CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH
COURT NO.IV

EXCISE APPEAL NO. 50185/2021

[Arising out of Order-in-Appeal No. 75 & 76 /2020 dated 16.9.2020 passed by the Commissioner(Appeals) Central Excise & CGST, Jaipur]

CASTEX TECHNOLOGIES LIMITED
SP(A) 502, RIICO Industrial Area
Bhiwadi, Rajasthan.

APPELLANT

VS.

COMMISSIONER, CENTRAL TAX,
CENTRAL EXCISE – ALWAR (Rajasthan)

RESPONDENT

WITH

EXCISE APPEAL NO. 50186/2021

[Arising out of Order-in-Appeal No. 75 & 76 /2020 dated 16.9.2020 passed by the Commissioner(Appeals) Central Excise & CGST, Jaipur]

CASTEX TECHNOLOGIES LIMITED
SP(A) 502, RIICO Industrial Area
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APPELLANT

VS.

COMMISSIONER, CENTRAL TAX,
CENTRAL EXCISE – ALWAR (Rajasthan)

RESPONDENT

APPEARANCE:

Shri Hemant Bajaj & Shri Dhruv Tiwari, Advocates for the Appellant
Shri Mahesh Bhardwaj, Authorised Representative for the Department

CORAM:
HON'BLE MRS RACHNA GUPTA, MEMBER (JUDICIAL)

Date of Hearing/Decision: February 18, 2022

FINAL ORDER No. 50167-50168 /2022

PER RACHNA GUPTA

Present order disposes of two appeals, the order under challenge i.e. Order-in-Appeal bearing No. 75 & 76 /2020 dated 16.9.2020 being common to both the appeals.

Table

S.No.	Appeal No.	SCN No. and date	OIO No. and date	OIA No. and date	Demand confirmed
1.	E/50185/2021	7043 dated 6.10.2017	168/2018 dated 31.3.2019	75 & 76/2020 dated 17.9.2020	Rs.2,33,787/-
2.	E/50186/2021	7037 dated 6.10.2017	166/2018-19 dated 3.03.2019	75 & 76/2020 dated 17.9.2020	Rs.1,48,466/-

2. The facts in brief are that the appellant is engaged in manufacture of cast iron. The department received an information from the DGCEI Zonal unit about a show cause notice dated 2.3.2016 to have been issued to M/s. Chandra Proleco ltd. (CPL in short) Silvassa, Dadra and Nagar Havelli alleging that the CPL is indulged in availing the CENVAT Credit fraudulently on the strength of Cenvatable invoices against which no goods i.e. Copper ingots were received by them physically in their factory premises. The present appellants are observed to be one of recipients. CPL as well as the appellants were found to have received goods from M/s. Sypher Impex Alloys Pvt. Ltd. . However, vide the show cause notice dated 2.5.2017 to M/s. Sypher Impex Alloys Pvt. Ltd. alleged to have been issuing cenvatable invoices without delivery of Copper ingots. The said show cause notice was issued based upon the physical search of the premises of M/s. Sypher Impex Alloys Pvt. Ltd. who were found having no manufacturing facility nor any manufacturing activity at the place of manufacture. Accordingly a show cause

notice No. 7043 dated 6.1.2017 was also issued to the appellant, the recipient of material from said M/s. Sypher Impex Alloys Pvt. Ltd. alleging that during the period from September 12 to March 13 they without physical receipt of the goods have wrongly availed the CENVAT credit amounting to Rs 1,48,446/- (in Appeal No. E/51086/2021) and Rs.2,33,783/- (in Appeal No. 50185/2021). The said amount was proposed to be recovered along with the interest and proportionate penalties. The proposals were initially confirmed vide Order-in-Original No. 168/2018-2019 dated 31.3.2019 (in Appeal No.50185/2021) and Order-in-Original No. 166/2018-2019 dated 31.3.2019 (in Appeal No. 50186/2021). Both these orders were challenged before Commissioner (Appeals) who vide the Order under challenge (as mentioned above) has rejected the appeals. Being aggrieved the appellants are before this Tribunal.

3. I have heard Shri Hemant Bajaj & Shri Dhruv Tiwari, learned Counsels appearing for the Appellant and Shri Mahesh Bhardwaj, learned Authorised Representative appearing for the Department.

4. It is mentioned by the learned Counsel for the appellant that the appellants M/s. Amtek India Ltd. (now Castex Technolgies Ltd.) have regularly been purchasing Copper ingots/ copper scarp from M/s. Amtek Auto Ltd. There have been hundreds of transactions and accordingly hundreds of invoices were issued for the same. However, only 9 invoices in Appeal No. E/50185/2021 and 7 invoices in E/50186/2021 have been objected by the Department in the present two appeals. It is mentioned that the reason for booking these invoices is their connectivity to M/s. Sypher Impex Alloys Pvt. Ltd. . Learned Counsel has mentioned that the proceedings against **M/s. Trishul Metal Industries** were also initiated on the same allegations as have been levelled against the present appellant and the same Show cause notice (verbatim) based upon the Show cause notice against M/s.

Sypher Impex Alloys Pvt. Ltd. dated 2.5.2017 was served to M/s. Trishul Metal Industries also. However their case stands decided in the appeal of Trishul Metal Industries vide its Final Order No.52101-52104/2021 dated 27.12.2021 reported as 2021 (12) TMI 1148 (CESTAT-NEW DELHI). It is submitted that this appeal is on the same footings as that of M/s. Trishul Metal Industries Ltd. Therefore, the same benefit is prayed to be extended in favour of the appellants.

5. It is mentioned in addition that the appellants have annexed all the relevant record to prove their bonafide. Said record was produced even before the Adjudicating Authorities Below, but the same have miserably been ignored. Learned counsel has relied upon one of several purchase orders i.e. one bearing No. 939 dated 5.11.2012, the corresponding invoice No. 03234 of 6.11.2012. It is mentioned that the invoices specifically mentions the motor vehicle No. as UP13Z 5304 which transported the goods from M/s. Amtek Auto Ltd. to the appellants premises but the department has not made any investigations from the transporters. The statement of the appellants' Director Shri Rajesh Chouhan, authorised signatory of the appellant only has been taken as an evidence against the appellant. But it is mentioned that in the said entire statement there is no admission for not receiving the goods as is otherwise alleged against the appellants. Shri Rajesh Chouhan has deposed about all the documents proving receipt of copper ingots / copper scrap in the appellants factory against the cenvatable invoices. Finally impressing upon that there is no positive evidence or not a single direct evidence against the appellant, the findings in the order of Commissioner (Appeals) are absolutely wrong. Same is accordingly prayed to be set aside and appeal prayed to be disallowed.

6. To rebut the submissions learned Departmental Representative emphasised upon the Panchnama dated 9.4.2013 which records the search in the premises of M/s. Sypher Impex Alloys Pvt. Ltd. . It is apparently clear from Panchnama that no manufacturing facility nor any manufacturing activity was found in existence in the premises of M/s. Sypher Impex Alloys Pvt. Ltd. . Accordingly the nine invoices in appeal No. E/50185/2021 and seven invoices in Appeal No. E/50186/2021, being the invoices travelling from/ issued by said M/s. Sypher Impex Alloys Pvt. Ltd. have rightly been alleged to be non cenvatable invoices for no possibility of receiving any goods from M/s. Sypher Impex Alloys Pvt. Ltd. due to simple reason that M/s. Sypher Impex Alloys Pvt. Ltd. was never indulged in the manufacturing activity. It is submitted that Commissioner (Appeals) in para 9 has discussed the evidence against the appellant. Accordingly, the order has no infirmity. Both the appeals are prayed to be dismissed.

7. After hearing the rival contentions perusing the records my considered opinion is as follows:

The case against the appellant has been booked on the basis of investigation as was conducted against M/s. Sypher Impex Alloys Pvt. Ltd. by the same Commissionerate who had issued the impugned Show cause notice to the present appellants. It has been alleged against the said company that M/s. Sypher Impex Alloys Pvt. Ltd. had conducted only paper transaction for showing the purchase of copper scrap with the sole intention of generating CENVAT Credit and passing the same to various firms.

8. Apparently and admittedly, there is no evidence on record as against the present appellant other than the statement of Shri Rajesh Chouhan, the authorised signatory of the appellant. Irrespective Shri Yogesh Singh, Director of M/s. Sypher Impex Alloys Pvt. Ltd. had repeatedly admitted for having no trading

activity in his factory at Bhiwadi since 2013. But there is no evidence procured by the Department about any arrangements by M/s. Sypher Impex Alloys Pvt. Ltd. with the present appellant. Though the appellants have been receiving material through M/s. Amtek India Ltd. which in turn was receiving from Swastik the said Swastik was having invoices of M/s. Sypher Impex Alloys Pvt. Ltd. but this trail is highly insufficient to hold precisely the invoices in the hands of the appellants are such, against which no goods were sent.

9. To substantiate his case the appellants have placed on record voluminous documents including the purchase orders, invoices, gate registers, GRRs and ledger account. Perusal thereof shows the clear connectivity in these documents reflecting that the appellants were purchasing the copper raw material for their final product against the duly issued invoices by the supplier. These invoices were precisely mentioning the details of the vehicles through which the goods were to be transported from the suppliers for being received by the appellant. Apparently and admittedly there is no investigation from the driver or owner of the said vehicles. The said lacunae creates a major bubble of doubt, the benefit of which is to be extended in favour of the appellants. In para 9 of the order under challenge, it is clear that the findings of the Commissioner (Appeals) are merely based upon the statements of various persons and the Panchnama. The submissions being the oral testimony cannot supercede the documents produced by the appellants proving their case beyond reasonable doubts.

10. The law i.e. as to whether the third party records can be adopted as an evidence for arriving at the findings of clandestine removal, in the absence of any corroborative evidence, is well established. Reference can be made to Hon'ble Allahabad High Court decision in the case of **Continental Cement Company Vs.**

Union of India – 2014 (309) ELT 411 (All.) as also Tribunal's decision in the case of Raipur Forging Pvt. Ltd. Vs. CCE, Raipur-I – 2016 (335) ELT 297 (Tri.-Del.), CCE & ST, Raipur Vs. P.D. Industries Pvt. Ltd. – 2016 (340) ELT 249 (Tri.-Del.) and CCE & ST, Ludhiana Vs. Anand Founders & Engineers – 2016 (331) ELT 340 (P&H). It stand held in all these judgements that the findings of clandestine removal cannot be upheld based upon the third party documents, unless there is clinching evidence of clandestine manufacture and removal of the goods." It is well settled law that there has to be some concrete evidence which would show clandestine manufacture of goods, as was reiterated by Tribunal, Delhi in the case of **Commissioner of Central Excise & Service Tax, Raipur vs. P.D. Industries Pvt. Ltd. reported as 2016 (340) ELT 249 (Tri.-Del.)**.

11. Further, unless there is clinching evidence of the nature of purchase of raw materials, use of electricity, sale of final products, clandestine removals, the mode and flow back of funds, demands cannot be confirmed solely on the basis of presumptions and assumptions. Clandestine removal is a serious charge against the manufacturer, which is required to be discharged by the Revenue by production of sufficient and tangible evidence. On careful examination, it is found that with regard to alleged removals, the department has not investigated the following aspects :

(i) To find out the excess production details.

(ii) To find out whether the excess raw materials have been purchased.

(iii) To find out the dispatch particulars from the regular transporters.

(iv) To find out the realization of sale proceeds.

(v) To find out finished product receipt details from regular dealers/buyers.

(vi) To find out the excess power consumptions.

Thus, to prove the allegation of clandestine sale, further corroborative evidence is also required. For this purpose no investigation was conducted by the Department. Hence the reliance of Commissioner (Appeals) merely on oral testimony is held not relevant and unjustified specially when there is no apparent admission as is alleged. Otherwise also the statements recorded are nothing more than third party evidence.

12. Law is clearly settled that third party evidence cannot be held as the basis for proof of guilt of some other person. Admittedly no search was conducted in the appellants premises. No record was recovered from the appellants custody, nor any material was seized . The findings against the appellants are accordingly held to be nothing but outcome of assumptions based upon the Panchnama drawn in the factory premises of M/s. Sypher Impex Alloys Pvt. Ltd.

13. In the Final order of **M/s. Trishul Metal Industries dated 27.12.2021** based upon the same set of facts and circumstances, it has already been held that merely because the Company issuing invoices was found non-existence, the appellant cannot be denied the availment of CENVAT credit . In the present appeal I do not find any such facts which may distinct the present case from that of **M/s. Trishul Metal Industries.**

14. Otherwise also the appellant has provided documentary details contrary to the allegations of the appellants. The gate register maintained by the appellant in their day to day business activity record the entry of vehicle number as is mentioned in the said invoices and the quantity of the copper ingots being transported in the said vehicle. The goods received record further corroborates the same and initially the ledger account register which records all such transactions along with the respective invoices, their number and date and the respective goods received records. Department has produced nothing on record to falsify

these trails of documents proving receipt of goods by the appellant against the invoices on which the appellants have taken the CENVAT credit.

15. From the entire above discussions, it is held that the documents as that of invoices, gate registers, raw material registers, GRs and ledger account as have been relied upon by the appellants, since the stage of filing of reply to the show cause notice. I find that the goods mentioned in the invoices were duly been received by the appellants. The invoices were Cenvatable invoices. Accordingly, the credit thereupon is therefore held to have been rightly availed. The order under challenge is therefore, set aside. As a result thereof both the appeals stand allowed.

(RACHNA GUPTA)
MEMBER (JUDICIAL)

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