

CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL

SCO 147-148, SECTOR 17-C, CHANDIGARH – 160 017

**SINGLE MEMBER BENCH
COURT NO. I**

APPEAL NO. E/61367-61368/2018

[Arising out of Order-in-Appeal No. OIA-APPEAL-CE-PKL-36-37-2018 dated 23.05.2018 passed by the Commissioner of Central Excise (Appeals), Rohtak]

Date of hearing/decision: 30.11.2018

For approval and signature:

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

Shyam Nagpal Director of, : Appellant(s)
Ms Swadesh Aluminium Company Pvt. Ltd

VS

C.C.E. Rohtak : Respondent(s)

Appearance:

Present for the Appellant(s): Shri Ravinder Singh (Advocate)

Present for the Respondent(s): Shri Harvinder Singh (AR)

CORAM:

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

FINAL ORDER NO.

63572-63573/2018

Per : Ashok Jindal

The appellants are in appeal against the impugned order, wherein the Cenvat credit sought to be denied on the ground that the appellants have received only invoices and not the goods as per the statement of one Sh. Amit Gupta who was investigated by DGCEI.

2. The facts of the case are like that an investigation was conducted with one, Sh. Amit Gupta who is having various firms and issued invoices enabling the various manufacturers/buyers to avail inadmissible Cenvat credit without a physically receiving of the goods.

It was also stated by Sh. Amit Gupta in his statement that he is having various firms and one of the such firm which is involved in this case is M/s Unnati Alloys Pvt Ltd (M/s UAPL). On the basis of the statement of Sh. Amit Gupta before DGCEI, an investigation was conducted at the end of the appellants on 02.02.2016, wherein the statements were recorded and the Panchanama was also drawn. On the basis of the statements, a show cause notice dt. 30.03.2017 was issued for the period of June 2012 alleging that the appellant has availed Cenvat credit on the invoices issued by M/s Unnati Alloys Pvt Ltd to the appellant. The said invoice has been travelled upto the appellant and no physical movement of the goods. The matter was adjudicated. Both the authorities below denied the Cenvat credit to the appellant. Consequently, the demand was raised alongwith interest and penalties on both the appellants were also imposed. Against the said order, the appellants are before me.

3. Ld. Counsel for the appellants submits that in identical facts and circumstances, a show cause notice was issued to the **M/s Akshit Enterprises Pvt Ltd and others** and this Tribunal has examined the issue in detailed and vide Final Order No. 63569-63571/2018 dated 29.11.2018 dropped the proceedings against the appellants; therefore, the proceedings against the appellant in this case are not sustainable.

4. Heard the parties and considered the submissions.

5. I find that the facts of the case are identical to the facts of **M/s Akshit Enterprises Pvt Ltd (supra)**, wherein this Tribunal has observed as under:-

"6. On careful consideration of the submissions made by both the sides, certain submissions were made by the Ld. Counsel for the appellants, which are as follows:

(i) No investigation of the directors Sh. Deepak Bansal and Sh. Nitin Bansal of M/s Unnati Alloys Pvt Ltd was conducted.

(ii) No investigation was conducted at the end of the manufacturers/suppliers of the goods to ascertain the fact that whether they have supplied any goods to M/s Unnati Alloys Pvt Ltd or not?

(iii) No investigation was conducted with the transporters of the goods mentioned in the invoices.

(iv) The statement of the employees of the appellant also corroborated the fact that the goods have been received in their factory which have been used for manufacture of dutiable goods and the said goods have been cleared payment of duty.

The above said facts have not been disputed by the Revenue.

7. It is also a fact on record that the Revenue has failed to prove that if the said inputs have not been received in their factory, then from where the inputs have been replaced by the appellants against those invoices. I also take note of the fact that M/s Prime Metalloys Pvt Ltd have specifically mentioned that they have supplied the goods to the appellant. In the absence of any contrary evidence to the above facts, the Cenvat credit cannot be denied to the appellant. Therefore, I hold that the investigation conducted by the DGCEI in this case is not proper and having various infirmities. In these circumstances, the benefit of doubt goes to the favour of the appellants. Accordingly, I hold that the Cenvat credit cannot be denied to the appellant.

8. As Cenvat credit cannot be denied, therefore, no penalty can be imposed on the appellants.

9. I further take the note that Sh. Amit Gupta whose statement has been made basis to investigate the appellant, has not made the party in the show cause notice. Moreover, Sh. Deepak Bansal and Sh. Nitin Bansal who are the suppliers of the goods to the appellant have also not made the parties to the show cause notice. In these circumstances, I find that the investigating team has issued the show cause notice only on the basis of pick and choose method. In that circumstance also, the impugned investigation is not sustainable against the appellants. Therefore, I set aside the impugned order.

10. In result, the appeals are allowed."

6. As no other evidence has been produced by the Revenue apart from the statement of Shri Amit Gupta and on identical facts, the issue has already been decided in the case of **M/s Akshit Enterprises Pvt Ltd (supra)**; therefore, I do not find any merit in impugned order, accordingly, the same is set aside.

7. In result, the appeals are allowed with consequential relief, if any.

(Order dictated and pronounced in the court)

Ashok Jindal
Member (Judicial)

Kailash