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CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066

EXCISE APPEAL BRANCH

Appeal No. E/2068/2010-2070/2010 - EX[DB] Date **01/12/2011**
E/S/1974-1976/2010

Assistant Registrar
C.E.S.T.A.T, New Delhi

To :
M/S METALMAN INDUSTRIES LTD.
PLOT NO. 802, SECTOR-III INDUSTRIAL AREA,
PITHAMPUR, DISTT. DHAR (M.P.)

M/S METALMAN INDUSTRIES LTD. Appellant
Vs
C.C.E. INDORE **STAY ORDER NO.1362-1364/2011** Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 1003-1005/2011 **EX[DB]** dated 14-11-2011 passed by the Tribunal under **Section 35-C(1)of Central Excises Act, 1944**

Assistant Registrar
(Excise Appeal Branch)

Copy to :

1. Respondent
C.C.E. INDORE
MANIK BAGH PALACE, POST
BOX NO. 10, INDORE 452001 (M.P.)

2. Adv. / Consult
MR.V. SRIDHARAN
B-6/10, SAFDARJUNG ENCLAVE, NEW DELHI - 29

3. C.D.R
4. Bar association. CESTAT. New Delhi
5. Director Publications. Customs. Excise. I.P. Estate. New Delhi
6. M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi -
7. Company Law Institute of India Pvt Ltd.,No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
8. Taxmann Allied Service Pvt Ltd., 59/32, New Rohtak Road. New Delhi - 110005
9. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road, Ahmedabad-15
10. LAWCRUX Advisors Pvt Ltd. LAW House.1-8.Sector - 10. Faridabad 121003 (Haryana)
11. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
12. Office Copy
13. Guard file

M/S SONI ISPAT LTD.,
PLOT NO. 805A, PITHAMPUR,
INDUSTRIAL AREA, SECTOR-III,
PITHAMPUR, DISTT. DHAR (M.P.)

SHRI M.S. RANA, AUTHORISED SIGNATORY,
M/S METALMAN INDUSTRIES LTD,
PLOT NO. 802, SECTOR-III INDUSTRIAL
AREA, PITHAMPUR, DISTT. DHAR (M.P.)

Assistant Registr
(Excise Appeal Bra

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
Court No.III

E/S 1974/10 in E/Appeal No.2068/2010

(Arising out of order in original No. 9/Comm.Cex/Ind/10 dated 13.4.10 passed by the Commissioner of Customs & Central Excise, Indore)

Date of Hearing: 14.11.2011

For Approval and signature:
Hon'ble Mr Archana Wadhwa, Member Judicial
Hon'ble Mr.Mathew John, Technical Member

1.	Whether Press Reporters may be allowed to see The order for publication as per Rule 27 of the CESTAT(Procedure) Rules, 1982?	Yes
2.	Whether it would be released under Rule 27 of the CESTAT (Procedure) rules, 1982 for publication in any authoritative report or not?	No
3.	Whether their lordships wish to see the fair copy of the order?	Seen
4.	Whether order is to be circulated to the Department Authorities?	No

M/s Metalman Industries Ltd — Appellants

Vs

CCE, Indore — Respondent

E/S 1975/10 in E/Appeal No.2069/2010

Shri M.S. Rana — Appellant

Vs

CCE, Indore — Respondent

E/S 1976/10 in E/Appeal No.2070/2010

M/s Soni Ispat — Appellant

Vs

CCE, Indore — Respondent

Appeared for the Appellant: Shri B.L. Narasimhan, Advocate
Appeared for the Respondent: Shri I. Beg, DR

Coram: **Hon'ble Mrs. Archana Wadhwa, Member(Judicial)**
Hon'ble Shri Mathew John, Member (Technical)

STAY ORDER No. 1362-1364/2011-EX
FINAL ORDER No. 1003-1005/2011-EX

Per Mathew John:

In this case three appeals are being decided together because all the appeals arise from the same impugned order. The first Appellant is M/s Metalman Industries Ltd. who manufacture Cold Rolled Coils of Steel from Hot Rolled Coils. They had initially received sponge iron from manufacturers of sponge iron and taken Cenvat credit of excise duty paid on it. Later they sold it as such to the M/s Sony Ispat Ltd., who is the second appellant, against invoices showing reversal of Cenvat credit taken at the time of receipt of the goods in their factory. The second appellants took credit of credit reversed by M/s Metalman Industries Ltd. at the time of removal of the goods from M/s Metalman Industries Ltd.. The third appellant Shri. M. S. Rana is the authorized signatory of both M/s Metalman Industries Ltd. and Soni Ispat Ltd..

2. The case of the Revenue is that M/s Metalman Industries Ltd. never had manufacturing facility to utilize sponge iron in their factory. They had never received the sponge iron in their factory. There is no transportation document to evidence transportation of the impugned goods to the factory of M/s Soni Ispat Ltd, either and therefore the credits taken by the first appellant and second appellant were fraudulent. Further Revenue has a case that the total credit taken by M/s Metalman Industries Ltd. initially was only Rs. 1,19,80,207/- but they had passed on additional credit of Rs. 18,90,910/- to M/s Sony Ispat Ltd.. So a Show Cause Notice for disallowing Cenvat credit of Rs. 1,38,71,117/-

was issued with proposal for imposing penalty under rule 15 of the Cenvat Credit Rules, 2004. The SCN is adjudicated by the impugned order confirming demand of Rs.1,38,71,717/- as duty and imposing penalty of Rs.1,38,71,717/- on Soni Ispat, Rs.1,19,80,207- on Metalman Industries Ltd. and Rs.10,00,000/- on M. S. Rana, authorized signatory of both Metalman Industries Ltd. and Soni Ispat Ltd..

3. The Appellants submit that the first appellant had a plan to get the sponge iron bought by them processed by job workers to produce steel ingots and to use such ingots in their factory for manufacture of their final products like CR Sheets. It is argued that Cenvat Credit Rules allow credit of such raw material and there is nothing wrong with the credit initially availed by them. However the sponge iron was found to contain more silica than what was suitable for their final products and the job-work arrangement did not materialize and hence they decided to sell the goods as such. The goods were sold to M/s Sony Ispat Ltd. whose factory is situated adjacent to the factory of Metalman Industries Ltd.. While selling the goods credit was reversed on the basis of transaction value and that is why credit in excess of what was taken on sponge iron was transferred to M/s Soni Ispat.

4. Soni Ispat Ltd. submitted that the goods were transported from Metalman Industries Ltd. using their own truck. Since the transportation was by their own vehicles from an adjacent factory there was no lorry receipt for such transportation and this cannot be a reason to say that the credit taken by M/s Sony Ispat Ltd. was fraudulent. M/s Sony Ispat Ltd. contends that the receipt of Sponge Iron in their factory and production of final products from such raw material is proved from their records and they have paid duty on the final product and in the circumstances there is no ground to deny such credit.

5. The Ld SDR submits that M/s Metalman Industries Ltd. did not have facility to manufacture goods from Sponge Iron and therefore

sponge iron was not an input for them and they could not have taken credit for excise duty paid on such material. Secondly he argues that the documents showing receipt of goods in the factory of Metalman Industries Ltd. were never produced to the department and thus the credit taken by Metalman industries Ltd. were fraudulent and they could not have passed on such credit. He also points out that the credit passed on is more than the credit taken.

6. We have considered arguments on both sides. In view of the provisions in Rule 4 (5) (a) of Cenvat Credit Rules, 2004 we are not agreement with the argument that M/s Metalman Industries Ltd. could not have taken credit on sponge iron because they could not have converted it into sponge iron in their factory. In the facts of the case we are also not in agreement with the argument that M/s Soni Ispat Ltd. could not have taken credit because they did not have documents evidencing transportation of these goods from the factory of Metalman Industries Ltd..

7. The core issue to be verified in this dispute is whether credit was taken by Metalman Industries Ltd. on receipt of goods in their factory and against proper duty paying documents. There was failure on the part of the Appellants to produce these documents during investigation stage. Apparently this has happened because there was an investigation by DGCEI also into the matter and some files of Metalman Industries Ltd. were taken over by DGCEI. It is rather surprising that there is no mention about the outcome of investigation done by DGCEI. However that is not quite relevant to decide this appeal. When the documents were produced during the adjudication stage the adjudicating authority did not examine the correctness of the documents. During argument before the Tribunal an issue whether submissions regarding availability of documents were raised during adjudication at all was raised. The adjudication records were called for and scrutinized by the Ld. DR and it was found that though this is not recorded by the adjudicating

authority, there was such a submission in the reply given by Metalman Industries Ltd. This method of dealing with the submissions of noticees cannot be approved of. When these records were produced the adjudicating authority should have examined the genuineness of these records. Before adjudicating authority they had submitted two annexures, namely annexure-2 showing invoice-wise details of sponge iron purchased by Metalman Industries Ltd. and the credit taken on said sponge iron along with vehicle number and LR No.. Annexure-3 shows illustrative copies of some of the invoices under which Metalman Industries Ltd. purchased the above sponge iron, lorry receipt, Note-cum inspection report showing receipt of sponge iron, Form 88 containing declaration furnished by consignor for handing over by transporter etc. We are of the view that the correctness of these documents and the credit amount which is supported by proper documents showing receipts of goods in the factory need to be examined for taking a proper decision in this matter.

8. Therefore we consider it proper to waive the requirement for pre-deposit of the dues arising from the appeals for its admission and we admit the appeals. Further since there is need for verification of facts we set aside the impugned order and remand the matter to the adjudicating authority to examine whether the credit taken by M/s Metalman Industries Ltd. was proper on the basis of records produced by them. If credits are not proper in any case such finding with reasoning has to be given for each of the credit entries and thereafter adjudication completed. The issue whether excess credit has been passed on may be examined afresh and adjudicated.

(Pronounced in open Court)

(Archana Wadhawa)
Member(Judicial)

(Mathew John)
Member(Technical)

MPS*