

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

**DIVISION BENCH  
Court-I**

**Date of hearing/Decision: 06.12.2018**

| <b>Sr. No</b> | <b>Case No</b>      | <b>Impugned Order Detail's</b> | <b>Date of Impugned Order</b> | <b>Passed By</b>                                         | <b>Appellant</b>               | <b>Respondent</b>       |
|---------------|---------------------|--------------------------------|-------------------------------|----------------------------------------------------------|--------------------------------|-------------------------|
| 1             | E/58075/2013-DB     | OIO-28-LDH-2013                | 11/04/2013                    | Commissioner of Central Excise and Service Tax- LUDHIANA | Sharman Strips Pvt Ltd         | C.C.E. & S.T.- Ludhiana |
| 2             | E/58330/2013-DB     | OIO-28-LDH-2013                | 10/06/2013                    | Commissioner of Central Excise- CHANDIGARH-I( Appeal)    | Fortune Metals Ltd             | C.C.E.- Chandigarh-i    |
| 3             | E/58441/2013-DB     | OIO-28/LDH/2013                | 11/04/2013                    | Commissioner of Central Excise- LUDHIANA                 | Ind Swift Laboratories Limited | C.C.E. & S.T.- Ludhiana |
| 4             | E/58574/2013-DB     | OIO-28-LDH-2013                | 11/04/2013                    | Commissioner of Central Excise- LUDHIANA                 | Tharaj Castings Pvt Ltd        | C.C.E. & S.T.- Ludhiana |
| 5             | E/58575/2013-DB     | OIO-28/LDH/2013                | 11/04/2013                    | Commissioner of Central Excise- LUDHIANA                 | V G Steel Industry             | C.C.E. & S.T.- Ludhiana |
| 6             | E/58681/2013-DB     | OIO-28/LDH/2013                | 11/04/2013                    | Commissioner of Central Excise and Service Tax- LUDHIANA | Kanin India Limited            | C.C.E. & S.T.- Ludhiana |
| 7             | E/58834/2013-DB     | OIO-28-LDH-2013                | 11/04/2013                    | Commissioner of Central Excise- LUDHIANA                 | Gaurish Steels Pvt Ltd         | C.C.E. & S.T.- Ludhiana |
| 8             | E/58835/2013-DB     | OIO-28-LDH-2013                | 11/04/2013                    | Commissioner of Central Excise- LUDHIANA                 | Gaurish Steels Pvt Ltd         | C.C.E. & S.T.- Ludhiana |
| 9             | E/58836/2013-DB     | OIO-28-LDH-2013                | 11/04/2013                    | Commissioner of Central Excise- LUDHIANA                 | A H Exports                    | C.C.E. & S.T.- Ludhiana |
| 10            | E/58837/2013-DB     | OIO-28-LDH-2013                | 11/04/2013                    | Commissioner of Central Excise- LUDHIANA                 | A H Alloys                     | C.C.E. & S.T.- Ludhiana |
| 11            | E/58838/2013-DB     | OIO-28-LDH-2013                | 11/04/2013                    | Commissioner of Central Excise- LUDHIANA                 | Chirag Trading Co              | C.C.E. & S.T.- Ludhiana |
| 12;           | E / 58859 / 2013-DB | OIO-28-ldh-2013                | 11/04/2013                    | Commissioner of Central Excise- LUDHIANA                 | Tube Investments Of India Ltd  | C.C.E. & S.T.- Ludhiana |

Present for the Appellant: S/Shri Sudhir Malhotra, Veer Singh,  
N.K.Sharma & Sudeep Singh, Advocates  
Present for the Respondent: Shri V.Gupta, AR

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

**FINAL ORDER NO. 63607-63618 / 2018**

**PER: ASHOK JINDAL**

The appellant M/s. Tharaj Castings Pvt.Ltd. (Tharaj) is in appeal against the impugned order wherein the demand has been confirmed along with interest by denying Cenvat credit on inputs alleging that the same cannot be inputs for the appellant to manufacture their final products and co-appellants are in appeal against the impugned order imposing penalties on them.

2. The facts of the case are the appellant (Tharaj) is engaged in the manufacture of alloy and non alloy steel ingots, castings etc. and availing Cenvat credit on inputs. During the course of audit from 22.7.2009 to 24.7.2009, it was found that M/s.Tharaj was availing Cenvat credit on certain goods, namely, bars and rounds of non-alloy steel SLR, bars and rods of non-alloy steel (rejected), cut pieces, bars and round of non-alloy steel, non-alloy steel rounds (rejected), non-alloy steel rounds (rejected cut pieces), round bar S/L reject, round bar small pieces, M.S.round cuttings and non-alloy steel round S/L (rejected) apart from waste and scrap as these items are finished products of prime quality. Thereafter the investigation was started and statements of officials of the appellants were recorded where they were stated that they have received inputs from the supplier and have been used in the manufacture for their final products being castings and auto parts. In continuation of the investigation, the statements of various suppliers were also recorded who stated that they have supplied

the goods to M/s.Tharaj against invoices and received the payment through account payee cheque. The Revenue entertained a view that as the goods in question apart from waste and scrap are prime quality product cannot be the inputs for the appellant M/s.Tharaj for manufacture of their final products, therefore, the show cause notice dt.20.4.2012 was issued to the appellants for the period 1.4.2007 to 31.8.2011 to deny Cenvat credit on the goods in question and to impose penalty on M/s. Tharaj as well as all the suppliers who are co-appellants before us. The matter was adjudicated, the demand of duty by denying credit was confirmed along with interest and penalty on M/s.Tharaj equal to the duty was confirmed and penalties have also been imposed on the co-appellants. Against the said order, all the appellants are before us.

3. Ld.Counsel for the appellant submit that M/s.Tharaj was engaged in the manufacture of alloy and non-alloy ingots, SG castings and auto parts. They were having induction furnace and casting furnace of capacity 3.5 MT and 350 kg respectively. The SG casting and alloy steel ingots were required quality and high standard scrap to arrive at specified quality/grade. The price of alloy steel and SG castings were supplied as OE's to Maruti Udyog Ltd., Tata Motors Ltd.,etc. The end user of alloy steel were mostly manufacturer-exporter of hand tools. The average prices of castings manufactured and sold by them was Rs.40,000/- to Rs.45,000/- Per MT during the year 2007-08 and Rs.50,000/- to Rs.55,000/- during the year 2008-09. The price of alloy steel ingots manufactured by them were usually Rs.3,000/- to Rs.5,000/- more than price of non-alloys steel ingots. It is his contention that the

appellant has purchased high value inputs and sold the goods manufactured thereto varying from Rs.50,000/- to Rs.95,500/- per MT. It is his contention that the appellant purchased inputs in question of the quantity of 3068.086 MT out of total purchases of 49939.433 MT which was worked out to 6.14% of total purchases, which is negligible quantity.

4. He further submits that all the suppliers have deposed that they have supplied the goods in question to the appellant M/s.Tharaj and M/s.Tharaj stated that they have received the said goods in their factory. The Revenue has not come with any positive evidence to show how the goods in question have been diverted from their factory. Moreover, how the scrap was received by the appellant. No investigation was conducted at the end of the transporter to prove the allegation alleged in the show cause notice. It is a fact that these inputs have been received by the appellant and the same has been used in the manufacture and the manufactured goods have been cleared on payment of duty. The Revenue has not come with any contrary evidence, in that circumstance, the demand is not sustainable against the appellant M/s.Tharaj and no penalty is imposable on all the appellants. To support his contention, he relied upon the decision of this Tribunal in the case of Didar Steel Complex Pvt.Ltd.-1996 (87) ELT 702 (Tri.). Therefore, he prayed that the impugned order is to be set aside.

5. On the other hand, Ld.AR supported the impugned order and submits that during the course of investigation, Shri Naveen Dhooper, the Director of the appellant himself has admitted that

they have sold the goods in question in market without issuance of invoice, in that circumstance, the demand has rightly been raised against the appellant.

6. Heard the parties and considered the submissions.

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.

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 thorough 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.

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.

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.

11. In view of above analysis, we do not any merit in the impugned order and the same is set aside.

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

(operative of the order was pronounced in the court)

**(BIJAY KUMAR)**  
**MEMBER (TECHNICAL)**

**(ASHOK JINDAL)**  
**MEMBER (JUDICIAL)**

mk

7

E/58075,58330,58441,58574-58575,58681,  
E/58834-58838,58859/2013