IN THE CUSTOMS, EXCISE AND SERVECE TAX APPELLATE TRIBUNAL, WEST ZONAL BENCH AT MUMBAI
COURT NO. I

APPEAL NO. E/85237 & 85239/2018

(Arising out of Order-in-Appeal No. PUN-EXCUS-001-APP-610 & 611/2017-18 dated 06.11.2017 passed by the Commissioner of Central Tax (Appeals-I), Pune.)

Shri Narendra Mohan Lal Sharma **Appellant**
M/s Specific Alloys Pvt. Ltd.

Vs.

CCE & ST, Pune-I **Respondent**

Appearance:

Shri M.P. Joshi, Advocate for Appellant
Shri M.R. Melvin, Superintendent (AR) for Respondent

CORAM:

HON'BLE SHRI S K MOHANTY, MEMBER (JUDICIAL)

Date of Hearing: 18.07.2018
Date of Decision: 18.07.2018

ORDER NO. A/86958-86959/2018

Per: S K Mohanty

These appeals are directed against the impugned order dated 06.11.2017 passed by the Commissioner of Central Tax (Appeals-I), Pune.

2. Brief facts of the case are that M/s Specific Alloys Pvt. Ltd., the appellant herein, is engaged in manufacture of aluminium alloys/ingots, falling under Chapter 76 of the first schedule to the

Central Excise Tariff Act, 1985. The appellant avails CENVAT credit of duties paid on inputs, capital goods and Service Tax on the input services. The Officers of DGCEI gathered intelligence that some manufacturers/importers imported aluminium scrap purchased on high-sea-sales basis from M/s Aman Impex, Mumbai and the said imported scrap items were diverted to some other place and not delivered at the appellant's premises. Since the appellant availed CENVAT credit of CVD paid on the scrap items on the strength of the Bill of Entry, without actual receipt of the said goods for manufacture of final products, the Department proceeded against the appellant for denial of the CENVAT benefit. The show-cause notice issued by the Department was adjudicated vide order dated 20.03.2017, wherein CENVAT credit was disallowed and ordered for recovery along with interest. Besides, the said order also imposed penalties on various persons, including the appellants herein. On appeal, the Learned Commissioner (Appeals) has upheld the adjudged demand. The appellants have filed appeals before the Tribunal against the said order passed by the Commissioner (Appeals), which were disposed of by the Tribunal vide order dated 16.04.2015 and 12.05.2015, in remanding the matter back to the adjudicating authority, with directions for supplying relied upon documents. Pursuant to the remand direction of the Tribunal, the original authority took up the *denovo* adjudication proceedings and again confirmed the CENVAT demand on the appellants. On appeal, the learned Commissioner (Appeals) vide the impugned order has upheld the adjudged amount confirmed in the original order.

3. The Learned Advocate appearing for the appellants submits that the impugned order has not considered the submissions made in the grounds of appeal, annexed to the appeal memorandum. Thus, he submits that the impugned order is a non-speaking one and should be set aside on this ground alone.

4. On the other hand, the Learned DR appearing for the Revenue reiterates the findings recorded in the impugned order.

5. Heard both sides and perused the records.

6. On perusal of the appeal records, I find that the appellant had taken the stand in support of receipt of the disputed goods in its factory premises. The detailed submissions were made at paragraph 11 in the grounds of appeal annexed to the appeal memorandum filed before the Learned Commissioner (Appeals). However, without considering the submissions of the appellants, the Learned Commissioner (Appeals) has upheld the adjudged amount on the ground that the appellants had wrongly availed CENVAT credit of duty paid on scrap items, without actual receipt of the same in the factory premises. The observations of the Commissioner (Appeals) have been recorded in paragraphs 6.5, 6.6 and 6.7 in the impugned order dated 6.11.2017. It is manifest from the available records that the Commissioner (Appeals) has not properly considered the submissions made before him by the appellants. Thus, under the

circumstances of the case, I am of the view that the matter should be remanded to the original authority for consideration of the submissions to be made by the appellants regarding its claim in support of receipt of the duty paid scrap material in its factory premises. The appellants are also directed to produce the relevant documents before the original authority to substantiate above claim. Upon consideration of the documentary evidences and the submissions of the appellants, the original authority should pass a fresh adjudication order in the matter.

7. Therefore, after setting aside the impugned order, the appeals are allowed in favour of the appellants by way of remand to the original authority for fresh adjudication of the matter, in light with the observations recorded above.

(Operative portion of the order pronounced in open Court)

(S K Mohanty)
Member (Judicial)

Prasad