

**IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
KOLKATA**

REGIONAL BENCH – COURT NO.2

Excise Appeal No.78560 of 2018

(Arising out of Order-in-Appeal No.47/DGP-CE/2018-19 dated 15.05.2018 passed by Commissioner (Appeals) of CGST & Excise, Siliguri)

M/s Shakambari Overseas Traders Private Limited
Raturia, Angadpur, Durgapur-713215

Appellant

VERSUS

Commissioner of CGST & Excise, Bolpur
Nanor Chandidas Road,SIAN, Dist.-Birbhum, Bolpur

Respondent

APPEARANCE :

Shri N.K.Chowdhury, Advocate for the appellant
Shri P.K.Ghosh, Authorized Representative for the Respondent

CORAM:

HON'BLE MR.R.MURALIDHAR, MEMBER (JUDICIAL)

FINAL ORDER NO...75912/2023

DATE OF HEARING : 26 .06.2023

DATE OF DECISION : 26.06.2023

Per R.Muralidhar :

The appellant is a manufacturer of TMR Bar. In the course of the said manufacture, they procured 608 MT of scrap from M/s Industrial Associates, Howrah. They have procured 32 consignments under their invoices and have taken Cenvat Credit of Rs.11,21,079/-. After undertaking the investigation and enquires at the end of the supplier, the Department issued show-cause notice on the following grounds :

- (a) The appellant has not received 608 MT of scrap from the vendor. The invoices were issued only to facilitate for

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taking the cenvat credit, hence the same is in the nature of paper transaction.

(b) The vendor did not have proper infrastructure for manufacturing and generating such scrap at his end.

(c) The activity of cutting and generating scrap does not amount to manufacture

2. Based on these grounds, the appellant was issued show-cause notice for reversal of cenvat credit of Rs.11,21,079/-. After due process, the lower authorities confirmed the demand.

3. Being aggrieved, he appellant is before the Tribunal.

4. The Id.Advocate for the appellant submits that the entire case has been initiated based on assumption and presumption. The show-cause notice itself admits that the appellant has paid the vendor for the invoices raised and to the transporter for the freight charges incurred. He submits that the Department has recorded the statement of 8 transporters out of 32 transporters used from time to time for transportation of these goods. Even the statement recorded from these 8 transporters have not been made available to the appellant. Further, the appellants were not allowed to cross examine these persons at the adjudication level. They have made specific request that the recorded statements should be made available to them and also requested to allow the persons to be cross examined. The Department has also relied on the statements recorded from two officials of the vendors. The appellant had requested for cross-examination of these persons

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also, which was not granted to the appellant. The appellant further submits that as to whether the activity undertaken by the vendor, amounts to manufacture or not, can be taken up only at the end of the vendor and the same cannot be taken up on the recipient's end to deny the cenvat credit. In view of the above submissions, the Id.Advocate prays that the appeal may be allowed.

5. The Id.A.R. for the Revenue reiterates the findings of the lower authorities. He submits that after thorough investigation was taken up at the end of the vendor, it was ascertained that the vendor has no facility to supply the huge quantity of 608 MT to the appellant. They have made enquiry with the Road Transport Officials, who have stated that the vehicles are not capable for transporting such consignments. Apart from this, he submits that the truck owners clearly state that they have not transported the scrap to the appellant. Therefore, he submits that the present appeal is required to be dismissed.

6. Heard both sides and considered the submissions.

7. In so far as the grounds taken by the Department that the activity undertaken by the vendor does not amount to manufacture, the same cannot be considered since such issue is to be taken up by the Department against the vendor by the Jurisdictional authorities. When a proper invoice has been made by vendor, which clearly shows the payment of Excise duty and the vendor has filed their Returns, the eligibility of cenvat credit cannot be questioned at the end of the appellant who is the receiver of goods. Further, it is also observed

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from the Orders passed by the lower authorities that they have not denied the cenvat credit on this ground.

8. Coming to the allegation of the Department, that the appellant did not receive the scrap and this was only a paper transaction, the Department has relied upon 8 statements out of 32 trucks used by the appellant. In spite of seeking a copy of these statements and seeking cross examination of these persons, the same was not granted by the authorities. When the statement itself is not issued to the appellant, it is not clear as to whether the same were supporting the Department's case or not. I cannot go merely by the observations of the adjudicating authority that the statements are in favour of the Department. It is a gross error on the part of the Adjudicating authority that when the appellant sought to cross examine of the said 8 persons, the same was not granted. The Adjudicating Authority has failed to follow the principles of natural justice. It has been held in catena of decisions that the persons recording the statement under Section 14 of Central Excise Act, 1944 have to reiterate the same before the adjudicating authority and then only it should be admitted as an evidence. After this, an opportunity should be given to the noticee to cross-examine them. In this case, in spite of the appellant seeking cross examination of these persons, the adjudicating authority has failed to give them this opportunity.

9. While the Department relies on the Road Transport Authorities' statement about the vehicles not being capable of transporting the

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goods, these statements/letters have not been provided to the appellant. Hence, their veracity has not been checked nor could be countered by the appellant.

10. Non-issue of recorded statement of 8 transporters and 2 other officials, denial of cross-examination of these persons and non-providing of the statements/letters from RTO about the vehicles, are grave errors committed in the investigation process which have proved to be fatal to the Department's stand.

11. The entire proceedings have been initiated based on presumption and assumption without any concrete evidence brought in by the Department against the appellant. After going through in details of payments made both to the vendor and to the transporter for the freight charges, which are already admitted in the show-cause notice itself, I find that the Department has not made out any case against the appellant.

12. Accordingly, I allow the appeal filed by the appellant, with consequential relief, if any, as per law.

(Dictated and pronounced in the open court)

Sd/-
(R.Muralidhar)
Member (Judicial)

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