IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL,
EAST REGIONAL BENCH : KOLKATA

Appeal No. Ex/77075/2017

Arising out of Order-in-Appeal No. 41/KOL-II/2017 dated 20.07.2017 passed by the Commissioner of CGST & Central Excise (Appeal-I), Kolkata.

M/s Premiar Iron & Steel Works (P) Ltd.

...APPELLANT(S)

VERSUS

Commissioner of CGST Howrah North

...RESPONDENT (S)

APPEARANCE
Shri M. K. Guha, Neogy, Consultant for the Appellant (s)
Shri S. Guha, A.C. (AR) for the Respondent (s)

CORAM:
SHRI P. K. CHOUDHARY, HON'BLE JUDICIAL MEMBER

DATE OF HEARING:-...19.01.2018

DATR OF PRONOUNCEMENT.23.02.2018

ORDER N0. FO/A/75190/2018

Per Shri P. K. Choudhary :

Briefly stated the facts of the case are that the appellant is engaged in the manufacture of other Cast articles of Iron etc. classifiable under Chapter 73 of the Central Excise Tariff Act, 1985. A Show Cause Notice dated 13.03.2015 was issued alleging that the appellant availed irregular CENVAT Credit amounting to Rs.6,77,534/- without receiving the goods on the basis of Invoice. The Adjudicating authority confirmed the demand of CENVAT Credit of Rs.6,77,534/- alongwith Interest and also imposed penalty of equal amount of duty. In the impugned Order the Commissioner (Appeals) upheld the Adjudication Order.

2. Heard both the sides and perused the appeal records.

3. On perusal of the records I find that during the scrutiny of the records of the appellant by the Central Excise Officers it was noticed that the appellant availed CENVAT Credit on the inputs supplied by M/s. Dankuni Steel Limited, Liluah who passed the CENVAT Credit on inputs without receiving the goods. It is deserved that the Departmental Officer during their visit, could not locate the Dealer's/Supplier's Unit. Hence, it has been alleged that the appellant had availed the credit on the strength of Invoices issued by the said Dealers without receiving the goods. The Learned Counsel for the appellant submitted that they received the goods accompanied with the Dealer's Invoice. It is also submitted that the Tax Invoice-cum-Excise Invoice issued by the Dealer is showing the Registration Number.

4. I find that the Commissioner (Appeals) observed that a Dealer cannot pass on the credit without actual receipt and sale of duty paid goods in their registered godown. Once it is noticed under the investigation proceedings and the revocation of registration certificate that the dealer is not passing the

credit in a proper manner, then the substantial benefit cannot be availed.

5. I find that there is no clear finding in the present proceedings as to whether the Registration Certificate of the Dealer was revoked. In my considered view it is a crucial test to verify as to whether the Dealers Registration Certificate was revoked or not. There is no clarity in the facts of the case. Hence, it is appropriate to remand the case to the Adjudicating authority to examine afresh after considering the facts in detail.

6. In view of the above discussion, the impugned Order is set aside and the matter is remanded to the Adjudicating authority to decide afresh after considering the submission of the appellant and to pass Order in accordance with law.

(Pronounced in the open court…23.02.2018….)

(P. K. CHOUDHARY)
MEMBER (JUDICIAL)

T.K.