FAX : 0532-2400149 REGISTERED / AD

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
38,MG Marg Civil Lines,Old Red Building,Allahabad-211001
Regional Branch, Allahabad

Dated: 15/03/2018

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/70552-70554/2018-SM[BR] dated 14/03/2018

I am directed to transmit herewith a certified copy of order passed by the Tribunal under section 35-C(1) of the Central Excise and Salt Act, 1944.

Asstt. Registrar

Application	Appeal	Name and Address of Appellant
1	E/2916/2010	**J.G. SPONGE & POWER PVT. LTD.** BN 37-42 & CN 91-100, UPSIDC IND. AREA, PHASE-III, MASOORIE GULAOTHI ROAD, GHAZIABAD-(UP)
2	E/2917/2010	**SHRI KARUN JUNEJA, DIRECTOR** M/S J.G. SPONGE & POWER PVT. LTD. BN 37-42 & CN 91-100, UPSIDC IND. AREA, PHASE-III, MASOORIE GULAOTHI ROAD, GHAZIABAD-(UP)
3	E/60706/2013	**J G Sponge And Power P Ltd** Bn 37-42,cn 91-100,upsidc Ind.area,phase-iii,masoori Gulaothi Road GHAZIABAD U.P
		Name and Address of Respondent
4		-C.C.E. MEERUT II Opp. Saheed Park (Near Ashok ki Lat) Delhi Road, Meerut (UP)
5		C.C.E. & S.T.-Meerut-ii OPPOSITE SHAHEED SMARAK,DELHI ROAD...BHANSALI GROUND, MEERUT, UTTAR PRADESH-
6		-C.C.E. MEERUT II Opp. Saheed Park (Near Ashok ki Lat) Delhi Road, Meerut (UP)

Cont - 2/-

Other Appellants and Respondents as per Annexure

Copy To
7Advocate(s) / Consultant(s):

Rajesh chibber
FA-9, KAVI NAGAR,
GHAZIABAD,
UP

8 Bar Association, CESTAT, Allahabad

9 Director Publications, Customs, Excise. I.P. Estate, Delhi

10 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, Opp ICICI Bank of Defence Colony New Delhi-3

11 Company Law Institute of India Pvt. Ltd., No.2 (old no.36), Vaithyaram Street, T. Nagar, Chennai-17

12 Taxmann Allied Service Pvt. Ltd., 59/32, New Rohtak Road, New Delhi-110005

13 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)

14 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi - 110070

15 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad – 38

16 The ICFAI society, 52, Nagarjuna Hill,Punjagutta Hyderabad.-500082

17 M/S Knowledge Processing Pvt. ltd.(taxmanagementindia.com),FF-19,1st Floor,Cross River Mall,CBD Ground,Near Karkardooma Court,Delhi-110032

18 C.D.R. 19 Office Copy 20 Second Folder Copy 21 Guard File

Asstt. Registrar

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH : ALLAHABAD
COURT No. I

APPEAL Nos. E/2916, 2917/2010-EX[SM] & E/60706/2013-EX[SM]

(Arising out of Order-in-Appeal Nos.196-197-CE/MRT-II/2010 dated 30/06/2010 & Order-in-Appeal No.140/CE/M-II/2013 dated 30/09/2013 passed by Commissioner (Appeals), Customs, Central Excise & Service Tax, Meerut-II)

M/s J. G. SPONGE & POWER PVT. LTD.,

SHRI KARUN JUNEJA, DIRECTOR **Appellants**

Vs.

C.C.E. MEERUT-II, C.C.E. MEERUT-II **Respondents**

Appearance:

Shri Rajesh Chhibber (Advocate) for Appellant
Shri D. K. Deb (Asstt. Commr.) AR for Respondent

CORAM:

Hon'ble Mr. Anil Choudhary, Member (Judicial)

Date of Hearing : 02/12/2016
Date of Decision : 02/12/2016

FINAL ORDER NOs. 70552-70554/2018

Per: Anil Choudhary

The appellants - J.G. Sponge & Power (P) Ltd., is a registered manufacturer of ingots classifiable under chapter 72.

2. The issue in these appeals is whether Cenvat credit taken on the inputs namely 'scrap' have been rightly disallowed and further whether penalty is sustainable.

3. The brief facts of the case are that there was inspection in the factory of the assessee by Central

Excise Officer on 22nd August, 2008. In the course of stock taking of raw material and finished goods, it appeared to Revenue that the stock in the premises of appellants, inputs scrap is mainly market scrap whereas most of the invoices available with the assessee for purchase of scrap showed purchase of industrial scrap on which duty had been paid and accordingly, the appellants had taken the Cenvat credit. The total scrap in the factory was weighed by resorting to physical weighment on the weigh bridge. The same was found to be 576MT.

4. The scrap available in the factory was not found to be the scrap as mentioned in the invoices. The Director of the appellant (Company) namely Mr. Karun Juneja, who was confronted with *prima facie* evidence, agreed that the scrap found available in the factory appeared to be non industrial scrap and accordingly, agreed and reversed the credit involved on the same. A total of Cenvat credit of Rs.16,18,834/- as calculated on the stock of scrap available in the factory. This was reversed by debit to Cenvat account on 27/08/2008 to the tune of Rs.7,18,834/- and further amount of Rs.8,20,000/- was deposited by challan on 28th August, 2008. The said

stock was put under seizure vide Panchanama dated 9th September, 2008.

5. It was further observed that the assessee is maintaining a single record (Form-IV Register) for the receipt and consumption of raw material and scrap of iron & steel and consolidated entry was made for receipt and consumption of such raw material.

6. It further appeared to Revenue that the assessee received scrap of iron & steel which was not cenvatable. As per the statement of the Director Mr. Karun Juneja, who stated that scrap of iron & steel was consigned by the trader and manufacturer registered under the Act. He further, stated, the entry of receipt of said scrap of iron & steel is made on the basis of invoices issued by the traders and manufacturer/supplier. Further, they were not aware that Cenvat credit on the basis of invoices issued by the traders was not admissible. Accordingly, it appeared to Revenue that the appellant is not purchasing dutiable scrap but purchasing cenvatable invoices and thereby claiming in-eligible Cenvat credit. Show cause notice dated 9th February, 2009 was issued with the corrigendum dated 30th April, 2009 requiring the appellants as to why in Cenvat credit amounting to Rs.16,18,834/- availed on the

said scrap (507.265MT) procured from market be not disallowed, and with further, proposal to appropriate the matching amount, already debited or deposited with further proposal for interest and penalty under Rule 15 of CCR, 2004. Further proposal to confiscate the scrap found at the 507.265MT. and penalty on the Director Karun Juneja was also proposed.

7. Another show cause notice dated 29th February, 2012 was issued pursuant to further investigation. The Revenue identified name of some transporters who have transported the alleged purchase of industrial scrap to the factory premises of appellants. On such inquiry made, it appeared to Revenue that the transporter namely Maharashtra Roadways and Jai Shri Ram Goods Carrier were not found on their address. Capital Roadways and Mahima Roadways were also not found at the given address. As regards Aman Roadlines, when they visited given address, it was found that another transport Company in the name of 'Vikas Roadlines' was operating at the same address, who claimed that they were working there for last 2-3 years and they do not know anything about Aman Roadlines and further R. K. Transport Service could not be found at their given address. On inquiry nobody could be found at R. K. Transport Service.

Accordingly, the view was taken that no cenvatable scrap were transported by transporters and only cenvatable invoices were procured by the assessee to avail Cenvat credit fraudulently, and the inputs were substituted with the market scrap, which find support from the facts that during stock taking such non-cenvatable scrap was found in the factory premises of the assessee. In view of the duty reversed deposited by the assessee, it was presumed that the assessee admitted that they have taken ineligible Cenvat credit. Accordingly, it was proposed to disallow Cenvat credit of Rs.25,57,554/- as alleged in the show cause, also proposal was made for penalty U/R-15. The penalty was also proposed on the director Karun Juneja. Vide separate Orders-in-Original dated 29th January, 2010, Additional Commissioner confirmed the demand of Rs.16,18,834/- appropriating the same with the amount deposited along with interest and further equal amount of penalty was imposed on the appellants (Company) under Rule 15 of CCR, read with Section 11AC of the Act. Further the scrap of iron & steel seized, 507.265MT. was confiscated. Further penalty was imposed on the Director Mr. Karun Juneja. Vide another Order-in-Original No.90 dated 30th March, 2013, another show cause notice dated 29th February, 2012 was adjudicated and the authority confirmed the proposed demand of Rs.25,57,554/- with interest and further equal amount of penalty imposed under Rule 15 of CCR, read with Section 11AC of the Act and penalty of Rs. 5 lakhs was imposed on the Director under Rule 26 of CER, 2002.

8. Being aggrieved the appellants (company) and the Director preferred appeals before Learned Commissioner (Appeals), who by separate orders was pleased to confirm (1) the Cenvat demand of Rs.16,18,834/- along with the penalties imposed and confiscation being Order-in-Appeal dated 30th June, 2010 and (ii) Order-in-Appeal dated 15th July, 2013 pleased to uphold the recovery of Cenvat demand of Rs.25,57,554/- and equal penalty, but was pleased to set aside the penalty of Rs. 5 lakhs imposed on the Director Mr. Karun Juneja.

9. The summary of demand of penalty is –

SI. No.	**Appeal No.**	**SCN No. & Dated**	**Input Cenvat Disallowed**	**Penalty**
1.	E/60706/2013	29/02/2012	Rs.25,57,554/- (Approximated)	Rs.25,57,554/-
2.	E/2916/2010	09/02/2009	Rs.16,18,834/- (Approximated)	Rs.16,18,834/-
3.	E/2917/2010	09/02/2009		Rs.1,00,000/- on Director (K. Juneja)
Net Scrap (507.265MT), Confiscated value (Rs.60,87,180/-), Redemption Fine (Rs.15,25,000/-)				

10. Being aggrieved the appellants are in appeals against confirmation of the demand and penalty.

11. The Learned Counsel of appellant Mr. Rajesh Chhibber argued that the demand has been confirmed mainly on the basis of assumptions and presumptions and accordingly, is fit to be set aside. It is further said that Revenue has not done any investigation from the supplier of the inputs. He further said, that deposit of duty in the course of investigation, by the appellants (company) in good faith to avoid litigation, does not amount to admission of taking ineligible Cenvat credit. It is further stated that the in view of the fact of deposit already made of the Cenvat credit, at the time of inspection, the issue of the first show cause notice is vitiated and the impugned orders are fit to be set aside along with penalty. So far as the second show cause notice is concerned, it is not the case of Revenue that appellants have got received goods in the factory. It is admitted that the appellants on receipt of scrap in the factory, they have manufactured dutiable goods and the same have been cleared on payment of duty. Further Revenue has not pointed out anything during investigation in respect to mismatch in the consumption of the raw materials with respect to the manufactured goods. There is no finding that any of the

suppliers of the raw materials have denied the supply of inputs, as mentioned in the invoices. It is further urged that in respects of the same set of transactions, Revenue have wrongly raised two separate demands, one with respect to the invoices and the other with respect to the subject goods, at the time of inspection. In any view of the matter the demand of Rs.16,18,834/-, the benefit of telescope can be given. The Learned Counsel further relied on ruling of this Bench in Appeal No.E/54587/2014-SM whereby Final Order dated 7th January, 2016, under the fact that Cenvat credit on receipt of inputs from Khamismar Enterprise had been disallowed and disputed by Revenue, on the fact that Revenue has not produced the supplier of inputs for cross examination and in view of the admitted facts that the appellants have manufactured finished goods and cleared on payment of duty, and further the assessee had utilized road permits issued by Commercial Tax Department, it was held that it's impracticable to require the assessee to keep record of transaction beyond the first stage dealer. The assessee acted with all reasonable diligence with the suppliers of inputs as required within the meaning of Cenvat Credit Rules, 2004. It is further urged that no investigation is done at the end of supplier of inputs. However, taking notice of the fact that the assessee had reversed the Cenvat credit disputed by Revenue, the penalty was set aside.

12. The Learned A.R. for Revenue relied on the impugned orders. He has drawn the attention to the findings of the Learned Commissioner (Appeals) in the impugned order dated 30th September, 2013 wherein the Learned Commissioner (Appeals) have relied on the finding in the Order-in-Original and observed that the assessee - appellants had stated that they were using the said scrap in the manufacture and clearing on duty. Reliance have been placed on the conduct of the director of the assessee, wherein he has deposited the duty, which amounted to admission and accordingly, appeals were dismissed.

13. Having considered the rival contentions, I find that the Revenue had not made any inquiry from the supplier of the scrap (Cenvat input) to the appellants. There is no finding of the fact that the supplier of raw material and the supplier of invoices are different persons. Revenue have drawn reliance mainly on the visual inspection of scrap without relating it from Invoice number and the transporters not found at their address. Further adverse inference is drawn on the deposit or reversal of Cenvat

credit by the appellants – assessee, at the time of inspection/investigation. Under these circumstances, I find that Revenue had not established with sufficient evidences that the appellants have not received cenvatable inputs in their factory. It appears that appellants have purchased both cenvatable and non-cenvatable scrap, as has been stated in the statement recorded under Section 14 of the Director, that they are mainly concerned with receipt of scrap and they take credit on the basis of duty indicated there in the invoices and they are not much concerned with consistency of the scrap.

14. In view of the fact that the assessee is not contesting strongly the reversal of duty made by them, I hold that appellant is entitled to deduct the demand of Rs.16,18,834/- from the subsequent demand of Rs.25,57,554/- and they are liable to only the balance demand of Rs.9,38,720/- in the circumstances. So far as the confiscation is concerned, the same is set aside, in view of the fact that the appellants had reversed the duty in the course of investigation and the whole finding of lower authority is on assumption and presumption. Under the fact and circumstances of the case, I set aside the penalty imposed on the assessee Company and the Director Mr. Karun Juneja.

15. Thus, the appeals are allowed in part as indicated above.

(Dictated & Pronounced in Court)

-Sd/-
(ANIL CHOUDHARY)
Member(JUDICIAL)

Lks