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

REGIONAL BENCH – COURT NO. 2

Excise Appeal No. 76196 of 2016

(Arising out of Order-in-Original No. 85/Commr/DGP/DGP-I/15-16 dated 26.02.2016 passed by the Commissioner of Customs, Central Excise & Service Tax Durgapur Commissionerate Satyajit Roy Sarani, City Centre, Durgapur-713216, DT. Burdwan (W.B.)

M/s. OM Shakti Smelters Pvt. Ltd., **: Appellant**
Lenin Sarani, Durgapur-713210

VERSUS

Commissioner of Central Excise, Durgapur **: Respondent**
Commissionerate, City Centre, Durgapur-713216

AND

Excise Appeal No. 76197 of 2016

(Arising out of Order-in-Original No. 85/Commr/DGP/DGP-I/15-16 dated 26.02.2016 passed by the Commissioner of Customs, Central Excise & Service Tax Durgapur Commissionerate Satyajit Roy Sarani, City Centre, Durgapur-713216, DT. Burdwan (W.B.)

Shri Ghanashyam Prasad, Director (Noticee No.2) **: Appellant**
M/s. OM Shakti Smelters Pvt. Ltd.,
Lenin Sarani, Durgapur-713210

VERSUS

Commissioner of Central Excise, Durgapur **: Respondent**
Commissionerate, City Centre, Durgapur-713216

APPEARANCE:

Shri D. N. Chatterjee, Advocate
Shri S. Mukherjee, A.R. for the Appellant

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

CORAM:

HON'BLE SHRI R. MURALIDHAR, MEMBER (JUDICIAL)
HON'BLE SHRI K. ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NOs.76470-76471/2025

DATE OF HEARING: 07.05.2025
DATE OF PRONOUNCEMENT: 09.06.2025

ORDER: [PER SHRI R. MURALIDHAR]

The Appellant is registered under Central Excise Registration Certificate No. ABTFS3534MEM001 for the manufacture of MS Round /Ingot/Billet all falling under Chapter 72 CET. Proceedings were initiated against a firm known as Shree Ganesh Forging Company, wherein purportedly documents were recovered from them to the effect that they have only issued Paper Invoices to the appellant without actually dispatching any goods. Based on this investigation, proceedings were initiated against the present appellant to recover the Cenvat Credit of Rs.81,66,865/- on the ground that the Cenvat availed in respect the consignments of MS Round , TMT Cutting, end cutting etc. were not physically received by the appellant. Show Cause Notice No. 1/Commr./BOL/14 dated 06.01.2014 was issued, by invoking the extended period provisions. The Show Cause Notice was issued to the appellant company and the Director Ghanshyam Prasad [the second appellant herein] and the partner of the vendor. The appellants refuted the allegations contained in the Show Cause Notice and contested the same both on merits and on account of limitation. After due process, the Adjudicating authority went on to confirm the demand along with interest and imposed penalties on the appellants. Being aggrieved, the appellants have preferred the present appeal before the Tribunal.

2. The Ld. Advocate appearing on behalf of the appellant makes the following submissions:

2.1 The entire proceedings have been taken up without any proper verification and investigation and hence the demand itself is purely on assumptions basis. The entire investigation has been taken up on the ground that the vendor was having the manufacturing facility of longer length of MS Round and Angles, and hence he could not have supplied the cut pieces of smaller length to the appellant. The investigation is on a single point by summoning and recording the statement of the owners of the truck numbers given in the Invoices. The Dept did not even attempt to gather any further corroborative evidence. He submits that during the period under consideration, the appellants have procured the raw materials / inputs [cut pieces / smaller pieces]. The Department has not brought in any corroborative evidence that to the effect that the goods in question have not been received and used by the appellants towards manufacture of their finished goods.

2.2 He submits that allegation is based on the purported recorded statement of the vehicle owners on various counts like, they do not know the drivers, the driver's signature is not known, the freight has not been received etc. The appellants submits that the statements were recorded after about 2 to 5 years after the date of the actual movement of the goods. In such a case, no vehicle owner can possibly remember the details of the drivers. Even as 160 consignments are under the allegation, the Dept could get the statements recorded / obtain letters only from about 70 vehicle owners. In respect of the balance 90 vehicle owners, not even any statement has been recorded nor has any letter been recorded. The drivers used to deliver the goods and receive the freight payments on the vouchers prepared by the appellant. The appellants have recorded the payment of Freight details and have been paying the Service Tax to the Dept. Therefore, the statements recorded after many years, cannot be relied on to confirm the demand. None of the persons who have recorded statements before the investigation officials have affirmed that their statement has been recorded without any force / coercion before the Adjudicating authority in terms of Section 9D of the CEA 1944. Hence, even on this count, these statements do not have any evidentiary value. In case of written replies, since they are not even made under Section 14, the same cannot be treated as proper evidence at all.

2.3 It is submitted that the transactions have taken place during the period 2008 to 2012. The appellants have all the records towards having purchased the goods under proper Invoices issued by the Vendor for which the payments have been made by the appellant through normal banking channel. Copies of the Ledger in respect of the Vendor Shree Ganesh Forging have been submitted to the Adjudicating authority to show the details of the transactions reflected in the books of accounts of the appellant, including the payment details through the banking channels. The Dept. has not brought in any corroborative evidence to the effect that the amounts so being paid through banking channels have flown back to the appellant by way of any cash transactions. No searches were conducted nor have any private records been recovered towards cash transactions / receipts from the Vendor, if the Revenue wants to rebut the banking transactions. Though the appellant’s submissions on these grounds are very much recorded in the Order in Original, the Adjudicating has failed to address the same and has not given any reason as to why such documentary evidence is not considered by him.

2.4 In respect of the inward transportation of goods, after paying the freight to the owners of the vehicles, the appellant company has also paid the Service Tax on Reverse Charge Basis and shown the same in the ER 1 and ST 3 Returns.

2.5 The goods in question have been received under valid Central Excise Invoice, showing the details of Assessable Value, Excise Duty and VAT payment details. The Excise Duty paid by the Vendor at his end and the Returns filed by him at his end have been accepted by the jurisdictional authorities. In such a case, the valid duty paid documents cannot be put to question at the end of the end-user.

2.6 The appellant relies on the following case laws:

i) *CCE vs. Hindustan Lever Ltd. - 2000(121)E.L.T. 437(CEGAT)*

ii) *Sutlej Coach Products (2014)303-ELT-54(P&H HC DB)*

iii) *Surya Alloys Industries vs. CCE(2008)227-ELT-617(CESTAT SMB)*

iv) *Steel Authority of India vs. CCE(2009)236ELT-571(CESTAT)*

v) *CCE vs. Advance Diesels Engines(2012)278ELT-491(CESTAT)*

vi) *MDS Switch Gear vs CCE-2001(132)ELT-405 (CESTAT)*

2.7 The Ld. Counsel further submits the Show Cause Notice issued on 6.1.2014, is entirely time barred for the following reasons:

(a) The appellant has been receiving the goods under the Invoices raised by the Vendor and accounting for the same in their books of accounts.

(b) The inward receipt is entered into statutory books like RG 23 A Part I for stocks and Part II for the CENVAT Credit taken.

(c) The CENVAT Credit taken was utilized for the clearance of the finished goods.

(d) All these details are recorded in the monthly Returns filed with the Range officials.

(e) From time to time Department has conducted Audits and no query was raised at any time doubting receipt of the input goods or payment of the Service Tax on GTA services utilized by the appellant.

(f) Thus, the Dept. is aware of the purchase and CENVAT transactions and clearances of finished goods on a monthly basis because of the monthly Returns. No query was raised in the normal course.

(g) Therefore, the appellant strongly deny and refute the allegation of suppression / misstatement on the subject dispute. It is proved that the absence of any "Suppression of facts" or "Misstatement" which, as raised against the appellant for justifying the invoking of extended period , appears to be baseless & fictitious

(h) The appellant relies on the case law of ***Indian Explosives vs. Collector – 1983(35) ELT – 434 (I) and Parle Beverages Ltd. vs. CCE-1998(99) ELT – 468 (CEGAT)*** had observed "it is well settled fact that for invoking the extended period of limitation suppression/ misstatement etc. must be established by the Department, and it cannot be based on presumption".

2.8 In view of the above submissions, the Ld. Counsel prays that impugned order may be set aside the appeal may be allowed both on merits and on account of time bar.

3. The learned AR representing the Revenue reiterates the findings of the Adjudicating authority. He submits that only on account of the detailed investigation taken up by the Dept. at the end of the Vendor Shri Ganesh Forging Company and the present appellants, they could find that the in many cases, the vehicles in which the appellant claims to have received the goods, are not capable of transporting such goods. In the recorded statements the vehicle owners have denied receipt of the freight payments or engaging the drivers whose signatures have been shown to them. These corroborative evidence prove that there was no actual movement of goods, but the entire transaction was on paper only. Accordingly, he justifies the confirmed demand and prays that the appeals may be dismissed.

4. Heard both the sides and perused the appeal papers submissions made by both the sides.

5. We find that out of 160 transactions between the Vendor and the appellant, the Department could get hold of the letter/statements of only 70 vehicle owner. Thus, there is no adverse statement in respect of 90 transaction. Even in respect of 70 Vehicles, there are some replies, which cannot be

directly taken as evidence since they are not statements given under Section 14 of the CEA 1944. Even in cases where the statements have been recorded, the persons recording the statements have not reiterated that they have given such statement out of their free will before the Adjudicating authority. Hence, we do not find such statements / letters to have any evidentiary value whatsoever. Viewed with the fact that the Revenue could lay hands only on 70 out of the 160 vehicle owners, we find that the verification is not even complete in respect of all the transactions. On this ground itself the proceedings are vitiated and liable to be set aside. We do so.

6. We find that the appellant has time again pleaded about the freight being paid by way of vouchers and payment to the vendor being made through banking channel. The relevant documents were provided to the investigating officials and to the adjudicating authority. The appellants have produced the copies of the Ledger pertaining to the Vendor showing the details of the Invoices raised by the Vendor and payments made by the appellant through banking channels. The Revenue has not brought in any evidence to the contrary. For the payments made to the GTA, the appellants have paid

the Service Tax of Rs. 45,057/- on Reverse Charge basis. The receipt of inputs have been accounted for in the statutory books like RG 23 A Part I, Part II and in ER 1 Returns. Therefore, we take the view that while the appellant has produced sufficient number of evidence from their side in their defence. On the other hand, the Revenue not only failed to properly investigate the issue, but also did not consider the factual evidence before confirming the demand.

7. Another submission made by the appellant is to the effect that as to how they could have manufactured their finished goods without actual receipt of the inputs from the Vendor. We find that no investigation has been taken up by the Dept. to go through the input / output ratio of raw materials vis-à-vis the finished goods. The appellants have taken the cenvat credit on the inputs and also paid the Excise Duty on the finished goods. The taking of Cenvat Credit and quantity manufactured, the value of clearance, the Excise Duty paid on etc are being shown by the appellant in their ER 1 Returns, which also have been subjected to periodical audit by the Dept.

8. Another point to be considered is the fact that the appellant has received the Invoices from the Vendor showing the details of their Central Excise Reregistration number, details of the goods, Assessable Value, Excise Duty, VAT paid. Therefore, for all practical purposes the jurisdictional authorities have accepted the Returns filed by Vendor and have also taken the Excise Duty paid at that end. Therefore, we fail to understand as to which sane assessee would pay the entire Invoice value along with the Excise Duty and VAT thereon to take the CENVAT Credit of Excise Duty without having received the materials. They are fully accountable for the inputs received to show that the same has been used for manufacture of the finished goods. There is nothing to indicate that any verification to this effect was taken up by the Revenue, before raising the demand on the appellant. If the Dept alleges that the appellants have not received the inputs in question, in order to undertake the manufacturing activity, the appellants should have received such goods from other third party on cash payment basis. No evidence to this effect has been found by the Revenue during their investigation.

9. From the Show Cause Notice, it is seen that the Vendor, Shree Ganesh Forging Company has not been made a co-noticee at all. Only the partner of the vendor has been made co-noticee for playing his role in the alleged contraventions. For all practical purposes, the partner is a different person from the partnership firm unlike in the case of proprietorship firm. Admittedly, the present proceedings have been taken up on the sole ground that this Vendor has misstated the description of goods and has carried out only paper transaction. There is nothing to indicate from the SCN that the Vendor had not accounted for these Invoices with his jurisdictional officials. There is also nothing to indicate that the Excise Duty in respect of these were not paid by the Vendor, or he was not accounting for these Invoices in his monthly Returns. If he was despatching higher length goods and showing the same as cut-pieces, even the jurisdictional officials were accepting the details of the Invoices and monthly Returns. By non-making of the vendor as a Co-noticee, to enable them to counter the allegation that they have only carried out paper transaction, is contrary to the statutory provisions as well as principles of natural justice. In such a case, the present proceedings against the appellant are erroneous and would have

no legal legs to stand on. Even on this ground the Revenue's case fails.

10. We find that in respect of the same Vendor, wherein identical proceedings were taken up by the Department, the matter reached this Tribunal, in the case of **R S Ispat Vs CCE – Kolkata -IV**. Vide Final Order No. 76809-76810/2024 dated 04.09.2024, the Tribunal [of which one us was also a Member], had held as under:-

> 19. Now coming to overall proceedings in this case, we find that the appellant has time again pleaded about the freight being paid by way of vouchers and payment to the vendor being made through banking channel. The relevant documents were provided to the investigating officials on the very first day. Therefore, there is nothing to assume that the appellant had enough time to prepare / cook up such entries in their books of account. *<u>The purchase transaction of 5759.70 MT on payment through banking channel to the extent of Rs.14.91 crores cannot be simply brushed aside. Similarly, the appellant has accounted for finished goods of 4477.73 MT during the period under consideration. All the facts are part of the statutory Returns like RG 23 A Part I, Part II and ER 1</u>*. This factual evidence on record cannot be ignored by clinging on to the 12 statements in respect 32 invoices and Vahan Dept's remarks in respect of 35 invoices. *<u>Therefore, we take the view that while the appellant has produced sufficient number of</u>*

evidence from their side in their defence, the Revenue not only failed to properly investigate the issue, but also did not consider the factual evidence before confirming the demand.

20. From the SCN, it is seen that the Vendor, Shree Ganesh Forging Company has been made a co-noticee, seeking to know as to why penalty under Rule 26 of CER 2002 should not be imposed on them. Admittedly, the entire proceedings have been taken up on the ground that the Vendor has misstated the description of goods and has carried out only paper transaction. There is nothing to indicate from the SCN that the Vendor had not accounted for these Invoices with his jurisdictional officials. There is also nothing to indicate that the Excise Duty in respect of these were not paid by the Vendor, or he was not accounting for these Invoices in his monthly Returns. *If he was despatching higher length goods and showing the same as cut-pieces, even the jurisdictional officials were accepting the details of the Invoices and monthly Returns. In such a case, the present proceedings against the appellant are erroneous and would have no legal legs to stand on.*

21. Therefore, even on account of our observations at Para 19 and 20 above, we hold that the confirmed demand is legally not sustainable*. Accordingly, we allow the appeal on merits.*

22. We also find considerable force in the arguments of the appellant about the time bar aspect in this case. The appellant is an assessee with the Dept. They have been taking the Cenvat Credit and also filing their Returns. It is not the case of the Dept. that any private records have been recovered towards the cash transactions. The Dept. has not brought in any evidence to the

> effect that any suppression has taken place from the appellant's side. *Hence, we hold that the confirmed demand for the extended period is legally sustainable on account of time bar. Hence, we allow the appeals even on account of limitation.*

11. We find that the facts are identical in the present case which emanates from the transactions of the same Vendor Shri Ganesh Forging Company. In the other case, the Vendor was made a co-noticee whereas in the present the Dept failed to make them a co-noticee, giving a go by to the statutory provisions and the principles of natural justice. Therefore, on account of our observations at Para 5 to 10 above, we hold that the confirmed demand is legally not sustainable on merits. Accordingly, we allow set aside the impugned order and allow the appeal of the appellant company on merits.

12. We also find enough force in the arguments of the appellant about the time bar aspect in this case. The appellant is an assessee with the Dept. They have been taking the Cenvat Credit and also filing their Returns. Their accounts are subject to the Departmental audit. No private records have been recovered towards the cash transactions between the appellant and the vendor. The quantities of the finished goods have been declared in the ER 1

Returns. The Service Tax paid on GTA services towards the freight have been shown in the ST 3 Returns. On the other hand, the Revenue has failed to bring in any cogent evidence to the effect that the appellant has suppressed any factual details, so as to invoke the extended period provisions. Hence, we hold that the confirmed demand for the extended period is legally not sustainable on account of time bar. Accordingly, we allow the appeal of the company even on account of limitation.

13. Since we have allowed the appeal filed by the appellant company both on merits as well as on account of limitation, the penalty imposed on the Director of the company also does not sustain. We set aside the same.

14. Thus the appeals stand allowed. The appellants would be eligible for consequential relief, if any, as per law.

(Order Pronounced in Open court on 09.06.2025)

(R. MURALIDHAR)
MEMBER (JUDICIAL)

(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

RKP