IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.

Date of Hearing/Decision: 17.10.2017

Appeal No. E/51232/2017-SM

(Arising out of Order-in-Original No. 89 (AK)CE/JPR/2017 dated 19.05.2017 passed by the Commissioner (Appeals), Customs, Central Excise & Service Tax,Jaipur)

Shri Ram Metalloys (P) Ltd — Appellant

Vs.

CCE Alwar — Respondent

Appearance

Shri Rajesh Chibber, Advocate - for the appellant

Shri G.R. Singh, AR - for the respondent

CORAM: **Hon'ble Mr. Anil Choudhary, Member (Judicial)**

Final Order No. 57658/2017

Per Anil Choudhary :

1. The issue in this appeal is whether the Ld. Commissioner (Appeals) have rightly upheld the revocation of registration of the appellant along with penalty of Rs. 5000/- under Rule 26(2) of CER, 2002.

2. The brief facts of the case are that the appellant, having Central Excise Registration No. AAKCS2344AXD001 as a 'Dealer' under Rule 9 of the Central Excise Rules, 2002, engaged in trading of Ferrous Waste and scrap and was issuing Cenvatable invoices & passing on Cenvat credit of Central Excise duty.

3. During the course of verification of premises of the appellant by Anti-Evasion team of Central Excise Division-I, Bhiwadi, on 27.11.2014, the said premises was found closed and a sign board of 'M/s Jamia Air conditioners & Engineers' was found affixed on the above premises and it was found that the premises belongs to Sh. Krishna Kumar of Rewari. Statements of Sh. Pradeep Agarwal, Director of the appellant were recorded on 05.01.2015 under which he stated that their registered office under Companies Act is situated at 27/10, Punjabi Bagh Extn., New Delhi-26 and they have very few transaction from Bhiwadi branch. That they are engaged in consignment sale (In transit) and thus the goods are also further transported in the same vehicle and no storage of goods is required. Their authorised person issues invoice (under transit sale) by visiting Bhiwadi as and when order is received. Sh Krishna Kumar, owner of the above premises, vide his letter dated 08.01.2015 submitted a copy of Sub-lease deed dated 05.02.2007 with M/s Misty Meadows (P) Ltd. dated 10.03.2015, and stated that he did not know any company named M/s Shri Ram Metalloys (P) Ltd. Thus, it was alleged

that the appellant was not having the possession of registered premises. Accordingly, Show Cause Notice was issued for revoking the Central Excise Registration and imposing penalty. The adjudicating authority while deciding the case has held that the appellant was engaged in passing on the Cenvat Credit, from the fake address, without having the acquisition/possession of registered premises and also not having the arrangement of receipt, loading, unloading, store and dispatch of the goods and also held that the appellant has contravened the provisions of the Section 6 of the Central Excise Act, 1944 and Provisions of Rule 9 & 11 of the Central Excise Rules, 2002 read with Notification No. 35/2011-CE(NT) dated 26.06.2001 (as amended). Accordingly, the adjudicating authority vide impugned order, ordered to revoke the registration issued to appellant under sub-para (7) of Para [1] of Notification No. 35/2001-Central Excise (NT) dated 26.06.2001 (as amended) and imposed penalty of Rs. 5,000/- on the appellant under Rule 26(2) of the Central Excise Rules, 2002.

4. Being aggrieved, the appellant preferred appeal before Commissioner (Appeals), who vide impugned order, was pleased to reject the appeal by confirming the order passed by original authority.

5. Being aggrieved, the appellant-assessee is before this Tribunal. The Ld. Counsel appearing for the appellants states that the appellant assessee is a private ltd. company, having registered office at Punjabi Bagh, New Delhi-26.

6. The appellant assessee was granted registration by the Central Excise Department for its branch office at Bhiwadi, as a registered dealer vide registration certificate dated 20th November 2016 having address M-10 Ganpati Shopping Plaza, Bhiwadi, Rajasthan. Registration No granted AAKC52344AXD001. The appellant have also filed in the paper book, written rent agreement for the said premises as well as the relevant rent receipt dated 26th October 2006. After few months as they had very few transactions, they left the tenancy of the premises at M-10 Ganpati Shopping Plaza. However, they continued to have business transactions. The nature of the business was that they were purchasing iron and Steel in full

truck load and used to be resell by way of sales in transit. For this purpose their Authorised person/ manager used to go to Bhiwadi and issue the document of resale to their buyers and also passing on the Cenvat Credit along with the goods sold. The Show Cause Notice dated 11 August, 2015 was issued wherein based on some enquiries made by revenue. The department was of the opinion that the appellant is no longer operating from their registered address with the department at M-10 Ganpati Plaza, Bhiwadi, and it appears that they are clandestinely passing on the credit. It was proposed to revoke the registration granted earlier in the year 2006 and also impose the penalty under Rule 26 CER of 2006.

7. The appellant contested the Show Cause Notice by filing reply dated 26th December 2015 wherein they stated that they are continuing to do business without interruption, and since 2014 at the new location being Verdaman Market, Main Road, Bhiwadi. But due to inadvertence, they failed to inform the department (new address) for necessary amendment in the registration certificate. They informed that due to the Show Cause Notice issued to them and some letters were issued to

their buyers proposing denial of credit due to which the buyers have stopped their payments.

8. After filing reply to the Show Cause Notice the appellant also filed the application for amendment in the registration certificate which was received by department on 16th November 2006. Thereafter copy of the amended registration certificate was issued on 15th December 2015 by the office of the Deputy / Assistant Commissioner of Central Excise division. It is evident that the department have recognized them as a continuous dealer. Thus, the passing of Order in Original dated 23/12/2015, revoking their registration is bad and fit to be set aside. The Ld. Counsel said that there is no allegation in the Show Cause Notice or any finding that they have not dealt with the goods or have not supplied the goods along with the cenvatable invoices. The only allegation is that they were not found present at their address-registered with the department. Accordingly, he prayed for setting aside the impugned order, and appropriate relief.

9. Heard the Ld. AR for the revenue who supports the impugned order.

10. Having considered the rival contention I find that from the amended registration certificate issued to the appellant dated 15 December 2015, the Registration-status matter have been regularized by the department. Thus, the order of cancelling of registration vide order dated 23 December, 2015, is erroneous and fit to be set aside. Accordingly, I allow this appeal and set aside the impugned order. The registration of the appellant is deemed to be in operation all throughout. Further letters issued by the department to the buyers of the goods from the appellant, (proposing denial of Cenvat credit) are also declared null and void, and no adverse action can be taken by the revenue on the basis of such letters. The appellant is entitled to consequential relief, as per law.

(Dictated & pronounced in open Court)

(Anil Choudhary)
Member (Judicial)

Rekha