CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHANDIGARH

REGIONAL BENCH - COURT NO. I

Excise Cross Application No. 215 of 2009
(on behalf of the respondent)

Excise Appeal No. 1432 of 2009

[Arising out of Order-in-Appeal No. CHANDIGARH-COMMITTEE-REVIEW-02-2009 dated 26.03.2009 passed by the Commissioner CE & ST, Chandigarh]

Commissioner of Central Excise & Service Tax, Ludhiana ......**Appellant**
GST Bhawan, F Block,
Rishi Nagar, Ludhiana

VERSUS

M/s Garg Industries Ltd ......**Respondent**
S.No. 199/2-A, Shed No. 3,
Panchal Udyog Nagar,
Bhimpore Daman,
The Dadra & Nagar Haveli and Daman & Diu-396210

APPEARANCE:

Present for the Appellant: Sh. Ravinder Jangu, Authorized Representative
Present for the Respondent: Shri Ashesh Lal, Advocate

CORAM:

HON'BLE Mr. S. S. GARG, MEMBER (JUDICIAL)
HON'BLE Mr. P. ANJANI KUMAR, MEMBER (TECHNICAL)

FINAL NO.60519/2025

DATE OF HEARING: 27.02.2025
DATE OF DECISION: 02.05.2025

P. ANJANI KUMAR:

M/s Annapurna Impex Pvt Ltd. (AIPL) are manufacturers of copper ingots and copper wire; on the basis of an investigation conducted against them, Revenue came to a conclusion that M/s AIPL has availed Cenvat credit of Rs. 28,01,76,009/- fraudulently without procuring the goods and thus indulging only in paper transactions; a show cause notice dated 23.04.2007 was issued to M/s AIPL and directors inter-alia seeking to confirm the demand of Cenvat credit fraudulently availed along with interest; seeking to impose penalty on M/s AIPL under Section 11AC, Rule 14, and Rule 15 of Cenvat Credit Rules, 2004 and seeking to impose penalty on the directors of M/s AIPL under Rule 25 of the Central Excise Rules, 2002. Penalty was also proposed to be imposed on various dealers and transporters (who are the respondents in this case) under Rule 25/26 of Central Excise Rules, 2002 as may be applicable. the proposals in the show cause notice against M/s AIPL and their directors were confirmed vide impugned order dated 30.12.2008 while discharging all others. The respondents, M/s Garg Industries, who have been alleged to have abetted the fraudulent availment of CENVAT credit of Rs.37,97,289/-, are one such noticee against whom penalty was dropped in the impugned order. On a review of the impugned order, Revenue filed various appeals against the dropping of penalty imposed on various noticees therein. A bunch of 25 appeals filed, by the Revenue, against dropping of penalty against them by the adjudicating authority, were decided by this Bench vide Final Order No.60122-60146/2024 dated 22.03.2024. The respondents filed a miscellaneous application No.61086/2024 seeking restoration of the appeal on the grounds that, the cross-objections filed by them, as respondents in E/1432/2009 were not considered. This Bench vide miscellaneous order No.60289/2025 dated 13.02.2025 allowed the application of the respondent and directed the Registry to restore the appeal to its original number and to list for final disposal on 27.02.2025. Accordingly, the matter was placed before us for hearing.

2. Learned Authorized Representative reiterates the grounds of review and appeal and submits that as the final order in the case has already been issued, considering the cross-objections at this stage,

would amount to review of its own order by the Tribunal. He prays that cross-objections may not be accepted.

3. Learned Counsel for the respondents reiterates the grounds of cross-objections as summarised below:

- Commissioner has not afforded reasonable opportunity to the respondents in violation of principles of natural justice; copies of documents referred in the show cause notice have not been supplied; impugned order is liable to be set aside.
- The impugned order is without jurisdiction and beyond the scope of SCN; impugned order relies heavily on material it is not part of SCN.
- Commissioner ignored the statement of the Director; he relied on statements of the transporters recorded afterwards; Commissioner totally ignored the statement of Shri N.K. Nair on 03.04.2006 to the effect that the transporter manipulated the documents; Commissioner totally ignored the statement of Shri Naveen Aggarwal, Director, M/s AIPL that they have purchased the goods and received them in the factory.
- the appellants have sold the goods to M/s AIPL on freight-to-pay basis and consideration was received through cheques; there is no evidence to show that the respondents made any payment to transporter; the goods were sold on ex-factory basis. Commissioner ignored the fact that there was no allegation against the respondents
- Commissioner ignored bank statements of the respondents; there is no positive, tangible, conclusive and sufficient evidence to show that the goods weighing more than 822 MT were not purchased by M/s AIPL.

- Commissioner failed to take note of the fact that Lorry No. HR38K8184 was re-numbered as HR38K8194 and therefore, enquiries made with the owner of earlier number cannot be relied upon; Commissioner wrongly relied on the report by Excise & Taxation Commissioner.
- Commissioner ignored the judgment of the Tribunal in Prathamesh Shipping Pvt Ltd – 2000 (119) ELT 75 (T) that the company being a juristic person cannot be alleged to have committed the acts of commission and omission in dealing with the goods as would a physical person do;

4. Learned Counsel submits that the respondent's case stands on a different footing as they have actually supplied the goods and learned Commissioner has correctly discharged the penalty proposed on them. He further submits that in the instant case, the provisions of Section 9D and Section 33 of the Central Excise Act, 1944 have not been followed. He relies on the decision of the Tribunal in the case of Trishul Metal Industries & Others – MANU/CE/0242/2021; N.D Metal Industries – 2024-SCC-Online-CESTAT-1325 and submits that the Bench may pass suitable order on the cross-objections.

4. Heard both sides and perused the records of the case. We find that the respondent assails the impugned order in the cross-objections and relies on the cases where violation of Section 9D and Section 33 of the Central Excise Act, were held to be fatal to the proceedings. We find that the appellant has not filed any appeal against the impugned order and as such, they cannot request for quashing the impugned order by way of filing the cross-objections. The respondents could have helped themselves by bringing out any inadequacies in the grounds of review by the Committee of Chief

Commissioners or the grounds of appeal in the appeal filed by the Department. We fail to understand as to how the respondents would be benefitted by setting aside the impugned order, which in fact discharges them from any liability. If the respondents had any objection to the reasoning given by the learned Commissioner in coming to the conclusion that was arrived at, they were free to file an appeal against the impugned order. We find that the respondents have not convinced us on as to how the grounds of appeal taken by the Revenue in the instant appeal are not legally tenable. This being so, we are of the considered opinion that the respondent has not made a case in their favour. Therefore, we are of the considered opinion that even after taking into account the cross-objections filed by the respondent, the findings and the decision arrived at by us, vide Final Order No.60122-60146/2024 dated 22.03.2024 remains the same, in respect of the respondents.

5. In view of the same, we allow the appeal No. E/1432/2009 and reject the cross-objections filed by the respondents.

(Order pronounced in the open court on 02/05/2025)

(S. S. GARG)
MEMBER (JUDICIAL)

(P. ANJANI KUMAR)
MEMBER (TECHNICAL)

PK