CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

NEW DELHI

PRINCIPAL BENCH – COURT NO. – II

Excise Appeal No. 53580 of 2018

[Arising out of Order-in-Appeal No. 68-70/CE/DLH/2018 dated 28.08.2018 passed by the Commissioner(Appeals), IP Estate, New Delhi]

Shri Dinesh Aggarwal, Partner
M/s. Amar Steel Syndicate **...Appellant**
Shop No. 567, Sector–59
Loha Mandi, Faridabad

Vs.

Principal Commissioner of
Central Goods & Service Tax **...Respondent**
Delhi North, CR Building
IP Estate, New Delhi

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M/s. Amar Steel Syndicate **...Appellant**
Shop No. 567, Sector–59
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Vs.

Principal Commissioner of
Central Goods & Service Tax **...Respondent**
Delhi North, CR Building
IP Estate, New Delhi

Excise Appeal No. 53582 of 2018

[Arising out of Order-in-Appeal No. 68-70/CE/DLH/2018 dated 28.08.2018 passed by the Commissioner(Appeals), IP Estate, New Delhi]

Shri Rajesh Aggarwal, Partner
M/s. Amar Steel Syndicate **...Appellant**
Shop No. 567, Sector–59
Loha Mandi, Faridabad

Vs.

Principal Commissioner of
Central Goods & Service Tax **...Respondent**
Delhi North, CR Building
IP Estate, New Delhi

APPEARANCE:

Shri N.K. Sharma, Advocate for the Appellant
Shri K. Poddar, Authorised Representative for the Respondent

Coram: HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)

FINAL ORDER No. 50786-50788/2019

DATE OF HEARING : 16.04.2019
PRONOUNCED ON : 20.06.2019

ANIL CHOUDHARY

These Appeals have been preferred against the impugned Order-in-Appeal by which penalty imposed have been confirmed as follows:

Name of Party	**Amount** (in Rs.)	**Section/ Rule**
M/s. Amar Steel Syndicate	35,71,874/-	Rule 25 of Central Excise Rules read with Rule 15A of Cenvat Credit Rules
Shri Rajesh Aggarwal	35,71,874/-	Rule 26 of Central Excise Rules read with Rule 15A of Cenvat Credit Rules
Shri Dinesh Aggarwal	35,71,874/-	Rule 26 of Central Excise Rules read with Rule 15A of Cenvat Credit Rules

2. The appellant, M/s. Amar Steel Syndicate is the partnership firm trading in iron and steel items, as a registered dealer having their shop premises at Loha Mandi, Faridabad. The other appellants – Shri Dinesh Aggarwal and Shri Rajesh Aggarwal are brothers and partners in the said firm. The main allegation against them as per show cause notice is that they have supplied invoices to one M/s. Delight Industries, Delhi, to facilitate the availing of cenvat credit without supplying goods.

3. The brief facts as per show cause notice are that one M/s. Delight Industries, a partnership firm whose partners are Smt. Renu Jindal, Shri Deepak and Shri Y.M. Jindal, are engaged in manufacturing of electric wire and cable, alloy tinned wire of copper, PVC compound, voltage stabilizer, transformer, etc. They are registered with the Central Excise Department and also filing their returns and paying taxes. The Revenue in the course of routine checking of their PLA/cenvat ratio, found that for the year 2013-14, the ratio had come down to 7.60% from the previous financial year 2012-13 where it was 12.21%. Accordingly, to verify the affairs, a team of officers visited M/s. Delight Industries located at Narela, Delhi, on 7 August, 2014. At the time of visit, the officers met Smt. Renu Jindal, partner and Shri Deepak, partner who were present. The officers undertook verification of the current stocks with current

purchases and *prima facie* it appeared that stocks were not tallying. It further alleged that upon inquiry from the partners they tried to explain the reasons, but after sometime they suddenly left the factory. Mr. Ravi Shankar Srivastava, Production In-charge assisted in taking the stock of raw material and stock of finished goods. Thereafter, the officers took inventory of raw material and finished goods in the presence of the panchas. The finished goods stock was found not tallying with RG-1 Register. It was observed that entries in RG-1 were not made for more than a month. Since the goods were not found tallying with the stock register as well as with purchase invoices and there was huge variation, hence the goods were detained for further inquiry. Statement of Production In-charge, Mr. Ravi Shankar Srivastava was recorded under Section 14 of the Act, who *inter alia* stated that he was Production In-charge of cable only. Further he stated that the officers permitted Smt. Renu Jindal and Shri Deepak to stay in open area as there was some power problem and it was very hot inside the factory premises. Then after sometime both Smt. Renu Jindal and Shri Deepak left the factory premises. Thereafter, the stock verification was conducted in presence of the panch witnesses and he was satisfied with the Panchnama proceedings. Thereafter, the partners of the said firm M/s. Delight Industries failed to appear for recording of the statement in spite of repeated summons. Smt. Renu Jindal subsequently appeared before the officers and tendered her statement on 20.04.2017, and again appeared on 25.05.2017.

4. As, the value of the detained goods were not provided by the appellants, the same was estimated by Revenue. After verification of latest purchase during the last fortnight from the date of search, it was observed that 707.645 MT of CR coils/ strips/ sheets valued at Rs. 3,59,16,107 was purchased from M/s Amar Steel Syndicate, Faridabad (appellant). Further, it was observed by the officers that these good were not found in the premises of M/s Delight Industries at the time of search and on verification of sales invoices checked and resumed till the date of search, there was no sales made of these goods and there was no invoice issued for goods returned as well. There were no documents available which showed the

movement of goods outside the factory of M/s. Delight Industries. Thus, it appeared to Revenue that the goods in question being CR coils/strips/sheets totalling 707.645 MT, received from M/s. Amar Steel Syndicate during 21 July, 2014 to 31 July, 2014, having total value of Rs. 3,59,16,107/- (as per invoice), were physically never delivered to M/s. Delight Industries, and as such, the cenvat credit stated in the invoices (33 in number) totalling Rs. 35,71,874/- was not available and appeared to have been fraudulently availed and utilised in duty payment. It appeared that M/s. Delight Industries have taken bogus cenvat credit on the strength of invoices issued by these appellants, M/s. Amar Steel Syndicate, without supply of goods.

5. In the follow up investigation, search was conducted in the premises of appellant M/s. Amar Steel Syndicate, Loha Mandi, Faridabad in presence of witness on 30.09.2014 and Panchnama was drawn and some records were resumed. Based on the investigation, it appeared to Revenue that the appellant M/s. Amar Steel Syndicate and its partners have wrongly passed cenvat credit to M/s. Delight Industries under invoices (totalling 33 invoices) between 21 July, 2014 to 31 July, 2014 and thus have passed a total bogus credit of Rs. 35,71,874/- including cess. Further, as per ER-I return filed by M/s. Delight Industries for July 2014, their total opening balance of cenvat was Rs. 3,80,424/- and further after receiving of cenvat on inputs from first and second stage dealer for Rs. 28,16,935/- and from manufacturer cenvat of Rs. 2,77,874/- and cenvat utilised for payment of duty on goods manufactured and cleared at Rs. 34,68,878/-, thus, leaving them with closing balance of Rs. 6,355/- as on 31 July, 2014. Further, in their ER-I return for August 2014, opening balance was Rs. 6,355/-, further credit received from first/second stage dealer Rs. 8,92,400/- and from manufacturer, credit received Rs. 39,32,334/-. They utilised cenvat credit for payment of duty of Rs. 10,83,678/- and for payment of duty on goods removed as such was Rs. 35,31,874/- and they were left with closing balance at the end of August 2014 as Rs. 2,15,537/-. It further appeared to Revenue that some of the vehicle numbers as mentioned in the invoices of M/s. Amar Steel

Syndicate were either passenger vehicles or light commercial vehicles, which cannot carry the quantities of goods mentioned in the invoices. In some instances, the transporter have also denied the event of transportation from M/s. Amar Steel Syndicate to M/s. Delight Industries. It is further alleged by Revenue that on the date of search i.e. 7 August, 2014 at M/s. Delight Industries, when stock was taken as per Annexure A to the Panchnama, such CR coil/strips/sheets supplied by M/s. Amar Steel Syndicate, were not found available in the premises of M/s. Delight Industries. It further appeared from the examination of records of M/s. Delight Industries that no sale bills have been issued for removal of the goods in question. However, as per ER-I return for the month of August 2014, M/s. Delight Industries have removed the goods in question as such back to the appellant,- M/s. Amar Steel Syndicate upon reversal of equal amount of duty. Thus, it appeared that M/s. Delight Industries in connivance with M/s. Amar Steel Syndicate have managed to avail wrong cenvat credit without actual movement of goods. Accordingly, show cause notice was issued to M/s. Delight Industries and its partners proposing to recover cenvat credit totalling Rs. 35,71,874/- with further proposal for penalty on the firm and its partrners Smt. Renu Jindal and Shri Y.M. Jindal. These appellants were also made co-noticee with proposal to impose penalty under Rule 25/26 read with Rule 15(A) on the partners/appellants.

6. The show cause notice was adjudicated on contest by these appellants, and not contested by M/s. Delight Industries and equal amount of penalty was imposed on M/s. Delight Industries and its two partners Smt. Renu Jindal and Shri Y.M. Jindal. Further, equal amount of penalty on Rs. 35,71,874/- was imposed on each of these appellants as stated herein before.

7. Being aggrieved these appellant preferred Appeal before the learned Commissioner(Appeals) who vide impugned, Order dismissed their Appeals.

8. The learned Counsel for the appellant assailing the impugned Order states that these appellants have denied all the allegations

against them. M/s. Prompt Enterprises Private Limited, Ballabhgarh, Haryana was the first stage dealer who purchased the goods in question from M/s. Bokaro Steel Plant, Faridabad Depot (PSU). These appellants received the goods alongwith invoices issued by M/s. Prompt Enterprises Private Limited, reflecting therein that the goods in question have been subjected to duty at the end of M/s. Bokaro Steel Plant. Thereafter these appellants have supplied the goods to M/s. Delight Industries, Delhi, on the basis of their invoices as the second stage dealer, reflecting therein the movement of goods at the earlier two stages and the fact of duty having already been paid at the initial stage by the manufacturer. The vehicle in which the goods were received by these appellants from M/s. Prompt Enterprises Private Limited, were further used to transport the goods to M/s. Delight Industries without unloading. So far, the allegation of excess loading on transport vehicle is concerned, the same is the normal practice in the trade. Further, M/s. Delight Industries have never denied receipt of goods alongwith invoices at any stage of investigation. It is further urged that the recipient firm– partners were present at the time of stock verification but were allowed to leave by the visiting officers, without any questioning. It is unbelievable that partners could have left without consent of the officers. It is wrong to allege that Smt. Renu Jindal and Shri Deepak, the partners of M/s. Delight Industries suddenly left the factory on the date of search.

The fact is that it was hot, the electricity had failed and the partners, as stated by Shri Ravi Shankar, were allowed by the officers to stay in open area outside. Not able to bear the heart, they left. Shri Ravi Shankar production In-charge attended the proceedings.

9. Shri Ravi Shankar production In-charge who was also present at the time of visit and witnessed the proceedings was subjected to recording of statement under Section 14 of the CE Act, 1944.

Impugned show cause notice alleges huge variation in stock but surprisingly the statement of Shri Ravi Shankar does not contain any query or questioning about the stock variation. It is wrong to say that the stock was short at M/s. Delight Industries. The facts are that stock register had not been updated hence goods were detained and subsequently converted into seizure on 16.01.2015.

It is pertinent to state here that the premises of the appellant at Loha Mandi were also searched on 30.09.2014 and stock was taken as per Annexure B to Panchanama. No excess or shortage was pointed out.

Had the goods not been sent alongwith invoices to M/s. Delight Industries, there would have been excess of stock, which was not the case. The Department has also not brought out any evidence of diversion of these goods.

10. Statement of Smt. Renu Jindal Managing Partner of M/s. Delight Industries was recorded on 25.05.2017. Smt. Renu Jindal claimed to have re-sold the goods as such, on reversal of proportionate credit for the same, to the appellant in the month of August, 2014.

When asked vide question no. 4 that on the date of search i.e. 07.08.2014 goods which came under 33 invoices were not available in the premises, Smt. Renu Jindal stated that the above mentioned goods had been sent for job work, under statement dated 25.07.2017.

The text of the statement does not contain any question about the job worker to whom goods were sent or what kind of job work is got done. The statement also does not contain any question as to how the goods sold as such were sent. How were the goods transported or who was the transporter or detail of driver or the truck number, etc.

In reply to question no. 3, she admitted that they had availed and utilized the credit against above mentioned invoices. However, they did sell the goods as such in next month and reversed proportionate credit for the same, to M/s. Amar Steel Syndicate in the month of August, 2014. Copy of ER-1 Returns for the month of August is enclosed in Appeal paper-book.

11. Statement of various persons have been recorded in the case but no statement of any of the driver of the truck was recorded. The appellant contend that it is the driver(s), who can give first

hand evidence of delivery or non delivery of goods. The statement of transporter saying that he only provided bilties is totally wrong and not acceptable. Such transporter not being made a co-noticee for his role in alleged connivance in availment of credit without receipt of goods, clearly points to the accommodation shown to him for uttering lies to help the officers, in building up the case.

12. So far, the statement of the persons of M/s. Prompt Enterprises Private Limited is concerned, to the fact that they do not accept their trucks/ vehicles to be used for further supply, to the fact that these appellant could not have used the trucks of M/s. Prompt Enterprises Private Limited in sending the goods to M/s. Delight Industries, is vague and appears to have been given under pressure of the officers. It is common in the iron and steel trade that as loading and unloading cost is heavy due to the bulk nature of goods, the goods are normally resold without unloading as full truck load to the subsequent buyer. Further, none of the drivers of the trucks in question were examined and/or their statement recorded. Further, the persons whose statement is relied upon is hit by the provisions of Section 9D of the Act, as such persons were not produced for examination and cross examination in the adjudication proceedings. Further, Revenue have not brought anything on record as to if the goods were not dispatched to M/s. Delight Industries, to whom were such goods actually dispatched. Further, no shortage or excess was found at the premises of these appellants during the visit of officers on 30 September, 2018, when physical stock was also taken. Further, the penalty have been imposed mechanically without application of mind and same is fit to be set aside. Further the explanation given by the partners of M/s. Delight Industries to the officers, that at the time of inspection in their premises on 7 August, 2014, the goods in question were lying with the job workers, and were returned as such to the appellants in the month of August 2014, have not been found to be untrue. Further, the cogent explanation is further fortified, by non finding of any discrepancy in the stock records of these appellants. It is further urged that no goods were found to have been removed clandestinely without payment of any duty. Rule 25 of CER is not applicable and

accordingly penalty is fit to be set aside on this score alone. So far as the partners are concerned, it is an admitted fact that no goods were found/ appeared to be confiscable and as such, penalty under Rule 26 of CER read with Rule 15A of CCR is bad and fit to be set aside. No discrepancy was found in the books of accounts and records of these appellants. Such transaction was also found duly recorded and disclosed in the returns with the Sales Tax Department. The learned counsel also placed reliance on the following case laws:

- **Arvind Enterprises Vs. CCE** reported in **2013 (296) E.L.T. 253(T)**
- **Victory Impex Vs. CCE** reported in **2014 (311) E.L.T. 645(T)**
- **Rajan Engg works** reported in **2012 (279) E.L.T. 306(T)**
- **Punjab Gas Cylinder Ltd.** reported in **2015 (322) E.L.T. 747(T)**
- **Saraya Sugar Mills Ltd.** reported in **2017 (358) E.L.T. 1109(T)**
- **Super Trading Company** reported in **2014 (299) E.L.T. 75(T)**
- **VMA Enterprises Pvt. Ltd.** reported in **2016-TIOL-2880-CESTAT-DEL**

13. Learned Authorised Representative for Revenue have relied upon the findings of the Court below. Further, reiterated the allegations in the show cause notice that some of the vehicles were not found to be capacitated to carry the stated weight of the goods in the invoices, and further some of the vehicles in question were not transport vehicles. Further he reiterated that the goods in question alleged to be sold and supplied by these appellant were not found in the premises of M/s. Delight Industries on the date of search which was within close vicinity of the alleged supply. Further, from the conduct of M/s. Delight Industries at the time of search and subsequent investigation, it leads to malafide on the part of the parties and indicates to the inevitable conclusion of passing on of bogus cenvat credit by these appellants to M/s. Delight Industries.

14. Having considered the rival contentions, I find that in the chain of transaction, supply of goods in question from M/s. Bokaro Steel Limited to M/s. Prompt Enterprises has not been doubted. Further, the transaction between M/s. Prompt Enterprises and the

appellant M/s. Amar Steel Syndicate, have not been doubted. The doubt has been raised by Revenue on not finding the goods at the time of inspection, for which a cogent explanation was given by the partners of M/s. Delight Industries that such goods were lying with their job workers at the relevant time, that no further investigation was made in this respect. So far, the evidence of the transporters and personnel of M/s. Prompt Enterprises is concerned, such statements have been recorded behind the back of these appellants. Further, such persons whose statements were recorded and relied upon by Revenue, were neither examined during the adjudication proceedings nor were offered for cross examination. Hence, their evidence cannot be relied upon as the same is hit by the provisions of Section 9D of the Central Excise Act. Further, I find that no mis-match of the records of these appellant nor any mis-match in the physical stock on the day of search (30 September, 2014) was found. Further, I find that Revenue have not investigated that if the goods were not received by M/s. Delight Industries, then to where alternatively were they dispatched. Further, the crucial evidence of the truck drivers in question have not been recorded. Further, I find that no goods were found to be removed clandestinely attracting confiscation and accordingly the penalty invoked under Rule 25 on the appellant firm and Rule 26 on the partners is bad and not imposable. Further, the cogent explanation given by the partners of M/s. Delight Industries was not found untrue. Further, I find that the parties in question have maintained proper records and the transaction in question was found recorded in the relevant books of accounts, registers, maintained in ordinary course of business.

15. Accordingly, I allow these Appeals and set aside the impugned Order. The appellants are entitled to consequential benefits in accordance with law.

[Order pronounced in the open Court on 20.06.2019]

(ANIL CHOUDHARY)
MEMBER(JUDICIAL)

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