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

DIVISON BENCH
COURT NO.1

Appeal No. E/948,1145/2009

[Arising out of the Order-in-Original No. 30/LDH/2008 dated 20.01.2009 passed by the CCE (Appeals), Ludhiana]

Date of Hearing/Decision: 27.08.2018

For Approval & signature:

Hon'ble Mr. Ashok Jindal, Member (Judicial)
Hon'ble Mr. Anil G. Shakkarwar, Member (Technical)

Nand Mangal Steels Ltd. **Assessee**

Vs.

CCE, Ludhiana **Revenue**

And

CCE, Ludhiana **Revenue**

Vs.

Nand Mangal Steels Ltd. **Assessee**

Appearance

Shri. Sudhir Malhotra, Ms. Kanika Malhotra, Advocates- for the appellant
Shri. Vijay Gupta, AR- for the respondent

CORAM: **Hon'ble Mr. Ashok Jindal, Member (Judicial)**
Hon'ble Mr. Anil G. Shakkarwar, Member (Technical)

FINAL ORDER NO: 63173-63174 / 2018

Per Ashok Jindal:

Both sides are in appeal against the impugned order.

2. The facts of the case are that the appellant/assessee is manufacture of Non Alloy Steel Ingots and Runners & Risers. The appellant/assessee is availing facility of cenvat credit on inputs received for manufacture of their

final product. On the basis of intelligence the appellant/asssessee were indulging in the procurement of higher valued re-rollable scrap from the different dealers of Mandi Gobindgarh for availing cenvat credit and were diverting the same in open marker without issuance of any Central Excise invoice and were substituting the same with the kabari scrap for maintaining the inventory of stocks of raw material for the manufacturing of non alloy steel ingots, therefore, the factory of the appellant/assessee was visited on 09.08.2005 and certain records were resumed, statements were also recorded from various persons of the appellant/assessee. On the scrutiny of records, it was also observed that during the period 01.04.2003 to 08.08.2005, the appellant/assessee has taken wrongly cenvat credit on re-rollable scrap and other scrap received from various dealers on the basis of the various vehicles involved in transportation of the goods and it was alleged that it was merely a paper transaction. In these set of facts, a show cause notice was issued to both the assessee/appellants and the matter was adjudicated. The ld. Adjudicating authority ordered for recovery of cenvat credit to the tune of Rs. 33,31,024/- out of the total cenvat credit of 1,13,25,749/- sought to be denied in the show cause notice and imposed penalty on both the appellants/assessee. Against the said order, both sides are in appeal. The appellants/assessee are in appeal for denial of cenvat credit of Rs. 33,31,024/-, and imposed penalty whereas, the Revenue is in appeal against the impugned order for dropping the demands against the appellants/assessee.

3. The ld. Counsel appearing on behalf of the appellants/assessee submits that the case of the Revenue is that the appellants/assessee have substituted the re-rollable scrap with kabari scrap. It is his submissions that it is admitted position that the appellants/assessee received the re-rollable scrap and the same has been substituted with kabari scrap. No evidence has been brought by the Revenue from where the kabari scrap

was procured by the appellants/assessee and how the re-rollable scrap was transported from their factory to outside. It is his contention that it is not the case of the Revenue that the re-rollable scrap was not received in their factory as alleged in the show cause notice, in fact it has been categorically mentioned in the show cause notice that the appellants/assessee were substituting the re-rollable scrap with kabari scrap for maintaining the inventory of stock of the raw material for the manufacturing of the non alloy steel ingots. He also submits that the Revenue has not produced any evidence that how the re-rollable scrap was diverted and how the kabari scrap was procured. It is his submissions that the Revenue is heavily relying on the vehicle nos. Which were found to be fake. In this context, it is his submissions that as per the Revenue, the appellant has substituted the re-rollable scrap. In fact, when re-rollable scrap has been reached to their factory, therefore, without investigation, it cannot be alleged against the appellants/assessee that they have not received the re-rollable scrap in their factory. Now, burden cast to the Revenue to prove that how the re-rollable scrap was substituted by kabari scrap which Revenue has failed to do so. Therefore, the impugned qua denying cenvat credit to the appellants/assessee is to be set aside.

4. On the other hand, the ld. AR submits that during the course of investigation and from the various statements recorded during the course of investigation it has been observed that the vehicles are used in transportation of re-rollable scrap are non-existent or found to be scooter, tanker and other vehicles which are not capable for transportation of re-rollable scrap, therefore, the Revenue has been able to prove that the appellant has diverted re-rollable scrap without issuance any Central Excise invoices. He also relied on the decision of this Tribunal in the case of ***Ranjeev Alloys Limited reported in 2009 (236) ELT 124 (Tri.***

Del.) which has been affirmed by the ***Hon'ble High Court of Punjab and Haryana reported in 2009 (247) ELT 27 (P&H).***

5. Heard the parties and considered the submissions.

6. On careful consideration submissions made by both the sides, we find that the case of the Revenue is that the appellant/assessee has substituted the re-rollable scrap with kabari scrap. The facts of the case are contrary to the allegation made in the show cause notice as it is alleged in the show cause notice that the appellant/assessee has substituted the re-rollable scrap with kabari scrap which means the re-rollable scrap was reached to the factory of the appellant and thereafter, the same was substituted with kabari scrap to maintain their statutory records. On the other hand, the Revenue is alleging that the vehicles involved in transportation of the said re-rollable scrap are not capable of transportation of re-rollable scrap to the factory of the appellant/assessee. The two allegations of the Revenue itself are contrary to each other which shows that proper investigation was not conducted to establish the fact whether the re-rollable scrap was not reached in the factory or the same has substituted by the appellant with kabari scrap. In that circumstance, benefit of doubt goes in favour of the appellant/assessee. Consequently, the cenvat credit cannot be denied on the basis of assumption and presumption and without any specific allegation against the appellant/assessee. In that circumstance, in the case of Ranjiv Alloys Ltd. (Supra). relied upon by the ld. AR is not applicable to the facts.

7. Moreover, no investigation has been conducted to establish the fact that the appellant/assessee has received kabari scrap in their factory instead of re-rollable scrap. As the investigation is deficient, in that circumstances, we hold that the appellant/assessee has taken cenvat credit correctly.

8. In these circumstances, the impugned order qua denial of cenvat credit and imposing penalty on both the appellants/assessee is not sustainable.

9. In view of the above analysis, the appeal filed by the Revenue is dismissed and the appeal filed by the appellants/assessee are allowed.

(Dictated and pronounced in the open court)

Anil G. Shakkarwar	**Ashok Jindal**
Member (Technical)	**Member (Judicial)**

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