CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI

REGIONAL BENCH - COURT NO. I

Excise Appeal No. 87593 of 2018

(Arising out of Order-in-Appeal No. SM/CGST & CX/Bhiwandi/ APP/59-61/17-18 dated 03.04.2018 passed by the Commissioner of CGST & Central Excise (Appeals), Bhiwandi)

M/s Axis Impex .... Appellant

Versus

Commissioner of CGST & Central Excise, Thane-II .... Respondent

Appearance:

Shri Stebin Mathew, Advocate for the Appellant

Shri N.N. Prabhudesai, Supdt. (AR) for the Respondent

WITH

Excise Appeal No. 87604 of 2018

(Arising out of Order-in-Appeal No. SM/CGST & CX/Bhiwandi/ APP/59-61/17-18 dated 03.04.2018 passed by the Commissioner of CGST & Central Excise (Appeals), Bhiwandi)

Rameshchandra Raghvji Gada .... Appellant

Versus

Commissioner of CGST & Central Excise, Thane-II .... Respondent

Appearance:

Shri Stebin Mathew, Advocate for the Appellant

Shri N.N. Prabhudesai, Supdt. (AR) for the Respondent

AND

Excise Appeal No. 87943 of 2018

(Arising out of Order-in-Appeal No. SM/CGST & CX/Bhiwandi/ APP/59-61/17-18 dated 03.04.2018 passed by the Commissioner of CGST & Central Excise (Appeals), Bhiwandi)

M/s Axis Impex **.... Appellant**

Versus

Commissioner of CGST & Central Excise, ... Respondent
Thane-II

Appearance:

Shri Rajesh Ostwal, Advocate for the Appellant

Shri N.N. Prabhudesai, Supdt. (AR) for the Respondent

CORAM:

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

FINAL ORDER NO. A/ 85797-85799/2019

Date of Hearing: 11.04.2019

Date of Decision: 11.04.2019

Per: Dr. D.M. Misra

Heard both sides.

2. Briefly stated the facts of the case are that the appellants were issued a show-cause notice on 9.5.2014 alleging that they availed credit of Rs.44,25,702/- of the duty paid on the inputs claimed to have been received from M/s Shah Foils Ltd, but in fact, only the input invoices were received and total quantity of input of 101708.800 kgs, for the period April, 2009 to June, 2011 were not received in their factory, consequently the said amount was proposed to be recovered 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. At the outset, the learned Advocate Shri Stebin Mathew for the appellant submits that even though before the adjudicating authority as well as in the reply to the show-cause notice, he has vehemently requested for cross-examination of the witnesses Shri Chhail Singh M Deora, job-worker of the appellant, who allegedly to have been stated before the authorities below explaining the terms ""Bill Condition", "Bill Sales" and "Bombay Sales" mentioned in their private record contrary to the facts, but cross-examination of the said witnesses was denied. He further submits that the adjudicating authority as well as the learned Commissioner (Appeals) placed reliance on the said job-worker's statement in confirming the demand against the appellant. He also submits that the statements of Director of M/s Shah Foils Ltd., who sold the raw material to the appellants received in their factory and utilized in the course of manufacture of the finished goods, are in their favour. He submits that denial of cross-examination of Shri Chhail Singh Deora resulted into violation of the principles of natural justice. In support, he refers 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).*

4. Per contra, learned AR for the Revenue Shri N.N. Prabhudesai submitted that there are other corroborating

evidences by which the Department could able to establish that appellant had availed inadmissible credit of Rs.44,25,702/- without receiving the material from M/s Shah Foils Ltd.. He submits that therefore non-allowing of cross-examination by the authorities below is not resulted in violation of principles of natural justice. He refers to the judgment of Hon'ble Kerala High Court in the case of *Mohammed Fariz & Co. Vs. Commissioner of Customs, Cochin – 2018 (18) GSTL 415 (Ker).*

5. The allegation in the present case against the appellant is that they have availed CENVAT Credit on input CR stainless steel without receiving the same from M/s Shah Foils Ltd., but availed the credit on invoices only; thus the credit availed of the duty reflected in the invoices is allegedly not admissible. Besides evidence of primary in nature, Revenue also recorded statement of job-worker, to whom M/s Shah Foils directly supplied the goods, who in turn, converted the goods and sent it to the appellant for further manufacturing at their premises. The proprietor of the job-worker Shri Chhail Singh Deora explaining the meaning of terms "Bill Sales", "Bombay Sales" etc. referred in the private record recovered from premises of the appellant, indicated that the goods were sold without the cover of invoices and payment of duty, hence it is concluded that the material on which the credit availed by the appellant has not been received by them. The appellant vehemently argued to rebut the said statement of M/s Chhail Singh Deora by way of cross-examination. From the records, I find that

both the authorities below referred to and relied upon the statement in arriving at the conclusion of credit of Rs.44,25,702/- was availed wrongly by the appellant. In these circumstances, in my opinion, the appellant should be allowed cross-examination of the witness Mr. Chhail Singh Deora, whose evidence is vital and relied in confirming the demand, in view of the principle laid down by the Hon'ble Supreme Court in the catena of cases including *Andaman Timber Industries (supra)*.

6. In the result, the impugned order is set aside and appeals are remanded to the adjudicating authority for cross-examination of the witnesses Shri Chhail Singh Deora and decide the matter accordingly. Appeals are allowed by way of remand.

(Dictated and pronounced in open court)

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

Sinha