CUSTOMS, EXCISE & SERVICE TAXAPPELLATE TRIBUNAL
SCO 147-148, SECTOR 17-C, CHANDIGARH-160017

SINGLE MEMBER BENCH

COURT NO.1
Appeal No.E/60817 & 61045/2018 (SM)

(Arising out of OIA No.APP/CE/PKL/285/2017-18 dt.28.2.2018 and OIA No. APP/CE/PKL/362/2017-18 passed by the CCE(Appeals), Panchkula)

Date of hearing/decision: 06.02.2019

M/s. Cosmo Zincox Industries **Appellant**
M/s. Soorajmull Baijnath Industries P.Ltd.
Vs.

Commissioner, CGST, Panchkula **Respondent**
<u>Appearance</u>

Shri P.K.Mittal, Advocate for the appellants
Shri Bhasha Ram, AR for the respondent

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

FINAL ORDER NO.60079-60080/2019

Per **ASHOK JINDAL:**

The appellants are in appeal against the impugned order wherein the credit has been denied to them on the ground that the appellants have received only cenvatable invoices and not the goods.

2. The facts in both these appeals are similar, therefore, both the appeals are disposed of by this common order.

3. On the basis of records, I find that investigation was conducted by DGCEI at the end of one Shri Amit Gupta, who was engaged in passing on inadmissible Cenvat credit on the cenvatable invoices through various registered dealers namely, M/s.Unnati Alloys Pvt.Ltd. But on the basis of statement of Shri Amit Gupta,an investigation was

conducted at the end of the appellant and the appellant contended that they have received the goods against the invoices issued by M/s. Unnati Alloys Pvt.Ltd. for which appellant made payment through account payee cheque. The goods transported through M/s. Leo Trans & Logistics which was found non existence during the course of investigation. Further, investigation revealed that the said transporter M/s. Leo Trans & Logistics has been taken over by M/s.Leo Roadlines Pvt.Ltd. Their accountant stated that they have never transported the goods on behalf of M/s Unnati Alloys Pvt.Ltd. On the basis of investigation, a case has been made against the appellants that they have not received goods from M/s. Unnati Alloys Pvt.Ltd and only received cenvatable invoices. Against the said orders, the appellants are before me.

4. Heard the parties.

5. Considering the fact that similar investigation has been conducted by the DGCEI against Shri Amit Gupta and show cause notices were issued to the recipients of goods against whom the invoices were issued by Shri Amit Gupta to various firms. One such firm M/s.Unnati Alloys Pvt.Ltd. Neither cross examination of Shri Amit Gupta nor Shri Amit Gupta was made party to the show cause notice which shows that the investigation conducted against the appellant is not proper. Moreover, the transporters were also not examined at all nor made party to the show cause notice. On the other hand, in the case of M/s.Cosmo Zincox Industries, the appellant has been able to show each vehicle mentioned in GRs is capable of transportation of the goods. In that circumstance, the benefit of

doubt goes in favour of the appellants that they have received the goods against cenvatable invoices issued by M/s.Unnati Alloys Pvt.Ltd., in question and made payment through account payee cheque. The goods received by the appellant for manufacturing of goods, which has been cleared on payment of duty. In that circumstance, I allow Cenvat credit to the appellants and hold that the show cause notices are not required to the issued to the appellants.

6. In the result, the impugned orders are set aside and the appeals are allowed with consequential relief, if any.

(dictated and pronounced in the open court)

(Ashok Jindal)
Member (Judicial)

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