CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL MUMBAI

REGIONAL BENCH - COURT NO. I

Appeal No. E/88248 & 88256/2018

(Arising out of Order-in-Appeal No. NSK/EXCUS/000/APPL/408-413/17-18 dated 27.03.2018 passed by the Commissioner of Central Excise & Service Tax (Appeals), Nashik)

M/s Rajrani Steel Casting Pvt. Ltd. **.... Appellant**
Arvind Mithailal Agarwal

Versus

Commissioner of Central Tax & **.... Respondent**
Central Excise, Nashik

Appearance:

Shri Ashok Kumar Singh, Advocate for the Appellant

Shri Anil Choudhary, DC, Authorized Representative for the Respondent

CORAM:

HON'BLE DR. D.M. MISRA, MEMBER (JUDICIAL)

FINAL ORDER NO. A/85654-85655/2019

Date of Hearing: 27.03.2019

Date of Decision: 27.03.2019

Per: Dr. D.M. Misra

These two appeals are filed against Order-in-Appeal No. NSK/EXCUS/000/APPL/408-413/17-18 dated 27.03.2018 passed by the Commissioner of Central Excise & Service Tax (Appeals), Nashik.

2. Briefly stated the facts of the case are that on the basis of investigation initiated against the appellant it is alleged that the appellant had availed inadmissible CENVAT Credit of Rs.16,67,830/- during the period June, 2009 to March, 2010. Consequently, a show-cause notice was issued to them on 11.3.2014 for recovery of the inadmissible credit with

interest and penalty. On adjudication, the demand was confirmed with interest and penalty. Aggrieved by the said order, they filed an appeal before the learned Commissioner (Appeals), who in turn, rejected their appeal. Hence, the present appeal.

3. Learned Advocate Shri Ashok Kumar Singh for the appellant submits that the entire demand has been confirmed against them mainly on the basis of statements of brokers, suppliers and transporters of the raw materials. It is his contention that even though these statements of brokers, suppliers and transporters have been relied upon in the show-cause notice but their request for cross-examination of these witnesses were denied on the ground that the questionnaire was not circulated before cross-examination of the said witnesses. He submits that not allowing the cross-examination of the witnesses whose statements were relied upon in confirmed the demand result in gross violation of principles of nature justice. In support, learned Advocate referred to the judgment of Hon'ble Supreme Court in the case of *Andaman Timber Industries Vs. Commissioner of Central Excise, Kolkata-II – 2015 (324) ELT 641 (SC).* He submits that the cross-examination of the witnesses requested in the reply to the show-cause notice particularly, brokers Shri Bhadresh Shah & Shri Jitu Kumar, Directors/proprietors of Kamdar & Associates, Shree Ram Steel & Rolling Mills, Vijay Ship Breaking Corporation, International Steel Corporation, Dynamic Ship Suppliers Pvt. Ltd, Rushil Industries, Mahavir Ship Breaker, Sohilwad Ship Breaker, and Shri Ghanshyam Utoomal, owner/proprietor of Jai Ramdev Transport.

4. Learned AR for the Revenue reiterates the findings of the learned Commissioner (Appeals).

5. Heard both sides and perused the records.

6. I find that the Revenue has booked a case against the appellant alleging the availment of inadmissible CENVAT Credit on inputs which were not received in their factory and used in or in relation to manufacture of finished goods. In arriving at the said conclusion, Revenue relied upon the statements of the suppliers of the raw materials, brokers and transporters. The appellant vehemently requested for cross-examination of these witnesses so as to ascertain the correctness of the allegation against them. However, cross-examinations of these witnesses were denied by the adjudicating authority and also by the learned Commissioner (Appeals). Needless to mention oral evidences relied in raising and confirming the demand subjected to be cross-examination so as to inspire against the said evidence. This includes in the judgment of the Hon'ble Supreme Court in the case of Andaman Timber (supra).

7. In the result, impugned order orders are set aside and the matter is remanded to the adjudicating authority with a direction to allow cross-examination of suppliers of raw materials, brokers and transporters as mentioned in para 3 of this order. Appeals are allowed by way of remand.

(Dictated and pronounced in open court)

(Dr. D.M. Misra)
Member (Judicial)

Sinha