IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL EASTERN ZONAL BENCH : KOLKATA

REGIONAL BENCH – COURT NO. 1

Excise Appeal No. 70601 of 2013

(Arising out of Order-in-Original No. 02/DENOVO/COMMR/CE/KOL-II/Adjn/2012-13 dated 28.02.2013 passed by the Commissioner of Central Excise, Kolkata-II, M.S. Building, Custom House, 15/1, Strand Road, Kolkata, West Bengal – 700 001)

M/s. Bankey Behari Commercial Private Limited : Appellant
31, Shakespeare Sarani, Jasmine Tower, 2nd Floor,
Room No. 205, Kolkata – 700 017

VERSUS

Commissioner of Central Excise : Respondent
Kolkata-II Commissionerate,
M.S. Building, Custom House, 15/1, Strand Road,
Kolkata – 700 001

WITH

Excise Appeal No. 70612 of 2013

(Arising out of Order-in-Original No. 02/DENOVO/COMMR/CE/KOL-II/Adjn/2012-13 dated 28.02.2013 passed by the Commissioner of Central Excise, Kolkata-II, M.S. Building, Custom House, 15/1, Strand Road, Kolkata, West Bengal – 700 001)

M/s. S.F. Forgings : Appellant
40 & 107, Jai Bibi Road, Plot No. 18 & 20,
Ghusuri, Howrah – 711 202

VERSUS

Commissioner of Central Excise : Respondent
Kolkata-II Commissionerate,
M.S. Building, Custom House, 15/1, Strand Road,
Kolkata – 700 001

WITH

Excise Appeal No. 70615 of 2013

(Arising out of Order-in-Original No. 02/DENOVO/COMMR/CE/KOL-II/Adjn/2012-13 dated 28.02.2013 passed by the Commissioner of Central Excise, Kolkata-II, M.S. Building, Custom House, 15/1, Strand Road, Kolkata, West Bengal – 700 001)

M/s. Adhunik Corporation Limited : Appellant
Hahniman Sarani, Angadpur,
Durgapur – 713 215

VERSUS

Commissioner of Central Excise : Respondent
Kolkata-II Commissionerate,
M.S. Building, Custom House, 15/1, Strand Road,
Kolkata – 700 001

AND

Excise Appeal No. 70617 of 2013

(Arising out of Order-in-Original No. 02/DENOVO/COMMR/CE/KOL-II/Adjn/2012-13 dated 28.02.2013 passed by the Commissioner of Central Excise, Kolkata-II, M.S. Building, Custom House, 15/1, Strand Road, Kolkata, West Bengal – 700 001)

Shri Kishan Dhanuka, Director, **: Appellant**
M/s. S.F. Forgings
40 & 107, Jai Bibi Road, Plot No. 18 & 20,
Ghusuri, Howrah – 711 202

VERSUS

Commissioner of Central Excise **: Respondent**
Kolkata-II Commissionerate,
M.S. Building, Custom House, 15/1, Strand Road,
Kolkata – 700 001

APPEARANCE:

Shri Indranil Banerjee, Advocate [Excise Appeal No. 70601 of 2013]

Shri V.L. Dwivedi, Advocate [Excise Appeal Nos. 70612 & 70617 of 2013]

Shri N.K. Chowdhury, Advocate [Excise Appeal No. 70615 of 2013]

for the Appellant(s)

Shri B.K. Singh, Authorized Representative for the Respondent

CORAM:

HON'BLE SHRI ASHOK JINDAL, MEMBER (JUDICIAL)
HON'BLE SHRI K. ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NOs. 75724-75727 / 2024

DATE OF HEARING: 19.03.2024

DATE OF DECISION: 18.04.2024

Order : [Per Shri K. Anpazhakan]

There are four appeals in this case. All the appeals arise out of the common Order-in-Original No. 02/DENOVO/COMMR/CE/KOL-II/Adjn/2012-13 dated 28.02.2013 passed by the Commissioner of Central Excise, Kolkata-II. Hence, all the four appeals are taken up together for disposal by a common order.

2. In the said Order-in-Original, the Ld. Commissioner has passed the following order: -

"12. ORDER:

In view of the above facts and circumstances, as discussed in the foregoing paragraphs, I do hereby pass the following order:-

(1) I do hereby confirm the demand amounting to 75,48,840/-, and order for recovery of the same from the said noticee No.1 in terms of Rule 12/ 14 of the Cenvat Credit Rules, 2002/2004, read with the first proviso to Section 11A(1) of the Central Excise Act, 1944.

(2) I also order for recovery of interest at appropriate rate from the said noticee No.1, which would be applicable on the above quantum of confirmed demand, in terms of Section 11AB of the said Act, read with Rule 12/14 of the Cenvat Credit Rules, 2002/2004.

(3) I also order for imposition of penalty of 75,48,840/- on the said notice No.1 in terms of Rule 13/ 15 of the Cenvat Credit Rules, 2002/2004, for the reasons mentioned supra.

(4) I also impose a penalty of ₹25,00,000/- (Rupees twenty five lakhs) only on Sri Kishan Dhanuka, the said noticee No.2 in terms of Rule 26 of the Central Excise Rules, 2002, read with Rule 13/15 of the Cenvat Credit Rules, 2002/2004, for the reasons mentioned supra.

(5) I further disallow the rebate of Central Excise duty amounting to 75,48,840/- being granted to the said noticee No.3 and order for recovery of the same from them in terms of the first proviso to Section 11A(1) of the said Act.

(6) I also order for recovery of interest at appropriate rate from the said noticee No.3, which would be applicable on the above quantum of disallowed rebate, in terms of Section 11AB of the said Act.

(7) I also impose a penalty of 75,48,840/- on the said noticee No.3 in terms of Section 11AC of the said Act, for the reasons mentioned supra.

(8) I further impose a penalty of 75,48,840/- (Rupees seventy five lakhs forty eight thousand eight hundred forty) only on M/s. Adhunik Corporation Ltd., the said noticee No.4, in terms of Rule 26 of the Central Excise Rules, 2002, for the reasons mentioned supra."

3. **Excise Appeal No. 70601 of 2013** has been filed by M/s. Bankey Behari Commercial Private Ltd. (hereinafter referred to as 'Appellant No. 1') against the confirmation of central excise duty interest and penalty on them, in the impugned order.

3.1. **Excise Appeal No. 70612 of 2013** has been filed by M/s. S.F Forgings (hereinafter referred to as 'Appellant No. 2') against the confirmation of central excise duty interest and penalty on them, in the impugned order.

3.2. **Excise Appeal No. 70615 of 2013** has been filed by M/s. Adhunik Corporation Limited (hereinafter referred to as 'Appellant No. 3') against the confirmation of central excise duty interest and penalty on them, in the impugned order.

3.3. **Excise Appeal No. 70617 of 2013** has been filed by Shri Kishan Dhanuka, Director, M/s. S.F. Forgings (hereinafter referred to as 'Appellant No. 4') against the penalty imposed on him, in the impugned order.

4. The brief facts of the case are that during the Period under dispute from 20.06.2003 to 02.08.2003, the Appellant No. 3 has supplied Alloy Steel Ingots to M/s. S.F. Forgings Pvt. Ltd (Appellant No. 2). The purchaser M/s. S.F. Forgings Pvt. Ltd. had manufactured goods i.e. Alloy Steel Forgings and supplied the same to one merchant exporter by name M/s. Bankey Behari Commercial Pvt. Ltd., (Appellant No. 1) who in turn had exported the goods and availed rebate of duty. Proceedings were initiated against the Appellant No. 1 alleging that they had not exported the Alloy Steel Forgings. It was also alleged that Appellant No. 1 has not purchased the goods from

Appellant No. 2 as they were not having the capacity to manufacture Alloy Steel Forgings and the Appellant No. 3 could not have manufactured and supplied the Alloy Steel Ingots to the Appellant No. 2.

4.1 Accordingly, a Show Cause Notice dated 08.09.2006 was issued to all the four appellants. The Appellant No. 3 was alleged to have colluded with Appellant No. 2 enabling them to take inadmissible CENVAT Credit involved on the Alloy Steel Ingots by providing Appellant No. 2 the duty paying documents only i.e. Central Excise Invoices, etc., without actually supplying the goods. Appellant No. 2 was alleged to have taken the inadmissible CENVAT Credit without receipt of the goods. It was also alleged that Appellant No. 2 did not have the facility to manufacture Alloy Steel Forgings. Accordingly, it was alleged that the inadmissible credit availed by them has been wrongly utilized for payment of duty on the goods not manufactured by them; hence, they passed on irregular credit to the Appellant No. 1 which enabled them to avail rebate of the duty paid on the goods said to have been exported by them. The Notice also alleged that Appellant No. 1 has not actually exported the Alloy Steel Forgings and claimed irregular rebate.

4.2. The said Notice was adjudicated by the Ld. Commissioner vide the impugned order, wherein the central excise duty along with interest and penalty has been confirmed as reproduced at paragraph 2 of this Order (*supra*).

5. The Appellant No. 1 submits that as a merchant exporter they have exported Alloy Steel Forgings and claimed rebate of Rs.74,48,840/-. They submit that the said Alloy Steel Forgings were manufactured by

M/s. S.F. Forgings (Appellant No. 2) and duly exported under the cover of ARE-1 Forms. The goods were stuffed in the premises of the manufacturer and the export consignments were sealed by the central excise officers with One Time Seal. Later, the said consignments were exported under Customs supervision; the Department could not submit any evidence to establish their theory of export of Mild Steel Billets in the place of Alloy Steel Forgings. It was alleged that Appellant No. 1 has procured Mild Steel Billets from M/s. Concast Pvt. Ltd.; however, no evidence has been adduced by the Department to substantiate that claim. The Department has not challenged the declarations made by the Appellant No. 1 in the shipping bills and hence the assessment of the shipping bills attained finality. Accordingly, the Appellant No. 1 submits that there is no substance in the allegation of the Department that the goods viz. Alloy Steel Forgings have not been exported. Thus, they contended that they have rightly claimed the rebate on the goods exported and the demands confirmed in the impugned order against them are not sustainable.

5.1. Appellant No. 2 submits that they have purchased Alloy Steel Ingots from Appellant No. 3 and taken delivery of the goods in their factory by engaging transporters. The payment in consideration of the goods was made by Account Payee Cheques. Subsequently, they have manufactured Alloy Steel Forgings and supplied the same to Appellant No. 1, who in turn exported the goods and availed rebate of the duty paid. It is their contention that the Department has not brought in any evidence to substantiate the allegation that they did not have the capacity to manufacture Alloy Steel Forgings; the goods manufactured by them have been stuffed for export within the factory premises, under the supervision of central excise officers. Accordingly, they submit that the denial of CENVAT Credit availed by them in the impugned order is not sustainable.

5.2. Appellant No. 3 submits that they supplied Alloy Steel Ingots to Appellant No. 2 and delivered the goods in their factory; that the payments in consideration of the goods were received by Account Payee Cheques; the allegation of the Department is only on the basis of assumptions and presumptions. It is submitted that there is no evidence available on record to substantiate the allegation that they have not supplied goods and issued only invoices. Accordingly, they prayed for setting aside the demands confirmed in the impugned order against them.

6. The Ld. Authorized Representative appearing on behalf of the Revenue reiterated the findings in the impugned order. He submits that Appellant No. 2 has no facility to manufacture Alloy Steel Forgings. Hence, the supply of Alloy Steel Ingots by Appellant No. 3 to Appellant No. 2 was only a paper transaction without supply of goods; Mild Steel Billets have been exported in the guise of Alloy Steel Forgings and rebate has been wrongly claimed. Accordingly, he supported the impugned order confirming the demands.

7. Heard both sides and perused the appeal documents.

8. We observe that the issue originated from the rebate of Rs.74,48,840/- claimed by the Appellant No. 1 as a merchant exporter on export Alloy Steel Forgings. Appellant No. 1 has purchased the said Alloy

Steel Forgings from M/s. S.F. Forgings (Appellant No. 2) and duly exported the same under the cover of ARE-1 Forms, sealed under the supervision of central excise officers. However, the Department alleged that the appellant has actually exported Mild Steel Billets in the guise of Alloy Steel Forgings. The goods were stuffed in the premises of the manufacturer and the export consignments were sealed by the central excise officers with One Time Seal. Later, the said consignments were exported under Customs supervision. The Department could not establish their allegation of export of Mild Steel Billets in the place of Alloy Steel Forgings, with any evidence. It was alleged that the Appellant No. 1 has procured Mild Steel Billets from M/s. Concast Pvt. Ltd. and exported the same as Alloy Steel Forgings. We observe that no evidence has been adduced by the Department to substantiate this claim. We observe that statements were recorded from Shri Sanjay Sureka and Shri Bharat Agarwal on 14.11.2003, both Directors of M/s. Concast Ispat Ltd. which is a different entity from the alleged M/s. Concast Pvt. Ltd. Even otherwise, the said Sri Sanjay Sureka and Shri Bharat Agarwal had denied to have any business dealings with Appellant No. 1. Thus, we observe that there is no evidence available on record to substantiate the allegation that Mild Steel Billets have been exported in the place of Alloy Steel Forgings.

8.1. We also observe that the Department has not challenged the declarations made by the Appellant No. 1 in the shipping bills and hence the assessment of the shipping bills attained finality. As per the shipping bills, Alloy Steel Forgings have been exported, under Customs supervision. Accordingly, we hold that that there is no evidence available on record to substantiate the allegation of the Department that the Appellant No. 1 has not exported the goods Alloy Steel Forgings. Thus, we hold that Appellant No. 1 has rightly claimed the rebate on the goods exported and the demands confirmed in the impugned order against them are not sustainable. Accordingly, we set aside the demand of duty along with interest and penalty confirmed against Appellant No. 1.

8.2. We observe that the allegation against Appellant No. 2 flows from the allegation against Appellant No. 1. The goods exported have been purchased by Appellant No. 1 from Appellant No. 2. The goods were stuffed in the premises of the manufacturer and the export consignments were sealed by the central excise officers with One Time Seal. Later, the said consignments were exported under Customs supervision. As per the shipping bills, the goods exported were Alloy Steel Forgings. We observe that there is no evidence available on record to establish the allegation of the Department that the appellant has actually exported Mild Steel Billets in the guise of Alloy Steel Forgings. The officers who sealed the containers have certified that the goods exported were Alloy Steel Forgings. We observe that during cross examination also, the officers confirmed that the exported goods were Alloy Steel Forgings only. Accordingly, we hold that the allegation against the Appellant No. 2 is not sustainable and hence we set aside the demands of duty, interest and penalty confirmed against the Appellant No. 2.

8.3. Appellant No. 3 has supplied Alloy Steel ingots to Appellant No. 2 and delivered the goods in their factory. The payments in consideration of the goods were received by Account Payee Cheques. We observe that the allegation of the Department is only on the basis of assumptions and presumptions. There is no evidence available on record to substantiate the allegation that the Appellant No. 3 has not supplied any goods and issued only invoices. Accordingly, we hold that the demand of duty along with interest and penalty confirmed against the Appellant No. 3 is not sustainable.

8.4. Regarding the penalty imposed on the Appellant No. 4, we observe that Appellant No. 4 is the Director of the company M/s. S.F. Forgings. Penalty has been imposed on him in the impugned order under Rule 26 of the Central Excise Rules, on the ground that they have availed irregular credit on the inputs namely Alloy Steel Ingots. We observe that there is no evidence available on record to establish the allegation that Appellant No. 3 has only issued invoices without actual supply of the goods. In view of the discussions in the foregoing paragraphs, it has been established that this allegation of the Department is not supported by any evidence. Therefore, we hold that the allegation against the Director of the Appellant No. 2 (Appellant No. 4 herein) is not sustainable. Accordingly, we set aside the penalty imposed on the Appellant No. 4.

9. In view of the above discussions, we set aside the demands confirmed in the impugned order and allow the appeals filed by all the four appellants.

(Order pronounced in the open court on **18.04.2024**)

Sd/-	Sd/-
(K. ANPAZHAKAN)	**(ASHOK JINDAL)**
MEMBER (TECHNICAL)	MEMBER (JUDICIAL)

Sdd