# CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
# <u>CHANDIGARH</u>

REGIONAL BENCH - COURT NO. I

**Excise Appeal No. 61046 of 2018**

[Arising out of Order-in-Appeal No. LUD-EXCUS-001-APP-875-876-18 dated 28.03.2018 passed by the Commissioner (Appeals), GST, Ludhiana]

**M/s Vardhman Industries Limited** **......Appellant**
(Village Beopror, GT Road, Rajpura, Patiala, Punjab)

*VERSUS*

**Commissioner of CE & ST, Jalandhar** **......Respondent**
(GST Commissionerate, F Block Rishi Nagar,
Ludhiana, Punjab)

**WITH**

**Excise Appeal No. 61073 of 2018**

[Arising out of Order-in-Appeal No. LUD-EXCUS-001-APP-875-876-18 dated 28.03.2018 passed by the Commissioner (Appeals), GST, Ludhiana]

**M/s Mas Equipments Pvt Ltd** **......Appellant**
(Village Beopror, GT Road, Rajpura, Patiala, Punjab)

*VERSUS*

**Commissioner of CE & ST, Jalandhar** **......Respondent**
(GST Commissionerate, F Block Rishi Nagar,
Ludhiana, Punjab)

**<u>APPEARANCE:</u>**

Present for the Appellant: Ms Krati Singh, Ms Priyanka Singla, Advocates

Present for the Respondent: Mr. Bhasha Ram, Authorized Representative

**<u>CORAM:</u>** **HON'BLE MR. ASHOK JINDAL, MEMBER (JUDICIAL)**

**FINAL ORDER NO. 60801-60802/2021**

DATE OF HEARING: 08.04.2021
DATE OF DECISION: 08.04.2021

**PER ASHOK JINDAL:**

The appellants are in appeal against the impugned order wherein cenvet credit has been denied to M/s Vardhman Industries Limited (appellant no.1) alleging that M/s Mas Equipments Pvt Ltd (appellant no.2) has not supplied the goods physically, only invoices were moved, therefore, the appellant no.1 is not entitled to take cenvet credit and penalty on both the appellants has been imposed.

2. During the course of arguments, the ld. Counsel for the appellants submits that M/s Vardhman Industries Ltd (appellant no.1) is no more as they have gone into insolvency and taken over by M/s JSW Steel Ltd. She further submits that M/s Mas Equipments Pvt Ltd (appellant no.2) has sold the goods and during the course of investigation, no shortage or excess of goods were found in their premises. All the payments have been received through account payee cheques and no evidence has been brought in record by the Revenue of flowing back of funds. In that circumstance, penalty on the appellant no.2 cannot be imposed. She further submits that during the course of investigation, four invoices were detected and statements of the transporter was recorded and cross examination thereof was not given to ascertain the truth despite request. In that circumstance, the statement of transporter is not reliable.

3. On the other hand, the ld. A.R. submits that the transporter has admitted that he has not transported the goods and the goods have not crossed the barrier of Shambhu Border between Haryana and Punjab. In that circumstance, it is evident from the record that the

goods have not been moved, only invoices have been moved, therefore penalty is rightly imposed.

4. Heard the parties and considered the submissions.

5. In this case, the sole allegation against M/s Mas Equipments Pvt Ltd (appellant no.2) is that they have only issued the invoices to facilitate M/s Vardhman Industries Ltd (appellant no.1) to avail cenvat credit without physically receiving of the goods, that is only basis of the allegation that the goods were never transported, moreover, the goods never crossed the Shambhu Border. In this case, it is a fact on record that during the course of investigation, no shortage or excess of the goods were found in the premises of both the appellants. In that circumstance, duty cast on the Revenue to ascertain the fact if the appellant no.1 has not received the goods, then from where, they procured the goods and used the same for manufacturing of dutiable goods which have been cleared on payment of duty. Further, it was also the duty of the Revenue to find out where M/s Mas Equipments Pvt Ltd has cleared the goods without payment of duty. This is lacking in the investigation which gives benefit of doubt in favour of the appellants. Moreover, the transporters whose statements have been relied upon, have not given the cross examination to ascertain the truth. The ld. A.R. relied on various case laws to say that cross examination is not required. In fact, the facts of those cases have not been explained by the Revenue and blindly relied on the case laws; in fact in those cases, the statements of accused itself were sought to be cross examined which is not in the case in hand. In fact, third party made the statement

during the course of investigation whose statements have been relied by the Revenue. Therefore, the said case laws are distinguishable from the fact of the case.

6. In these circumstances, I hold that penalty on M/s Mas Equipments Pvt Ltd (appellant no.2) is not imposable. Accordingly, the impugned order is set aside.

7. In result, the appeals are allowed.

(Dictated and pronounced in the open court)

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

RA_Saifi