**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL**
SCO 147-148, SECTOR 17-C, CHANDIGARH – 160 017

**SINGLE MEMBER BENCH**
**COURT NO. I**

| Sr. No | Case No | Impugned Order Detail's | Date of Impugned Order | Passed By | Appellant | Respondent |
|---|---|---|---|---|---|---|
| 1 | E/40/2010-SMC | OIA-255/MA/GGN/2009 | 15/09/2009 | Commissioner of Central Excise-DELHI-III | GUPTA METAL SHEETS PVT. LTD. | C.C.E.-DELHI-III |
| 2 | E/41/2010-SMC | OIA-264-MA-GGN-2009 | 22/09/2009 | Commissioner of Central Excise-DELHI-III | Agrawal Metal Works Pvt. Ltd. | C.C.E.-Delhi-iii |
| 3 | E/42/2010-SMC | OIA-281-282-MA-GGN-2009 | 06/10/2009 | Commissioner of Central Excise-DELHI-III | Shiva Metal Traders, | C.C.E.-Delhi-iii |
| 4 | E/43/2010-SMC | OIA-281-282-MA-GGN-2009 | 10/10/2009 | Commissioner of Central Excise-DELHI-III | V.k.enterprise, | C.C.E.-Delhi-iii |

**Date of hearing/decision**: 11.10.2018

For approval and signature:
**Hon'ble Mr. Ashok Jindal, Member (Judicial)**

Appearance:
Present for the Appellant(s): Shri Abhishek Jaju & Shri M.N. Dubey (Advocates)
Present for the Respondent(s): Shri Harvinder Singh (AR)

**CORAM:**
**Hon'ble Mr. Ashok Jindal, Member (Judicial)**

**FINAL ORDER NO. 63305-63308** /2018

***Per :* Ashok Jindal**

The appellants are in appeal against the impugned order wherein Cenvat credit sought to be denied to the manufacturer/buyers, namely, M/s Gupta Metal Sheets Pvt. Ltd. and Aggarwal Metal works Pvt. Ltd., on the ground that they have not received the material against the invoices issued by Shiva Metal Traders or M/S V.K enterprise, the second/first stage dealer and penalty has been imposed on the all the appellants.

2. The brief facts of the case are that an investigation was conducted at the end of one of the manufacturer/supplier, namely,

M/s Annpurna Impex pvt. Ltd., Ludhiana and it was found that during the impugned period they have not cleared any goods from their factory as per ER-1 returns but they issued cenvatable invoices to their first stage dealer, namely M/s V.K Enterprises who further issued invoices to the second stage dealer M/s Shiva Metal traders who in turn issued invoices to the manufacturer/buyers to avail inadmissible Cenvat credit without supply of the goods. In these set of facts, without any investigation have conducted at the end of manufacture/buyers, the show cause notice was issued to deny the Cenvat credit to manufacture/buyers on the invoices issued by the M/s V.K. Enterprises and M/s Shiva Metal Traders works first stage dealer/second stage dealer respectively and to impose penalty on all the appellants. The matter was adjudicated, and proposals made in the show cause notice were confirmed. Against the said order, the appellants are before me.

3. Shri T.R. Rastogi and Abhishek Jaju, advocates appeared on behalf of manufacturer/buyers and Shri M.N dubey appeared on behalf of the first stage/second stage dealers.

4. The Counsels appearing on behalf of the manufacturer/buyers submits that no investigation was conducted at their end no stock taking was done, merely on the basis of investigation at M/s Annpurna Impex Pvt. Ltd., the show cause notice has been issued to them to deny Cenvat credit. In fact these manufacturer/buyers have received the goods and made the payment through account payer cheques, these inputs have been used in manufacturing of final products which has been cleared on payment of duty. As no

investigation was conducted at their end, therefore, the discrepancy in stock/records could not be ascertained. In the absence of this, Cenvat credit cannot be denied to the appellants. Moreover they have taken proper care while purchasing the inputs and as per the invoices issued by first stage/second dealer full particulars were mentioned and on the basis of that they have taken Cenvat credit, therefore, Cenvat credit cannot be denied to the manufacturer/buyers. On behalf of the first stage/second stage dealer, it is the contention of the Ld. Counsel that they have supplied goods to the appellant, therefore, no penalty can be imposed on them. It is also submitted that they have received goods from M/s Annpurna Impex Pvt. Ltd.

5. On the other hand, Ld. AR reiterated the findings of the impugned order and submits that as M/s Annupurna Impex Pvt Ltd. have not supplied any goods, therefore, the question of receiving goods by manufacturer/buyer does not arise.

6. Heard the parties, considered submissions.

7. On consideration of rival submissions, I find that the fact which is not in dispute is that no investigation was conducted at the end of manufacturer/buyers to ascertain whether they have received the inputs in question or not. Merely, on the basis of the statement of third party, it has been alleged that the appellants have not received the goods. Moreover, no investigation was conducted with the transporter to ascertain the fact that whether this manufacturer/buyers have received goods in their factory or not? In the absence of these evidence, the Cenvat credit cannot be denied to the manufacturer/buyers, namely, M/s Gupta Metal Sheets Pvt. Ltd.

and M/s Agrawal Metal works Pvt. Ltd., therefore, the impugned order qua denial of Cenvat credit to these manufacturer/buyers and imposing of penalty on them is set aside. Accordingly, their appeals are allowed.

8. With regard to the penalty imposed on M/s V.K. enterprises and M/s Shiva Metal Traders they have failed to establish that they have received the goods from M/s Annupurna Impex Pvt Ltd. As the vehicle which has been shown in the invoice found to be a Maruti Car which is incapable of transportation of the goods in question. Further, it is their contention that they have supplied goods to the manufacture buyers that contention may be right as held by this Tribunal in the case of manufacturer/buyers that the manufacturer/buyers have received the goods in the absence any contrary evidence but these dealers have failed to establish that they have received the goods against the Cenvatable invoices issued by M/s Annpurna Impex Pvt. Ltd. In that circumstances, penalty on first stage/second stage dealer is rightly imposed by the adjudicating authority or the authorities below, therefore, penalty imposed on first stage dealer and second stage dealer, namely, M/s Shiva Metal Traders and M/s V.K. Enterprises are confirmed.

With these terms, the appeals are disposed off.

*(Order dictated and pronounced in the court)*

**Ashok Jindal**
**Member (Judicial)**

*Kailash*