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

Appeal No.: E/42613/2017

(Arising out of Order-in-Appeal No. 129/2017 (CTA-I) dated 11.09.2017 passed by the Commissioner of G.S.T. & Central Excise (Appeals-I), Chennai)

M/s. J. R. Smelters Pvt. Ltd., : Appellant
(Now known as M/s. Janakiram Steel & Power Pvt. Ltd.),
No. 117, Sadayankuppam Village,
Manali, Chennai – 600 103

Versus

Principal Commissioner of G.S.T. & Central Excise, : Respondent
Chennai North Commissionerate

Appearance:-
Shri. S. Venkatachalam, Advocate
for the Appellant
Shri. L. Nandakumar, AC (AR)
for the Respondent

CORAM:

Hon'ble Shri P Dinesha, Member (Judicial)

Date of Hearing: 27.09.2018

Date of Pronouncement: 26.10.2018

Final Order No. 42705 / 2018

This appeal is filed by the assessee against the Order-in-Appeal No. 129/2017 dated 11.09.2017 passed by the Commissioner of G.S.T. & Central Excise (Appeals-I), Chennai.

1.2 A Show Cause Notice dated 13.05.2015 was issued alleging *inter alia* that on verification of ER-4 submitted with the Range Office and ER-4 submitted to the Headquarters Preventive Unit, there was a difference with regard to the closing balance of Rolling Scrap which had resulted in shortage of Cenvated input Rolling Scrap, which, according to the Additional Commissioner amounted to intentionally suppressing the shortage of Cenvated inputs. The assessee filed a detailed reply in response contending *inter alia* that it was a *bona fide* clerical mistake, etc., but however, the adjudicating authority vide Order-in-Original No. 51/2016 dated 21.06.2016 confirmed the proposals made in the Show Cause Notice. The appellant having not met with success in its first appeal, has assailed the Order of the Commissioner (Appeals) *(supra)* in this appeal.

2. Heard Shri. S. Venkatachalam, Ld. Advocate appearing for the appellant and Shri. L. Nandakumar, Ld. AC (AR) appearing for the Revenue, perused the documents placed on record and have also gone through the decisions referred to during the course of hearing.

3.1 It is the case of the assessee with regard to the alleged difference in closing stock as on 31st March, 2010 that 1356.151 MT was shown as against 352.901 MT since the consumption quantity was wrongly shown at 11336.901 MT as against 12340.151 MT which resulted in a difference of 1003.25 MT which boosted the closing balance to 1356.151 MT. Further, the appellant had filed a revised/corrected ER-4 on 15.05.2014 before the Range Officer and the same was also duly reflected in the appellant's statutory records like Form-IV - Raw material register, RG-1 and monthly ER-1 returns.

3.2 Ld. Advocate further submitted that the Department only alleged about the difference in stock without carrying out any further investigation even after the appellant filed its revised ER-4 returns nor did they examine the RG-1 register or tried to tally the same with the monthly ER-1 returns; that if the allegation were to be true then the appellant could not have manufactured the finished goods nor would the appellant have removed the Rolling Scrap as such; the whole allegation is based only on ER-4 return, etc.

4. *Per contra*, Ld. AR supported the findings of the lower authorities and vehemently argued that the appellant had not maintained proper documents/records relating to receipt/usage/disposal of inputs at their factory premises and that the computer printouts furnished in support before the lower authorities were unauthenticated.

5. On a perusal of the documents placed on record, I find that the assessee has been maintaining its stand that it was the case of a *bona fide* clerical error which could have been verified with regard to the ER-1 returns also since there was no allegation by the Revenue that there was any such mistake or difference unearthed even in ER-1 returns. Unfortunately, there is also no finding on the appellant's stand right from its reply to the Show Cause Notice that the appellant had furnished ER-1 returns for the year, Form-IV Register, chart reflecting purchase and usage of raw material/removal of raw material as such, etc., along with its replies to Show Cause Notice. The Revenue has not taken any supporting evidence to nail the assessee on the alleged difference in stock in ER-4 return which only points out that no further investigation was done in the interests of justice. Thus it may even be correct on behalf of the appellant to plead that the appellant did not benefit in any way in showing the difference in closing stock in ER-4 return as alleged, especially when no such difference was pointed out in the monthly ER-1 returns filed for the entire financial year.

6. It is the settled position of law that the allegations/assumptions howsoever strong, cannot take the place of proof. The Revenue has only harped upon the difference in closing

stock of raw material, but nothing prevented the Revenue from examining the balance-sheet for the year filed with the Income Tax Department *vis-à-vis* the appellant's ledger account filed therewith or the revised ER-4 return.

7. In view of the above, I am therefore of the considered opinion that the demand on the alleged difference cannot sustain for which reason I set aside the impugned Order and allow the appeal with consequential benefits, if any.

8. The appeal is therefore allowed.

(Pronounced in open court on ***26.10.2018****)*

(P Dinesha)
Member (Judicial)

Sdd