IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
SOUTH ZONAL BENCH, CHENNAI

E/00499, 00500/2012

[Arising out of Order-in-Appeal No.CMB-CEX-OOO-APP-139 to 141/2012, dated 07.08.2012 passed by the Commissioner of Central Excise & Service Tax (Appeals), Coimbatore]

M/s. RANGAMMA STEELS & MALLEABLES APPELLANT/S
K. RAJINIKANTH

Versus

COMMISSIONER OF CENTRAL EXCISE, COIMBATORE RESPONDENT

Appearance:

For the Appellant Shri M.A. Mudimannan, Adv.
For the Respondent Shri L. Nandakumar, AC (AR)

CORAM:

Hon'ble Smt. Sulekha Beevi C.S, Judicial Member

Date of hearing **13-08-2018**
Date of pronouncement

FINAL ORDER NOs. **42259-42260 / 2018**

The appellants are engaged in manufacture of automobile spares-break drums, hubs and spring brackets. They were availing the credit on inputs such as, MS Scraps, CI Borings, etc. Based on the intelligence gathered that appellants are availing credit wrongly on invoices without receiving the goods into the factory, the officers visited the premises of the appellants and verified the records. During verification, it was found that M/s. Santosh Kumar Steels, who was the supplier of MS Scrap to appellants had issued invoices with the description shown as "MS Wires." The department was of the view that MS Wires have not been the material supplied to the appellants and that only cenvatable invoices giving the description as 'MS Wires' were issued. Statement was recorded from Shri M. Manikandan, Authorised Signatory of M/s. Santosh Kumar Steels, N. Karthikeyan, Shri L. Mahimaidas etc., of appellant-Company It appeared to department that appellants have received non-duty paid MS Scrap in the guise of MS Wires from the registered dealer and wrongly availed credit to the tune of Rs.49,430/-. Show-cause notice was issued proposing to recover the wrongly availed credit along with interest and also for imposing penalty. After due process of law, the original authority confirmed the duty demand along with interest and imposed penalty of Rs.15,000/- under Rule 15 (1) of Cenvat Credit Rules, 2004. Separate penalty of Rs.15,000/- was imposed under Rule 15 (2). Besides, imposing penalty on M/s. Santosh Kumar Steels, Shri Abirami Industries and Shri K. Rajinikath, Partner of appellant-company penalty was imposed on Shri M. Manikandan and Shri Ramanathan, Proprietor of M/s. Abirami Industries. Aggrieved by the confirmation of demand as well as the imposition of the penalty the appellants M/s. Rangamma Steels and Shri K. Rajinikanth appeals before Commissioner (Appeals). The department also filed appeals aggrieved by the non-imposition of equal penalty under section 11AC of the Central Excise Act, 1944. The Commissioner (Appeals) vide order impugned herein, rejected the appeals filed by the appellants and allowed the appeal filed by the department, imposing equal penalty of Rs.49,430/- under section 11AC. Thus, the appellants are now before the Tribunal.

2. The learned counsel Shri M.A. Mudimannan appeared and argued on behalf of the appellants. He submitted that appellants are manufacturers of automobile spares-break drums, hubs and spring

brackets etc. To manufacture these items they purchase inputs like Steel Scrap, MS Iron Scrap and SS Coil Scraps etc., from the registered dealers and are availing Cenvat credit on such items. They had purchased inputs from M/s. Santosh Kumar Steels and various others. The department does not dispute the utilization of inputs in manufacture of final products. So also there is no dispute with regard to the fact that the dealers are registered dealers. The allegations are based on mere statements of dealers and office clerk of the appellants. These statements are not supported by corroborative evidences. Though, the statement of Shri M. Manikandan, Authorised Signatory of M/s. Santosh Kumar Steels is much relied by the department, he has clearly stated that goods were supplied only as per invoices. He has not stated that he has supplied only non-duty paid scrap to appellants. What he has stated is that they purchase both duty paid as well aas non-duty paid scrap. The appellant has received goods and paid duty on them. Hence, the credit availed is fully correct. He adverted to the annexure to the show-cause notice and submitted that the dispute is with respect to three invoices supplied by M/s. Santosh Kumar Steels. These three invoices are dated 03.03.2005, 05.03.2005 and 16.03.2005. The show-cause notice is dated 10.03.2010 which is almost beyond five years of the date of invoices. The department though alleges that there was cash transaction of unauthorized invoices issued by the registered dealers, there is no evidence to show such transactions. The transporters have not been examined. In case the department alleges that the appellants have procured raw materials (scrap) locally and that mere invoices were obtained from the dealers, without receiving any goods described in the invoices, the department has to show as to how and from where the appellant has procured the necessary raw materials to manufacture the finished products. When there is no dispute with regard to manufacture of finished products or the clearance of the same on payment of duty, the department cannot merely rely upon the statements to allege that the appellant has wrongly availed credit on invoices without receiving the goods into the factory. He prayed that the appeal may be allowed.

3. The learned Authorised Representative Shri L. Nanda Kumar supported the findings in the impugned order. He argued referring to the statements recorded by the department. Adverting to the statements recorded from Shri M. Manikandan, he submitted that the said person has admitted that they have been issuing only invoices to the appellants without supplying MS Wires as described in the invoices. The *modus operandi* was that these registered dealers like M/s. Santosh Kumar Steels purchase scrap from manufacturers, namely, M/s. Best Engineering, M/s. Balaji Machines etc. They generally purchase MS Scraps, CI Borings, SS Scrap and sometimes MS Wires, CR Sheets and rejected sheets and coils. Sometimes, local scrap merchants sell the scraps to them without bills. They sell the above scraps to those who do not require cenvated bills. Sometimes, they receive only invoices but they did not receive the goods particularly in respect of MS Wires and Coils from M/s. Karpagam Steels and M/s. Abirami Industries. M/s. Santosh Kumar Steels utilized these invoices for passing on the Cenvat credit to manufacturers like the appellants. He argued that it is clear that the appellants have been engaged in receiving the cenvated invoices without receiving goods into the factory. The three invoices which were unearthed by the department

during the time of investigation would support the statements. Therefore, the demand confirmed is legal and proper.

4. Heard both sides and perused the records.

5. The allegation is that the appellants have availed Cenvat credit wrongly without receiving the goods described in the invoices. The main contention is with regard to only three invoices to the tune of Rs.49,430/-. The invoices are dated Mar.'05, whereas, the investigation was conducted in 2006 by visiting the premises recording the statements etc. Thereafter, the show-cause notice has been issued only in Mar. 2010. After such a long gap of five years, apart from the statements and these three invoices, the department has not been able to put forward any evidence to establish the allegations raised in the show-cause notice. There is no allegation that suppliers/dealers are not registered with the department. The allegation is that these dealers procure non-duty paid scrap locally and also from manufacturers by paying duty. That there is difference in the description of the goods in the disputable cenvated invoices wherein the description is shown as MS Wires, wherein the statements recorded show that they have obtained only scrap. The invoices are issued to appellant by M/s. Santosh Kumar Steels. It is seen from the statement of Shri Manikandan that except in the case of M/s. Karpagam and M/s. Abirami Industries the transaction was through bank accounts. There is no evidence put forward by the department to show that the appellants have procured such large quantities of inputs locally. Neither buyers nor transporters have been examined. There is nothing brought out from evidences as to how the appellants have been able to manufacture the finished products if they were not

receiving the goods as per the cenvated invoices. It is settled law that statements cannot be relied upon without examining the witnesses under section 9D of the Central Excise Act. Mere statements cannot be a ground for confirming the demand in a serious charge of clandestine availment of credit. On perusal of the Order-in-Original, we find that it is not a speaking order. Except for reproducing the statements recorded and the show-cause notice, the adjudicating authority has not discussed about the evidences relied for confirming the demand.

6. From the discussions made above, I am of the view that the department has failed to establish case alleged in the show-cause notice. The impugned order confirming the demand is, therefore, set aside. The appeals are allowed with consequential benefits, if any.

(Pronounced in open court on **17-08-2018**)

(SULEKHA BEEVI C.S)
JUDICIAL MEMBER

ksr
14-08-2018

	DRAFT			Remarks
	I	II	III	
Date of dictation	13.08.2018			
Draft Order - Date of typing	13.08.2018			
Fair Order Typing	14.08.2018			
Date of number and date of dispatch	17.08.2018			