantial questions of law: -

“1. Despite the specific findings of the adjudicating authority and the Commissioner (A), on the commission of the offence in the

instant case, vis-a-vis the guidelines set down by Shri R.K.Gupta for identifying bogus transactions, would a general statement, say, of the nature of Shri R.K. Gupta's, lose its evidentiary value and its pre-eminent fulcrum position in a case that is built around it.

2. Whether the preponderance of evidences and probabilities in this case establish the commission, by the respondents, of the offences alleged in the show cause notice and whether the Tribunal was correct in ignoring such preponderance of evidences and probabilities in passing their order against the appellants.”

Counsel for the appellant submits that Shri R.K.Gupta, proprietor M/s R.K. Enterprises admitted that he indulged in bogus transactions and passed MODVAT/CENVAT credit by issuing invoices without actually transferring goods. Upon inquiry it was established that Shri R.K.Gupta did not possess any godown, was operating from residential premises and his office in Faridabad was a one room tenement without any infrastructure. The inquiry also revealed that slips, GR books, numbering machines and blank cheques, taken into possession were accepted by Mr.R.K.Gupta to be false. The GR books of M/s Paradise Tempo Transport Service, Bata Chowk, Faridabad and Golden Transport Company, Nehru Ground, NIT Faridabad, were accepted as forged as it was admitted that these transport companies do not exist. The rubber stamps pertaining to the department, invoice books, GR books etc. were also recovered. Shri R.K.Gupta also admitted that he had not supplied any goods beyond 6 metric tonnes. A show cause notice was, therefore, issued to the respondent and after considering the entire matter, credit of Rs.2,43,024/- of an equal amount etc. was imposed. The CESTAT has wrongly placed reliance upon the statement made by Shri

R.K.Gupta that consignments of less than 6 metric tonnes are genuine and placed reliance upon a judgment of the CESTAT passed in “Garima Enterprises (P) Ltd. Vs. Commissioner of Central Excise, Delhi-IV”, 2005 (182) ELT 106 (Tri.-Del.) while accepting the appeal. The statement has to be read in its entirety and alongwith material recovered from the office of Shri R.K.Gupta and failure of the respondents to prove receipt and consumption of the goods allegedly received from Shri R.K.Gupta. The judgment in Garima Enterprises's case (supra), therefore, does not apply to the present case. It is further submitted that even if Shri R.K.Gupta has not named the respondent as a beneficiary of illegal MODVAT credit, he has delimited the modus whereby he conducted his operations thereby proving that the respondent was party to a fraud played by Shri R.K. Gupta. It is further contended that Shri Deepak Kumar Jain, Director of M/s Vardhman Strips (P) Ltd., in his statement dated 01.02.2001 stated that they had purchased goods from M/s R.K.Enterprises and referred to invoices as well as submitted copies of the relevant GR but this statement and these documents do not discharge the onus to prove that these transactions were genuine. All relevant facts being within the knowledge of the respondent, the onus to prove that these transactions were valid, lay upon the respondent. The respondent apart from the aforesaid statement has not led any evidence to prove the legality of transactions whereby they claimed MODVAT credit. The CESTAT

has, therefore, committed an error in accepting the appeal and setting aside the orders passed by the assessing authority and the appellate authority.

Counsel for the respondent submits that it is true that Shri R.K.Gupta made a statement setting out in detail the mode and manner of claiming fraudulent MODVAT credit etc. It is also true that he did not name the appellant as beneficiary of these fraudulent transactions. Shri R.K.Gupta has also stated that transactions below six metric tonnes were valid transactions. The onus, therefore, lay upon the appellant to prove that the invoices and GR receipts etc. did not reflect valid transactions. The adjudicatory authority apart from raising general inferences has not recorded any clear finding against the appellant. The CESTAT has, therefore, rightly set aside the original order as well as the order in appeal and exonerated the appellant.

We have heard counsel for the parties, perused show cause notice dated 23.01.2004, order in original dated 27.01.2006, order in appeal dated 30.04.2007 and order dated 27.07.2009, passed by the CESTAT.

The appellant, unearthed a fraud allegedly perpetuated by one Shri R.K.Gupta, proprietor M/s R.K.Enterprises whereby MODVAT/CENVAT credit was passed on without any actual transaction. A search of the residential premises of Shri R.K.Gupta led to recovery of voluminous incriminating evidence in the shape of

slips, fake GR books, numbering machines, blank cheques, stamps of various officers of the department and it also transpired that the alleged office in Faridabad was a single room rented out by Shri R.K.Gupta without any godown from where he could have transferred these goods. Shri R.K.Gupta made a statement on 16.01.2001 under Section 14 of the Central Excise Act, 1944 (hereinafter referred to as the 'Act') stating that parties from whom he procured goods are located in Delhi, Hisar, Gurgaon, Mathura, Baddi and Faridabad. The GR books of M/s Paradise Tempo Transport Service, Bata Chowk, Faridabad and Golden Transport Company, Nehru Ground, NIT Faridabad, recovered from his office were printed by him as these companies do not exist. He also admitted that he issued MODVAT/CENVAT credit invoices without actual delivery of goods and to authenticate the transaction he had prepared fraudulent GR books. He admitted that he did not have any godown to store the goods but stated that he delivered the goods to his buyers directly from manufacturers warehouses and further stated that where the tempo number was the same in his purchase and sale invoice of the same date the transactions were genuine and actual delivery of goods had taken place. Mr.R.K.Gupta also stated that where quantity delivered on the invoice through a tempo was more than six metric tonnes, such invoices were bogus. The authorities, therefore, issued notices to four companies namely M/s Gangotri Exports (P) Ltd., 301 Mahavir Shree House, 23/4771, Bharat Ram Road, Darya Gang,

Delhi; M/s Jain Tar Udyog, A-26, Jhilmil Indl.Area, Delhi; M/s Metal Road Ltd., B-97, Wazirpur Indl.Area, Delhi; and M/s Rahuljee & Co., 1-A Sagar Apartments, 6 Tilak Marg, New Delhi (Now M/s KMG Intl. Ltd., 375 Main Road, Gazipur, Delhi). A notice was also issued to the respondents. Shri Deepak Kumar Jain, Director of the respondent, recorded a statement under Section 14 of the Act stating that they had purchased goods from M/s R.K. Enterprises vide invoice No.65, dated 07.02.2000, No.75, dated 11.02.2000, No.93 and No.94 dated 13.03.2000, No.45 dated 06.07.2000 and availed MODVAT credit. He further stated that the goods were actually received by them and also submitted copies of G.R.No.9798, dated 07.02.2000, No.9828, dated 11.02.2000, No.9858 dated 13.03.2000 of Paradise Tempo Transport Service, Bata Chowk, Faridabad and GR No.923 of Golden Transport Co., Nehru Ground, NIT, Faridabad.

The Assistant Commissioner of Central Excise and Customs, Yamuna Nagar, vide order dated 27.01.2006, did not accept the explanation furnished by the respondents and concluded that these transactions are bogus, the transport companies namely Paradise Tempo Transport Service and Golden Transport Company are fake and, therefore, held against the respondent by disallowing CENVAT credit of Rs.2,43,024/- and imposing penalty of an identical amount and a penalty of Rs.10,000/- on Deepak Kumar Jain, director of the respondent.

Aggrieved by the above order, the respondents filed appeals. The Commissioner of Central Excise (Appeals) Delhi-III dismissed the appeals by holding as follows: -

“9. Scrutiny of records recovered from the office cum residence of Sh.R.K.Gupta revealed that the said M/s RKE had been issuing fake G.Rs (transport documents) to cover the bogus transactions i.e. actual delivery of the goods covered in the invoices were never effected and in order to give authenticity and credibility to such transaction, the aforesaid G.R. Books were used in selling as well as purchasing in bogus transactions as was evident from the blank G.R.Books of the non-existent transport companies namely M/s North India Transport Co. Bata Chowk, Faridabad and M/s Golden Transport, Nehru Grount, NIT, Faridabad.

10. The appellant has not produced any evidence before me regarding the actual receipt of inputs by them contrary to the allegations held against them by original authority. The facts and circumstances in cited cases is different that of present case. The impugned order disallowing the modvat/cenvat credit has, therefore, been correctly passed.

11. The evidence brought on record by the department regarding the fraudulent availment of Cenvat credit, in my view is sufficient to prove the same. I find that the Adjudicating Authority has correctly disallowed the credit and imposed penalty against the appellant on admissible and adequate evidence, as discussed above.

12. I find from the statement of Sh.Deepak Kuma Jain that he was looking after the day to day work of the Appellant Company; therefore he was responsible for taking the modvat credit without physical receipt of the goods. Therefore, the adjudicating authority has correctly imposed the penalty on him.”

The respondents, thereafter, filed appeals before the CESTAT, which vide order dated 27.07.2009 allowed the appeals, set aside the order in original as well as in the appeal by primarily relying upon a judgment in Garima Enterprises's case (supra) and by holding that as Shri R.K.Gupta has himself stated that transactions below six metric tone are genuine and the respondent had received goods weighing less than six tonnes, the onus to prove that these goods were not received, lay upon the department. The department

having failed to establish that the respondent did not receive the raw material, the respondent cannot be held liable merely on the basis of the statement made by Shri R.K.Gupta.

A perusal of the order recorded by the CESTAT reveals that it has placed onus on the department to prove that the transaction did not involve physical transport or transfer of goods and has relied upon the statement made by Shri R.K.Gupta that transactions below six metric tonnes were valid. Admittedly, the respondents received goods which were less than six metric tonnes. A perusal of the provisions of the statute reveals that initial onus to establish culpability or violation vis-a-vis provisions of the Act lies upon the department but once the department prima-facie proves the culpability of a dealer, the onus to prove that the transaction is legal and valid shifts to the dealer. A perusal of the original statement made by Shri R.K.Gupta as detailed in the order in original, reveals that the respondents were not named as beneficiaries of fraudulent MODVAT/CENVAT credit. The respondents came into the picture only after various invoices and accounts of Shri R.K.Gupta were checked and it was found that goods had been delivered to the respondents namely;- invoice No.65, dated 07.02.2000, No.75, dated 11.02.2000, No.93 and No.94 dated 13.03.2000, No.45 dated 06.07.2000 and on that basis they had availed MODVAT credit. The respondents stated that the goods were actually received by them and submitted copies of G.R.No.9798, dated 07.02.2000, No.9828, dated

11.02.2000, No.9858 dated 13.03.2000 of Paradise Tempo Transport Service, Bata Chowk, Faridabad and GR No.923 of Golden Transport Co., Nehru Ground, NIT, Faridabad.

Admittedly, the transactions are less than six metric tonnes and goods were transported by Paradise Tempo Transport Service and Golden Transport Company. The order in original clearly records that Shri R.K.Gupta has stated that Paradise Tempo Transport Services and Golden Transport Company are non-existent. The statement made by the respondents is that the goods received were transported by these transport companies. The respondents were, therefore, required to prove the existence of these companies. The respondents have not offered any explanation as to how goods received by them could be transported by non-existent companies and, therefore, cannot hide behind the onus placed on the department. The CESTAT placed implicit reliance on the statement made by Shri R.K.Gupta that transactions below six metric tonnes are genuine and relied upon the judgment in Garima Enterprises's case (supra). The CESTAT lost sight of the fact that in Garima Enterprises's case (supra), the revenue could not controvert evidence adduced by the dealer that he had used the goods received from Shri R.K.Gupta, for job work and conversion and had paid conversion charges on job work thereby establishing that the goods had been received, processed and consumed by the dealer. A perusal of the record reveals that the respondent has failed to prove any

consumption of raw material much less its receipt and as the transport companies have been found to be fake, the judgment in Garima Enterprises's case (supra) cannot be relied as a precedent . The CESTAT, however, failed to consider these significant facts and by placing implicit reliance upon the judgment in Garima Enterprises's case (supra), wrongly allowed the appeal. Consequently, the appeals are allowed, the impugned orders are set aside and the appeals are restored to the CESTAT for adjudication afresh and in accordance with law after examining the entire material on record particularly whether there is any material on record to prove that the goods allegedly received by the respondents was consumed/utilised. The CESTAT shall grant an opportunity to the respondent to adduce evidence to prove receipts of goods, their consumption and use and only thereafter decide the appeals.

Parties are directed to appear before the Customs, Excise & Service Tax Appellate Tribunal, New Delhi, on 04.02.2015.

**[RAJIVE BHALLA]
JUDGE**

24th December, 2014
Shamsher S.Sabharwal

**[B. S. WALIA]
JUDGE**