**Customs, Excise & Service Tax Appellate Tribunal**
**West Zonal Bench At Ahmedabad**

REGIONAL BENCH- COURT NO.3

**Excise Appeal No.12292 of 2019**

(Arising out of OIO-DMN-EXCUS-000-COM-17-19-20 dated 12/07/2019 passed by Commissioner of Central Excise, Customs and Service Tax-DAMAN)

**C.C.E. & S.T.-DAMAN** ........**Appellant**
3rd Floor...Adarsh Dham Building, Vapi-Daman Road, Vapi
Opp.Vapi Town Police Station,
Vapi, Gujarat-396191

*VERSUS*

**TAHA WIRES PVT LTD** .......**Respondent**
Plot No. 89, Panchal Udyog Nagar, Bhimpore
Daman, Gujarat

**APPEARANCE:**
Shri G.Kirupanandan, Superintendent (AR) for the Appellant
Shri Willingdon Christian, Advocate for the Respondent

**CORAM: HON'BLE MEMBER (JUDICIAL), MR. RAMESH NAIR**
**HON'BLE MEMBER (TECHNICAL), MR. RAJU**

**Final Order No. A/ 10093 /2022**

DATE OF HEARING: 11.10.2021
DATE OF DECISION: 11.02.2022

**RAMESH NAIR**

This appeal is filed by the revenue against the impugned order wherein denovo proceedings the Principal Commissioner, CGST & Central Excise, Daman dropped the Cenvat Credit demand of Rs. 1,63,29,798/- (incl. cess) in respect of the case against the Respondent of taking Cenvat Credit allegedly on the basis of invoices without actually receiving the goods.

02. The Revenue challenged Order-In-Original dated 12.07.2019 on the grounds that The Adjudicating authority has placed reliance on the decision of CESTAT, Ahmedabad vide Order No. A/11031-11032/2019 dated 28.06.2019 in case of Gujarat Forging Pvt. Ltd. and held that said decision is applicable to the facts of the present case on all force. The Adjudicating authority has erred in placing reliance on the mentioned decision involving distinguishable facts, in as much as, though the issue may look similar, but the charges and evidence in the subject notice are different. The inputs have not at all been transported from Delhi to the Factory of Respondent or the factory of the Job Workers in trucks shown in LRs. The Adjudicating

authority failed to appreciate the detailed investigation which was also extended to the Road Transport Authorities/RTOs and Check Post of Rajasthan, Madhya Pradesh and Gujarat. In order to ascertain as to whether M/s Singal Road Carriers had actually transported the consignments, the reports received from RTOs revealed that some of the vehicle number mentioned in seized LRs were government vehicle, Auto-Rickshaws, Pick-up Vans, Mahindra Load Carriers etc, which were not capable for transportation of goods. Respondent could not produce the original LRs and not proved as to how the consignments reached their factory. Shri Subham Chandra Sharma, Manager of M/s Singal Road Carriers, in his statement admitted that imported Copper Ingots/ Copper Wire bars as mentioned in LRs were not transported and they had prepared LRs only. During the investigation the statements of persons clearly corroborate the facts that Respondent fraudulently availed Cenvat Credit merely on the strength of duty paying documents without physical receipts of goods. The Adjudicating Authority has completely overlooked these facts, while arriving at conclusion in the instant case. The Adjudicating authority has not properly examined the important piece of evidence which was seized from the office of the Transporter, M/s Singal Road Carriers. It is also well settled that a statement made by a witness under Section 14 is ex-facie admissible in evidence. From the provisions of Cenvat Credit Rules, it is clear that Cenvat Credit of the duty paid on inputs can be availed, subject to condition that such input are received in the factory of manufacturer of the final products or in the premises of the Job -Worker who use the same for the manufacture in or in relation to , the manufacture of the final product. Since, investigation have clearly established that the duty -paid raw materials have not at all been transported and delivered either to the respondent or their Job Worker, the Cenvat Credit of duty-paid thereon is not admissible to Respondent.

03. The Appellant relied upon the following judgments/decisions:

(i) Viraj Alloys Ltd Vs. CCE Thane -II [2004(177)ELT0892 (Tri.-Mumbai)]

(ii) Ranjeev Alloys Pvt. Ltd. Vs CCE, Chandigarh- [2009(236)ELT0124(T)]

(iii) Hansa Tubes Pvt. Ltd., Vs Commissioner of Central Excise, Chandigarh [2006(004)STR0549(Tri.-Del.)

(iv) M/s Mangalam Alloys Ltd. Vs CCE, Ahemedabad. Tax Appeal No. 1088 of 2018

(iv) Commissioner of Central Excise Vs Srikumar Agencies 2008(232)ELT577(SC)

(v) Haryana Financial Corporation Ltd Vs Jagadamba Oil Ltd. (2002) 3 SCC 496,

(vi) Deputy Director of Enforcement, Madras Vs A.M. Ceaser 1999(113)E.L.T 804 (Mad.)

(vii) Surjeet Singh Chhabra Vs Union of India 1997(89)ELT646(SC)

(viii) Vinod Solanki Vs Union of India 2009(233) E.LT. 157 (SC)

(x) Gulabchand Silk Mills Pvt. Ltd. Vs Commissioner of C.Ex. 2005 (184)ELT263 -Tri. Bang.

04. Shri Willingdon Christian, Learned Counsel appearing on behalf of the respondent submits that there is not a single statement of any supplier to the effect that the disputed inputs were not supplied to Respondent and were supplied to some other parties. There is no evidence that some third parties have made payment to the supplier of the disputed inputs. Only on the basis of third party statement or records, the demand for denial of cenvat Credit cannot be sustained. The Respondent preparing Job-Work Challan and entries also made in Job Work Register (Annexure- IV Register). The Records maintained by the Job-worker were also produced before the investigating officers, no discrepancy has been found at the Job Worker's premises. The Respondent entered the disputed inputs in their RG23A Part-I & Part II and also shown the consumption of the same for manufacture of the final products. The consideration for the disputed inputs was paid through cheques and freight payments were made through cheque or vouchers. There is no evidence brought forth on record to show as how the huge quantity of the disputed inputs has been disposed off clandestinely and how and from which sources the substituted inputs were procured. Case of the department is mainly on recorded statements of few transporters. The statements were retracted or contradicted during cross examination of the Deponents. Mere third party evidence like Transporter's statements, RTO Reports, Check Post Records, etc cannot suffice to prove the department's

case about non-receipts of the inputs. He also placed reliance on judgments in the case of:

- COMMISSIONER VS DHANLAXMI TUBES & METAL INDUSTRIES 2012(282)ELT 206(GUJ.),
- NISSAN COPPER PVT LTD VS CCE 2014(313)ELT449(TRI.AHMD.),
- AKSHAY LPG VALVES VS CCE 2016(337)ELT129(TRI. HYD.),
- STI INDUSTRIES VS CCE 2015(325)ELT910(TRI. AHMD.)
- COMMISSIONER VS. MOTABHAI AND STEEL INDUSTRIES 2015(316)ELT 374 (GUJ.),
- BAJRANG CASTINGS PVT. LTD., VS CCE 2015(7)TMI 669-CESTAT-AHMD.,
- GUJRAT VICTORY FORGINGS PVT. LTD. VS CCE 2019(7) TMI 5-CESTAT -AHMD.,
- CCE VS PARMATMA SINGH JATINDER SINGH ALLOYS PVT. LTD 2012(25) STR 281 (TRI- DEL.)

05. We have carefully considered the submissions made by both the sides and perused the records. We find that the case of the revenue on the allegation that the respondent has availed the Cenvat Credit on the copper ingots/ copper rod purchased from the Jammu based unit which was not received by them as the same was diverted in and around Delhi. The case of the revenue is mainly based on the report from RTO Check Post, Commercial Tax Check Post and investigation carried out with transporter. We find that as against the evidence relied upon by the revenue in the Show Cause Notice, the appellant have brought ample of evidences to prove the receipt of duty paid goods originated from Jammu and use thereof in the manufacture of their final product.

5.1 We find that it is admitted fact that the appellant used to procure copper Ingot/ Bars/ Scraps, etc. as raw material from indigenous/import sources and get them converted into copper wire rods of required sized from different job worker who had Hot Rolling facilities. Such job worked Copper Wire Rods were converted into Copper Wires in the Respondent's factory. The department in support of their case needs to prove;

(a) On one hand, the allegation of clandestine disposal of the disputed inputs and

(b) On the other hand also to prove about sources, transportation, money flow, etc. of procurement of substituted scrap in place of the disputed inputs.

5.2 We find that there is neither any investigation nor any evidence on the aspects of alleged disposal of disputed inputs in or around Delhi. The investigation could not bring on record the single alleged buyer out of huge quantity of 303MT. Similarly, there are no details about transportation of goods or about financial transactions or any flow back from the suppliers of alleged buyers therefore, the alleged clandestine disposal of the disputed input remains unsubstantiated. As regard the allegation of the department about the substitution of the disputed inputs by scrap procured from market, there is no evidence showing details as to any single supplier of alleged substituted scrap or about transportation thereof, or any financial transaction with the alleged suppliers of the substituted scrap. This shows that the department's case of clandestine disposal of the disputed inputs and its substitution by procurement of scrap has no support of any evidence. There is no dispute that the entire quantity of copper inputs which was disputed by the department has been physically cleared from the various manufacturers factories at Jammu on payment of excise duty under valid Central Excise Invoice or this is not a case of fake invoices. In this case, huge quantity of 303MT of Copper inputs duly suffered duty and transported from the respective manufacturer's factory and duly accompanied by valid Central Excise Invoices, delivery challans, lorry receipts, etc.

5.3 Now the case of the revenue is as discussed above based on some evidences such as RTO Report and Commercial Tax Check post report to allege that as per the said reports the vehicle has not passed from Delhi. On the contrary, the respondent have heavily relied upon various documents for movement of receipt of the duty paid copper inputs such as valid Central Excise Invoices, delivery challans, lorry receipts, entries in respondent's stores ledger, material inspection reports, etc. Against the said transaction payment through official bank channels for the full value of aforesaid duty paid copper inputs has been made against the Central Excise Invoice. It is also not disputed that the payment of the transport charges through the official bank channels to the transporter of copper inputs from Delhi to respondent's job worker's premises has been made. As regard the receipt of goods, it is proved on the basis of following documents:-

i) Central Excise invoices,

ii) Entries in Cenvat Credit Registers, i.e. RG23A Part-I & Part-II

iii) Annexure-II - challans for each and every consignments individually for regularising direct supply of the Copper inputs to the job worker's premises in terms of Rule 4(5)(a) of the Cenvat Credit Rules, 2004.

iv) Annexure-IV Job Work Register showing movement of each consignment starting with delivery of inputs to the job worker and receipt of the job worked goods from job worker against each individual consignment with details of quantity dispatched, quantity manufactured, processing loss, etc.

v) Daily Stock Register maintained under Rule 10 of the Central Excise Rules, 2002 showing daily production of final product (copper wires) out of the copper wire rods received from the job workers who had manufactured the same (copper wire rods) out of the aforementioned duty paid copper inputs.

vi) Monthly ER-1 returns containing details of clearance of final products and abstract of Cenvat Credit Registers for the respective month.

From the above documents, it clearly shows that the respondent have received the copper goods transported from Jammu based manufacturers to the respondent's job workers. We find that the revenue could not held the above documents as fake or incorrect.

5.4 We further find that during the panchnama dated 10.02.06 and 21.12.06 drawn at the respondent's factory during the visit of the investigating officers, no evidence or any discrepancies were found between book and physical stocks of raw material and finished goods particularly without any indication of presence of non-duty paid copper inputs or absence of duty paid copper inputs. Shri Kamil Vasi, Director of the company in his statement repeatedly stated the fact of receipt and delivery of disputed copper inputs at job worker's premises. He also confirmed receipt of invoices and LRs of the copper inputs through truck drivers. Shri Atul N Sharma, In-charge, Singal's Office, Ahmedabad in cross-examination before the Commissioner stated that they have transported the ingots and delivered to M/s. TAHA as door delivery and received all transportation payments through cheques. It is also not in dispute that any movement of the goods to the job-worker they prepare records and maintained on regular basis showing various details like Date, variety, weight of incoming copper ingots of the respondent in its factory and similar particulars of job worked copper rods returned to the respondent with burning loss quantity, challan number, etc. are the documentary evidences of receipt of ingots at job worker's place on behalf of the respondent.

5.5 The master chart showing material balance of 33 consignments of ingots prepared on the strength of Job worker's statutory challans, etc these were seized by the DGCEI and copies taken from Department's CDs are in agreement with similar details recorded in M/S. PARAMOUNT's private records. Similarly, there are all supporting storage and accounts records in respect of consignment of ingots, door delivery to M/S. SANTRAM METAL, Nadiad for job work. The job worked goods evidenced in the said document shown to have been received by the respondent in the finished goods made there from were cleared on payment of duty as per the respondent's records. Some correspondence retrieved from the department's CDs addressed to M/S. SINGAL, DELHI for direct delivery of the ingots at the premise of M/s. PARAMOUNT at Kadodara, Surat, except one to M/S. SANTRAM METALS, TANDEL, NADIAD are in line with the availment with the facility of delivering raw materials directly to job worker's premises. We find that all these records could not be availed if the respondent had cleared the goods in and around Delhi as alleged by the revenue. The chain of documents for entire transaction from transport of goods from Jammu to Delhi and to Gujarat based job worker, use of job worked goods in the manufacture of final product and removal of final product from the respondent's factory on payment of duty cannot be brushed aside merely on the basis of some stray evidences which also not substantiated.

5.6 It is also a fact that the Officers of the DGCEI summoned the job worker when the statutory and other office records of the job workers were taken by the DGCEI Officers but investigation results not reflected in the show cause notice. This shows that the evidences in support of the respondent were not brought on the record of the show cause notice nor discussed the same. As regard the inculpatory statements of three employees of the transporter M/S. SINGAL, the same have been retracted. Shri Subhas C Sharma, Manager, Delhi retracted his statement dated 28.11.2006 on same day. Shri Gulab Shankar Pandey, Clerk in Ahmedabad office of SINGAL retracted his statement dated 24.08.2007 and similarly, Shri. Atul Sharma , Manager of the said office retracted his statement dated 24.08.2007 on the same day. Shri. Atul in his cross-examination deposed that"-

a) Delivery registers do not keep records of 'door delivery' consignments.

b) confirmed transportation of M/s. Taha's goods and delivery of the same,

c) There is alternate route, wherein Shamlaji Check post his by passed and

d) They received all the payments from M/s Taha by cheque.

On the basis of above retraction and clarification about the transportation, It is clear that the goods have been transported to the respondent's job worker's premises. Complete set of transport documents found retrieved from department's CDs were available comprising of invoices, LR's of two stages of transportation, with endorsement of handing/taking over of goods at Motikhan , New Delhi, letters of appellant for effecting door delivery at job worker's factory along with larger number of toll receipts of trucks while travelling from Delhi to Gujarat. The said documents evidence:-

A) All ingots were duty paid.

B) Transportation from Jammu to Gujarat took place in two stages under two LR's

C) Movement of truck from Delhi to Gujarat confirmed from the toll receipts.

D) Door delivery of ingots to job worker's factory was done as per the respondent's instruction.

Thus, it is evident that except for the evidence in the form of records, statements of transporter's employee and check post records, the department has not been able to bring any acceptable evidence to prove non- receipt of the duty paid copper inputs . The department also not been able to disprove by any logical means the receipt and use of duty paid copper inputs in the manner prescribed in and due compliance with the provision of Cenvat Credit Rules, 2004.

5.7 The second part of the allegation of the department is the alleged use of non-duty paid copper inputs required for manufacture of final product cleared on payment of duty. In the entire show cause notice there is not a whisper or any iota of direct or documentary or corroborative evidence regarding alleged receipt of non- duty paid copper inputs if this is so, then how the respondent have manufactured and cleared the goods on payment of duty without receipt of copper inputs as alleged, therefore, when admittedly respondent has manufactured the final product i.e. copper wire and cleared the same on payment of duty. Unless, it is proved that the respondent have procured non duty paid goods off the record, it is not possible to disprove the receipt of duty paid inputs. The department could not bring anything on record regarding the supplier of non duty paid copper inputs, its transportation, money transaction, etc. Therefore, it is proved without any doubt that the respondent have not purchased any non duty paid inputs without any documents to substitute the duty paid inputs therefore, on this basis also the department's allegation of non receipt of duty paid goods does not stand. The department in support of their allegation for non receipt of duty paid copper inputs by the Respondent could not bring a single buyer of the duty paid inputs which was alleged to have been diverted in an around Delhi. Therefore, in absence of any evidence the entire allegation is based on assumption, presumption and conjunctures.

5.8 The department's case is entirely based on the following so-called evidence:

(i)Three statements of M/s Singal's employees, inspite of retraction, as recorded in SCN itself;

(ii) Truck movement records at Ratanpur & Shamlaji check posts, inspite of adoption of corrupt practices as per IIM's e-governance Report to the Government of India (placed in case record); and

(iii)Some records in delivery registers called Railway Receipt Registers, maintained at M/s Singal's Ahmedabad office, showing delivery of only "miscellaneous goods" to parties in & around Ahmedabad; but no entry of delivery of copper, shown to have carried together as in 10 trucks of the Respondent's present case, out of total 34.

5.9 In the present case in fact there are 7 suppliers of disputed inputs namely:

a) M/s Vaishno Metals
b) M/s Kashmir Wires
c) M/s Viraj Industries
d) M/s V.M.I. Industries

e) M/s V. K. Metal
f) M/s Jain Metal
g) M/s Shivgiri Metal

But it is an admitted fact that the investigating officers have not enquired or investigated even a single supplier as regard actual supply of disputed inputs or as regard payment received by them for the value of disputed inputs. This is very vital to establish that the duty paid goods have not been transported to the respondent but diverted somewhere else. We are therefore of the view that the department could not prove their case summarily on the following points:

(1) There is not a single statement of any supplier to the effect that the disputed inputs were not supplied to the respondent and supplied to a third party.

(2) There is no evidence that some third party have made payment to the supplier of the disputed inputs.

(3) The statements of the transporter are not corroborated with any evidence.

(4) The entire case of the department is based on the records of the transporters only. On the basis of third party statements or records, the demand for denial of Cenvat credit cannot be sustained.

(5) There is no investigation made at the factory of the respondent and no statements of any staff or excise/stores staff is recorded, there is no allegation of flow back of money from the supplier to the respondent.

(6) The respondent was preparing the job work challan in Annexure-II and Entries were also made in Annexure- IV register. The records maintained by the Job workers were also produced before the investigating officer but no discrepancy has been found at the job worker's premises.

(7) On the visit of investigating officer at the factory premises of the respondent as well as that of the job workers they did not find any discrepancy about inventory of inputs or final products.

(8) There is no iota of evidence that the respondent had procured inputs from the open market for substitution of the disputed inputs.

(9) The respondents have also entered the disputed inputs in their RG-23A part I and part II and have also shown the consumption of the same for

manufacture of the final product. This position does not stand rebutted by the revenue.

(10) The inputs have also been entered in the official stores ledger and used in manufacture of final products which are cleared on payment of duty. Consequently, the denial of Cenvat Credit on the sole ground that the vehicle numbers were not found to be genuine cannot be made basis for arriving at the finding against the respondent.

(11) The consideration for the disputed inputs was paid through cheque and freight payment were also made through cheque or vouchers.

(12) There is no inculpatory statement of the respondent on the contrary the director has repeatedly stated in his two recorded statement about the receipt inputs in his factory and about no illicit transaction resorted by the respondent.

(13) There is absolutely no evidence or investigation rather to show as to how the huge quantity of disputed inputs has been disposed of clandestinely and how and from which source the substituted inputs were procured.

(14) The facts of the present case is also similar to the facts of the various judgments relied upon by the respondent. Some of the judgments are cited below:-

- NISSAN COPPER PVT LTD VS. CCE – 32014 (313) ELT 449 (TRI. AHMD.)
- AKSHAY LPG VALVES VS. CCE- 2016 (337) ELT 129 (TRI. – HYD)
- STI INDUSTRIES VS. CCE- 2015(325) ELT 910 (TRI. AHMD.)

5.10 The appellant's case gets support from the Hon'ble Gujarat High Court in the case or COMMISSIONER VS. DHANLAXMI TUBES & METALS INDUSTRIES REPORTED IN 2012 (282) ELT 206 (Guj.). In this case also the inputs were the same i.e. copper ingots. Secondly, the suppliers were also the same and unit located in Jammu, thirdly, the inputs were also supplied by transshipment at Delhi and the transporter was also the same i.e. M/s. Singal Road Carriers. Therefore, the facts of the aforesaid case is similar to the facts in the present case, hence, the ratio of the said judgment is directly applicable in the present case.

06. As per our discussion and finding made hereinabove, we find that the respondent have correctly taken the Cenvat credit, hence, there is no infirmity in the impugned order.

07. Accordingly, the impugned order is upheld. Revenue's appeal is dismissed.

(Pronounced in the open court 11.02.2022 )

**(RAMESH NAIR)**
**MEMBER (JUDICIAL)**

**(RAJU)**
**MEMBER (TECHNICAL)**

Mehul