

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI**

PRINCIPAL BENCH-COURT NO. 3

SINGLE MEMBER

Excise Appeal No. 52147 of 2019-SM

(Arising out of Order-in-Appeal No. 29-30-SM-CE-JPR-2010 dated 7.2.2019 passed by the Commissioner, Central Excise & CGST, Alwar (Rajasthan))

M/s MD Sales Corporation

Appellant

A-3, RIICO Industrial Area, Chopanki,
Bhiwadi Distt., Alwar-301019.

Versus

**Commissioner, Central Excise &
Central Goods & Service Tax, Alwar,
Rajasthan.**

Respondent

A Block, Surya Nagar,
Alwar (Rajasthan)-301 001.

And

Excise Appeal No. 51553 of 2019-SM

(Arising out of Order-in-Appeal No. 29-30-SM-CE-JPR-2010 dated 7.2.2019 passed by the Commissioner, Central Excise & CGST , Alwar (Rajasthan))

Shri Mahesh Kumar Bhutra, Partner

Appellant

M/s MD Sales Corporation
A-3, RIICO Industrial Area, Chopanki,
Bhiwadi Distt., Alwar-301019.

Versus

**Commissioner, Central Excise &
Central Goods & Service Tax, Alwar,
Rajasthan.**

Respondent

A Block, Surya Nagar,
Alwar (Rajasthan)-301 001.

Appearance

None

- for the appellant

Ms. Tamana Alam, DR

- for the respondent

Date of Hearing/Decision: 17.01.2020

CORAM:
HON'BLE MR. ASHOK JINDAL MEMBER (JUDICIAL)

Final Order No. 50106-50107/2020

Ashok Jindal:

The appellants are in appeal against the impugned orders wherein Cenvat credit has been denied alleging that the manufacturer are non-existent. Therefore, the appellants have not received the goods consequently, they are not entitled to avail the Cenvat credit.

2. The facts of the case are that an investigation was conducted on the information of Central Excise Commissionerate, Dhanbad that M/s A.S. Infratel P. Ltd. Dhanbad has obtained Central Excise registration for manufacture of iron and steel items and some other units namely M/s Aditya Enterprises, Bokaro, Jharkhand who were passing inadmissible Cenvat credit on Cenvatable invoices of M.S. scrap to the manufacturer of excisable goods through M/s Shree Mahalaxmi Scrap Trading Company, Chomu, Jaipur to the appellants and who are availing Cenvat credit on the invoices without physically receiving the goods. Further, the investigation was conducted and the statement of the appellant namely Shri Mahesh Kumar Bhutra, partner of the appellant manufacturer was recorded on 23.1.2017 who stated that he has purchased 526.720 MT of M.S. scrap covered in 20 consignments from M/s Shree Mahalaxmi Scrap Trading Co., Chomu, Jaipur, a second stage dealer through trucks, the receipt of same was recorded for in form IV register and Cenvat credit of Rs. 13,16,825/- was availed thereon. The payments towards purchase of scrap was made

through RTGS through Vijaya Bank and Karnataka Bank. The said goods were unloaded in their factory premises from the concerned trucks mentioned in the invoices. Thereafter, a statement of Shri Manoj Vijay, authorised person of M/s Shree Mahalaxmi Scrap Trading Co. was also recorded, wherein he stated that the deal with Shri Manish Naredi regarding purchase of scrap from M/s Surya Udyog Corporation, Kulti, West Bengal, M/s Maa Parwati Engineering & Casting, Kulti, West Bengal, M/s Hariom Udyog, Purulia Bakura Road, West Bengal. He further stated that Shri Manish directly sent the goods as per their direction to the appellants. It is a fact that the said goods were not received physically at the premises of M/s Shree Mahalaxmi Scrap Trading Co. and they never seen the goods as the goods have been sent by Shri Manish Naredi directly to them and the invoices were sent to Shree Mahalaxmi Trading Co. who further issues invoices in the name of buyer of scrap and put signature in token to send thereof to the extent of involvement of their unit. On the basis of the said statements, and without any further investigation, it was alleged that appellants have not received scrap from M/s Shree Mahalaxmi Scrap Trading Co. Consequently, they are not entitled to avail Cenvat credit on the invoices issued by M/s Shree Mahalaxmi Scrap Trading Co. The matter was adjudicated. Cenvat credit was denied. Consequently, appellants were asked to pay the said amount along with interest and penalties were also imposed on both the appellants. Against the said order, the appellants are before me.

3. None appeared on behalf of the appellants nor any request for adjournment have been received.

4. Records has been perused. On perusal of the record, I find that the appeals can be disposed of, therefore, same are taken for disposal.

5. The learned Authorised Representative submits that it is a fact on record that at the time of investigation, the manufacturer of scrap are non-existent, therefore, Shree Mahalaxmi Scrap Trading Co. has not received the scrap. Consequently, the goods were not supplied to the appellants and it is mere paper transaction and they are not entitled to avail Cenvat credit.

6. Heard the learned Authorised Representative. On perusal of record, I find that in the impugned order the learned Commissioner has recorded the following:

" (ix) Shri Mahesh Kumar Bhutra, Partner of M/s MD Sales Corporation, in his statement dated 23.1.2017 admitted that they had purchased 526.720 MT of MS Scrap covered in 20 consignments from M/s Shree Mahalaxmi Scrap Trading Co., Chomu, a second stage dealer through trucks; the receipt of scrap had been accounted for in form IV register and cenvat credit amounting to Rs. 13,16,825/- has been availed thereon; that the payment towards purchase of scrap has been made through RTGS/proper banking channel through Vijaya Bank and Karnataka Bank; that the goods were unloaded at their factory premises from the concerned truck mentioned in the invoices; when he has confronted with the statement of Shri Manoj Vijay stated that they might have managed the scrap from somewhere.

It further seen from the evidence and statements of those persons who have been shown manufacturer on the impugned invoices, on the strength of which the appellant has taken CENVAT credit, in their statement have admitted that neither they have manufactured any goods nor they have issued any excisable invoices.

(x) When the manufacturer has not manufactured any goods, how, the same can reach appellant's premises. Obviously, they have managed bazaar scrap from kabadees who purchases such scrap from local households etc. and have obtained invoices from

M/s Shree Mahalaxmi Scrap Trading Co., Chomu. Therefore, CENVAT credit on such invoices is not admissible to appellant."

7. In the impugned order, the learned Commissioner (Appeals) himself has recorded the fact that M/s Shree Mahalaxmi Scrap Trading Co. used to place order for supply of scrap to the appellants directly through Shri Mahesh Naredi and scrap was directly going to the appellant's premises and invoices were issued in the name of Shree Mahalaxmi Scrap Trading Co. who in turn issued the invoices to the appellant. These facts have not been controverted by the Revenue with cogent evidence. No investigation have been conducted with the transporters to ascertain the fact whether the transporter has directly supplied the goods to the appellant or not. Moreover, the appellant sought cross-examination of the witnesses whose statements have been relied upon by the Revenue and no such cross-examination was granted. The case has been made out against the appellants on the basis that the manufacturers are not existent. In fact, the appellant has purchased the goods from M/s Shree Mahalaxmi Scrap Trading Co., a dealer who has issued the proper invoice and same has been accompanying with the goods, the buying manufacturer was not required to ascertain the fact whether the manufacturer is existent or not. If the particulars of manufacture and second stage dealer are mentioned correctly and the goods have been transported to the buyer's premises, in that circumstances, the buyer is entitled to avail Cenvat credit. Admittedly, nothing adverse has been brought out on record by the Revenue. In that circumstances, Cenvat credit cannot be denied

merely on the basis of the presumption that it might be a paper transaction as manufacturer of the scrap are non-existent. I further observe that it is a fact on record that the manufacturer of scrap are registered dealer of the Revenue.

8. In view of this, the impugned order is not sustainable in the eyes of law and accordingly, the same is set aside.

9. In result, the appeals are allowed with consequential relief.

(Dictated & pronounced in open Court)

(Ashok Jindal)
Member (Judicial)

RM