CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD

REGIONAL BENCH - COURT NO.I

Excise Appeal No.70324 of 2019

(Arising out of Order-in-Appeal No.MRT/EXCUS/000/APPL-MRT/437/2018-19 dated 19.12.2018 passed by Commissioner (Appeals) CGST, Meerut)

Principal Commissioner of CGST, Meerut .....Appellant
(Opp. CCS University, Meerut)

VERSUS

M/s Jotindra Steels And Tubes Ltd., ...Respondent
(6th Stone, Meerut Road, Muzaffarnagar)

APPEARANCE:

Shri Santosh Kumar, Authorized Representative for the Revenue
Absent on Call, for the Respondent

CORAM: HON'BLE MR. P.K. CHOUDHARY, MEMBER (JUDICIAL)
HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)

FINAL ORDER NO.- 70184/2024

DATE OF HEARING : 09 January, 2024
DATE OF DECISION : 09 January, 2024

P. K. CHOUDHARY:

The present appeal has been filed by the Revenue assailing the Order-in-Appeal passed by the learned Commissioner (Appeals), Meerut.

2. The facts of the case in brief are that the Respondent M/s Jotindra Steels And Tubes Ltd. is engaged in the manufacture of M.S. Bars. During the examination of the records of the Respondent by the Officers of erstwhile Central Excise Department, it was alleged that the Respondent had availed Cenvat credit on input purchased from an Unregistered Dealer during the period from March, 2016 to 23rd September, 2016, who used to purchase the same from Registered Traders. It was also alleged that the Respondent had taken Cenvat credit on the strength of invoices of Manufacturer or Registered Traders, in which buyer was Unregistered Dealer and the Respondent was shown as Consignee. Further, after the receipt of goods in the

factory premises of the Respondent, the unregistered dealer used to issue Commercial Invoices for sale. Show Cause Notice[1] dated 13.07.2017 was issued to demand and recover Cenvat credit under Rule 14 of the Cenvat Credit Rules, 2004[2] read with Section 11A(1)(a) by Central Excise Act, 1944[3]. The Adjudicating Authority confirmed the demand as proposed in the SCN alongwith applicable interest and also imposed penalty of equal amount under Rule 15(2) of CCR, 2004 read with Section 11AC of the Act.

3. Being aggrieved, the assessee filed an appeal before the First Appellate Authority and the learned Commissioner (Appeals) vide the impugned Order-in-Appeal, allowed the appeal of the Assessee.

4. Revenue being aggrieved by the impugned order, has filed the present appeal before this Tribunal.

5. When the matter was called none appeared on behalf of the Respondent-Assessee.

6. Heard the learned Departmental Authorized Representative for the Revenue and perused the appeal records. Revenue's ground of appeal is that the Respondent purchased M.S. Ingots from M/s Shri Satguru Mctalloys Pvt. Ltd., 6th Km. stone, Meerut Road, Muzaffarnagar (hereinafter referred to as M/s SSMPL), who was not registered under the Central Excise law, as dealer of excisable goods, nor they were manufacturer of such goods. It was further observed that credits concerned, amounting to Rs.1,12,48,525/- were availed by the Respondent, during the period from March, 2016 to 23rd September, 2016 on the basis of invoices issued by M/s R.N. Traders, Bhopa Road, Muzaffarnagar (herein after referred to as M/s RNT), who was a dealer of excisable goods. In these invoices, M/s SSMPL, were mentioned as buyer of the goods and the Respondent as the consignee.

7. We observe that it is an undisputed fact that the Respondent - Assessee had received the goods in their factory

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[1] SCN
[2] CCR
[3] The Act

on the basis of duty paying documents/invoices (in which Respondent-Assessee was the consignee) from the registered dealers and have paid the freight and have also discharged service tax liability in terms of Section 68 (2) of the Finance Act, 1994 and that the final goods manufactured were cleared on payment of duty. The dispute arose due to wrong evaluation of invoices, as the Respondent-Assessee had directly received the good under the cover of invoices and GR of the registered dealers and these invoices were legal documents in terms of Rule 9 of the CCR, whereas in the Order-in-Original, it has been mentioned that the Respondent-Assessee had taken Cenvat credit on the basis of commercial invoices issued by the unregistered dealers. That the Board Circular No.1003/10/2015-CX dated 05.05.2015 which has been relied upon by the Adjudicating Authority, does not prohibit availing credit on first stage dealer invoice where the goods are directly delivered to the Assessee under invoices, in which the Assessee is the consignee; the law does not mandate that seller must be registered or the first stage dealer cannot consign the goods directly to the consignee on instruction of the seller. The Ld. Commissioner (Appeals) have observed as under:-

> *"6. I have considered the facts and records of the case as well as the submissions made by the appellant. I find that there is no dispute that the appellant had received the impugned goods directly from a registered dealer and the invoices issued by the registered dealer, in this regard, had the appellant's name as consignee of the goods and there is no denial that the impugned goods had suffered duty and the same were used in the manufacture of dutiable goods by the appellant and the final manufactured goods were cleared on payment of duty. Hon'ble High Court of Gujarat, in the case of CCE, Ahmedabad-II Vs. Transformers & Rectifiers (India) Ltd., as reported in 2012 (281) E.L.T. 670, has held as under:-*

> *Cenvat credit - Duty paying documents - Invoices issued by 1st and 2nd stage dealers* ***showing name of assessee as consignee*** *- Circular No.218/52/96-CX, dated 4-6-1996 allowing taking of credit on them-HELD: Even though Central Excise Rules had undergone modifications, principles underlying availment of Cenvat credit remained same - In that view, taking of credit on such invoices was permissible -* ***It was more so as there was no dispute that assessee purchased the goods, there was no evidence that even one transaction out of several was not genuine, and that goods had not been received but only bills had been raised*** *- Rule 9 of Cenvat Credit Rules, 2004. [paras 5, 6,7,8]*

Relying on the said Hon'ble High Court order, Hon'ble CESTAT, Mumbai, in the case of Hydro Electro Machinery Vs CCE, Mumbai, as reported in 2017 (345) ELT 314, has held as under:-

> *4. ---------it is very clear that* ***if in the invoices end user's name is appearing as consignee irrespective of fact that sale purchase transaction is not between the supplier of inputs and the end user, the credit is admissible at the recipient's end****. On this very issue, this Tribunal in the case of Transformers & Rectifiers (India) Ltd. (supra) and Kunststoff Polymers Ltd. (supra) has held that credit on invoices issued by first stage or second stage dealer, wherein recipient's name is appearing as consignee is admissible for Cenvat credit. The issue being settled as per the Board Circular as well as the ratio of the above referred*

judgments, impugned order is not sustainable, hence the same is set aside. Appeal is allowed.

Accordingly, in the light of above decisions, I hold that the Cenvat credit cannot be denied on the ground that the invoices had the name of appellant as consignee of the goods. Moreover, the credit has been taken on the basis of invoices issued by the registered dealer and not on the basis of commercial invoices issued by the un-registered dealer and that the Service Tax on reverse charge mechanism on the GTA services availed in transportation of the impugned goods, has also been paid by the appellant.

7. In view of above discussions and findings the impugned order is set aside, and the appeal of M/s. Jotindra Steels & Tubes Ltd., 6th Stone, Meerut Road, Muzaffarnagar (UP.), against Order-in-Original No.77/ADC/MEERUT/2017-18 dated 28.12.2017 is allowed, with consequential relief."

8. On going through the impugned Order-in-Appeal passed by the learned Commissioner (Appeals), Meerut, we do not find any reasons to interfere with the impugned order and accordingly the same is sustained. The appeal filed by the Revenue being devoid of any merits, is dismissed.

(Operative part of the order pronounced in open court)

(P. K. CHOUDHARY)
MEMBER (JUDICIAL)

(SANJIV SRIVASTAVA)
MEMBER (TECHNICAL)

LKS