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

REGIONAL BENCH – COURT NO.1

Excise Appeal No.75053 of 2017

(Arising out of Order-in-Original No.135/Commr./CE/DGP/15-16 dated 15.03.2016 passed by Commissioner of CGST & Central Excise, Durgapur)

M/s Surya Alloy Industries Ltd.
(Waria Road, Angadpur, Durgapur, West Bengal, Pin-713215)

Appellant

VERSUS

Commissioner of CGST & Central Excise, Durgapur
(Satyajit Roy Sarani, City Centre, Durgapur-713216,Dist.-Burdwan, West Bengal)

Respondent

WITH

Excise Appeal No.75234 of 2017

(Arising out of Order-in-Original No.135/Commr./CE/DGP/15-16 dated 15.03.2016 passed by Commissioner of CGST & Central Excise, Durgapur)

Shri Aloke Garodia
(67, Nalini Ranjan Avenue, Block-H, Alipore, Kolkata-700053)

Appellant

VERSUS

Commissioner of CGST & Central Excise, Durgapur
(Satyajit Roy Sarani, City Centre, Durgapur-713216,Dist.-Burdwan, West Bengal)

Respondent

APPERANCE :

Shri N.K.Chowdhury, Advocate for the Appellant
Shri S.K.Dikshit, Authorized Representative for the Respondent

CORAM:

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

FINAL ORDER NO.75603-75604/2026

DATE OF HEARING : 11 MARCH 2026

DATE OF PRONOUNCEMENT : **20 MAY 2026**

Excise Appeal Nos.75053 & 75234 of 2017

Per Ashok Jindal :

The appellant is in appeal against the impugned order denying cenvat credit availed on inputs and input services by the appellant along with interest of amounting to Rs.58,76,084/- and equivalent penalty.

2. The facts of the case are that the appellants are engaged in the manufacture of M.S. Ingot utilising the Scrap/M.s. Round Cuttings, Scrap (M.S. Round Cuttings/Short Length). During the ordinary course of their business, from September, 2009 to April, 2012, the appellants had purchased 2383.385 M.T. of input from M/s. Shree Ganesh Forging Company. The transportation of the goods were arranged by them. The appellants had duly received the goods in their factory and reflected the same in their RG23A Part-1 & Part-II. The appellants were utilising the inputs and manufacturing the finished goods and clearing the finished goods on payment of appropriate duty by utilising CENVAT credit. No dispute was raised by the Division or Range at any point of time. The appellant had also availed the credit of service tax against the service tax payment made to the GTA during the Financial Year 2009-10 to 2012-13 which was also not disputed.

2.1 The appellant was issued a Show Cause Notice on 20.08.2014 on the basis of some alleged intelligence and subsequent investigation as is appearing from the Show Cause Notice itself that the appellant had taken credit without receiving the goods or services. It appears from the Show Cause Notice that investigation was made at the suppliers' end on different dates who had said that they have supplied M.S. Round Cutting to the appellant. The statement of the Director of the appellant was also taken who had also stated that they had purchased the goods from M/s. Shree Ganesh Forging Company and reflected the receipt of the goods, availment of credit and utilisation of the same properly in their books. The transportation was also arranged by the appellant. To verify the genuineness of the transportation, the Department had taken the letters from different vehicle owners/transporters containing the statements of denial of transportation of goods from the factory of M/s. Shree Ganesh Forging Company to the factory of the appellant and some vehicles were also found to be not capable of carrying huge quantity of goods.

2.2 Wholly on the basis of this material, a conclusive/pre-judged Show Cause Notice has been issued making a inference that the appellant had taken credit without receiving the goods and the said credit has been proposed to be denied.

2.3 Against the said order, the appellant is before us.

3. The ld.Counsel appearing on behalf of the appellant submits that the appellant has purchased the goods against the invoices of M/s. Shree Ganesh Forging Company, which was reflected in the statutory records and there was no allegation that the appellant did not manufacture any goods by utilising those inputs and did not pay the duty on the finished goods. Only on the basis of some letters from few owners/transporters, it has been concluded that the appellant did not receive any goods and proposed to deny credit which cannot be maintainable in law.

3.1 It is further submitted that apart from those statements of some vehicle owners/transporters, there is no other corroborative evidence to show that the goods were not received by the appellant and in that view of the matter, credit cannot be denied. The appellant has paid through banking channel which has also not been disputed by the Revenue. Therefore, the cenvat credit has rightly taken by the appellant as there is no admission by the appellant from the supplier that they have not received the goods. In that circumstances, the cenvat credit cannot be denied. To support his contention, he relies on the following decisions :

(i) Gontermmann Peipers (India) Ltd. -Vs- Commissioner of Central Excise, Kolkata-VII Final Order No. FO/77772-77773/2017 dated 08.11.2017 ;

(ii) C.C.E., Ludhiana Vs Parmatma Singh Jatinder Singh Alloys Pvt. Ltd. 2011 (266) ELT 67 (Tri.-Del.) ;

(iii) HBR Steel Corporation -Vs- Commissioner of Central Excise, Ludhiana : 2008 (225) ELT 102 (Tri.-Del.) ;

(iv) Grace Casting Ltd. Vs. Commr. of C.Ex. & S.T., Ahmedabad-III : 2019 (369) ELT 751 (Tri.-Ahmd.) ;

(v) Jindal Drugs Pvt. Ltd. Vs. Union of India : 2016 (340) ELT 67 (P & H)

(vi) Madurai Metal Industries -Vs- Union of India : 1991 (52) ELT 495 (Mad.)

(vii) Hiren Aluminium Ltd. -Vs- Commissioner of Central Excise, Valsad : 2009 (245) ELT 386 (Tri.- Ahmd.)

(viii) Super Shakti Metaliks Pvt. Ltd. -Vs- Commissioner of CGST & Central Excise, Bolpur : Final Order No. 75008-75010/2026 dated 09.12.2025.

4. On the other hand, the ld.A.R. for the Revenue, has supported the impugned order.

5. Heard both the parties and considered the submissions.

6. We find that the sole allegation is to deny the cenvat credit to the appellant based on the statements of some transporter/truck owners, who made the statements that they have not transported the goods. Admittedly, those transporters were not allowed to cross-examine by the appellant and no other corroborative evidence has been brought on record.

7. We find that the evidence relied upon by the adjudicating authority is the statements of owners/authorised persons of the vehicle, which were said to have transported the goods. The appellant’s submission is that the owners/authorised persons, who gave the statement, are not cross-examined, and hence, the said statements cannot be relied upon against them. Accordingly, the appellant prayed for cross-examination of the owners/authorised persons, who in their statements disposed about the movement of the vehicles as stated in Para 5 of the show-cause notice.

8. In this regard, we agree with the submissions of the appellant. From the records available, it is seen that the allegations against the appellant is substantiated by the adjudicating authority on the basis of the statement of the owners/authorised persons of the vehicles.There is no other corroborative evidence available on record to substantiate the allegations of non-receipt of the raw material into the factory. Thus, it is observed that the owners/authorised persons needs to be cross-

examined. In the absence of cross-examination, their statements cannot be relied upon.

8.1 This view has been taken by the Hon'ble Apex Court in the case of Arya Abhushan Bhandar Vs. Union of India reported in 2002 (143) ELT 25 (SC), wherein the Hon'ble Supreme Court has observed as under :

> *"An issue raised by the appellants was that the search was conducted both in their shop and in their house and that the search warrant was limited to the shop. The Panchas to the search were, therefore, material witnesses in this behalf. That they were not produced for cross-examination, though asked for, is not disputed. There has, therefore, in our view, clearly been a breach of natural justice. On this count alone, the order of the High Court must be set aside. We are unimpressed by the argument that no prejudice was caused to the appellants by reason of the non-production of the Panchas which, it would appear, was what the High Court seemed to think."*

8.2 Again, on the same issue, the Hon'ble Supreme Court in the case of Andaman Timber Industries Vs. Commissioner of Central Excise, Kolkata II reported in 2015 (324) ELT 641 (S.C.), has held as under :

> "***6.*** *According to us, not allowing the assessee to cross-examine the witnesses by the Adjudicating Authority though the statements of those witnesses were made the basis of the impugned order is a serious flaw which makes the order nullity inasmuch as it amounted to violation of principles of natural justice because of which the assessee was adversely affected. It is to be borne in mind that the order of the Commissioner was based upon the statements given by the aforesaid two witnesses. Even when the assessee disputed the correctness of the statements and wanted to cross-examine, the Adjudicating*

Authority did not grant this opportunity to the assessee. It would be pertinent to note that in the impugned order passed by the Adjudicating Authority he has specifically mentioned that such an opportunity was sought by the assessee. However, no such opportunity was granted and the aforesaid plea is not even dealt with by the Adjudicating Authority. As far as the Tribunal is concerned, we find that rejection of this plea is totally untenable. The Tribunal has simply stated that cross-examination of the said dealers could not have brought out any material which would not be in possession of the appellant themselves to explain as to why their ex-factory prices remain static. It was not for the Tribunal to have guess work as to for what purposes the appellant wanted to cross-examine those dealers and what extraction the appellant wanted from them.

7. *As mentioned above, the appellant had contested the truthfulness of the statements of these two witnesses and wanted to discredit their testimony for which purpose it wanted to avail the opportunity of cross-examination. That apart, the Adjudicating Authority simply relied upon the price list as maintained at the depot to determine the price for the purpose of levy of excise duty. Whether the goods were, in fact, sold to the said dealers/witnesses at the price which is mentioned in the price list itself could be the subject matter of cross-examination. Therefore, it was not for the Adjudicating Authority to presuppose as to what could be the subject matter of the cross-examination and make the remarks as mentioned above. We may also point out that on an earlier occasion when the matter came before this Court in Civil Appeal No. 2216 of 2000, order dated 17-3-2005 [2005 (187) E.L.T. A33 (S.C.)] was passed remitting the case back to the Tribunal with the directions to decide the appeal on merits giving its reasons for accepting or rejecting the submissions.*

8. *In view the above, we are of the opinion that if the testimony of these two witnesses is discredited, there was no material with* *the Department on the basis of which it could justify its action, as the statement of the aforesaid two witnesses was the only basis of issuing the show cause notice.*

9. *We, thus, set aside the impugned order as passed by the Tribunal and allow this appeal."*

9. Since the principle of natural justice has not been followed, we observe that the matter needs to be remanded back to the adjudicating authority for the purposes of cross-examination of the owners/authorised persons of the vehicles, whose statements have been relied upon in this case.

10. In view of the above, we set aside the impugned order and remand the matter back to the adjudicating authority. The adjudicating authority is directed to allow the cross-objection of the owners/authorised persons of the vehicles, whose statements have been relied upon in Para 5 of the show-cause notice and pass appropriate order.

11. In the result, the impugned order is set aside and the appeals are disposed of by way of remand.

(Pronounced in the open court on **20.05.2026**)

(Ashok Jindal)
Member (Judicial)

(K.Anpazhakan)
Member (Technical)

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