IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
<u>CHENNAI</u>

REGIONAL BENCH – COURT NO. III

Excise Appeal No. 770 of 2007
(Arising out of Order-in-Original No. 04/2007 Commissioner of Central Excise (Adjudication) 26/1, Mahatma Gandhi Road, Nungambakkam, Chennai- 6000 34)

Pramod Saraf, Chief Executive **: Appellant**
M/s. Jaibhavani Steel Enterprises Limited
New No. 91 (Old No.44) Armenian Street
IInd Floor, Chennai 600 001

VERSUS

The Commissioner of Central Excise **: Respondent**
Chennai II Commissioneate
MHU Complex,692 Anna Salai
Chennai 600 035

<u>APPEARANCE</u>:

Shri G. Natarajan, Advocate for the Appellant

Shri Anandalakshmi Ganeshram, Assistant Commissioner (A.R.) for the Respondent

<u>CORAM</u>:

HON'BLE MRS. SULEKHA BEEVI C.S., MEMBER (JUDICIAL)
HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)

FINAL ORDER NO. <u>41018/2023</u>

DATE OF HEARING: 22.09.2023

DATE OF DECISION: 08.11.2023

Order : [Per Ms. Sulekha Beevi C.S.]

Brief facts are that Show Cause Notice dated 28.06.1989 was issued to M/s Jaibhavani Steel Enterprise Ltd (hereafter referred to as M/s Jaibhavani) who were engaged in the manufacture of MS Ingots from MS scraps. The Show Cause Notice was issued pursuant to search conducted at factory premises of M/s Jaibhavani, the city office of the group located at Anna salai, Madras, and the premises of Shree Ganesh Steel Rolling Mills at Ennore High Road.

1.1 Prior to such search, the premise of M/s Sujana Group of Companies was also searched in regard to their transactions in MS Scrap. The investigations revealed that M/s Sujana had disposed of MS scrap imported by them to various Ingot manufacturers including M/s Jaibhavani. These materials were supplied without bills/invoices, to M/s Jaibhavani and various other units through brokers such as M/s Indoria Steel Corporation etc. where as in the statutory records of M/s Sujana it was shown to have been dispatched to their manufacturing units in Hyderabad. During search various documents were recovered. Statements were recorded.

1.2 It appeared that M/s Jaibhavani had purchased 2405.200 MTs of imported shredded scrap without proper documents from M/s Sujana and had not accounted them in their statutory records. Thus Show Cause Notice dated 28.06.1989 was issued alleging M/s Jaibhavani contravened the provisions of Central Excise Rules, 1944 in as much as they received unaccounted scrap and used it in the clandestine manufacture and clearance of MS Ingots. Thus M/s Jaibhavani suppressed facts with intent to evade payment of duty. Show Cause Notice was issued to M/s Jaibhavani proposing to demand duty of Rs. 34,01,775 along with interest and proposing to impose penalties. Show Cause Notice was issued to Shri Pramod Saraf, and Shri Ashok Saraf, Directors of M/s Jaibhavani.

1.3 After due process of law, the original authority passed the following order.

> "1. I confirm and demand Excise duty amount of Rs 34,01.775/- (Rupees thirty four lakhs one thousand seven hundred and seventy five only) from M/s Jai Bhavani Steel Enterprises Ltd, Panchetti, Under Section 11A(2) of Central Excise Act, 1944.
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> 2. I appropriate an amount of a 1,50,000/- (Rupees one lakh fifty thousand only) already paid by M/s Jai Bhavani Steel Enterprises Ltd on 09.12.96 and adjust the same towards the duty determined above.
>
> 3. I impose a penalty of Rs.25,00,000/- (Rupees Twenty Five Lakhs only) on M/s Jai Bhavani Steel Enterprises Ltd under Rule 173Q of Central Excise Rules, 1944.
>
> 4 I confiscate land, building, plant and machinery of M/s Jai Bhavani Steel Enterprises situated at their factory at No.4/181, G.N.T. Road, Panjetty - 601 204, Ponnery Taluk, under Rule 173Q(2) of Central Excise Rules, 1944. However, 1 allow them the option to redeem the same on payment of a fine of Rs 2,50,000/- (Rupees Two Lakhs Fifty thousand only) in lieu of confiscation They are required to exercise this option within three months from the date of receipt of this order.
>
> 5. I impose a penalty of Rs 5,50,000/- (Rupees Five Lakhs fifty thousand only) on Shri Pramod Saraf, Chief Executive of M/s Jai Bhavani Steel Enterprises Ltd under Rule 209A of Central Excise Rules, 1944.
>
> 6. I also impose a penalty of Rs.3,00,000/- (Rupees Three Lakhs only) on Shri Ashok Saraf, Director of M/s Jai Bhavan! Steel Enterprises Ltd under Rule 209A of Central Excise Rules, 1944.
>
> 7. I refrain from imposing penalty under Section 11AC and demanding interest under Section 11AB of the Central Excise Act, 1944 against M/s Jai Bhavani Steel Enterprises Limited for reasons discussed already.

> 8. I impose a penalty of Rs 25,00,000/- (Rupees Twenty Five Lakhs only) on M/s Sujana Industries Limited, Chennai under Rule 209A of Central Excise Rules, 1944.”

1.4 Aggrieved by such order, the appellant M/s Jaibhavani, Shri Pramod Saraf and Shri Ahok Saraf filed appeals before the Tribunal as E/768/2007, E/769/2007 and E/770/2007 respectively.

1.5 On 22.09.2023, the Ld. Counsel Shri G. Natrajan submitted that against the main appellant viz; M/s Jaibhavani, proceedings were initiated for liquidation and a liquidator was also appointed. Subsequently, M/s Revathi Sridharan, who was appointed as liquidator passed away. The department had not put forward any claim before NCLT in regard to claim as per the order impugned in this appeal. The Ld. Counsel Shri G. Natarajan submitted that he is not representing the main appellant. So also it was submitted that Shri Ashok saraf (appellant in E/769/2007) passed away on 08.07.2019. Taking note of these submissions the Tribunal vide Final Order No. 40854-40855/2023 dated 22.09.2023 dismissed the appeal filed by main appellant M/s Jaibhavani for default, as there was no representation. On the same day vide same Final Order the appeal filed by Shri Ashok Saraf was dismissed as abated.

1.6 The Show Cause Notice was served on M/s Sujana Metals on 16.02.2004 as a co-notice. M/s Sujana Metals had filed appeal against this impugned order before the Tribunal as E/896/2007. The company filed petition under Section 9 of the insolvency And Bankruptcy code 2016 before the NCLT, Hyderabad bench. The NCLT vide order dated 20.06.2019 admitted the petition filed by M/s Sujana and ordered for commencement of the Corporate Insolvency proceedings. Thus only the appeal filed by Shri Pramod Saraf is before us.

2. The Ld. Counsel Shri G. Natarajan argued on behalf of Shri Pramod Saraf. The arguments of the Ld. Counsel are summarized as under;

2.1 It is submitted that the Show Cause Notice issued to the appellant Shri Ashok Saraf, and M/s Jaibhavani culminated in passing Order-in-Original No. 20/2003 dated 29.05.2003. The duty demand of Rs. 34, 01,775 was confirmed against M/s Jaibhavani and penalties were imposed. The adjudicating authority imposed penalty of Rs. 5 lakh on Shri Pramod saraf (appellant herein) Chief Executive of M/s Jaibhavani and imposed penalty of Rs. 2 lakhs on Shri Ashok Saraf, Director of M/s Jaibhavani. The proceeding under Section 11AC/11AB of Central Excise Act, 1944 against M/s Jaibhavani was dropped. The Proceedings against under Rule 209 of Central Excise Rule 1944 M/s Sujana was kept in abeyance.

2.2 Against this order M/s Jaibhavani filed appeal before the Tribunal, and vide Final Order No. 657/2003 dated 22/08/2003 the Tribunal set aside the order and remanded for DENOVO adjudication.

2.3 In such DENOVO adjudication the adjudicating authority took up the proceedings against M/s Sujana also, and has passed this impugned order.

2.4 The allegation in the Show Cause Notice is that raw material (shredded MS Scrap) to the tune of 2405.820 MTs was procured by the main appellant (M/S Jaibhavani) from M/s Sujana Industries Ltd, without any documents. That M/s Jaibhavani has used such raw materials procured by them without documents to manufacture finished products viz; MS Ingots and cleared the finished products without payment of duty.

2.5 There is no evidence that appellant cleared finished products without payment of duty. The case emanates from the investigation initiated against M/s Metal Scrap Trading Corporation Ltd (hereafter referred to as M/s MSTC) who had imported shredded scrap availing benefit of concessional rate of duty as per Notification No. 83/90-Cus. One of the conditions to claim the benefit of concessional duty is to furnish the end use certificate showing that the said melting scrap of iron and steel has been used in electric arc furnace or induction furnace for melting.

2.6 M/s MSTC had supplied huge quantities of scrap to M/s Sujana. The appellant had procured some quantity of scrap from M/s Sujana. In fact M/s MSTC had supplied scrap to others also. M/s MSTC failed to comply with the condition of furnishing the end use certificate for which proceedings were initiated against M/s MSTC by issuing Show Cause Notice dated 14.06.2000 by the Customs authorities proposing to deny the benefit of concessional rate of duty on the imported scrap, for demanding the differential duty and for imposing penalties. In the said proceedings Show Cause Notice was issued to Sujana group of companies (M/s Sujana Steels Ltd, and Sujana Industries Ltd. Hyderabad) and to various other ingot manufacturers. The appellant (M/s Jaibhavani) was not issued Show Cause Notice and was not a party to such proceedings initiated against M/s MSTC.

2.7 Out of the quantity imported, M/s MSTC has sold 19474 MTs of scrap to M/s Sujana. The appellant has purchased from M/s Sujana. The appellant had obtained end use certificate for a quantity of 3590.43 which would go to show that the quantity is more than the alleged unaccounted quantity (2405.820 MTs)on which demand is raised in the Show Cause Notice.

2.8 The end use certificate issued by the department would establish that the appellant has properly accounted the scrap procured by them from M/s Sujana and also has used for manufacture of MS Ingots. The Ld. Counsel adverted to page 138 to 142 of the appeal paper book. The end use certificate dated 05.02.1999 shows the quantity sold by M/s Sujana to M/s Jaibhavani as 2920.030 MTs. The quantity consumed by M/s Jaibhavani for manufacture of ingots is shown as 2920.030 MTs.

2.9 The Ld. Counsel submitted that there is no evidence that the appellant has procured unaccounted raw material/scrap and used the same in clandestine manufacture of ingots. The entire case has been set up because of the non-compliance of end use certificate by M/s MSTC who imported the scrap availing the benefit of notification No.83/90-Cus.

2.10 The Ld. Counsel argued that there is absolutely no evidence for clandestine manufacture and clearance of ingots. There is no evidence in the nature of excess consumption of electricity transportation documents, bank statements to prove manufacture and realisation of sale proceeds. There is absolutely no evidence adduced by department as to whom the appellant has clandestinely sold the final products. Apart from a case of procurement of raw materials from M/s Sujana, which was later regularized, there is no iota of evidence to allege clandestine manufacture and clearance. The Ld. Counsel prayed that the appeal may be allowed.

2.11 The Ld. Counsel. Submitted that earlier M/s Sujana had not furnished end use certificate. But later they furnished end use certificate for the entire quantity procured from M/s MSTC and got the procurement regularized. For this reason, the penalty imposed against M/s Sujana in the proceedings initiated against M/s MSTC was dropped. The Ld. Counsel adverted to the operative portion of the Order-in-Original No. 186/2001 dated 17.10.2001 wherein it is stated that the allegations and charges levelled against M/s Sujana scrap Limited, M/s Sujana Industries Ltd, are not maintainable. The proceeding against P. Mallikarjun Reddy, Chief Executive of Sujana Industries Ltd & Sujana Steels Ltd Chennai shri M.K. Chaturvedi, sales manager of SSL/SIL, and Shri N.S. Ayyangar, Finance Manager of SSL/SIL were also dropped. The case of the department being that appellant procured unaccounted scrap from M/s Sujana, the allegation itself cannot sustain as M/s Sujana has furnished end use certificate for entire quantity procured by them form M/s MSTC, including the quantity sold by M/s Sujana to appellant.

2.12 The Ld. Counsel put forward the above contentions regarding import by M/s MSTC of shredded scrap, the supply to M/s Sujana and in turn the supply to appellant, in a tabular form which is as under:-

S.No.	Details	Qty – MT	Remarks
1	Total Quantity imported by MSTC	42309.606	
2	Total Quantity sold by MSTC	41691.115	
3	Out of (2) above, sold to Sujana	19474.000	
4	Quantity no sold (1)-(2)	618.491	
5	End Use Certificate produced by MSTC	27818.510	
6	Out of (5) above, EUC produced by Sunajan	8067.745	
7	SCNs issued demanding EDon MS ingots to Various parties–Appellant name not figuring in this	8397.673	
8	Demand confirmed on MSTC on the ground of diversion (1)-(5)-(7)	6093.423	
9	Sold to Sujana	19474.000	
10	End use Certificate produced by Sujana	8067.745	
11	Out of (10) above, EUC pertaining to appellant	3590.400	
12	Sold by Sujana with bills, but no EUC	2837.660	Para 40/Page 135 of Paper book
13	CE SCNs issued, demanding ED on MS Ingots	8397.673	
14	Total for which explanation given by Sujana (10)+ (12)+(13)	19303.078	
15	Difference could not be reconciled by Sujana (9)-(14)	170.922	Para 40/Page 135 of Paper book
Conclusions:			
(i)	If the quantity of 2405.820 sold by Sujana to appellant allegedly without bills is comprised of under (11) above, the demand on appellant would not survive, as end use and subsequent clearance on payment of ED is proved.		
(ii)	If the quantity of 2405.820 sold by Sujana to appellant allegedly without bills is comprised of under (12) above, the demand on appellant would not survive, as demands stand confirmed on MSTC on the ground of diversion and no use in melting.		
(iii)	The quantity of 8397.673 for which CE demands have been issued, does not cover the appellant's case		
(iv)	So the obvious conclusion is that the EUCs produced by Sujana covers, the appellant's EUCs also.		

Proceedings initiated against M/s MSTC for violation of condition in notification 83/90. The adjudicating authority has discussed this paras 9, 10 and 11 of the impugned order.

4. The Ld. Authorized Representative Anandalakshmi Ganeshram appeared and argued for the department. The Ld. Authorized Representative supported the findings in the

impugned order. It is argued that the appellant has tried to take shelter on the basis of the Order-in-Original No. 186/2001 dated 30.10.2001 passed by the Chief Commissioner of Customs in Chennai, in the case of M/s MSTC.

5. After examining such claim of the appellant and M/s Sujana, it is discussed in para 14.3 that as there is no details of the supplies who had issued the invoices, though the Lorry No., quantity of scrap, invoice number and date are given. There is no co-relation between the details submitted by appellant and the details in Annexure- F which is the basis for raising the demand.

6. The file recovered from M/s Sujana vide Sl. No. 90 of Mahazar dated 31.10.1996 (Annexure C-2 to Show Cause Notice) states that a quantity of 8270.650 MTs of melting scrap was diverted to M/s Jaibhavani and other units directly or through brokers such as M/s Indoria. This file showed the factual details of business transactions of M/s Sujana with various Customers including the appellant. The documents recovered showed unaccounted purchases made by M/s Jaibhavani from M/s Sujana. In para 15.6, the adjudicating authority has observed that the evidence in the form of accounts showing payments made by M/s Jaibhavani to M/s Sujana to the tune of 90 lakhs corroborates the receipt of the MS Scrap from M/s Sujana, but such receipt are not accounted by the appellant in their statutory

registers. The Ld. Authorized Representative argued that the confirmation of demand of duty with interest and penalties imposed on M/s Jaibhavani are legal and proper. The appellant is a Director /Chief Executive of the company and therefore the penalty of Rs. 5,50,000/- (Five lakhs fifty thousand) imposed on the appellant herein under Rule 209A of Central Excise Rule 1944 does not require any interference. The Ld. AR prayed that the appeal may be dismissed.

7. Heard both sides.

8. The appellant is aggrieved by the penalty of Rs. 5,50,000/- imposed under 209A of CER, 2002.

9. The allegation against they main appellant M/s Jaibhavani is that the procured unaccounted raw material i.e. MS Scrap and used the same in the clandestine manufacture of MS Ingots. At the outset it has to be stated that the entire allegation as well as evidence put forward by the department is with regard to unaccounted raw material procured from M/s Sujana. We do not find any evidence as to the manufacture of MS Ingots using the alleged unaccounted raw material. There is no investigation or enquiry conducted as to whom M/s Jaibhavani has sold/supplied the MS Ingots clandestinely. The investigation carried out, statements recorded and documents relied upon are all in regard to the alleged procurement of raw materials from M/s Sujana. It is alleged vaguely in the Show

Cause Notice that M/s Jaibhavani sold the MS Ingots without bills and collected cash. The demand is also quantified by assuming that M/s Jaibhavani would be able to use 85%(after loss of 15%) of the raw material of 2405.200 MTs procured from M/s Sujana and thus calculated the duty demand. There is not even a thin strand of evidence as to the alleged clandestine clearance. In the Show Cause Notice, the statement of Shri B. Anantha Subramanian, Excise-in-charge and authorised signatory in M/s Shree Ganesh Steel Rolling Mills is relied. The said person does not say that they purchased MS Ingots from M/s Jaibhavani without issuing any bills. Even though search was conducted in the premises of M/s Shree Ganesh Steel Rolling Ltd, no documents are alleged to be recovered for clandestine clearance of M.S Ingots. It is clearly stated by M/s Anantha Subramanian that they receive the MS Ingots from M/s Jaibhavani under delivery challans. We find that the entire Show Cause Notice and impugned order has only emphasized on the alleged unaccounted scrap cleared by M/s Sujana to M/s Jaibhavani.

10. This background is that which makes the contentions put forward by the appellant probable and acceptable. It is argued by the Ld. Counsel that the Show Cause Notice has been issued as an offshoot of the investigations conducted against M/s MSTC for violation of Customs Notification No. 83/90. M/s MSTC could not furnish the end use

certificate for the quantity imported by them. They supplied some quantity to M/s Sujana. M/s Jaibhavani had procured the MS Scrap from M/s Sujana. M/s Jaibhavani was issued end use certificate by the Department for the quantity of MS Scrap procured from M/s Sujana. Later M/s Sujana could also produce end use certificate for the quantity of MS Scrap supplied to units other than M/s Jaibhavani. The infractions of non-compliance of the condition of furnishing the end use certificate was later regularized as M/s Sujana could produce the end use certificate in regard to the quantity procured by them from M/s MSTC. This is evident from the fact that the adjudicating authority in Customs proceeding had dropped all charges and allegations levelled against M/s Sujana, (Both M/s SSL & M/s SIL) and Shri P. Mallikarjun Reddy, Shri M.K. Chaturvedi, and Shri N.S Ayyanagar of M/s Sujana. The relevant operating part of the order No. 186/2001-CAU. Dated 17.10.2001 reads as under:-

> "(iv) I hold that the allegations and charges levelled against M/s SSL, M/s SIL and S/Shri P. Mallikarjun Reddy, Shri M.K. Chadurvedi and Shri N.S. Ayyanagar are not maintainable".

11. In para 26 of the impugned order the adjudicating authority observes that M/s Jaibhavani has produced end use certificate for 3590.430 MTs of Scrap. The end use certificate dated 05.02.1999 is for quantity of 2920.030 MTs and end use certificate dated 14.02.2000 is for quantity of 670.400 MTs. However the said contention is not accepted by Department for the reason that the Ld. Counsel B. V.

Kumar appearing for M/s Sujana stated that M/s Sujana sold 3871.320 MTs of Scrap to M/s Jaibhavani with proper bills. The demand raised is for the period from 26.02.1996 to 01.06.1996 and the end use certificate is issued for the period from 26.02.1996 to 02.08.1996. The adjudicating authority observes that this period is two months longer that the demand period and that the quantity shown in the end use certificate is less than the quantity claimed to have been sold by M/s Sujana as represented by counsel. Thus adjudicating authority refused to accept the end use certificate issued to M/s Jaibhavani for 3590.430 MTs even though the allegation in the Show Cause Notice is only for the quantity of unaccounted Scrap of 2405.200 MTs. Here again, we have to emphasize that the whole effort of adjudication has been to reconcile the purchase of raw material by M/s Jaibhavani from M/s Sujana. There is no discussion as to the sale of finished product, viz; MS Ingot to have been manufactured and cleared clandestinely. The power consumption, the evidence of transporters, lorry receipts, the buyers of MS Ingots etc. have not been investigated or established at all.

12. After appreciating the facts we find that the Department has miserably failed to establish clandestine manufacture and clearance of finished products by M/s Jaibhavani during the disputed period, which is the basis for demand of duty, interest and penalties.

13. Only the appeal filed by M/s Pramod Sharaf, CEO of M/s Jaibhavani is before us for consideration. The adjudicated authority has imposed penalty of Rs.5,50,000/- on the appellant. From the facts narrated above, and evidences placed before us we have no hesitation to conclude that the penalty imposed on the appellant is not justified and requires to be set aside. Ordered accordingly.

14. In the result, the impugned order is modified to the extent of setting aside the penalty imposed on the appellant. The appeal is allowed with consequential reliefs, if any.

(Order pronounced in the open court on 08.11.2023)

(VASA SESHAGIRI RAO)
MEMBER (TECHNICAL)

(SULEKHA BEEVI C.S.)
MEMBER (JUDICIAL)

RKP