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

REGIONAL BENCH – COURT NO. 1

Excise Appeal No. 75071 of 2017

(Arising out of Order-in-Appeal No. 43/HAL/2016 dated 26.09.2016 passed by the Commissioner of Central Excise (Appeal-I), Kolkata 169, A. J. C. Bose Road, Bamboo Villa (4th Floor), Kolkata-700 014)

M/s. N. F. Forgings Pvt. Ltd. **: Appellant**
Jalan Industrial Park,
N. H. 6 (Bombay Road),
Dhulagarh Sankrail,Howrah-711302.

VERSUS

Commissioner of Central Excise, **: Respondent**
Haldia Commissionerate,
25, Princep Street, Kolkata-700 072

APPEARANCE:

Shri V. N. Dwivedi, Advocate
MS. Jayanti Char, Advocate for the Appellant
Shri S. Dey, Authorized Representative for the Respondent

CORAM:

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

FINAL ORDER NO.76313/ 2025

DATE OF HEARING: 01.05.2025
DATE OF PRONOUNCEMENT: 08.05.2025

ORDER: [PER SHRI K. ANPAZHAKAN]

Brief facts of the case are that M/s. N. F. Forgings Pvt. Ltd (herein after referred as the appellant) are engaged in the manufacture and supply of goods to various public sectors, organizations such as Indian Railways, Braithwaite& Co. Ltd., Jupiter Wagons Ltd., Hindustan Engineering Ltd. etc. as well as to private entities. In the course of their business, the appellant purchased goods such as machine and mechanical appliances such as moulds, machine tools, dies for forging, EOT crane of 3MT capacity, furnace and ovens, from the supplier M/s Ashok Electrical Stampings Pvt. Ltd. vide 27 numbers of Central Excise invoices, during the period between 01.07.2004 and 07.01.2005.

1.1. The appellant has received the goods purchased by them under the 27 Invoices goods at the appellant's factory on the same date on which those goods were cleared from the factory of the supplier. Upon receipt of the inputs under cover of the Central Excise Invoices, the appellant availed the credits of duty paid on the said goods and entered the details in the appellants RG-23A part 1 and 2 (Cenvat Account). The aforesaid inputs were used by the appellant for manufacture of MS Ingots, alloy steel forging machine square and non-alloy steel forging square. When they became unusable in normal course due to wear and tear, the same were scrapped. The manufactured goods were duly cleared in accordance with law.

1.2. On 18-12-2008, officers of Central Excise, Anti-Evasion Unit of Haldia Commissionerate visited the factory of the appellant and issued "spot summons" to the director of the appellant and his statement was recorded on the same day i.e.18.12.2008 and 16.01.2009. On 23.12.2008, as per the spot summons, the appellant handed over to the Department several documents as enumerated therein such as Balance Sheets for the F.Y. 2004-2005, 2005-2006, 2006-2007, 2007-2008, attested copy of the Central Excise Invoices received from the supplier, ledger account of supplier, photocopies of the moulds and dyes received from the supplier, copies of the ER-1 for the period July 2004 to March 2005 etc.

1.3. On 21.07.2009, the department issued a Show Cause Notice proposing to disallow the Cenvat credit of Rs.40,76,512/- availed by the appellant in respect of the goods purchased by them from M/s Ashok Electrical Stampings Pvt. Ltd, on the allegation that the appellant has not received the goods and they have only received the Invoices based on which Cenvat credit has been availed.

1.4. The said notice was adjudicated ex-parte by the Additional Commissioner of Central Excise, Haldia Commissionerate wherein he has confirmed the demands made in the notice vide Adjudication Order dated 30.09.2010.

1.5. On appeal, the Ld. Commissioner (Appeals) upheld the demands confirmed in the Order-in-Original dated 30.09.2010. Aggrieved against this order, the appellant has filed this appeal.

2. The appellant submits that in the impugned order, it has been alleged that they have availed the Cenvat Credit only on paper without receiving any material. In this regard, the appellant submits that the inputs were received in the factory during the period from 01-07-2004 to 07.01.2005 and the departmental officers visited the Unit on 18.12.2008, ie, after a lapse of 4 years& 6 months approx. The appellant submits that they have received the goods under the cover of Central Excise Invoices and on receipt of the same entered the details in the RG-23A part 1 and 2 records maintained by them. The machines and machine tools were available in the factory, which has not been disputed by the visiting

officers. The contention of the officers was the said goods available in the factory were not having the stamp/ logo of the supplier. The aforesaid inputs were used by them for manufacture of MS Ingots, alloy steel forging machine square and non-alloy steel forging square. When they became unusable in normal course due to wear and tear, the same were scrapped. The stamp/ of the supplier are not available in the goods due to wear and tear as the said goods were in use for the past four years. Accordingly, the appellant submitted that there is no merit in the allegation of the department that they have not received the goods and availed the credit only on the basis of invoices received.

2.1. The appellant submits that the statement of Mr. Ashok Kumar Kar, the Director of supplier was recorded on 02.03.2006 (page 59 of Paper Book). He did not deny having supplied the stated inputs to appellant. In answer to Q.no.10 he confirmed that the sale of manufactured goods by the supplier during the financial year 2004-05 was 35.09 crores and he submitted the balance sheet in support of that. No other statement of supplier is on record.

2.2. In answer to Q.4 of statement dated 16.01.2009, the Director of appellant Confirmed that they have taken Cenvat Credit against all the 27 invoices issued by supplier. In answer to Q.no.6 the appellant's Director stated that all the materials mentioned in the 27 Invoices were received in the factory and they have made all the payments by A/C cheques which is reflected in the ledger submitted by them and none from the supplier side contradicted the above statement of the director of the appellant. Accordingly, they prayed for setting aside the demands confirmed in the impugned order along with interest and penalty.

3. The Ld. A.R. reiterated the findings of the impugned order.

4. Heard both sides and perused the appeal documents.

5. We observe that the appellant has purchased machine and mechanical appliances such as moulds, machine tools, dies for forging, EOT crane of 3MT capacity, furnace and ovens, from the supplier M/s Ashok Electrical Stampings Pvt. Ltd. vide 27 numbers of Central Excise invoices, during the period between 01.07.2004 and 07.01.2005. The appellant claimed that they have received the goods purchased by them under the 27 Invoices goods at the appellant's factory on the same date on which those goods were cleared from the factory of the supplier. Upon receipt of the inputs under cover of the Central Excise Invoices, they have availed the credits of duty paid on the said goods after entering the details in the appellants RG-23A part 1 and 2 registers maintained by them.

5.1. We observe that the aforesaid inputs were used by the appellant for manufacture of MS Ingots, alloy steel forging machine square and non-alloy steel forging square. When they became unusable in normal course due to wear and tear, the same were scrapped. In this regard, we observe that the mechanical appliances purchased from supplier were found in the unit of appellant. The officers could not identify the goods and connect the same with the supplier because of non-availability of logo/stamp of Supplier in the goods. In this regard, we observe that non-availability of logo/stamp of Supplier in the goods does not mean that those machines were not purchased from the supplier. If supplier did not supplied those goods then who supplied those machines. We observe that the machines and machine tools were available in the factory and the same were used for the manufacture of MS Ingots, alloy steel forging machine square and non-alloy steel forging square in the factory for the past four years.

5.2. We observe that the officers of Central Excise, Anti-Evasion Unit of Haldia Commissionerate visited the factory of the appellant on 18.12.2008 after more than four years from the date of purchase of the said goods. Thus, we observe that non-availability of logo/stamp of Supplier in the goods after four years of its use cannot be a reason to deny the credit availed on the said goods.

5.3. From the statement of Mr. Ashok Kumar Kar, the Director of supplier recorded on 02.03.2006, we find that the Director has confirmed the sale of the goods manufactured by the supplier to the appellant. We observe that there is no finding in the impugned order contrary to this. In answer to Q.no.6 the appellant's Director stated that all the materials mentioned in the 27 Invoices were received in the factory and they have made all the payments by A/C cheques which is reflected in the ledger submitted by them and none from the supplier side contradicted the above statement of the Director of the appellant. We also observe that there is no other statement of supplier is on record. Accordingly, we hold that finding of the adjudicating authority that the appellant has availed the credit without receipt of the goods into the factory is erroneous and not supported by any evidence. Accordingly, we hold that the disallowance of the credit to the appellant in the impugned order is not sustainable and hence, we set aside the same. As the disallowance of the credit is not sustained, the question of demanding interest or imposing penalty does not arise and hence we set aside the same.

6. In view of the above discussions, we set aside the impugned order and allow the appeal filed by the appellant with consequential relief, if any, as per law.

(Order Pronounced in Open court on 08.05.2025)

(ASHOK JINDAL)
MEMBER (JUDICIAL)

(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

RKP