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

REGIONAL BENCH – COURT NO. 1

Excise Appeal No. 77581 of 2018

(Arising out of Order-in-Original No. 42/COMMR/BOL/17-18 dated 28.03.2018 passed by the Commissioner of Central Goods & Services Tax Commissionerate: Bolpur, Nanoor Chandidas Road, Sian, Bolpur, District: Birbhum (W.B.), PIN – 731 204)

Commissioner of C.G.S.T. and Central Excise **: Appellant**
Bolpur Commissionerate,
Nanoor Chandidas Road, Sian, Bolpur, District: Birbhum,
West Bengal, PIN – 731 204

VERSUS

M/s. C.P. Re-Rollers Limited **: Respondent**
Raturia Industrial Area, Angadpur,
Durgapur, West Bengal, PIN – 713 215

APPEARANCE:

Shri Prasenjit Das, Authorized Representative, for the Appellant / Revenue

Shri Subrata Mukherjee, Consultant, for the Respondent

CORAM:

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

FINAL ORDER NO. 75350 / 2026

DATE OF HEARING / DECISION: 10.03.2026

ORDER: [PER SHRI ASHOK JINDAL]

The Revenue is in appeal against the impugned order.

2. The facts of the case are that intelligence was gathered to the effect that the respondent-company was engaged in availment and utilization of irregular CENVAT Credit by showing procurement of their raw materials i.e., M.S. Scrap, from one of their dealers, namely, M/s. Shyam Sky Steel, Kolkata, without receipt of any goods physically from the said dealer and was also engaged in issuing central excise invoices only to the said dealer without supplying any goods.

3. On 17.01.2017, the factory premises of the respondent was searched and during the course of search and scrutiny of records / documents, it was found that the respondent, during the period 2014-15, had availed CENVAT Credit amounting to Rs.97,93,739/- on the strength of invoices issued by M/s. Shyam Sky Steel. It was further found that the respondent were also issuing invoices in favour of M/s. Shyam Sky Steel showing clearances of 3360.400 M.T. of TMT bars involving central excise duty of Rs.1,28,39,192/- during the said period.

3.1. Statement of the Proprietor of M/s. Shyam Sky Steel was recorded, who stated that all the sales and purchases made by them were book entries and that no transfer of goods took place.

3.2. Subsequently, statement of the respondent's representative was also recorded, who did not admit to the said statement given by the Proprietor of M/s. Shyam Sky Steel.

4. Thereafter, a case has been made out against the respondent that the respondent has issued invoices without supplying the goods.

5. The ld. adjudicating authority examined the issue and inter alia held that it is an admitted fact that on the invoices issued by the respondent, central excise duty has been paid by them, on their clearances; although the allegation of the Revenue is that the goods had not been transferred to M/s. Shyam Sky Steel but diverted to some other customers, no other customer has been identified. Therefore, the ld. adjudicating authority, by way of the impugned order, dropped the charges against the

respondent for the demand of Rs.1,28,39,192/-, along with interest and penalty thereon.

5.1. Against the said order, the Revenue is before us.

6. The Ld. Authorized Representative of the Revenue has heavily relied on the Grounds-of-Appeal, which state as under: -

(i) On examination of the aforesaid OIO No. 42/COMMR/BOL/17-18 dated 28.03.2018, passed by the Commissioner, Central Tax, CGST Bolpur, the same does not appear to be legal, proper and correct in respect of dropping the proceedings against the demand of Rs. 1,28,39,192/- (including cess) without actual dispatch of any goods viz. TMT BARS during the F.Y. 2014-15 (May,2014 to Feb,2015).

(ii) That the instant issue was based on two different aspects i.e. (1) the assessee issued the invoices involving duty of Rs.1,28,39,192/- against TMT Bars weighing 3360.400 MTs, without supply thereof and (2) the stock of quantity Le. 3360.400 MTs has been cleared by the assessee as per Stock Register.

(iii) That the said quantity of 3360.400 MTs is equal to the quantity for which invoices were issued to the said dealer. However, the Noticee No.3 has admitted in his statement dated 30.07.2015 under Section 14 of the Central Excise Act, 1944 that they had not received any quantity of TMT Bars along with the invoices involving the duty of Rs. 1,28,39,192/-

(iv) That the provisions of the Central Excise Act, 1944 and the rules made there under do not specify the adjustment of duty paid against specific invoices to any other clearances to the different buyers. The adjudicating authority has therefore erred in holding revenue neutral effect against such clandestinely removed TMT Bars.

(v) That the adjudicating authority has relied upon the statement of Noticee No.3 along with other relied upon documents relating to vehicle movement, with regards to passing the CENVAT credit of Rs. 97,93,739/ to the assessee against commission and they have also manipulated the books of accounts. However, the adjudicating authority while dropping the aforesaid demand of Rs.1,28,39,192/-has not given any credence to the statement dated 30.07.2015 of Noticee No.3, wherein he has admitted that the said goods weighing 3360.400 MTs were not received by them.

(vi) That the assessee had meticulously manipulated the books accounts to justify the supply of TMT Bars to the said dealer, whereas Noticee No.3, has categorically stated in his statement dated 30.07.2015 about non-receipt of the said TMT Bars along with the said invoice.

(vii) That the said quantity of 3360.400 MTs was recorded in stock registers evidencing the removal (i.e. reducing the stock level of produced quantity) and the said quantity of 3360.400 MTs had not been supplied to the said dealer, and therefore such removal of 3360,400 MTs shall be clandestine to the buyers by way of suppression of facts and the said stock remained non-duty paid and supplied.

(viii) That neither the assessee nor Noticee No.3 have retracted their statements recorded under Section 14 of the Central Excise Act, 1944.

(ix) That the assessee has failed to produce any documentary evidence showing the movement of the impugned goods. The assessee stated that they were selling the goods at ex-factory whereas Noticee No.3 has stated regarding non-receipt of any goods from the assessee. Noticee No.3 has also not produced any such document evidencing the movement of the said goods from the assessee's premises to the premises of the said dealer. Therefore, the liability for clearance of the said goods weighing 3360.400 MTs to the assessee rested with the assessee that they had supplied the same to the said dealer.

(x) In this regard, reliance is placed on the following decisions of the CESTAT and Hon'ble Supreme Court wherein it has been held categorically that if the Department had discharged its liability for providing the allegations, then the burden to proof always rests with the assessee.

- *M/s. Chandan Steel Limited vs. CCE & ST, Vapi [as reported in 2013 (4) ECS (53) (Tri-Ahd)].*
- *M/s. M.R. Tobacco (P) Ltd. & Others Vs. CCE, New Delhi [as reported in 2013 (4) ECS (67) (Tri-Del)],*
- *M/s. Tulip Lamcraft Pvt Ltd. vs. CCE & ST, Ahmedabad III [as reported in 2014 (4) ECS (98) (Tri-Ahd.)],*

- *C.C.E. & S.T., Ahmedabad vs. M/s Paras Steel Industries [as reported in 2014 (4) ECS (106) (Tri. Ahd.)],*
- *Collector vs. D Bhoormul [as reported in 1983 (13) ELT 1546 (SC)]*

(xi) In the instant case, the Department has discharged its burden based on enclosed relied upon documents wherefrom it is amply clear that said dealer had not received the said goods of 3360.400 MTs and hence the assessee was required to discharge its burden proving contrary, which he has failed to discharge except the copies of invoices/payment details, under consideration, for which Noticee No.3, has categorically stated about non-receipt of the said goods along with the said invoices. Therefore, vide para 4.25 of the OIO the adjudicating authority has erred in accepting the clearances made by the assessee to the buyers other than the said dealer without payment of Central Excise duty and without observing Central Excise procedures.

7. The Ld. Consultant appearing on behalf of the respondent supported the impugned order.

8. Heard the parties and considered their submissions.

9. We find that in this case, the sole allegation against the respondent is that although they have issued invoices, the goods have not been sent to the dealer, namely, M/s. Shyam Sky Steel. It is an admitted fact that the respondent has paid duty on the said goods.

10. We find that on the one side, the Revenue is alleging that no goods have been moved by the respondent. If no goods have been moved by the respondent, then duty is not payable by the respondent in the first instance. On the other side, if it is alleged by the Revenue that the said goods have been diverted to some other place, even then, admittedly, the respondent has paid duty on the clearances of the said goods.

11. We think that the Revenue itself is confused as to whether duty can be demanded from the respondent on alleged diversion of the goods, when duty has already been paid by the respondent.

12. In these circumstances, we do not find any merit in the appeal filed by the Revenue and accordingly, the same is dismissed.

(Operative part of the order was pronounced in open court)

Sd/-
(ASHOK JINDAL)
MEMBER (JUDICIAL)

Sd/-
(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

Sdd