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

REGIONAL BENCH – COURT NO.1

(1) <u>Excise Appeal No.76169 of 2018</u>
(On behalf of Appellant)

(Arising out of Order-in-Original No.34/Commr./CGST & CE/HWH/Adjn/2017-18 dated 29.12.2017 passed by Commissioner of CGST & Excise, Howrah)

M/s Uma Iron & Steel Industries Limited
167/2 Mirpara Road, Bhattanagar, Liluah, Howrah-711204

Appellant

VERSUS

Commissioner of CGST & Excise, Howrah
15/1, Strand Road,Kolkata-700001

Respondent

WITH

(2) <u>Excise Appeal No.76188 of 2018</u>
(On behalf of Appellant)

(Arising out of Order-in-Original No.34/Commr./CGST & CE/HWH/Adjn/2017-18 dated 29.12.2017 passed by Commissioner of CGST & Excise, Howrah)

M/s Calcutta Metal Corporation
135/100,Girish Ghosh Road, Belur, Howrah-711202

Appellant

VERSUS

Commissioner of CGST & Excise, Howrah
15/1, Strand Road,Kolkata-700001

Respondent

AND

(3) <u>Excise Appeal No.76206 of 2018</u>
(On behalf of Appellant)

(Arising out of Order-in-Original No.34/Commr./CGST & CE/HWH/Adjn/2017-18 dated 29.12.2017 passed by Commissioner of CGST & Excise, Howrah)

M/s Jekay International Track Private Limited
54/3, Goushala Road, Liluah, Howrah-711204

Appellant

VERSUS

Commissioner of CGST & Excise, Howrah
15/1, Strand Road,Kolkata-700001

Respondent

(4) Excise Appeal No.76227/2018
(M/s Dayal Commercial Company)

(5) Excise Appeal No.76258/2018
(M/s Carnation Industries Limited)

(6) Excise Appeal No.76259/2018
(M/s Carnation Industries Limited)

(7) Excise Appeal No.76262/2018
(M/s Indian Alloys Fabricators)

(8) Excise Appeal No.76280/2018
(M/s Hobb International Private Limited)

(9) Excise Appeal No.76287/2018
(M/s Kishan Bajaj @ Krishan Chandra Bajaj)

(10) Excise Appeal No.76352/2018
(M/s Maa Shakti Iron Works)

(11) Excise Appeal No.76546/2018
(M/s Rajput Rolling Mills)

(12) Excise Appeal No.77243/2018
(M/s J.P.Steel Udyog)

APPERANCE :

Mr.S.P.Siddhanta,Consultant for the Appellant No. (1) & (8)
Shri N.K.Chowdhury, Advocate for the Appellant No.(6,7)
Shri Abhijit Roy, Advocate for the Appellant Nos. (9) & (11)
None for the rest Appellants
Shri S.S.Chattopadhyay, Authorised Representative for the Respondent

CORAM:
HON'BLE MR.ASHOK JINDAL, MEMBER (JUDICIAL)
HON'BLE MR.K.ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NO…77266-77277/2023

DATE OF HEARING : 18.09.2023

DATE OF PRONOUNCEMENT : **12.10.2023**

Per Ashok Jindal :

All the appeals are having a common issue, therefore, all are disposed off by a common order.

2. The facts of the case are that an investigation was started with M/s Shree Ganesh Forging Company on 25.07.2012. During search, certain documents were recovered. Thereafter, physical verifications of stocks of finished goods lying in the factory were done and some shortages were noticed.

2.1 The statements were recorded. However, on going through the said invoices, it was observed that the said M/s Shree Ganesh Forging Company have cleared their finished goods i.e. M.S.Rounds (Cuttings), M.S.Scrap though they are the manufacturer of Bars and Rods of non-Alloy Steel and M.S.Scrap as per tax Audit Report. The said appellant sold maximum portion of their finished goods in the year 2011-12 to the iron and steel re-rollers unit by writing M.S.Round Cutting on the invoices, so that the said re-roller unit can take cenvat credit. Hence, the invoices were issued to them only to pass on Cenvat Credit to others. Only paper transactions were found to have been made to substantiate the aforesaid transaction. Therefore, the Cenvat Credit was taken by the buyer for issue of sale invoices of M.S.Round Cutting for the year 2011-12.

2.2 Consequent to that, show-cause notices were issued to the appellants to deny the cenvat credit on the invoices issued by M/s Shree Ganesh Forging Company alleging that the appellants have not received the materials and have taken the cenvat credit without receiving the goods. Therefore, they are entitled to take the cenvat credit.

2.3 Out of 12 Appellants, only Appellant Nos.(1), (8),(9), (10) & (12), were represented and appeared before us.

2.4 Rest of the Appellants, despite notice, never appeared and notices sent to them were returned un-served.

2.5 In that circumstances, all the appeals are being taken up for consideration as all the parties have appeared before us on several times for arguing the matters.

3. During the arguments, the ld.Advocate appearing on behalf of the Appellant Nos.(1), (8),(9), (10) & (12), produced some documents evidencing the transportation of goods from M/s Shree Ganesh Forging Company, the manufacturer of goods to their respective unit and the payment for transportation charges have been recorded by them in their books of account and it is the contention of the appellants that these goods have been used by them in the process of manufacturing of their final product, which has been cleared on payment of duty. In that circumstances, cenvat credit cannot be denied.

4. On the other hand, the ld.A.R. for the Revenue submits that as the supply of goods from M/s Shree Ganesh Forging Company is M.S.Rounds, M.S. Ingots etc., therefore, it is a paper transaction to enable the appellants to take the cenvat credit without receiving the goods. In that circumstances, the cenvat credit cannot be allowed.

5. Heard both the parties and considered the submissions.

6. We find that the ld.Advocates appearing before us in the cases at Sl.No.(1), (8),(9), (10) & (12), have produced the documents evidencing the transportation of goods to the factory premises from M/s Shree Ganesh Forging Company and the payment of transportation charges were also recorded in the books of accounts. In that circumstances merely alleging that without any evidence that the

appellants have not received the goods, the cenvat credit cannot be denied. Moreover, the appellants have produced the documents for transportation of goods and the said goods have been used in their factory for manufacture of final product, which has suffered duty.

7. In that circumstances, the cenvat credit on the invoices received in their factory against the invoices issued by M/s Shree Ganesh Forging Company, cannot be denied to them. Therefore, we allow the cenvat credit availed by the Appellant Nos.(1), (8),(9), (10) & (12) on the invoices issued by M/s Shree Ganesh Forging Company.

8. Rest the appellants, have failed to produce any evidence with regard to transportation of goods in their factory, in that circumstances, the cenvat credit is denied to them.

9. In that circumstances, we pass the following orders :

(a) The cenvat credit is allowed to the Appellant Nos.(1), (8),(9), (10) & (12) and their appeals are allowed ;

(b) The Appellants Nos.(2),(3),(4),(5), (6), (7) & (11) have failed to produce any evidence with regard to transportation of goods. Accordingly, the cenvat credit is denied to them, therefore, their appeals are dismissed.

(Pronounced in the open court on **12.10.2023**)

Sd/-
(Ashok Jindal)
Member (Judicial)

Sd/-
(K.Anpazhakan)
Member (Technical)

mm