

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
CHANDIGARH

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REGIONAL BENCH – COURT NO. 1

**Excise Appeal No.55937 Of 2013**

[Arising out of OIO No. 49-50/LDH/2012 dated 14.12.2012 passed by the Commissioner of Central Excise, Ludhiana]

**1. M/s Allied Recycling Limited**

**: Appellant (s)**

Village Budhewal, Near D.A.V College,  
Jalandahr, Punjab-144008

Vs

**The Commissioner of Central Excise,  
Ludhiana**

**: Respondent (s)**

GST Bhawan, F-Block, Rishi Nagar,  
Ludhiana, Punjab-141001

**With**

**Excise Appeal No.56273 Of 2013**

[Arising out of OIO No. 49-50/LDH/2012 dated 14.12.2012 passed by the Commissioner of Central Excise, Ludhiana]

**2. M/s Kailash Steel & Alloys**

**: Appellant (s)**

812, Sua Road, Kanganwal,  
Industrial Area-C, Ludhiana

Vs

**The Commissioner of Central Excise,  
Ludhiana**

**: Respondent (s)**

GST Bhawan, F-Block, Rishi Nagar,  
Ludhiana, Punjab-141001

**APPEARANCE:**

Shri Sudhir Malhotra, Advocate for Appellant No.1

Shri Kulvinder Singh, Advocate for Appellant No.2

Shri Pawan Kumar and Shri Aneesh Dewan, Authorised Representatives  
for the Respondent

**CORAM:**

**HON'BLE Mr. S. S. GARG, MEMBER (JUDICIAL)**

**HON'BLE Mr. P. ANJANI KUMAR, MEMBER (TECHNICAL)**

**FINAL ORDER Nos.60712-60713/2023**

Date of Hearing: 11.12.2023

Date of Decision: 14.12.2023

***Per: P. ANJANI KUMAR***

The appellant No.1, M/s Allied Recycling Limited (E/55937/2013) assails the Order dated 14.12.2012, passed by the Commissioner of Central Excise, Ludhiana, vide which Central Excise duty of Rs.89,28,473/- was confirmed along with interest and equal penalty and penalty was also imposed on M/s Kailash Steel and Alloys, Ludhiana (appellant No.2, E/56273/2013) under Rule 26 of the Central Excise Rules, 2002.

2. Brief facts of the case are that the appellant No.1 is engaged in the manufacture of alloy and non-alloy steel ingots/ billets; two show-cause notices dated 08.07.2011 and 27.01.2012 were issued to M/s Allied Recycling Limited alleging that credit availed on rolled products/ rounds and HR coil/ sheets is not admissible to the appellants on the ground that they are not inputs but were final products in themselves; allegations were also levelled that the appellants have procured only Cenvatable invoices from their suppliers, like M/s Kailash Steel and Alloys without commensurate movement of goods; the allegations levelled were confirmed vide the above cited impugned order.

3. Shri Sudhir Malhotra, learned Counsel for appellant No.1, submits that they have totally procured 83418.504MT of raw material during the impugned period whereas the disputed raw material was only 1671.365MT; the appellants manufactured 11019.060MT of wire rod, 32.860MT of castings and 16111.825MT of ingots/ billets during

the impugned period and have paid duty of Rs.12.55 crores. Learned Counsel submits that the Adjudicating Authority failed to appreciate that such quantity of final products cannot be manufactured and cleared without the procurement of raw material; Department only alleges that the impugned raw material was not physically received and only invoices were exchanged; however, Department did not adduce any evidence; the statements of transporters/ drivers of the trucks were not recorded; the financial transactions which were through banking channels were not verified; no evidence of any flow back of money was established.

4. Learned Counsel further submits that the Adjudicating Authority erred in arriving at the conclusion that the appellants have availed CENVAT credit fraudulently as the cost of the impugned raw material was more than the final products cleared by the appellants; learned Commissioner failed to appreciate that the impugned raw material i.e. HR sheets etc. were used in a very small proportion; comparing the price of the final products with the price of a minuscule quantity of inputs is bizarre; Commissioner did not appreciate the cost data certified by a Cost Accountant which shows that the finished goods were sold at a profit; he did not also consider the average price of the input which was around Rs.19,113/- to Rs.24,640/- during the period 2006-07 to 2010-11, whereas the price of the final products varied from Rs.19,323/- to Rs.25,309/- during the same period.

5. Learned Counsel further submits that when the officers visited the factory of the appellant on 28.09.2010, the factory was found

working; there was no variation in stock of inputs; Shri Vijay Abrol, the Managing Director of the appellant, stated that the impugned material was used for blending with other scraps; proof of purchase in receipt of material was available in the form of freight payment and weighment slips which were not appreciated by the Adjudicating Authority. Learned Counsel further submits that CR Coils purchased were used in the manufacture of "formers", i.e. hollow cylindrical profiles placed in the crucible of the induction furnace; CBEC vide Circular No.690/6/2003-CX dated 21.02.2003 accepts that the "former" is actually consumed and is contained in the ingots and billets manufactured in the units, it is in the nature of inputs; learned Commissioner failed to appreciate this fact.

6. Learned Counsel further submits that the appellants are registered from 2005; several audit teams and officers visited the premises of the appellants on various occasions; no discrepancy was noticed; as held by the Hon'ble Supreme Court in the case of Malleable Iron & Steel Casting Co. Pvt. Ltd. – 1998 (100) ELT 8 (SC) and H.M.M. Ltd. – 1995 (76) ELT 497 (SC) that extended period cannot be invoked when the Department was aware of the facts; the show-cause notice is issued pursuant to an audit report FAR No.540/210 and as held by the Tribunal, in the case of Aditya College of Competitive Exam Vs CCE – 2009 (16) STR 154, extended period cannot be invoked when the show-cause notice is based on an audit objection; he relies on Tamil Nadu Housing Board – 1994 (74) ELT 9 (SC); Oudh Sugar Mills Ltd. – 1978 (2) ELT J172 (SC) and Gian Mahtani – 1999 (110) ELT 400 (SC) and submits that penalty cannot be imposed when

there is no intent to evade payment of duty and cannot be imposed on the basis of assumptions and presumptions in the absence of proof; Rule 26 has been amended w.e.f. 01.03.2007 and before this period, penalty cannot be imposed for receipt of invoices without accompanying goods.

7. Shri Kulwinder Singh, learned Counsel for appellant No.2, submits that penalty cannot be imposed on appellant No.2 as they have supplied the goods; transportation was arranged by their buyers and payments were received through banking channels; therefore, penalty cannot be imposed on them as there is no violation. He also submits that the appellant No.2 not being a physical person who can be alleged to have dealt in the goods, penalty cannot be imposed.

8. Shri Pawan Kumar, assisted by Shri Aneesh Dewan, learned Authorised Representative for the Department, reiterates the findings of the impugned order.

9. Heard both sides and perused the records of the case. It is the case of the Department that the appellants have availed credit on items which cannot be considered as inputs as they are final products themselves; the price of the inputs being more than that of the final products, economic logic defies the use of such inputs; the appellants have only received Cenvatable invoices supplied by various manufacturers and have not actually received the material and thus have availed credit in fraudulent manner.

10. Revenue alleges that the impugned raw material cannot be used as inputs; however, Revenue ignored the fact that the impugned/

disputed raw material was used in a small proportion; as against about 89000MT of raw material used, the disputed material used was about 1100MT; the possibility of mixing a small proportion to increase the quality of the material manufactured cannot be ruled out; the Department's case based on the cost of the raw material vis-a-vis the final product is incorrect, more so, looking into the small proportion in which it is used; the pricing of the final products should be reckoned taking into account all the raw material, labour, consumables, other expenses etc. in a holistic manner; the analysis given by the Cost Accountant has not been considered by the Adjudicating Authority. Therefore, the findings of the Adjudicating Authority on the point of the price of the raw material being higher than the final products are not legally tenable.

11. Moreover, the appellant's claim that the HR coil/ sheets were seconds and have been used to make "formers" which are used to hold the material together in the induction furnace; the "former" itself gets melted; therefore, there is no reason as to how the claim of the appellants can be discounted. We find that CBEC vide Circular No.690/6/2003-CX dated 21.02.2003, clarified that the "former" is actually consumed and is contained in the ingots and billets manufactured in the units, it is in the nature of inputs. Therefore, we find that learned Commissioner failed to appreciate that HR Coils can be used as inputs in the manufacture of ingots/ billets in an induction furnace. The Revenue's allegation that the appellant did not have equipment to cut the coils and manufactured "formers" for captive consumption is not based on any evidence like Panchnama. The

appellant's claim that they have borrowed the equipment from other manufacturers cannot be ignored.

12. Another allegation of the Department is that the appellant No.1 did not receive the material and has obtained only the invoices from his suppliers like the appellant No.2; however, the appellants claim that the goods have been actually transported and received and the transactions were through banking channels; actual receipt can be verified by the weighment slips. We find that Revenue has not undertaken any investigation into the aspect of actual transportation and the receipt of the material; no statement of transporter/ driver was recorded; no enquiries with the banks was made to ascertain whether the transactions were genuine and are not just temporary adjustments with flow back of money. Under such circumstances, we are of the considered opinion that the Department has not made out any case against the appellants. Mere allegation without any evidence to substantiate cannot hold.

13. We further find that CESTAT in a case, of the appellant No.1, involving identical facts, has decided the matter in favour of the appellants and allowed the CENVAT credit on HR/ CR Sheets/ Rounds, vide Final Order No. A/62925-62926/2018 dated 11.09.2018. We follow the ratio of the same in view of the discussion above and hold that appellants are eligible for the disputed CENVAT credit. When the credit is held to be admissible, penalties impose on both the appellants do not survive. There is no need to go into other issues like limitation etc.

14. In view of the above, both the appeals are allowed.

*(Pronounced on 14/12/2023)*

**(S. S. GARG)**  
MEMBER (JUDICIAL)

**(P. ANJANI KUMAR)**  
MEMBER (TECHNICAL)

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