CUSTOMS EXCISE & SERVICE TAX APPLELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH, COURT NO. 1

EXCISE APPEAL NO. 53693 OF 2018

[Arising out of Order-in-Original No. 82/PR.COMMR/ CES/IND/2017 dated 23/03/2017 passed by the Commissioner, Customs, Central Excise & Service Tax, Indore (MP)]

M/S. NEO CORP INTERNATIONAL LTD. **APPELLANT**
Pithampur

versus

COMMISSIONER OF CENTRAL EXCISE, SERVICE TAX -INDORE **RESPONDENT**

WITH

EXCISE APPEAL NO. 51507/2017

[Arising out of Order-in-Original No. 82/PR.COMMR/ CES/IND/2017 dated 23/03/2017 passed by the Commissioner, Customs, Central Excise & Service Tax, Indore (MP)]

M/S. PANAM PACKERS PVT. LTD. **APPELLANT**

versus

COMMISSIONER OF CENTRAL EXCISE, SERVICE TAX -INDORE **RESPONDENT**

WITH

EXCISE APPEAL NO. 50131/2019

[Arising out of Order-in-Original No. 82/PR.COMMR/ CES/IND/2017 dated 23/03/2017 passed by the Commissioner, Customs, Central Excise & Service Tax, Indore (MP)]

Shri Sunil K Trivedi, Chairman and Managing Director **APPELLANT**

versus

COMMISSIONER OF CENTRAL EXCISE, SERVICE TAX -INDORE **RESPONDENT**

APPEARANCE:

None for the Appellant.
Shri Bhagwat Dayal, Authorised Representative for the Respondent

CORAM: HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT
HON'BLE MS. HEMAMBIKA R PRIYA, MEMBER (TECHNICAL)

Date of Hearing/Decision: 19.01.2024

<u>Final Order No. 50242-50244/2024</u>

<u>JUSTICE DILIP GUPTA:</u>

All these appeals seeks to assail the common order dated 23.3.2017 passed by the Principal Commissioner disallowing Cenvat credit and ordering for its the recovery from M/s. Neo Corp International Ltd. (the appellant in Excise Appeal No. 53693 of 2018) with interest and penalty. The impugned order also seeks to impose penalty upon Shri Sunil K Trivedi, Chairman and Managing Director of Neo Corp International and upon M/s. Panam Packers Pvt. Ltd.

2. On 14.11.2023, when these three appeals were listed, the following order was passed.

> "It transpires that appeal was earlier dismissed by order dated 31.05.2018 as no one had appeared on behalf of the appellant. This order was recalled by order dated 15.01.2019. Learned Counsel on behalf of the appellant appeared on 04.04.2019 and the matter was directed to be listed on 10.06.2019. The bench also directed that in the meantime the Revenue shall not take any coercive action. **It transpires from the order sheet that the appellant has not been appearing on any of the dates thereafter, except 04.03.2020 though the matter was listed on as many as 15 occasions.** It would, therefore, be appropriate to vacate the protection granted to the appellant by order dated 04.04.2019. **The appeal would now be listed for hearing on 19 January, 2024. It is made clear that the appeal may be decided on merits even if appellant does not appear.**"
>
> **(emphasis supplied)**

3. The matters have been called out, but no one has appeared on behalf of the appellant nor any adjournment has been sought.

4. Shri Bhagwat Dayal learned authorised representative appearing for the Department has placed the written synopsis and has also made submissions.

5. In such circumstances, it is considered appropriate to decide the appeal on merits and not wait indefinitely for the appellants to appear before the Tribunal.

6. A perusal of the grounds of appeal indicate that the main grievance of the appellants is that the Principal Commissioner committed an error in passing the order without supplying copies of the documents relied upon in the show cause notice, thereby violating the and principles of natural justice. It has also been urged that denial of cross examination has resulted in injustice, which has also vitiated the order.

7. Shri Bhagwat Dayal, learned authorised representative appearing for the department has pointed out that the relied upon document were supplied not only to the present appellants, who were noticee No's. 1 to 3, but also to 8 other co-noticees as is evident from paragraph 34 of the impugned order. Learned authorised representative also pointed out that replies to the show cause notice were filed on 28.3.2017 five days after the passing of Order-in-Original and even the request of cross examination of 104 persons was made on 29.3.2017 which is after 6 days of passing of Order-in-Original. Learned authorised representative for the Department submitted that as ample opportunities had been granted to the appellant, the Principal Commissioner was left with no option but to decide the appeal on merits as more than 15 months had also lapsed after the issuance of the show cause notice.

8. The submission advanced by the learned authorised representative appearing for the Department is correct as can be noticed from paragraph Nos. 34, 35 and 36 of the impugned order. The relevant portions of paragraph 34 of the impugned order are reproduced below:

> "**<u>DEFENCE AND RECORD OF PERSONAL HEARING</u>**:-
>
> 34. This SCN F. No. DGCEI/BhZU/36001/11/2015/ 598 dated 02.11.2015 was issued to aforesaid Noticees as mentioned here-in-above. The SCN was duly received by all the Noticees alongwith copies of all the relied upon documents. In this regard, the acknowledgement receipts of all the Noticees read as under:
>
> **<u>In respect of Noticee No. 1:</u>**
>
> "Received Notice to Show Cause F. No. DGCEI/BhZU/ 36001/11/2015/586 dated 02.11.2015 alongwith copies of all relied upon documents as per Appendix A & B, issued by the Additional Director General, Directorate General of Central Excise Intelligence, Zonal Unit, Bhopal to M/s Neo Corp International Limited, Pithampur, Received today i.e. on 05.11.2015."
>
> **<u>In respect of Noticee No. 3:</u>**
>
> Received Notice to Show Cause F. No. DGCEI/BhZU/ 36001/11/2015/588 dated 02.11.2015 alongwith copies of all relied upon documents as per Appendix A & B, issued by the Additional Director General, Directorate General of Central Excise Intelligence, Zonal Unit, Bhopal to Sunil Trivedi, Managing Director of M/s Neo Corp International Limited, Pithampur, Received today 1.e. on 05.11.2015."
>
> **<u>In respect of Noticee No. 9</u>**:
>
> "Received Notice to Show Cause F. No. DGCEI/BhZU/ 36001/11/2015/594 dated 02.11.2015 alongwith copies of all relied upon documents as per Appendix A & B, issued by the Additional Director General, Director General of Central Excise Intelligence, Zonal Unit, Bhopal to M/s. Panam Packers Private Limited Pithampur, Received today i.e. on 05.11.2015."

9. It is seen that paragraph 34 of the impugned order notices that all the noticees had been served with show cause notices with copies of relied upon documents on 5.11.2015 and in support thereof the acknowledgment receipts have been referred. The impugned order thereafter notices the following facts:

> "It is thus quite clear from above that copies of all the relied upon documents of the case were received by all the Noticees with the SCN under proper acknowledgement receipts. It is pertinent to mention here the while issuing the SCN, all the Noticees were also specifically informed vide its paras 39, 40 and 41 - which read as under:
>
> In case, the Noticee(s) desires to have inspection of any of the records relied upon or to take photocopies thereof, he may apply for the same within 15 days of receipt of this notice to the Pr. Commissioner of Central Excise, Indore at his aforesaid office.
>
> The Noticee(s) are hereby directed that the copies of documents not relied upon in this case may be collected within a month from the date of receipt of this notice from the office of the Additional Director, DGCEI, Indore Regional Unit, Indore situated at A Wing, CGO Complex, A B Road, Indore on any working day between 09:30 hrs and 18:00 hrs with a formal prior intimation.
>
> The documents/records relied upon are listed in the Appendix A and B to this Show Cause Notice and copies thereof wherever not supplied earlier are enclosed or would be made available for inspection on demand.
>
> **It is thus seen from above that the Noticees were put to notice with specific directions regarding RUDs and non-RUDs of the case in unambiguous and clear terms and more so the copies of all the relied upon documents (RUDs) of the case were actually supplied to all the Noticees alongwith the SCN, as is apparent from the acknowledgement receipts tendered by all such Noticees, as**

> **reproduced above. Even then, none of the Noticees have filed any proper defence reply to the SCN so far. All the Noticees vide their respective letters dated 16.11.15 had requested for supply of photocopies of certain relied upon documents without citing any reasons, even when all the relied upon documents of the case already stood supplied to them at the time of service of SCN, as is evident from the acknowledgement receipts given by all the Noticees already available on record and reproduced above."**
>
> **(emphasis supplied)**

10. The impugned order thereafter records the following findings:

> "35. **Accordingly, personal hearing in the case was fixed on 15.9.2016. The Noticee No. 1, 2 & 4 to 11 vide their letters dated 14.09.2016 requested for adjournment of hearing and re-iterated their request to provide copies of certain relied upon documents without citing any reason as to why the copies of such documents are again needed when the copies of all the RUDs of the case already stand received and acknowledged by them.** The Noticee no. 1 and 2 also requested for release of non-relied upon documents of the case. This office vide letter dated 22.09.16 followed by another letter dtd 18.11.16 requested the office of DGCEI, RU-Indore to supply said non-RUDs to the Noticees concerned. These Noticees were also informed separately vide letter dated 22.09.2016 that they may approach DGCEI office to get the said non-RUDs. In the meantime, next dates of PH were fixed on 29.9.2016 and 29.11.16. The Noticee no.1 and 2 vide their letters dated 28.11.2016 again requested for adjournment of hearing due to non receipt o of relied upon documents as well as relied upon documents. Accordingly, both these Noticees were informed vide letter dated 06.12.16 that from the acknowledgement receipts availed on record, it is evident that all the copies of RUDs have already been supplied to them and thus there seems no need to provide the same once again. **They were, however, also again inform that they may approach DGCEI office to get the said non-RUDs. The DGCEI regional unit Indore vide letter**

dated 16.12.2016 & 16.01.2017 requested the concerned Noticees to collect the desired non RUDs from their office. This office vide letter dated 05.01.17 also informed the concerned Noticees to collect non-RUDs from DGCEI within 10 days of receipt of this letter, else it shall be considered that they are not interested in collecting the non-RUDs and are deliberately trying to delay the adjudication proceedings. Further PH in the matter was fixed on 13.02.2017. The Noticee No.1 to 3 vide letters dated 13.02.2017 interalia informed that they have received non-RUDs from the office of DGCEI, Indore on 17.01.17 and since the same are voluminous, they require some time to go through the same and prepare reply to SCN. They accordingly requested to give them last chance for filing reply & hearing. Further PH in the matter was fixed on 21.02.2017 but nobody appeared. The Noticee No. 1 and 2 vide letters dated 20.02.2017 informed that they may be provided photocopies of certain invoices which have been relied upon in the case, even when copies of all the relied upon documents already stood supplied to them. Accordingly, another opportunity of PH was given to them on 03.03.17 but nobody appeared. Instead, the Noticee No. 1 and 2 vide their letters dated 06.03.17 reiterated their request to supply certain copies of invoices relied upon in the case. They were again informed vide this office letter dtd 08.03.17 that since they had already received and acknowledged the copies of all the RUDs of the case, therefore, there seems no need to supply the same again. Hence, they were finally informed to file their replies within 5 days of receipt of this letter. **However, none of the Noticees came forward to either file their reply or attend the PH.** It is pertinent to mention here that certain correspondences issued from this office as above were returned by the postal department as undelivered whereas similar correspondences were received by the Noticees. It is thus apparent that the Noticees have conveniently received some letters at same address and some were returned and therefore it is clear that it is a deliberate attempt on their part to delay the adjudication proceedings.

36. **It is observed from above that all the Noticees have failed to file their written reply in the case even after lapse of sufficient period of time since issuance of SCN. It is already more than 15 months time that has elapsed since the SCN was issued to them, but the Noticees have not participated in the adjudication proceedings. I find that ample opportunities have already been extended to the Noticees in the case to file their written submission and to defend their case, however, the Noticees have utterly failed to avail the same. It is a fact on record that the SCN was duly served upon the Noticees alongwith the copies of all RUDs under proper acknowledgement receipts.** Moreover, the main Noticees i.e. Noticee no. 1 and 2 have also informed that they have received all the non-RUDs of the case on 17.01.17. Even then, the Noticees have not defended their case and tried to delay the present adjudication proceedings on flimsy grounds. I observe that the Noticees are not interested in placing their defence on record and have circumvented various opportunities of defence extended to them. The Noticee No. 1 and 2 and other co-noticees of the case were registered with the department, therefore, it cannot be stated that they are not versed with the procedures of CEx law. While issuing SCN, it was also categorically mentioned in the SCN that the Noticees are required to file their written reply within 30 days of the receipt of the same. It was also specifically pointed out in the SCN that if the Noticees do not show cause against the action proposed in the SCN within the above stipulated period of 30 days and/ or if the Noticees or their representative do not appear before the adjudicating authority, on the date and at the time fixed for hearing, then the case shall be liable to be disposed off, on the basis of evidences brought on records, without making any further reference to them.

I thus find from the above that it is in the earnest knowledge of the Noticees that they are required to file their defence submission within 30 days of receipt of SCN, yet they have not filed the same till date even when their request to give them last chance to file reply to SCN was acceded to. It is

> surprising that throughout the period since SCN has been issued to them, the Noticees even could not get any consultant disposed in the present case to defend them on their behalf either. **The instant case involves the proposal to recover considerable amount of wrongly availed Cenvat credit. In the light of aforesaid facts and circumstances, it leads me to believe that the Noticees are purposefully ignoring the governing provisions of law so as to unscrupulously enjoy the financial accommodation otherwise not permissible to them. I also find that several opportunities beyond the permissible limit have already been extended to them to defend their case and thus the principal of natural justice has clearly been met in the case. Accordingly, in such circumstances, the instant case cannot be kept in abeyance till unlimited period of time and is thus required to be taken up for adjudication. I am, therefore, left with no option but to adjudicate the impugned SCN ex-parte on the basis of the documents available on record on merit, after satisfying myself that there is no violation of principles on natural justice in taking up the case for disposal….."**
>
> **(emphasis supplied)**

11. At page 165 of the appeal filed by M/s. Neo Corp International, the acknowledgement of receipt of show cause notice has been enclosed and this is precisely what has been reproduced by the Principal Commissioner in the impugned order.

12. In the face of findings recorded in paragraph 34 of the impugned order, it is not possible to accept the contention that has been raised in the appeal that the copies of the Relied Upon Documents were not supplied to the three appellants. Not only were the copies of the Relied Upon Documents supplied to the appellant, but to other noticees also. Enough opportunity was also granted to the appellants to file their replies to the show cause notice, but the

appellants evaded filing reply to the show cause notice by alleging non-supply of Relied Upon Documents. The impugned order also mentions that the appellant were also permitted to inspect the non Relied Upon Documents but no efforts were made by the appellant to obtain the copies. As appellants failed to submit replies to the show cause notice and even failed to appear, the Principal Commissioner was left with no alternative but to decide the appeal on merits as more than 15 months had lapsed. This is precisely the conduct of the appellants before the Tribunal also as would be clear from the order dated 14.11.23 that has been reproduced above.

13. There is substance in the submission of the learned authorised representative appearing for the department that replies to show cause notice were filed after the passing of the impugned order, as is evident from documents enclosed with the appeal. The submissions raised in the grounds of appeal that cross examination of 104 persons was not granted is also not correct as such a request was made six days after the passing of the impugned order.

14. In such circumstances, the three appeals deserve to be dismissed and are dismissed.

(Order pronounced in open court)

(JUSTICE DILIP GUPTA)
PRESIDENT

(HEMAMBIKA R PRIYA)
MEMBER(TECHNICAL)

SS/Jyoti