CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH AT HYDERABAD

Single Member Bench - Court – I

CENTRAL EXCISE APPEAL No. 895 of 2012

(Arising out of Order-in-Appeal No. 93 TO 96/2011 (H-I) CE, dated 26.12.2011 passed by Commissioner of Customs, Central Excise & Service Tax (Appeals-I&III), Hyderabad)

CUBEX TUBINGS LIMITED .. **APPELLANT**
Survey No. 464 & 482, Near IDA,
Phase-IV, Pathancheru,
Medak District,
Telangana – 502 319.

VERSUS

Commissioner of Customs, Central Excise .. **RESPONDENT**
And Service Tax, Hyderabad-I
Kendriya Shulk Bhavan,
L.B.Stadium Road,
Basheerbagh,
HYDERABAD – 500 004.

WITH

CENTRAL EXCISE APPEAL No. 896 of 2012

(Arising out of Order-in-Appeal No. 93 TO 96/2011 (H-I) CE, dated 26.12.2011 passed by Commissioner of Customs, Central Excise & Service Tax (Appeals-I&III), Hyderabad)

P.R. BHANDARI, .. **APPELLANT**
CUBEX TUBINGS LIMITED
Survey No. 464 & 482, Near IDA,
Phase-IV, Pathancheru,
Medak District,
Telangana – 502 319.

VERSUS

Commissioner of Customs, Central Excise .. **RESPONDENT**
And Service Tax, Hyderabad-I
Kendriya Shulk Bhavan,
L.B.Stadium Road,
Basheerbagh,
HYDERABAD – 500 004.

WITH

CENTRAL EXCISE APPEAL No. 897 of 2012
(Arising out of Order-in-Appeal No. 93 TO 96/2011 (H-I) CE, dated 26.12.2011 passed by Commissioner of Customs, Central Excise & Service Tax (Appeals-I&III), Hyderabad)

U.M. BHANDARI, .. APPELLANT
CUBEX TUBINGS LIMITED
Survey No. 464 & 482, Near IDA,
Phase-IV, Pathancheru,
Medak District,
Telangana – 502 319.

VERSUS

Commissioner of Customs, Central Excise .. RESPONDENT
And Service Tax, Hyderabad-I
Kendriya Shulk Bhavan,
L.B.Stadium Road,
Basheerbagh,
HYDERABAD – 500 004.

AND

CENTRAL EXCISE APPEAL No. 898 of 2012
(Arising out of Order-in-Appeal No. 93 TO 96/2011 (H-I) CE, dated 26.12.2011 passed by Commissioner of Customs, Central Excise & Service Tax (Appeals-I&III), Hyderabad)

SURENDRA PRAKASH BHANDARI .. APPELLANT
CUBEX TUBINGS LIMITED
Survey No. 464 & 482, Near IDA,
Phase-IV, Pathancheru,
Medak District,
Telangana – 502 319.

VERSUS

Commissioner of Customs, Central Excise .. RESPONDENT
And Service Tax, Hyderabad-I
Kendriya Shulk Bhavan,
L.B.Stadium Road,
Basheerbagh,
HYDERABAD – 500 004.

APPEARANCE:
Shri S. Ravi, Sr. Advocate and Ms. Padmavati, Advocate for the Appellant.
Shri A. Rangadham, Superintendent/AR for the Respondent(s)

Coram:
Hon'ble MR. P. VENKATA SUBBA RAO, MEMBER (TECHNICAL)

FINAL ORDER No.A/30853-30856/2020

DATE OF HEARING: 27.02.2020
DATE OF DECISION: 18.03.2020

[ORDER PER: MR. P. VENKATA SUBBA RAO)

1. All these appeals arise out of same impugned order and hence are being disposed of together. Appeal No. E/895/2012 has been filed by the assessee M/s Cubex Tubings Limited and the remaining appeals are filed by individuals working with the assessee, challenging the personal penalties imposed upon them. Hence, all these appeals are being disposed of together.

2. Heard both sides and perused the records.

3. The appellants are manufacturerers of copper tubes, copper Rods, Copper Strips, Copper Flats, Brass Tubes, Cupro Nickel Pipes and are registered with the Central Excise Department and have been paying excise duty. They also avail CENVAT Credit on the inputs which they receive from their suppliers. The Directorate General of Central Excise Intelligence (DGCEI) of the Department of Revenue investigated the appellant and several others and came to the conclusion that the appellant had wrongly availed CENVAT Credit on eight invoices. It is the allegation that the appellant has not received any material on these invoices and has only received invoices and have taken CENVAT Credit on them. Accordingly a show cause notice was issued to the appellant assessee seeking to deny CENVAT Credit of Rs. 22,27,578/- against seven invoices detailed in the Annexure D-1 to the show cause notice and recover the same under Rule 14 of CCR 2004 read with sub section (1) of Section 11A of the Central Excise Act, 1944 and the proviso thereto. It also proposed to deny and recover an amount of Rs. 6,01,183/- taken as CENVAT Credit on the strength of one invoice listed in Annexure D-2 under the same provisions. Interest was also demanded under section 11 AB and penalty was proposed to be imposed under section 11AC of the Central Excise Act, 1944 and also under Rule 25 of Central Excise Rules, 2002. It was also proposed to impose penalties upon Shri P.R. Bhandari, Managing Director, Shri U.M. Bhandari, Executive Director and Sri Surendra Prakash Bhandari, Chief Executive of the assessee firm under Rule 26 of Central Excise Rules, 2002.

4. After following due process the Ld. Additional Commissioner by her Order-in-Original No. 13/2011(C.E.), dated 29.03.2011 confirmed the demands along with interest and imposed penalties as proposed in the show cause notice. Aggrieved, the appellants appealed to the first appellate authority who, by the impugned order, upheld the order of the lower authority and rejected the appeals. Hence these appeals.

5. The issue in dispute is whether the appellant assessee is entitled to CENVAT Credit on the disputed eight invoices or otherwise. It is the case of the Revenue that no material was received by the appellant against these invoices and only invoices were received and CENVAT Credit has been taken. It is the case of the appellant that they have indeed received the material against these invoices and have also accounted for them in their stock register and in their production records. Therefore, they are entitled for the CENVAT Credit and the entire show cause notice is without any merits.

6. I now proceed to examine the disputed eight invoices and the evidence produced by the Revenue to deny CENVAT Credit and the evidence produced by the appellant to claim that they are entitled to the CENVAT credit. The eight invoices in dispute are as follows:

S.No.	**Invoice No.**	**Date**	**Description of the material**	**Quantity in MT.**	**TOTAL Credit availed(Rs.)**
1	14	7-Jul-06	Remelted Copper Ingots	9.325	481896
2	13	7-Jul-06	Remelted Copper Ingots	8.970	463550
3	59	21-Jan-08	Remelted Copper wire bars	5.270	268659
4	60	21-Jan-08	Remelted Copper wire bars	4.910	250307
5	61	21-Jan-08	Remelted Copper wire bars	4.210	214634
6	62	21-Jan-08	Remelted Copper wire bars	5.460	278345
7	64	21-Jan-08	Remelted Copper wire bars	5.300	270187
8	47	11-Oct-06	Copper Wire	9.694	601183

It is undisputed that the appellant has taken CENVAT Credit on the strength of these invoices and has accounted them for in their records. Of the above, S.No. 1 to 7 have been issued by a registered dealer M/s Swastik Insulators, Secunderabad while Sl.No. 8 issued by M/s Sree Enterprises, a manufacturer based in Secunderabad. Sl. No. 1 & 2 are issued by M/s Swastik Insulators selling the material which they are said to have received from M/s Rajeswari Metallurgicals Limited, Bhiwadi, Mumbai while Sl. No. 3 to 7 have been issued against the material said to be sourced from M/s M.M. Enterprises, Chennai. Sl. No. 8, of course, is a manufacturer's invoice.

7. I now proceed to examine the evidence in respect of three categories of invoices i.e. Sl. No. 1 & 2 where the invoices were issued by M/s Swastik Insulators based on the material said to have been sourced from M/s Rajeswari Metallurgicals Limited, Bhiwadi, Mumbai, Sl. No. 3 to 7 where the material was said to be sourced from M/s M.M. Enterprises, Chennai and Sl. No. 8 being the manufacturer's invoice issued by M/s Sree Enterprises.

a) <u>Sl. No. 1 and 2:</u> These invoices were issued by M/s Swastik Insulators. Revenue seeks to deny CENVAT Credit against these invoices on the basis of the investigations conducted by DGCEI which showed that the appellant had not received any material against these invoices and has only received the invoices and took credit. They had recorded the statements of the following which were used as evidence-

(i) Shri R.S. Elanjeran on 31.03.2008. He is the proprietor of M/s Swastik Insulators and has stated that the documents were supplied to the appellant by them through one Sri Dilip Kothari and in all the above transactions, they have neither received the material nor supplied them to the appellants. He has also identified the entries made in their register against the receipt and issue of these invoices.

(ii) Shri Muthukari Jayaram, Managing Director of M/s Rajeswari Metallurgicals Limited, Bhiwadi on 26.05.2008. He said that he came to know about Swastik Insulators through one Shri Dilip Kothari and that the invoices No. 15 & 16 were issued by them to M/s Swastik Insulators are for remelted copper ingots. In fact, after importing these ingots and clearing from Customs, they were transported from Nhavasheva Port to Bhiwadi and he does not have any documents to show that further transportation of these goods from Bhiwadi to M/s Swastik Insulators, Secunderabad. The goods represented by these invoices were actually sold in cash in Bhiwadi. He further affirmed that they have received payments for these ingots by cheques (from Swastik Insulators) through Shri Dilip Kothari and since no goods were supplied, equivalent cash was returned to Shri Dilip Kothari. He further said that the consignment notes of the transporter M/s Varna Transport, Mumbai was arranged by his employee.

(iii) It was found that M/s Swastik Insulators had issued invoices to the appellant (at S.No. 1 & 2 above) for which material was shown to have been sourced from M/s Rajeswari Metallurgicals Limited, Bhiwadi vide Invoice No. 15, dt. 05.07.2006 and 16, dated 05.07.2006. Corresponding consignment notes 4 & 5 indicated that they were transported by M/s Varna Transport, Mumbai vide LR Nos. 865 & 866, dated 05.07.2006. When the Officers of DGCEI visited the address shown in the consignment notes, they found no such transporter at that address nor did such a transporter exist at any time before.

(iv) Two vehicle Nos. **AP-07-TT-9777** and **AP-03-6372** which were supposed to have transported the goods from Bhiwadi to Swastik Insulators, Hyderabad and submitted to Cubex Tubings (the appellant) were also verified by the investigating officers. It was found that the vehicle bearing No. AP-07-TT-9777 was indeed an Auto Rikshaw while AP-03-6372 was a motor cycle and therefore they could not have carried the goods.

8. Statements of Shri P.R. Bhandare, Shri U.M. Bhandare and Shri Surendra Prakash Bhandare of the appellant assessee were recorded by the Officers who affirmed that all the goods have been received against the invoices and have been accounted for in their stock registers and utilised in the manufacture of their final products. There was no discrepancy in either receipt of the goods or in their utilisation. There was no discrepancy in recording CENVAT credit in their RG-23 reports also. Therefore, these three statements are against Revenue's case and in favour of the appellants.

9. During the hearing before the original adjudicating authority, Shri Jayaram Muthukali, Managing Director of Rajeshwari Metallurgicals Limited, Bangalore was cross examined by the appellant's advocate on 03.02.2011 in which he has affirmed that all goods were despatched as indicated in the documents. He further stated that M/s Swastik Insulators are their consignment agents and he had sent material to M/s Swastik Insulators and payments were received by cheques. On being specifically asked about contrary statement given by him before the Officers of the investigation, he said that the last paras of the statement and those written by him in hand were made under threat and coercion while recording the statement in the middle of the night and he had signed the statement. On the question of M/s Varna Transport, Bhiwadi being a non existent transport agency, he said that they had not only transported the goods to Hyderabad but are also transporting the goods to Bangalore using the same Varna Transport and they have paid transportation charges to M/s Varna Transport by cheque, after deducting TDS. He further said that in a very recent case, Bangalore Central Excise Commissionerate had issued notices to M/s Varna Transport and have received replies from them. He, therefore, said that it is not clear as to how the departmental officers have come to the conclusion that Varna Transport was a non existent firm.

10. On the question of the vehicles not being trucks at all, Ld. Counsel for the appellant submits that the dispute is only with respect to two consignments received from M/s Swastik Insulators which were originally sent by M/s Rajeswari Metallurgicals Limited from Bhiwadi. As far as the vehicle No. AP07 TF 9777 is concerned, Ld. Counsel would submit that what the department has verified was the registration details of the vehicle No. AP07 TT 9777 which was an Auto Rikshaw and not of AP07 TF 9777. The invoices as well as the statements attached to the Show Cause Notice themselves show that no consignments were received through AP 07 TT

9777 but have been received only in truck No. AP07 TF 9777. The Department has not demonstrated that this vehicle is not a truck and the registration of AP07 TT 9777 is irrelevant. As far as the Truck No. AP 03 6372 is concerned, he would submit that there could be due to a clerical error in mentioning the number of the truck in the invoice.

11. Ld. Counsel for the appellant asserts, insofar as these two invoices are concerned, that there is no dispute that the goods have been accounted for in their records and final goods have been manufactured out of such inputs and payments have been made by cheque to the supplier. The statement of Shri Jayaram Muthukali of Rajeswari Metallurgicals Ltd. who sent the material from Bhiwadi, Mumbai, recorded by their Officers was negated by him during cross examination. The department has not re-examined Shri Jayaram to prove that he has turned hostile and made false statement during cross examination. Therefore, at this stage, the statement of Shri Jayaram Muthukali before the Officers has no validity.

12. Cross examination of Shri R.S. Elanjeran, Proprietor of M/s Swastik Insulators who issued the invoices, was also sought. However, he could not appear as he was suffering from cancer and requested to dispense his cross examination and affirmed that he goes by whatever he had given before the Officers of DGCEI.

13. Sl.No. 3 to 7 of the table above – These invoices issued by M/s Swastik Insulators on the strength of the material said to have been received from M/s M.M. Enterprises, Chennai. The departmental evidence in respect of these invoices are (i) Statement of Shri R.S. Elanjeran, Proprietor of M/s Swastik Insulators that they have not received the material or sold it to the appellant but only issued invoices and recorded receipt of sales in their Registers. Shri R.S. Elanjeran, as discussed above, was not available for cross examination as he was suffering from cancer but he affirmed in writing that he stands by whatever statement he gave before the investigating officers. (ii) Statement of Shri M.R. Mardia, Proprietor of M/s M.M. Enterprises in which he confirmed to the Officers that they had only issued invoices in the name of M/s Swastik Insulators and had not actually despatched any goods. This statement was negated by Shri Mardia during cross examination before the adjudicating authority. The Department did not re-examine Shri Mardia to establish that he was lying and had not actually despatched any materials. (iii) Statement of Shri Dilip Kothari, Consignment Agent in his statement dated 03.06.2009 stated that with his help, M/s Swastik Insulators was appointed as consignment agents for both Rajeswari Metallurgicals Limited and M.M. Enterprises, Chennai. That he also introduced the appellant to M/s Swastik Insulators proprietor Shri R.S. Elanjeran. He said that he is not aware whether or not M/s Swastik Insulators had physically received the material from the suppliers and supplied to the appellant. He was not aware whether any orders were placed with M/s M.M. Enterprises or M/s Rajeswari Metallurgicals Limited by M/s Swastik Insulators. In other words he has confirmed that he introduced the appellant to M/s Swastik Insulators and also the supplier to M/s Swastik Insulators but has not made any statement either way with regard to supply of material or otherwise. The statements of S/Shri P.R. Bhandare, U.M. Bhandare and Surendra Prakash Bhandare, the appellants herein, before the DGCEI Officers confirmed that they have indeed received the materials as per the invoices.

14. As far as the transportation of the goods in respect of these invoices is concerned, the appellant has transported these goods from M/s Swastik Insulators to their own premises in their own trucks. The truck numbers in which the goods were supposed to have been sent from M/s M.M. Enterprises to M/s Swastik Insulators were not investigated or their existence disputed in the show cause notice. Ld. Counsel for the appellant supports that in this case, apart from the statement of Shri R.S. Elanjeran, Proprietor, there is no evidence that they have not received these goods. Shri R.S. Elanjeran was not even present for the cross examination due to his illness.

15. The goods received from Sree Enterprises (Sl.No. 8 of the table). Sree Enterprises is a manufacturer registered in Hyderabad and have issued a manufacturer's invoice. The Head Office of M/s Sree Enterprises is located in New Delhi and it is owned by Shri Sanjay Bansal. The local head of Sree Enterprises is one Mr. Anil Goel. Investigations conducted by DRI in Delhi showed that the appellant is importing copper rods and selling them in the market. Further investigations also showed that they are supposed to have imported copper rods through ICD Hyderabad and have drawn the same into copper wires and sold to the appellant. Power consumption during the relevant period with Sree Enterprises was so slow that it would be impossible for them to have manufactured the wires. M/s Sree Enterprises had shown purchase of copper scrap and copper rods from otehr suppliers viz., Ganesh Metal Company and Ganesh Metal Agency etc. Examination of the VAT, TIN quoted in the invoices of M/s Shree Ganesh Metal Agency showed that the TIN was not existent and was not allotted to anybody.

16. Shri Dharmendra Sharma, authorised signatory of M/s Sri Ganesh Metal Company was summoned and in his statement on 26.09.2007 indicated that they are registered with the Sales Tax Department but he had no knowledge of any firm with the name of Sri Ganesh Metal Agency during copper scrap business. It was, therefore, concluded by the Officers that Ganesh Metal Agency is a fictitious firm and therefore no material was purchased from them and only fake invoices were produced. Since M/s Sree Enterprises apparently not received the material from Ganesh Metal Agency nor have they consumed the requisite power, it was concluded that it was impossible for them to have manufactured copper wire. Since it is impossible for them to have manufactured copper wire they could not have sold the same to the appellant. For these reasons, it was concluded that the invoice issued by M/s Sree Enterprises is a fake invoice and no goods were received against the same.

17. Statement of Shri Anil Goel of Sree Enterprises was recorded by the Officers on 30.07.2007. He was, therefore, cross examined by the Counsel for the appellant on 18.01.2011 before the adjudicating authority during which he confirmed that he was the authorised person of Sree Enterprises, and asserted that they had received all the materials which have been recorded and have processed them and sold and the power consumption during the period was sufficient to manufacture the products in question. He also asserted that the consideration for sale has been received in account payee cheques. Evidently, there was a discrepancy between this statement during cross examination and his original statement and other facts which came to light by the department during investigation. However, the department did not re-examine Shri Anil Goel to establish that what was stated during the cross examination before the adjudicating authority was not true and in fact no goods were manufactured by them or supplied to the appellant against the disputed invoice (Sl.No. 8 of the table above).

18. I have considered the arguments on both sides and the evidences available on record. As far as the invoices issued by M/s Swastik Insulators are concerned, two of these pertain to the invoices issued against the materials supposed to have been received by them from M/s Rajeswari Metallurgicals Limited, Bhiwadi, Mumbai. In respect of these invoices, the evidences in favour of the Revenue are the statements of Shri R.S. Elanjeran, Proprietor of M/s Swastik Insulators given on 31.03.2008 in which he confirmed that they have not received any material nor sold it to the appellant and have only issued invoices and made entries in their records and registers. Shri Elanjeran has not been cross examined as he was unwell but he gave in writing a letter that he stood by whatever statement he had made before the Officers of DGCEI. Therefore, to this extent, the evidence is against the appellant and in favour of the Revenue. The second piece of evidence is the statement of Shri M. Jayaram, Managing Director of M/s Rajeswari Metallurgicals Limited, Bhiwadi, made on 26.05.2008, supporting the Revenue's case. He was cross examined and has negated his own statement. He affirmed that all goods were supplied as per the records. Revenue did not re-examine Shri M. Jayaram to disprove his statement. Therefore, the statement of Shri M. Jayaram in respect of these invoices is against the Revenue. The third piece of evidence adduced by Revenue in respect of these invoices is that enquiry by the Officers showed that M/s Varna Transport who is supposed to have transported the goods in question was not available at the address indicated in the documents and had never been there at that location. When Shri M. Jayaram was questioned about this and he asserted that he had not only sent the goods through M/s Varna Transport to Hyderabad but had also sent the goods through the same transporter to Bangalore and that they have made payments after deducting TDS to M/s Varna Transport. He further asserts that Central Excise Commissionerate, Bangalore had issued notice to M/s Varna Transport in another case and has also received replies from them. He would, therefore, assert that M/s Varna Transport are exist and has rendered these services and so paid for it. In this factual matrix, I find that non-existence of M/s Varna Transport has not been proven by the Department to a reasonable degree of certainty in order to disallow CENVAT Credit on the goods said to have been transported by them. The next piece of evidence which the Revenue is adducing to dispute is supply of materials by M/s Varna Transport through vehicle No. AP-07-TT-9777 under which the goods were supposed to have been transported was actually an auto rikshaw and not a truck. Ld. Counsel for the appellant rightly submits that the enquiry was with respect to the wrong vehicle number and the goods were transported as per the documents in vehicle No. AP-07-TF-9777, regarding which no enquiry was made. Similarly, Revenue asserts that the vehicle No. AP-03-6372 under which the goods were supposed to have been transported from Mumbai to Hyderabad was actually a motor cycle and could not have transported the goods in question. Ld. Counsel for the appellant submits that there could have been a clerical or typographical error in mentioning the truck number in this particular invoice and in the absence of any other evidence that the goods were not received, this should not be held against them to deny CENVAT Credit. The last piece of evidence was the statement of Shri Dilip Kothari who was a Consignment Agent and who introduced the appellant to M/s Swastik Insulators and M/s Swastik Insulators in turn to M/s Rajeswari Metallurgicals Limited and M/s M.M. Enterprises introduced. In his statement, he only confirmed that he had introduced these parties but had pleaded ignorance in respect of the disputed transactions. Therefore, no conclusion in either way can be drawn based on his statement.

19. Invoices at Sl.No. 3 to 7 issued by M/s Swastik Insulators on the basis of invoices received from M/s M.M. Enterprises, Chennai. The evidence adduced by the Revenue in respect of these consignments is the aforesaid statement of Shri R.S. Elanjeran, Proprietor of M/s Swastik Insulators who affirmed that he had neither received the goods nor supplied the same which he stood by in the form of a letter when called for cross examination. He was not cross examined as he was suffering from cancer. There is no dispute regarding the transporters or the truck numbers as far as these goods are concerned. The second piece of evidence by the Revenue is the statement of Shri M. R. Mardia, Proprietor of M/s M.M. Enterprises, affirming that they have issued invoices without actually supplying the goods. Shri Mardia was cross examined during adjudication and has negated his earlier statement. Revenue has not re-examined Shri M.R. Mardia and therefore the evidentially valued the statement of Shri M.R. Mardia is no longer exists. The last piece of evidence adduced by the Department is the statement of Shri Dilip Kothari, who does not confirm anything regarding the specific transaction but only affirms that he had introduced the appellant to M/s Swastik Insulators and M/s Swastik Insulators to M/s M.M. Enterprises.

20. The invoice at Sl.No. 8 of the statement issued by M/s Sree Enterprises, the evidence which the department has in respect of these invoices is the statement of Shri Anil Goel recorded during the investigation which was negated by him when cross examined during hearing before the adjudicating authority. He was not re-examined by the Revenue to prove that his original statement was correct and his statement during cross examination was not correct. The second piece of evidence which the Revenue has, is the investigation which showed that the power consumption in the factory of M/s Sree Enterprises was too low to manufacture the goods which they are claimed to have supplied against the invoice. The third piece of evidence is the investigation conducted by the Officers and found that M/s Varna Transport actually does not exist. Shri Anil Goel in his statement asserts that all materials were received and sold out and the power consumption was enough to draw the wire. These issues were not contested by the Revenue during adjudication proceedings by re-examining Shri Anil Goel.

21. I now proceed to decide the availability of CENVAT Credit in respect of aforesaid invoices:

(i) Sl.No. 1 & 2: I find that after the cross examination and the Revenue not re-examining the witness for cross examination to contest their negation of the original statements, the evidentiary value of such statements is in doubt. The only statement which has not been retracted was that of Shri R.S. Elanjeran, Proprietor of M/s Swastik Insulators. He could not appear for cross examination due to ill health and also gave a letter asserting that he stood by his earlier statement. The existence of M/s Varna Transport is disputed by the Revenue based on their enquiry and asserted by the supplier Shri M. Jayaraman stating that they have paid the transporter by cheque after deducting TDS and the transporter has also been issued notices by Central Excise Commissionerate, Bangalore in another case and replies have been received. As far as registration numbers of two vehicles is concerned, one is said to be an auto rikshaw but a bare perusal of the number shows that the wrong number was verified by the department. The vehicle in which the goods were supposed to have been carried out was AP 07 TF 9777 but what was verified was AP 07 TT 9777. The second vehicle number which is disputing is AP 03 6372 which was a motor cycle. Ld. Counsel for the appellant asserts that there could have been a clerical error in mentioning the truck number and that itself should not deprive them of their CENVAT credit. Considering the totality of the evidence, I do not find sufficient evidence to deprive the appellant of the CENVAT Credit on these two invoices and it is not in dispute that receipt of the goods has been accounted for and the amounts have been paid and goods have been taken to recount for manufacture of the final products. Some of the statements which were relied upon by the Department were negated during cross examination and the Department has not re-examined them all. The only evidence against the appellant is the statement of Shri R.S. Elanjeran, Proprietor of M/s Swastik Insulators, on 31.03.2008 and the fact that one of the truck numbers on which the goods were supposed to have been received was indeed a motor cycle. It was perfectly possible that there was a typographical error in mentioning the vehicle number. As the Department had committed an error in not verifying the vehicle No. AP 07 TF 9777, but had instead verified the vehicle No. AP 07 TT 9777, it is an equally possible human failure that the person preparing the documents to have erred in mentioning the vehicle number. Under these circumstances, I find the assessee cannot be denied of CENVAT Credit on these two invoices.

(ii) <u>Sl.No. 3 to 7:</u> These invoices were issued by M/s Swastik Insulators on the strength of the goods received from M/s M.M. Enterprises. The first evidence in respect of these invoices is the statements of Shri R.S. Elanjeran, Proprietor of M/s Swastik Insulators that they have not received or supplied any goods. He could not be cross examined due to his ill health and has stood by his original statement dated 31.03.2008, through a letter. The second was the statement of Shri M.R. Mardia, Proprietor of M/s M.M. Enterprises, who is supposed to have supplied the goods from Chennai. In his original statement, he asserted that they had only issued invoices and during cross examination he has negated his statement. Revenue has not re-examined Shri M.R. Mardia to prove that the statement during cross examination was incorrect. Shri Dilip Kothari, Consignment Agent who introduced M.M. Enterprises to M/s Swstik Insulators and in turn M/s Swastik Insulators to the appellant has only confirmed that he has made introduction but has denied any knowledge of the disputed transaction either way. His statement does not support the case of either party. In this factual scenario, I do not find sufficient evidence to deny the appellant CENVAT on the disputed invoices especially when the goods have been recorded as received and utilised and payments have been made to the suppliers. Apart from the statement of Shri R.S. Elanjeran, there is nothing in favour of the

Revenue in respect of these invoices. This single statement, in my opinion, is not sufficient to deny the appellant the CENVAT Credit especially when he could not be cross examined, due to health reasons. I, therefore, find that the appellant is entitled to CENVAT Credit on the disputed invoices.

(iii) S.No. 8: This invoice was issued by M/s Sree Enterprises. Revenue's case in respect of this invoice is that DRI investigated M/s Sree Enterprises and they had consumed insufficient power to manufacture the goods and therefore it is impossible for them to have sold the goods at all. Investigations also showed that one of the persons from whom they were supposed to have purchased material was not existent. The case of the Revenue is that since they could not have purchased the material nor have they used the power, they could not have manufactured the copper wire. Since they could not have manufactured the wire, they could not have supplied the goods to the appellant. Therefore, the invoice is fake and no CENVAT Credit is admissible. I find that Shri Anil Goel, Chief Executive of M/s Sree Enterprises has asserted during the cross examination that they had indeed received all the materials indicated in their records and they had consumed sufficient power to manufacture the goods. He further asserted that they have sold the goods to the appellant and received sale consideration by account payee cheques. So, it is a case of the statements of Shri Anil Goel vs. Investigations done by the Officers. The truth could have come out if Shri Anil Goel was re-examined at length by the Department during adjudication proceedings and to show if he was lying. This was not done by the Department. In view of the above, I find that the assertion of the Department that M/s Sree Enterprises could not have manufactured the goods and therefore by implication have not supplied the goods, cannot form the basis to deny the appellant CENVAT Credit. At any rate, the present dispute is regarding entitlement of the CENVAT Credit by the appellant. As the recipient of the goods and CENVAT invoices, the appellant is not required to investigate the operations of their supplier to assess whether or not they had the capacity to manufacture the goods, whether or not they had procured sufficient raw material during the period and whether or not they consumed sufficient power to justify manufacture of the goods. CENVAT Credit can be denied if it is proved that the appellant has not received the goods. All accounts of the appellant and the supplier show that they have received the goods, used them and have paid the supplier by account payee cheques. Under these circumstances, I do not find sufficient evidence to deny the appellant CENVAT Credit on the invoice issued by M/s Sree Enterprises.

(iv) I find that there is not sufficient evidence to deny CENVAT Credit to the appellant against any of the eight invoices or to hold that the goods have not been received against them. Therefore, the demands raised in the show cause notice and confirmed by the Order-in-Original and upheld by the impugned order need to be set aside.

Consequently, the interest and penalties also need to be set aside against the assessee. For the same reason, personal penalties imposed upon Shri P.R. Bhandare, Shri U.M. Bhandare and Shri Surendra Prakash Bhandare also need to be set aside which I do so.

O R D E R

22. The impugned order is set aside and the appeals are allowed with consequential reliefs, if any.

(Pronounced in the Chamber on **18.03.2020**)

(P. VENKATA SUBBA RAO)
MEMBER (TECHNICAL)

vrg