CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
SOUTH ZONAL BENCH
BANGALORE

Appeals (s) Involved:

E/849, 191/2009; E/26972, 26973/2013

(Arising out of:

(i) Order-in-Appeal No.26/2009 dated 6.7.2009 passed by the Commissioner of Central Excise (Appeals), LTU, Bangalore.

(ii) Order-in-Original No.140/2008-Commr. LTU dated 20.12.2008 passed by Commissioner of Central Excise & Service Tax, Large Taxpayer Unit, Bangalore.

(iii) Order-in-Appeal No.85 & 86/2013 dated 22.3.2013 passed by the Commissioner of Central Excise (Appeals), LTU, Bangalore.)

M/s. Trident Powercraft Pvt. Ltd.
Plot No.45, Nagarur, Huskur Road,
Off Tumkur Road,
Bangalore – 560 123.

Appellant(s)

The Commissioner of Central Excise
LTU, Bangalore
JSS Towers, 100 Ft. Ring Road,
Banashankari III Stage,
Bangalore – 560 085.

Versus

The Commissioner of Central Excise
LTU, Bangalore
JSS Towers, 100 Ft. Ring Road,
Banashankari III Stage,
Bangalore – 560 085.

Respondent(s)

M/s. Trident Powercraft Pvt. Ltd.
Plot No.45, Nagarur, Huskur Road,
Off Tumkur Road,
Bangalore – 560 123.

Appearance:

Mr. S. Adhitya, CA
D. Arvind, Chartered Accountant
New No.8, Old No.12, 5th Street,
Rutland Gate, Off. Khader Nawaz Khan
Road, Nungambakkam,
Chennai – 600 006.

For the Appellant/Assessee

Mr. Madhupsharan, AR For the Respondent/Department

Date of Hearing: 05.02.2018

Date of Decision: 16.04.2018

CORAM:

HON'BLE SHRI S.S. GARG, JUDICIAL MEMBER

FINAL Order No. 20580 - 20583 / 2018

Per : S.S. GARG

Two appeals have been filed by the appellant against the two impugned orders dated 6.7.2009 passed by the Commissioner (A) and dated 15.12.2008 passed by the Commissioner whereby the appellate authorities have rejected the appeal of the appellant. Two appeals No. E/26972 & 26973/2013 has been filed by the Department on the same issue, against the common impugned order dated 22.3.2013 passed by the Commissioner (A). Since the issue in all these four cases is identical and it relates to the appellant-assessee M/s. Trident Power Craft Pvt. Ltd., therefore, all the four appeals are being taken up together for the purpose of discussion and disposal. The details of four appeals are given herein below:

Sl. No.	Appeal No.	OIA No.	Period	Duty
1.	E/849/2009	Order-in-Appeal No.26/2009 dated 6.7.2009	April to May 2007	Rs.5,98,088/- along with interest and penalty

Sl. No.	Appeal No.	OIA No.	Period	Duty
2.	E/191/2009	Order-in-Original No.140/2008-Commr. LTU dated 20.12.2008	April 2007 to January 2008	Rs.43,48,995/- along with interest
3.	E/26972/2013	Order-in-Appeal No.85 & 86/2013 dated 22.3.2013	Feb. to Mar. 2008	Rs.13,86,414/- along with interest interest & Penalty
4.	E/26973/2013			

2. For the sake of convenience, the facts of appeal No.E/849/2009 are taken.

3. Briefly the facts of the present case are that the appellants are engaged in the manufacture of alternators falling under Chapter Heading 85 of CETA, 1985. The appellant sent iron and steel sheets and coils to job worker directly by their vendors who availed input duty credit and processed the said goods to manufacture stampings/semi-finished goods and during the process of conversion, certain quantity of steel scrap is generated. The said job worker accounts for the materials and returned semi-finished stampings and scrap generated during the course of such activity to the appellant on payment of duty under a cover of invoice. During the audit by the Department, the objection was raised vide audit note dated 3.4.2008 that the appellant had availed CENVAT credit of Rs.5,98,088/- on scrap of iron and steel based on documents which were not consigned to

them and it also observed that there were no supporting documents evidencing the receipt of such goods into the factory. Accordingly, the Department came to the conclusion that the appellant has availed the CENVAT credit in violation of the CENVAT Credit Rules. Thereafter, a show-cause notice dated 6.5.2008 was issued to the appellant proposing to demand the irregular CENVAT credit along with interest and penalty. In the reply to the show-cause notice, the appellant supplied the documents like copies of job worker invoices, copies of sale of scrap invoices and copies of RG1 statement so as to show that they have received the material along with scrap, accounted and paid the duty on clearance of scrap. After following the due process, the original authority observed in the order that the job workers have sent these scraps to the appellant by raising the invoices and on payment of duty, the scrap was duly accounted for in the Daily Stock Register. In spite of this observation, the original authority came to the conclusion that scrap is not an input for the manufacture of final product and no manufacturing process was carried out on the scrap received by the appellant and therefore, the CENVAT credit taken on the scrap is not permissible to the appellant and confirmed the demand along with interest and penalty of Rs.10,000/- under Rule 15(1) of

CENVAT Credit Rules. Aggrieved by the said order, appellant filed appeal before the Commissioner (A), who rejected the appeal of the appellant.

4. Heard both the parties and perused the records.

5. Learned counsel for the appellant submitted that the impugned order is not sustainable in law as the same has been passed without understanding the nature of the transaction and the intention of the statute. He further submitted that the demand has been raised merely based on assumptions and presumptions, which is not sustainable in law. He further submitted that the Department has travelled beyond the scope of show-cause notice and has made a new case against the appellant which is not permissible under law. He further submitted that in the show-cause notice, eligibility of credit is questioned on the basis of the receipt of the said goods into the factory and never on the account of activity not resulting in manufacture. He further submitted that the allegation in the show-cause notice that scrap is not an input for the appellant but both the show-cause as well as the impugned order has failed to bring out the fact that the said goods were removed on payment

of duty, which is in fact much more than the amount of credit availed on the same. This is further established by the daily stock account maintained by the appellant and the same is also reflected in the returns. The learned consultant further submitted that the entire transaction is revenue neutral as duty was paid on removal of scrap on which credit was availed. The amount paid on removal of goods which were not processed to manufacture is nothing but reversal of credit availed and further demand is not sustainable. He also submitted that the credit was validly availed as duty and was being paid on removal of scrap. These scraps were not manufactured within the factory. He also submitted that the iron and steel was an input for the appellant in general and scrap was also iron and steel on which credit was availed as inputs. Since the scrap was removed as such, duty equal to amount of credit availed was paid in accordance with Rule 3(5) of CENVAT Credit Rules, 2004.

5.1 Alternatively, he submitted that Rule 16 permits receipt of duty paid goods within the factory of manufacture for being remade, refined, reconditioned or for any other reason, on which credit can be availed as inputs.

5.2 Further, he also submitted that the show-cause notice was issued invoking extended period of limitation with the allegations of ingredients set out in proviso to Section 11A(1) and when it was concluded that there were no such ingredients, the entire demand should have been dropped in terms of the decision of the Hon'ble Supreme Court in the case of *CCE vs. Alcobex Metals Ltd.: 2003 (153) ELT 241* and confirmation of demand for the normal period is not sustainable.

5.3 Learned consultant also submitted that the Commissioner (A) in two other cases of the appellant on the same issue, has allowed the appeals of the appellant vide common impugned order dated 22.3.2013 against which the department has filed two appeals. He defended the impugned order dated 22.3.2013 passed by the Commissioner (A) wherein the Commissioner (A) has considered all the facts and circumstances and has come to the conclusion that demanding credit from the assessee is incorrect as the entire situation is revenue neutral and question of demand on technical ground is not sustainable.

5.4 In support of his submissions, he relied upon the following decisions:

- *PSL Holdings Ltd. vs. CCE: 2003 (156) ELT 602 (Tri.-Mum.)*
- *SG Zaveri Pharmapack vs. CCE: 2007 (217) ELT 591 (Tri.-Mum.)*
- *Vickers Systems International Ltd. vs. CCE: 2008 (229) ELT 298 (Tri.-Mum.)*
- *CCE vs. MP Telelinks Ltd.: 2004 (178) ELT 167 (Tri.-Del.)*
- *CCE vs. Alcobex Metals: 2003 (153) ELT 241 (SC)*

6. On the other hand, the learned AR in the assessee's appeals defended the impugned order passed by the Commissioner (A) and Commissioner and in the Department's appeals, he has submitted that the impugned order dated 22.3.2013 vide which the Commissioner (A) has allowed the appeal of the assessee is not sustainable in law. He further submitted that the assessee has not followed the procedure prescribed under Rule 16. Further, he submitted that the assessee has failed to prove that the scrap was used for manufacture of the final product. He also submitted that scrap does not fall in the definition of 'input service' as per Section 2(k) of the Central Excise Act, 1944.

7. After considering the submissions of both the parties and perusal of the material on record and various decisions relied

upon by both the parties, I find that in the present case it is a fact that the iron and steel was directly supplied to the job worker who availed credit and processed and made semi-finished stampings and some scrap was generated in the process, which was cleared to the appellant on payment of duty and thereafter, the appellant also cleared the scrap on payment of duty which is higher than the one he claimed as CENVAT credit. It is also a fact that the appellant has paid higher duty as scrap than he claimed as CENVAT credit. Further, I find that the entire transaction, in the present case, is revenue neutral as the duty has been paid on removal of scrap on which the credit was availed.

7.1 Further, I find that in the case of *PSL Holdings Ltd. vs. CCE* reported in *2003 (156) ELT 602,* it was held by the Tribunal that utilisation of credit for payment of duty which was not required to be paid, credit was effectively reversed and the Revenue cannot once again ask for reversal of credit. In the present case also, the appellant has availed CENVAT credit on scrap received from the job workers based on the duty paid document and while at the time of clearance of the same, the appellant paid duty at the time of clearance which can be treated as reversal. Similarly, in other cases cited supra, it has been held by the Tribunal that if the credit is reversed, then the entire transaction is revenue neutral and demanding the reversal of CENVAT credit on technical ground is not tenable under law.

7.2 Further, I find that in the department's appeals, the Commissioner (A) vide impugned order dated 22.3.2013 where the Commissioner (A) has allowed the appeals of the assessee. The Commissioner (A) in para 11 of impugned order has given the reasoning, which are reproduced herein below:

> *"11. The appellant submits that the company purchases steel and dispatches the same directly to the job workers, job worker takes the credit of the duty paid on the said steel and manufactures stampings for the appellant. Job worker, after the manufacture of such stampings sends it back to the appellant on payment of duty and also sends scrap generated during manufacture of dutiable final products after payment of duty. As regards the credit availed on the scrap received from the job worker, it is not put to any use but cleared on payment of appropriate duty but not less than the credit availed on such scrap. It is observed that the Deaprtment has objected to the fact that the credit availed on the scrap received from the job worker is not an eligible credit. Appellant further submitted that when the scrap is cleared from factory premises, the duty liability is discharged on Transaction Value. If that be so, I find that the credit availed by them is reversed, when the said scrap is removed on payment of duty. In my view,*

demanding only the amount of credit taken by them would be an incorrect proposition in law as the manufacturer who received duty paid scrap, removes the same on payment of duty as such as required under Rule 16 of Central Excise Rules, 2002."

7.3 In view of my discussions above, I am of the considered view that the impugned order denying the CENVAT credit on scrap as irregular is not sustainable in law and therefore, the same is set aside by allowing the appeals of the assessee. Whereas in the appeals by the department, I do not find any infirmity in the impugned order whereby the Commissioner (A) has given detailed reasons for allowing the appeals of the assessee and I uphold the said impugned order and dismiss the appeals filed by the Revenue.

8. In the result, the appeals filed by the assessee are allowed with consequential relief, if any and appeals filed by the Revenue are dismissed.

(Order was pronounced in open court on **16.04.2018.)**

S.S. GARG
JUDICIAL MEMBER

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