CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

REGINAL BENCH AT CHANDIGARH

Court NO.I

Appeal No. E/55871/2013-Ex
(Arising out of OIO No.41/LDH/2012 dt.30.11.2012 passed by the Commissioner, Central Excise, Ludhiana)

Addi Alloys P. Ltd. **Appellant**
(G.T.Road, Jugiana, Ludhiana)
Vs.
CCE & ST, Ludhiana **Respondent**
(Central Excise House, Block, Rishi Nagar, Ludhiana)

With

Appeal No. E/56006/2013-Ex
(Arising out of OIO No.41/LDH/2012 dt.30.11.2012 passed by the Commissioner, Central Excise, Ludhiana)

M/s. J.s.Steel Traders **Appellant**
(1594,Street No.3, Muradpura, Gill Road, Ludhiana)
Vs.
CCE & ST, Ludhiana **Respondent**
(Central Excise House, Block, Rishi Nagar, Ludhiana)

Present for the Appellant: Shri Surjeet Bhadu, Advocate
Shri Vikrant Kackria, Advocate
Present for the Respondent: Shri G.M.Sharma, AR

Coram: Hon'ble Mr. Ashok Jindal, Member (Judicial)
Hon'ble Mr.Bijay Kumar, Member (Technical)

FINAL ORDER NO.60699-60700/2019

Date of hearing: 24.05.2019
Date of Decision: 24.05.2019

PER: ASHOK JINDAL

Both the appellants are in appeal before us.

2. The appellant No.1, namely M/s.Addi Alloys P.Ltd. is manufacturer of excisable goods i.e. non alloy steel ingots whereas the appellant No.2, namely, M/s. J.S.Steel Traders is the supplier of inputs. On the basis of intelligence, office of the appellant No.2 was visited on 26.8.2009. Thereafter the statement of Shri

Jaspreet Singh, proprietor was recorded wherein he stated that the appellant is engaged in the manufacture of HR/CR end cutting pcs and trimming and scrap; that they sell goods in the same condition as are received by them and no process whatsoever is ever carried out by them on thee goods; that they mainly purchase their goods from Bhushan Group firms, SAIL, Tata Steels, etc; that they issue cenvatable invoices as well as non cenvatable invoices. On the basis of statement and description of the goods, it was alleged that the some goods are not in the nature of the scrap and appellant No.2 has issued invoices to appellant No.1 by making the word "scrap" has been added on the goods purchased by appellant No.2. On the basis of investigation conducted, a show cause notice was issued to the appellant to both appellants on the ground that the steel melting scrap which is an input for appellant No.1 does not include any of the items mentioned in the description of the goods found during the course of investigation. The said items were purchased by the appellant No.2 and sold in the same condition falling under Chapter headings are neither inputs nor capital goods for the appellant No.1. These articles are capable of use as such in other industries like cycle parts manufacturers. It was also alleged that the appellant No.1 did not have the facility to handle HR coil/CR coil as the handling of such material requires specialized machinery. Even when such high valued material was consumed by the appellant No.1, there was no change in the quantum of consumption of Ferro Alloys and there was no change in the burning loss or consumption of electricity. These situations give serious doubt about the use of such materials which were not waste and scrap. They were not entitled for the Cenvat credit on the items mentioned in the annexure to the show cause notice as they are not waste and scrap of Chapter heading 7204. All these goods had specific use and cannot be used by the appellant No.1 in the manufacture of their final products i.e. steel ingots. In these sets of facts, a show cause notice to deny Cenvat credit to appellant No.1 and to impose penalties on both the appellants. The matter was adjudicated, the credit was denied and penalties on both appellants were imposed. Against the said order, the appellants are before us.

3. Ld. Counsel for the appellants submits that there was no allegation of diversion of goods in the show cause notice or non receipt of inputs by the appellant No.1. He further submits that the adjudicating authority has gone beyond the scope of show cause notice and confirmed the demand alleging that the impugned goods have been diverted by the dealer and were not received in the factory of the appellant No.1. Therefore, the impugned order is to be set aside relying on the decision of Hon'ble Supreme Court in the case of Reckitt & Colman of India Limited vs. CCE-1996 (88) ELT 641 (SC(and CCE vs. Sun Pharmaceuticals Indus.Ltd.-2015 (326) ELT 3 (SC). There was no allegation in the show cause notice regarding diversion of the goods or non receipt of inputs by the appellant NO.1, therefore, the findings of the adjudicating authority has travelled beyond scope of show cause notice.

4. He further submits that there is no enquiry of diversion of goods from dealer or from appellant-manufacturer. No visit was made in the factory of appellant to verify facts and manufacturing process. No enquiry from any transporter. No evidence of any alternate input purchase because appellant's sale of final product is not challenged. No contrary evidence to negate the payment

regarding goods made by appellant through cheque. Entire goods are recorded in statutory records of appellant and shown as received. Impugned goods were physically received in the factory of the appellant No.1 and used in manufacturing of dutiable goods. The final product is cleared on payment of duty by them. Receipt of goods by the dealer is not disputed in the show cause notice.

5. With regard to the melting of impugned scrap, it is submitted that there is no expert opinion with revenue which could state impugned goods could not be melted. There is no pilot experiment to verify the melting and results thereof to controvert the stand of appellant. No visit to factory of appellant to check manufacturing process.

6. It is further submitted that the dealer/supplier specifically stated that they tried to sell goods to various customers for as such use of impugned goods, however, after failing they used to sell goods to furnaces like appellant who made prompt payments, to avoid losses by standing stock. The appellant's manager in his statement clearly explained manner of consumption of goods in their factory. None of the three suppliers of dealers has stated the impugned goods cannot be melted in furnace. Therefore, he submits that the impugned order be set aside. To support his contention, he relied upon the decision of this Tribunal in the case of Sharman Strips Pvt.Ltd. and others vide Final Order No.63607-63618/2018 dt.6.12.2018, Dashmesh Castings Pvt.Ltd.-2015 (320) ELT 450 (Tri.-Del.).

7. On the other hand, Ld.AR supported the impugned order and submits that it is a fact on record that the material has been supplied by appellant No.2 can be used as such in the open market

cannot be the material for appellant No.1 to be used in their furnace. Moreover, the inputs used by the appellant in the manufacture are of prime quality material can be sold as such, therefore, the same cannot be inputs for the appellant to manufacture final goods, the credit was rightly denied.

8. Heard the parties and considered the submissions.

9. On careful consideration of the submissions made by both sides, we find that there is no allegation in the show cause notice that the goods in question have not been received by appellant No.1 from appellant No.2. In the show cause notice the only issue is that the goods in question cannot be the inputs to manufacture final products by the appellant No.1. To ascertain such fact, no visit was made by the Revenue in the factory premises of the appellant No.1. No process of manufacturing has been brought on record. Moreover, no evidence has been produced by the Revenue that the said goods have not been diverted to be used by the appellant-manufacturer to manufacture final products, therefore, we hold that the allegation made against the appellant is only on the basis of assumptions and presumptions. In a similar set of facts in the case of Sarman Strips Pvt.Ltd., this Tribunal has observed as under:-

> "7.We find that in this case the credit sought to be denied on the goods in question solely on the ground that the said goods in question cannot be the inputs for the appellant M/s. Tharaj to manufacture their final products.
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> 8. We take note of the fact that the total quantity of inputs in question for denial of credit is 6.14% of the total purchase by M/s.Tharaj, which is negligible . We further take note of the fact that all the suppliers of the said inputs admitted that they have supplied the goods to the appellant M/s.Tharaj and received payment thorugh account payee cheque. We further take note of the fact no investigation was conducted at the end of the transporter by the Revenue to prove that the goods have not been received by the appellant in their factory. Moreover, no investigation was conducted to prove that these inputs have been

> diverted by the appellant M/s.Tharaj in the market and procured bazaar scrap from the open market. As the Revenue has not come with any evidence on record to show that the goods have been substituted by bazaar scrap, the allegation against appellant is not sustainable as it is based on assumption and presumption without bringing any cogent evidence on record. Moreover, the appellant has shown that the said goods in question have been used to manufacture SG castings and auto parts which have been cleared at higher price. In that circumstance, the appellant M/s.Tharaj has been able to prove the usage of the said goods for manufacture of their final products. In that circumstance, the allegation that it is only paper transaction is not sustainable. Moreover, the Revenue cannot decide what should be the inputs for the appellant to manufacture their final products in the absence of any corroborative evidence.
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> 9. As the Revenue has failed to bring on record any cogent evidence in support of their allegation, therefore, the allegation that the goods in question cannot be the inputs for the appellant M/s.Tharaj for manufacture of their final product is not sustainable.
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> 10. In that circumstance, we hold that the appellant M/s.Tharaj has rightly availed Cenvat credit on the goods in question which have been used in the manufacture of their final products and the same have been cleared on payment of duty. Therefore, the credit availed by the appellant M/s.Tharaj is allowed and penalty is not imposable on the appellant and co-appellants."

10. We further take note of the fact that the Revenue has not come with any evidence to show that the said inputs cannot be used by the appellant-manufacturer to manufacture their final products. No expert opinion has been obtained by the Revenue. No statement of transporter has been recorded to allege diversion of the goods. Therefore, the credit cannot be denied.

11. Further, we find that in the impugned order, the adjudicating authority has alleged that there is diversion of goods and non receipt of goods by the appellant- manufacturer. As there is no such allegation in the show cause notice to allege that the goods were never received by the appellant-manufacturer and supplied by the dealer, in that circumstance, the adjudicating authority has gone beyond the scope of show cause notice. Such findings of the adjudicating authority are not sustainable in the eye of law. Therefore, on merits as well as scope of show cause notice, the

impugned order deserves no merit and therefore, the credit cannot be denied to the appellant-manufacturer. No penalty is imposable on both the appellants.

12. In the result, the impugned order is set aside and the appeals are allowed with consequential relief, if any.

(operative part of order was pronounced in the court)

(ASHOK JINDAL)
MEMBER (JUDICIAL)

(BIJAY KUMAR)
MEMBER (TECHNICAL)

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