Customs, Excise & Service Tax Appellate Tribunal
SCO 147-148, SECTOR-17-C, CHANDIGARH-160017
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Sr. No	Case No	Impugned Order Detail's	Date of Impugned Order	Passed By	Appellant	Respondent
1	E/1673/2011-DB	OIA-08/DM/ADJN/2010-11	23/03/2011	Commissioner of Central Excise-	MARSHALL CASTINGS LTD.	-C.C.E. DELHI IV
2	E/1674/2011-DB	OIA-08/DM/ADJN/2010-11	23/03/2011	Commissioner of Central Excise-	D.L. CHOPRA, DIRECTOR OF	-C.C.E. DELHI IV
3	E/1675/2011-DB	OIA-08/DM/ADJN/2010-11	23/03/2011	Commissioner of Central Excise-	MARSHALL AUTO CAST LTD.	-C.C.E. DELHI IV
4	E/1676/2011-DB	OIA-08/DM/ADJN/2010-11	23/03/2011	Commissioner of Central Excise-	D.L. CHOPRA, DIRECTOR OF	-C.C.E. DELHI IV
5	E/1677/2011-DB	OIA-08/DM/ADJN/2010-11	23/03/2011	Commissioner of Central Excise-	MARSHALL AUTO INDUSTRIES LTD.	-C.C.E. DELHI IV
6	E/1678/2011-DB	OIA-08/DM/ADJN/2010-11	23/03/2011	Commissioner of Central Excise-	D.L.CHOPRA, DIRECTOR OF	-C.C.E. DELHI IV
7	E/1679/2011-DB	OIA-08/DM/ADJN/2010-11	23/03/2011	Commissioner of Central Excise-	MARSHALL FOUNDRY WORKS (P) LTD.	-C.C.E. DELHI IV
8	E/1680/2011-DB	OIA-08/DM/ADJN/2010-11	23/03/2011	Commissioner of Central Excise-	D.L. CHOPRA, DIRECTOR OF	-C.C.E. DELHI IV
9	E/1681/2011-DB	OIA-08/DM/ADJN/2010-11	23/03/2011	Commissioner of Central Excise-	MARSHALL FOUNDRY AND ENGG. (P) LTD.	-C.C.E. DELHI IV
10	E/1682/2011-DB	OIA-08/DM/ADJN/2010-11	23/03/2011	Commissioner of Central Excise-	D.L. CHOPRA, DIRECTOR OF	-C.C.E. DELHI IV
11	E/1935/2011-DB	OIA-08/DM/ADJN/2010-11	23/03/2011	Commissioner of Central Excise-	KHOSLA FOUNDRY LIMITED,	-C.C.E. DELHI IV
12	E/1936/2011-DB	OIA-08/DM/ADJN/2010-11	23/03/2011	Commissioner of Central Excise-	SHRI AMAR NATH, DIRECTOR OF	-C.C.E. DELHI IV
13	E/1937/2011-DB	OIA-08/DM/ADJN/2010-11	23/03/2011	Commissioner of Central Excise-	VIJAY ENGINEERING AND METAL WORKS	-C.C.E. DELHI IV
14	E/1938/2011-DB	OIA-08/DM/ADJN/2010-11	23/03/2011	Commissioner of Central Excise-	SHRI AMAR NATH PARTNER OF	-C.C.E. DELHI IV

Represented by:
For Appellant (s) : Shri A. K. Prasad, Advocate
For Respondent (s): Shri Tarun Kumar, AR

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

Date of Hearing/Decision: 05.09.2018

ORDER No.A/63210-63223 / 2018

Per : Mr. Ashok Jindal

All these appeals are arising out of a common allegation, therefore, all are disposed by a common order.
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Status of Appeal as on date

Detail of Shivam Case

S. No.	Name of Company	Appeal No.	Demand of Excise Duty Created as per SCN dated 19.03.2009	Demand as per OIO No. 08/DM/Adjn/ 2010-11 Dated 23.03.2011	Penalty as per OIO No. 08/DM/Adjn/ 2010-11 Dated 23.03.2011	Amount of Duty already paid through PLA Account	Amount of Duty already paid through Cenvat Account	Remarks
A	B	C	D	E	F	G	H	I
1	Marshall Castings Limited	E/1673/2011	24,46,409.00	24,46,409.00	24,46,409.00	7,08,966.00	13,51,349.00	Rs. 386094.00 involved in SCN dated 27.12.2005 & Order in Appeal No. 159/CE/Appl/DLH-IV/2007 dated 17.01.2008, allow the appeal RS. 386094.00 & have file corss examination against apeal No. E-747/2008 CESTAT passed order on 07.10.2016 in our favor.
2	Dr. Dewan Darshan Lal Chopra Dierctor of Marshall Castings Limited	E/1674/2011	-	-	10,00,000.00	-	-	
3	Marshall Auto Cast Pvt. Ltd.	E/1675/2011	3,91,394.00	3,91,394.00	3,91,394.00	90,710.00	3,00,684.00	
4	Dr. Dewan Darshan Lal Chopra Dierctor of Marshall Auto Cast Pvt. Ltd.	E/1676/2011	-	-	1,50,000.00	-	-	
5	Marshall Auto Industries Ltd.	E/1677/2011	4,02,623.00	1,95,235.00	1,95,235.00	3,50,000.00	-	Invoices No. 470, 471, 473, 474 & 475, total duty Amounts to Rs. 209388.00 not pertain to Marshall Auto Industries Ltd., make relief in order
6	Dr. Dewan Darshan Lal Chopra Dierctor of Marshall Auto Industries Ltd.	E/1678/2011	-	-	1,00,000.00	-	-	
7	Marshall Foundry Works Pvt. Ltd.	E/1679/2011	15,89,253.00	15,89,253.00	15,89,253.00	6,48,482.00	2,20,050.00	Rs. 720621.00 involved in SCN dated 22.05.2006 & Order in Appeal No. 160/CE/Appl/DLH-IV/2007 dated 17.01.2008, allow the appeal RS. 720621.00 & have file corss examination against apeal No. E-748/2008 CESTAT passed order on 07.10.2016 in our favor
8	Dr. Dewan Darshan Lal Chopra Dierctor of Marshall Foundry Works Pvt. Ltd.	E/1680/2011	-	-	7,50,000.00	-	-	
9	Marshall Foundry & Engg. Pvt. Ltd.	E/1681/2011	3,28,328.00	3,28,328.00	3,28,328.00	-	3,28,328.00	
10	Dr. Dewan Darshan Lal Chopra Dierctor of Marshall Foundry & Engg. Pvt. Ltd.	E/1682/2011	-	-	1,50,000.00	-	-	
			51,58,007.00	**49,50,619.00**	**71,00,619.00**	**17,98,158.00**	**22,00,411.00**	

ANNEXURE-'B'

S. No.	Name	Appeal No.	SCN No. & date	Amount Involved (in Rs.)	Period involved	O-in-O No. & date	Amount confirmed (in Rs.)	Penalty imposed
1.	Khosla Foundry Ltd.	E/1935/2011	V(AE)78/Enq/Marshall/2007 dated 19.03.2008	68,44,004	2004-05	08/DM/ADJN/2010-11 dated 23.03.2011	67,61,129	67,61,129
2	Amar Nath, Director	E/1936/2011	-do-	N.A	-do-	-do-	N.A.	50,00,000
3.	Vijay Engineering & Metal Works	E/1937/2011	-do-	33,01,317	-do-	-do-	29,30,817	29,30,817
4	Amar Nath, Director	E/1938/2011	-do-	N.A	-do-	-do-	N.A.	Combined with sl no 2

The first 10 appeals as per chart relates to five companies of Marshall Group, where Dr. Dewan Darshan Lal Chopra is a Director in all the companies. The second group comprises four appeals relates to M/s

Khosla Foundry Ltd and M/s Vijay Engineering & Metal Works wherein Shri Amar Nath is a Director or partner in those firms. All these appellants are located in Faridabad in the state of Haryana were engaged in the manufacture of grey iron castings of motor vehicle parts. The main raw materials of these companies are Pig Iron, Iron Scrap and MS Scrap. All the appellants were availing cenvat credit of duty paid on raw material/inputs and in the case of Marshall Group of companies were sourced of raw material/inputs through M/s Shivam Corporation (India) Proprietor Shri Rakesh Gupta is a second stage registered dealer. With regard to the second group which belongs to Shri Amar Nath Group, their raw materials were procured mainly through M/s Shivam Corporation and two other dealers, namely, M/s Ganesh Enterprises and M/s Gautam Steel. On the basis of investigation, during the period 2004-2005, the Revenue alleged that the appellants have procured HR Coils/Sheets alongwith raw materials, namely, Pig Iron, Iron Scrap. The H.R. Coils/Sheets cannot be used in the manufacture of Grey Iron Castings, hence, these items were neither received by the appellants nor used in their factory premises for manufacture of their finished goods and only the invoices were received to take ineligible cenvat credit. On the basis of the following evidences:-

(a) Technical opinion of two experts, namely, Shri M.K. Banerjee Director of National Institute of Foundry and Forge Technology and Dr. S.K. Goel, a metallurgist.

(b) Statements of some other manufacturers of grey iron castings and a broker.

(c) Statements of Shri Rakesh Gupta, Proprietor of Shivam Corporation (India) and Shri RaJeev Kumar, Accountant Assistant, and the Anand Kaushik, Field Assistant.

(d) The enquiries with reference to vehicle numbers/transporters under which the raw materials were allegedly supplied to the appellants are not capable to the transport of the goods.

(e) the payments were made through cheque against the disputed invoices but were returned back in cash to the appellants.

The matter was adjudicated, the appellants sought cross examinations of the number of persons whose statements have been relied upon by the department but no cross examination was afforded to the appellants vide order dated 30.01.2009. The demands were confirmed against the appellants companies and various penalties were also imposed against the appellants. The said orders were carried out before this Tribunal and this Tribunal vide order dated 19.06.2009, remanded the matter back to the adjudicating authority for denovo adjudication. In remand proceedings, the appellants sought cross examinations of the various persons whose statements have been relied upon by the adjudicating authority. The cross examinations were allowed by the adjudicating authority and some of the witnesses appeared for cross examinations. However, most of the witnesses did not turn up for cross examination. The adjudicating authority again confirmed the demands proposed in the show cause notice with small variations and imposed penalty on all the appellants. Against those orders, the appellants are before us.

3. Ld. Counsel appearing on behalf of the appellants submits that the technical opinion of the technical experts which has been opined that the H.R. Coils/Sheets cannot be used as raw materials by the appellants. In this regard, it is submission that the appellants having both cupola as well as induction furnaces and these experts have stated that the H.R.Coils/Sheets cannot be melted in cupola furnace but can be melted in induction furnaces to produce castings. The adjudicating authority did not grant the cross examination of Dr. Banerjee and Dr. S.K.Goyal did not turn up for cross examination, therefore, the statements of these experts cannot be relied upon. The Ld. Counsel further submits that during the impugned period, there was a shortage of Pig Iron in the market, the appellants have to supply their iron castings to their buyers, therefore, to make their supplies, the appellants were having no other option to procure the H.R.Coils/Sheets to manufacture their goods. He also submits that the news has been published on 06.02.2004 in the Daily News Paper, i.e. Financial Express to that effect highlighting the problem due to shortage of

pig iron during the impugned period. He further submits that the appellants produced two Chartered Engineer's Certificate, namely, Dr. R.N. Basu and Shri D.K. Chakravorty, who had clarified that MS Scrap can be used in both cupola as well as induction furnaces for making cast iron and offered for cross examination by the revenue, but, they were not cross examined by the adjudicating authority. He further submitted that during the course of investigation, the statement of Rakesh Gupta, proprietor of M/s Shivam Corporation was relied upon during the cross examination he stated that the statement has been recorded under threat and coercion and that he had supplied goods against all the invoices and that consolidated payments were periodically received from buyers in respect of supply of all raw materials. Therefore, the statements of Shri Rakesh Gupta given during the course of investigation cannot be relied upon. With regard to other suppliers, namely, Shri Ganesh Enterprises and M/s Gautam Steel Traders whose statements have been relied in the case of M/s Khosla Groups, these witnesses never turned up for cross examination. He further submits that the revenue has relied upon the statements of various other manufacturers of iron castings to say that HR Coils/Sheets cannot be used in the manufacture of C.I. Castings. It is his submission that the statement given by these manufacturers are identically worded and same cannot be admitted as evidences in the light of the decision of this Tribunal in the case of ***Mandovi Pellets vs. Commissioner***

of Customs & Central Excise, Goa 2011 (267) ELT 669 (Tri.-Mumbai). Further, none of these manufacturers have denied that HR Coils cannot be melted/used in induction furnaces. They have simply stated that they do not use these inputs. Therefore, the said statements are also cannot be relied upon. He further submitted that the statement of broker, Shri Ram Bilas Bansal was also relied upon by the department, but during the course of cross examination he denied even knowing Dr. Chopra, Director of Marshall Group of Companies. He further submits that all the witnesses whose statements have been relied upon by the department have never examined, therefore, the said statements are not admissible in the light of the decision of this Tribunal in the case of ***Commissioner of Central Excise Delhi-I vs. Kuber Tobacco India Ltd. 2016 (338) ELT 113 (Tri.-Del.)***. He further submits that if a witness summoned for cross examination and does not appear, then, the statement of the said witnesses is to be ignored in the light of the decision of the Hon'ble High Court of Madras in the case of ***Karan Traders vs. JT Commissioner of Central Excise, Salem-2016 (339) ELT 249 (Mad)*** . He further submits that the sole allegation of the revenue is that the use of HR Coils/Sheets is not economically viable as it is more expensive than pig iron. It is his submission that the revenue itself has accepted that during the impugned period, the prevailing price of pig iron was between Rs. 17750/- PMT to 22500/- PMT whereas the price of HR Coils/Sheets were ranged between 18500/- PMT to Rs. 26500/-PMT.

Therefore, if the appellant purchased HR Coils/Sheets priced at Rs. 18500/- PMT instead of pig irons of at the rate of 22500/- PMT then it cannot be said that the use of HR Coils/Sheets is not economically viable and it is his submissions that during this period, the appellants earned profit, therefore, it cannot be said that the use of HR Coils/Sheets is not economically viable. He also submits that the statement of Shri Rajeev Kumar employee of Shivam Corporation was also relied upon. As Shri Anand Kaushik did not appeared for cross examination and Shri Rajeev Kumar has denied his statement saying that it has been taken through force and coercion. Therefore, these statements are not relevant. He further submits that the bank entries have been relied upon by the department to allege that the appellant has paid through cheques and received the said money in cash. It is his further submission that the appellants have made payments in the month, for example, of April 2004 and received the goods in May, 2004, therefore, how it is alleged that there is a cash received against the amount paid by the appellant. Therefore, the said allegation is not sustainable. It is his further submission that the appellants were also not procuring pig iron from the same supplier and having the same mode of payment in the case of pig iron, there is no allegation of flow back but in the case of HR Coils/Sheets it has been alleged, therefore, the revenue cannot take two different views for the same mode of transaction. He also submitted that the revenue has referred vehicle numbers relating to a large number of consignment supplied by M/s Shivam Corporation (India) to its buyers alleging that either they did not go to the appellant's premises or were incapable of carrying the load. It is his submission that none of these vehicle numbers related to the consignments received by the Marshall Group of Companies, therefore, the said allegation is not sustainable. Moreover, in the case of Amar Nath Group of Companies it is alleged that the vehicles delivered the goods upto the dealer's premises only and not beyond. Shri Rakesh Gupta has clarified that the same vehicles delivered goods upto the dealer's were used to deliver the goods to the end users and the said explanation was given by Shri Amar Nath in his statement that none of drivers has been called for verification of the said fact, therefore, no adverse view cannot be drawn. He also submits that the revenue has alleged the first stage dealers, namely, M/s Bhagwati Trading Company and M/s Ayushi Steel Co(Pvt)Ltd, has confirmed that they were supplying only invoices to M/s Shivam Corporation (india), then how could M/s Shivam Corporation, in turn, supply any goods to the appellants. It is his submission that the appellants have received goods from M/s Shivam Corporation (india) against the invoices having vehicles number and the appellants are not required to ascertain the fact from where the supplier has received the goods, in that circumstances, cenvat credit cannot be denied in the absence of cross examination of the first stage dealers. He also relied on the decision of this Tribunal in the case of ***JSL Stainless Limited & Ors. Vs. CCE, Rohtak vide Final Order No. A/61960-61964/2018 dated 14.12.2017***. He further submitted that if the appellant has not received H.R. Coils/Sheets then the said quantity deducted for the total input received then the finished goods cannot be manufactured by the appellant and revenue has not ascertain the fact from where the inputs have been procured by the appellants. As no investigation was conducted by the department with regard to source and used of other unaccounted raw materials, therefore, the allegation is not sustainable. It is further submitted that the factory/office premises of Marshall Group of Companies were never visited nor any statement of their employees/workers were recorded, only Director's statements were recorded which are exculpatory. Further, in respect of Amar Nath Group of companies, Shri Amar Nath's statements are all exculpatory. Therefore, the demands against the appellants are not sustainable. With regard to the penalties, it is his submission that as the demands are not sustainable, therefore, the penalties are also not imposable. Moreover, it is his submission in earlier round of litigation less penalty was imposed whereas the remand proceedings higher penalty has been imposed which is against the law. Therefore, the impugned orders are to be set-aside.

4. On the other hand, the Ld. AR supported the impugned orders and submits that in the basis of the investigation conducted by DGCEI, the case

has been booked against the appellants wherein it has been established that the H.R. Coils/Sheets cannot be the input of the appellants as the said inputs is not economically viable. Moreover, the experts also stated so and on the basis of other manufacturers who have not used H.R. Coils/Sheets to manufacture the iron castings, therefore, demands have rightly been confirmed against the appellants on the basis of various statements.

5. Heard the parties and considered the submissions.

6. On careful consideration of submission made by both sides, we find that the evidences which have been relied by the revenue to confirm the impugned demands are as under:-

(a) Opinion of two technical experts, namely, Shri M.K. Banerjee and Dr. S.K. Goel.

(b) Statements of other manufacturers

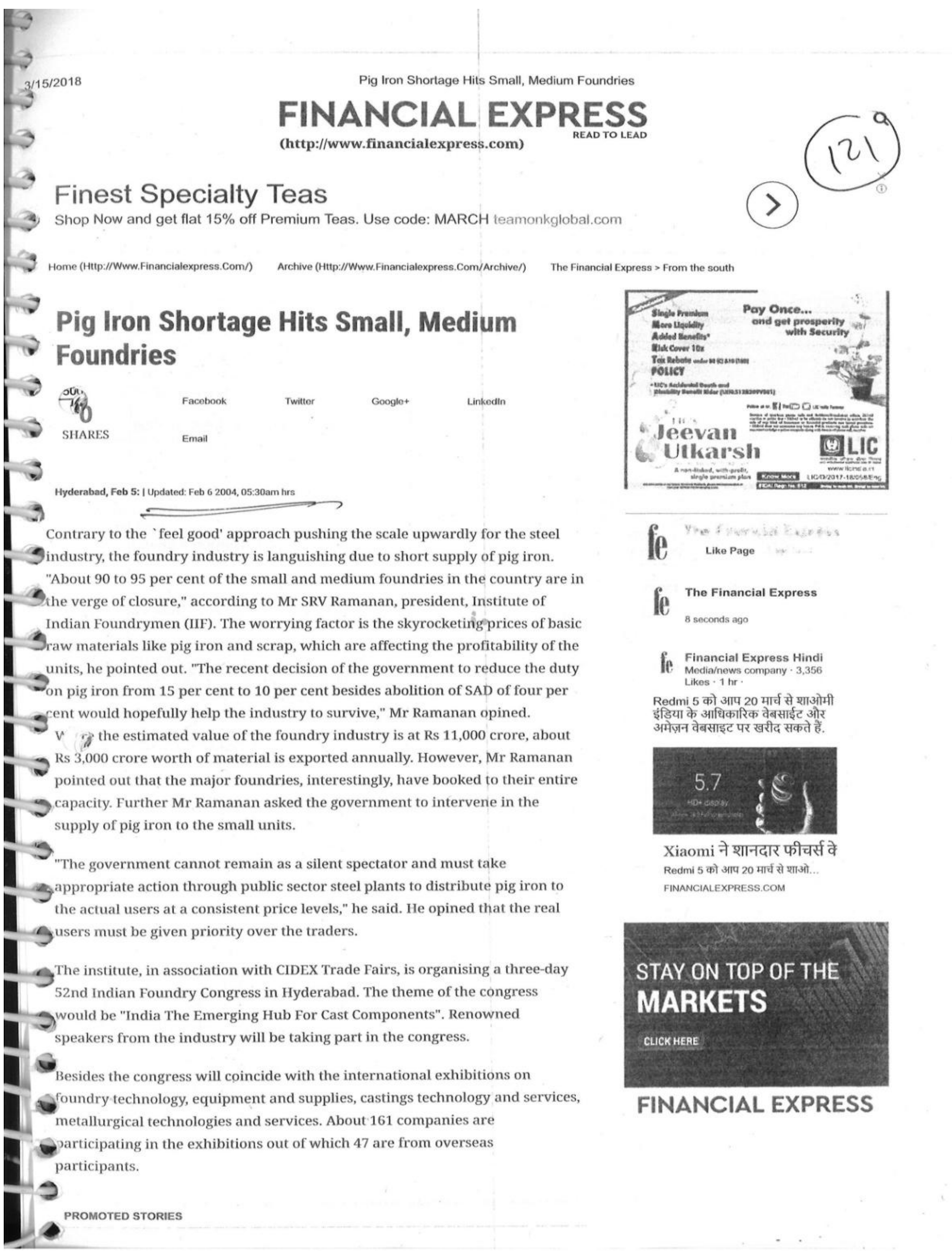
(c) statements of suppliers and Accountant Assistant of Supplier and one employee of the appellants.

(d) in queries made with reference to the vehicle numbers/transporters

(e) on the allegation of flow back of amount paid through cheque have been received in cash

We have gone through the statements of two experts, Shri M.K. Banerjee as well as Dr. S. K. Goel, the conclusion of the opinion of these experts is that the H.R. Coils/Sheets cannot be melted in induction furnaces to produce the iron castings but it is a fact on record that the appellants are having cupola as well as induction furnaces. The gist of the technical opinion is that the use of H.R. Coils/Sheets to manufacture of iron castings is not economically viable.

7. We find that the appellants have produced report of the Daily News Paper i.e. Financial Express of 06.02.2004, the same is extracted herein below:-



3/15/2018 Pig Iron Shortage Hits Small, Medium Foundries

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Pig Iron Shortage Hits Small, Medium Foundries

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Hyderabad, Feb 5: | Updated: Feb 6 2004, 05:30am hrs

Contrary to the `feel good' approach pushing the scale upwardly for the steel industry, the foundry industry is languishing due to short supply of pig iron. "About 90 to 95 per cent of the small and medium foundries in the country are in the verge of closure," according to Mr SRV Ramanan, president, Institute of Indian Foundrymen (IIF). The worrying factor is the skyrocketing prices of basic raw materials like pig iron and scrap, which are affecting the profitability of the units, he pointed out. "The recent decision of the government to reduce the duty on pig iron from 15 per cent to 10 per cent besides abolition of SAD of four per cent would hopefully help the industry to survive," Mr Ramanan opined.

V[illegible] the estimated value of the foundry industry is at Rs 11,000 crore, about Rs 3,000 crore worth of material is exported annually. However, Mr Ramanan pointed out that the major foundries, interestingly, have booked to their entire capacity. Further Mr Ramanan asked the government to intervene in the supply of pig iron to the small units.

"The government cannot remain as a silent spectator and must take appropriate action through public sector steel plants to distribute pig iron to the actual users at a consistent price levels," he said. He opined that the real users must be given priority over the traders.

The institute, in association with CIDEX Trade Fairs, is organising a three-day 52nd Indian Foundry Congress in Hyderabad. The theme of the congress would be "India The Emerging Hub For Cast Components". Renowned speakers from the industry will be taking part in the congress.

Besides the congress will coincide with the international exhibitions on foundry technology, equipment and supplies, castings technology and services, metallurgical technologies and services. About 161 companies are participating in the exhibitions out of which 47 are from overseas participants.

PROMOTED STORIES

The said article confirms the version of the appellant that during the impugned period there was a shortage of pig iron and the appellants have to supply goods to their buyers, therefore, the appellants used HR Coils/Sheets to manufacture of iron castings and no contrary evidence has been produced by the revenue to counter the contents of the article published in Financial Express, therefore, it cannot be said that the appellants have never used H.R. Coils/Sheets to manufacture of Iron Castings. Moreover, the appellants produced opinion of two Chartered Engineers during the course of adjudication and these chartered engineers have clarified that H.R. Coils/Sheets can be used in both cupola as well as induction furnaces for making cast iron, but these experts although available for cross examination to the Revenue but never cross examined by the adjudicating authority to revealed the truth, therefore, the opinion given by the chartered engineers is admissible and evidence in favour of the appellants.

7. We also take a note of the fact that during the course of investigation, various statements of Shri Rakesh Gupta, proprietor of M/s Shivam Corporation were relied upon but during the course of cross examination, Shri Rakesh Gupta confirmed that his statements were recorded in threat and coercion and he has supplied goods against all the invoices and received consolidated payments periodically from the buyers in respect of all the raw materials. No counter statements of Shri Rakesh

Gupta in cross examination has been produced by the revenue, therefore, the statements given by Shri Rakesh Gupta during the course of investigation cannot be relied upon. Moreover, the other supplier, namely, M/s Ganesh Enterprises and M/s Gautam Steel Traders were not appeared for cross examination, therefore, their statements cannot be relied upon. The statements of other manufacturers of iron castings have been heavily relied upon by the adjudicating authority but all these statements were identically worded and these manufacturers have simply stated that they do not use H.R. Coils/Sheets to manufacture of iron castings. It does not mean that HR Coils/Sheets cannot be input to manufacture of iron castings and revenue has not made any counter question of these suppliers that whether during the impugned period there was a shortage of pig iron in the market which also established that there was a deficient investigation conducted by the revenue, therefore, the statements given by these manufacturers are in favour of the appellants confirming that HR Coils/Sheets can be input for iron castings. Moreover, during the course of cross examination, three of the manufacturers have confirmed that MS Scrap namely defective HR Coils/Sheets can be used upto 20% alongwith iron. Further, the allegation of the revenue is that the use of HR Coils/Sheets is not economically viable but the price of pig iron as well as HR Coils/Sheets during the impugned periods were comparable and can be substituted to each other. Therefore, it cannot be said that the use of HR

Coils/Sheets is not economically viable when the appellants have earned profit during the impugned period. The statement of Shri Rajeev Kumar and Shri Anand Kaushik were also relied upon. As Shri Anand Kaushik was not produced for cross examination, therefore, the statement cannot be relied upon and therefore, the same is discarded. Moreover, Shri Rajeev Kumar in his statement has stated that the statement has been taken in force and coercion. Therefore, the statement is also not acceptable.

8. We also take a note of the fact that in the light of the decision in the case of Karan Traders (supra), the Madras High Court has held that if a witness is summoned for cross examination and failed to appear, in that circumstances, his statement is to be ignored. Therefore, the witnesses who could not called for cross examination or did not appear for cross examination, the statements cannot be relied upon.

9. Moreover, this Tribunal in the case of Kuber Tobacco India Ltd (supra) has held that in terms of Section 9 (D) of Central Excise Act 1944, if a statement of witness is to be relied upon, in that circumstances, the adjudicating authority is required to call the witness and to do examination in chief and thereafter to make an opinion that the statement is admissible and to offer cross examination to the assessee, thereafter, the statement admissible is an evidence. Admittedly, the procedure as per Section 9 (D)

of the Act has not been followed in the impugned proceedings, therefore, all the statements which has been relied upon by the adjudicating authority are not admissible evidence to alleged that the appellants have not received H.R. Coils/Sheets to manufacture of Iron Castings.

10. We further taken a note of the fact that another allegation made against the appellant is that they have received the payments made through cheque in cash, therefore, it is only the paper transaction. We have seen the financial statements in the case of Marshall Group of Companies found that the invoice has been issued to them in the manufacture of May 2004 whereas the payments were made by the appellants in April 2004. How it is possible that for the alleged disputed items billed in May, 2004 and payments were made one month earlier i.e. in April 2004. Therefore, the revenue has failed to come up with positive evidence to show that the appellants have received cash against the cheques issued by the appellant for the impugned goods against the invoices. It is also revealed from the records that the appellants are procuring pig iron from the same supplier and mode payment in the same, in that circumstances, how it can be possible with regard to H.R. Coils/Sheets, therefore, the said allegation is not justified by the Revenue. The last allegation made against the appellants is that the vehicle numbers relating to the large number of consignments either they did not go to the appellant's premises or were not incapable of carrying the load, wherein

the chart giving the vehicle details against each invoice has been provided by the appellants but these were never verified by the adjudicating authority and also produced before us with regard to the vehicles under which M/s Shivam Corporation (India) received the raw material. These number do not relates to any vehicle under which the appellants received their raw material from M/s Shivam Corporation, therefore, it cannot be alleged that the vehicles which has transported the goods upto M/s Shivam Corporation (India) are not capable to transported the said goods and appellants have not received the goods. In fact, these vehicles were never used for transportation of goods from the supplier to the appellants, in that circumstances, the allegation is not sustainable. Moreover, with regard to the goods supplied to Amar Nath Group of Companies, we find that Shri Rakesh Gupta has clarified that the vehicle which has been used for delivery of goods upto their premises were used to deliver the goods to the appellants and Shri Amar Nath also corroborates the same but no investigation was conducted with the drivers who transported the goods upto the premises of the appellants, in that circumstances, the said allegation is not sustainable and no adverse conclusion can be derived. Lastly, it is also alleged that the first stage dealers have admitted that they have not supplied the goods to M/s Shivam Corporation, therefore, M/s Shivam Corporation have not received the goods. We also take a note of the fact that during the adjudication the appellants sought cross examination of first stage dealers but these witnesses did not appear. Therefore, their statements cannot be relied upon. Moreover, the appellant is concerned with the transportation of goods from the supplier to their place i.e. 2nd stage dealer to their factory. The appellant is not required to find out how the supplier have received the goods, the said issue has been examined by the Hon'ble Allahbad High Court in the case of Juhi Alloys (supra) wherein the Hon'ble High Court has held that a buyer is not expected to go behind the source of receipt of the inputs by his supplier, even if the manufacturer is found to be fake, the genuineness of the supplies made by the dealer to deny cenvat credit, the same view was taken by this Tribunal in the case of JSL Stainless Limited (supra).

11. We further take a note of the fact that if it is presumed that the impugned goods, namely, H.R. Coils/Sheets were not received by the appellants then from where the appellants received the raw-materials to the manufacture of such huge quantity of goods which have been cleared on payment of duty, no investigation was conducted by the revenue to that effect, in that circumstances, it cannot he held that the appellants have not received H.R. Coils/Sheets to manufacture of iron castings.

10. We also take a note of the fact that no investigation by way of visit of the factory/office of the Marshall Group of companies has been conducted, therefore, merely on the basis of statement of the Director's

recorded which is all exculpatory, can't be the basis for non receipt of the inputs, therefore, the charge of non-receipt of goods is not sustainable.

12. In view of the above observations and discussions, we hold that revenue has failed to establish with the corroborative evidence that the appellants have not received H.R. Coils/Sheets to manufacture of iron castings in their factory premises, therefore, the demands against the appellants are not sustainable. Accordingly, the same are set-aside. As the demands are not sustainable against the appellants, therefore, no penalty can be imposed on the appellants.

13. In view of above, the impugned orders are set-aside and the appeals are allowed with consequential relief, if any.

(Dictated & pronounced in the Court)

(Bijay Kumar)
Member (Technical)

(Ashok Jindal)
Member (Judicial)

G.Y.