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

COURT NO. II

DATE OF HEARING : 21/12/2017.
DATE OF DECISION: 21/12/2017.

Excise Appeals No. 1328 & 1426 of 2012 (SM)

[Arising out of the Order-in-Original No. 31/Commr/CEX/IND/ 2012 dated 23/02/2012 passed by The Commissioner, Central Excise & Customs, Indore.]

M/s Jain Ispat] Appellants
M/s K.G. Ispat Pvt. Ltd.]

Versus

CCE & ST, Indore Respondent

Appearance

Ms. Priyanka Goel, Advocate – for the Appellants.

Shri G.R. Singh, Authorized Representative (DR) – for the Respondent.

CORAM: **Hon'ble Shri Ashok Jindal, Member (Judicial)**

Final Order No. 58587-58588/2017 Dated : 21/12/2017

Per. Ashok Jindal :-

The appellants are in appeal against the imposition of penalties under Rule 26 of Central Excise Rules, 2002.

2. The brief facts of the case are that an investigation was conducted at the end of one M/s Allianz Steel Limited (ASL) wherein stock taking done and some shortages of input namely

M.S. Ingots was found, thereafter investigation was conducted at the end of the appellants who are registered dealers sending goods against duty paying document. During the course of investigation and on the basis of submission of the transporters (who stated that they have not transported goods from the premises of the appellant to the premises of M/s ASL), therefore, it was alleged that appellants have issued only invoices not the goods. In that circumstances, it was hold that M/s ASL had received only invoices not goods to avail in admissible Cenvat credit without receiving the duty paid goods. Therefore, the penalties under Rule 26 of Central Excise Rules, 2002 were proposed and by the adjudication order, penalties were confirmed against the appellants.

3. Heard the parties.

4. The penalties have been imposed on the appellants on the basis of the statement of the transporters who stated that they have not transported the goods from the premises of the appellant to the premises of M/s ASL but as appellant sought cross examination of the transporters which has not been granted by the Adjudicating Authority, therefore, there is a gross violation of principle of natural justice as per Section 9D of the Central Excise Act, 1944.

5. In that circumstances, by setting aside the impugned order, the matters are remanded back to the Adjudicating Authority to

first give the cross examination of the transporters and thereafter to pass an appropriate order in accordance with law.

6. In view of the above observations, the appeals are disposed of by way of remand.

(Order dictated and pronounced in the open court.)

(Ashok Jindal)
Member (Judicial)

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