# CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
## <u>MUMBAI</u>

WEST ZONAL BENCH, MUMBAI

**Excise Appeal No. 989 of 2009**

(Arising out of Order-in-Original No. 20/MS-20/2008/Thane-I dated 28.11.2008 passed by the Commissioner of Central Excise, Thane-I.)

**Mr. Ashwini Pannalal Agarwal** ........Appellant
**Director of M/s Plaza Castings Pvt. Ltd.**
**(Now known as M/s JMD Castings Pvt. Ltd.)**
**Plot No. 58/2, Survey No. 30, Village-Vasuri Khurd,**
**Tal. Wada, Dist.-Thane**

*VERSUS*

**Commissioner of Central Excise, Thane-I** ........Respondent
**4th Floor, Navprabhat Chambers, Ranade Road,**
**Dadar (West), Mumbai – 400 028**

WITH

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**<u>APPERANCE:</u>**

None for the Appellant

Shri Ajay Kumar, Additional Commissioner, Authorised Representative for the Respondent

CORAM:

**HON'BLE MR. C J MATHEW, MEMBER (TECHNICAL)**
**HON'BLE DR. SUVENDU KUMAR PATI, MEMBER (JUDICIAL)**

**ORDER NO. A/86029-86030/2019**

Date of Hearing: 09.01.2019
Date of Decision: 09.01.2019

**PER: DR. SUVENDU KUMAR PATI**

Confirmation of duty liability along with interest and equivalent penalty for alleged illegal availment of CENVAT credit without actual receipt of inputs/raw materials along with penalty on appellant-2, the then director is assailed in these two appeals.

2. Brief facts of the case, as reveals from the appeal memo, is that appellants were engaged in the manufacture of M.S. Ingots falling under Chapter 72 of the Central Excise Tariff Act. On the basis of information that appellants were indulged in irregular availment of CENVAT credit without actual receipt of goods against invoices to evade Central Excise duty and also clandestinely removing finished goods namely M.S. Ingots, officer of DGCEI, Mumbai Zonal Unit had conducted search and seizer operation on 8th & 9th of July, 2006 in the factory premises, carried out physical stock taking of raw materials and finished products and found shortage of 4679.411 MT of raw materials. Shortage of raw material value was calculated @11,319/- per MT and duty assessment of Rs.

86,44,092/- was made. Appellants were put to show-cause cum demand notice vide notice dated 12.02.2008, matter was adjudicated upon and Order-in-Original dated 28.11.2008 was passed confirming the duty demand along with interest and equal amount of penalty on the appellants firm as well as penalty of Rs. 10,00,000/- on appellant-2. Both the appellants are before us challenging the legality of such order.

3. During hearing of the appeal, none appeared for the appellants while respondent-department was represented by Mr. Ajay Kumar, Additional Commissioner. The grounds shown in the appeal memo for challenging the Order-in-Original are primarily three. The first ground raised in the appeal memo is that valuation of the goods was made at an uniform rate despite the fact that all documents relating to procurement of various kinds of scrap were available with the department as were seized by it during the investigation. Second, appellants were not in a position to defend its case before the Commissioner of Central Excise during the adjudication proceedings as due to family dispute and closer of factory consequent upon raid conducted by the department, Managing Director i.e. appellant-2 could not make a reasonable and effective representation against the proposals contained in the show-cause notice. Third, appellant-2 i.e. the then Director stated that only 2500 MT of scrap were actually not received and credit was availed on the basis of documents receipt against which Rs.43,00,000/- were already deposited but duty demand was made on the entire 4679.411 MT of raw material,

shortage of which were primarily due to deposit of mud and pilferage.

4. Learned Authorised Representative for the respondent-department, on the other hand supported the reasoning and rationality of the order passed by the Commissioner of Central Excise and argued that mud cannot constitute almost half of the weight of the disputed raw material and concerning pilferage, appellants had not produced any evidence before the adjudicating authority who gave his finding that respondent-department had meticulously weighed the raw material with the dumpers and JCB. He also argued that not only the Managing Director and various other responsible officers of the appellants company as well as the supplier have admitted in their statement regarding procurement of invoices alone to avail CENVAT credit without actual received of raw material for which he sought no interference by the Tribunal in the order passed by the Commissioner of Central Excise as it was incumbent upon the manufacture to establish the burden of proof as per Rule 9(5) of CENVAT Credit Rules, 2004, which they failed to do.

5. We have perused the case record. Even in the appeal memo, appellants have admitted to have availed CENVAT credit on 2500 MT of raw material on the basis of invoice alone without actual receipt of any raw material and offered no plausible explanation as to why such availment of CENVAT credit was done that would invariable lead a prudent man to conclude that the motive behind to such illegal

availment could be evasion of duty. It is a settled principle of rule of evidence that admission needs no further proof (Section 58 of the Indian Evidence Act). Therefore, the only dispute concerning which appellants are before this forum is the duty demand on the balance of raw material that was found to have short fall during physical stock taking done by DGCEI. Appellants attributed the loss to pilferage and mud deposit but simultaneously admitted through the statement of Managing Director that concerning pilferage, no police report was lodged nor any record was produced to substantiate the same.

6. It is noticed that the valuation of raw material was also admitted by appellant-2 and the logic of taking standard valuation for all verities of raw material, as found from the Order-in-Original, was that appellant could not produce the procurement or cost price as no record was maintained by it. No reason is cited by the Director to exculpate himself from his legal liability and contention of appellants that principle of natural justice has not been followed is not maintainable as opportunity was granted to the appellants to reply to the show-cause and participate in the hearing but they failed to avail of the opportunities for personal reasons like family dispute which are unrelated to the appellant company. This being the factual position and evidence on record and in the absence of any rebuttal evidence, having regard to Rule 9(5) of the CENVAT Credit Rules, 2004 whereby burden of proof is on the appellants to establish the admissibility of CENVAT credit, we are of the considered view that

there is no convincing ground established by the appellant that would require interference in the order passed by the Commissioner of Central Excise. Hence the order.

ORDER

7. Both the appeals are dismissed and the order passed by the Commissioner of Central Excise, Thane-I, *vide* Order-in-Original No. 20/MS-20/2008/Thane-I dated 28.11.2008 is confirmed.

(Dictated & pronounced in open Court)

**(Dr. Suvendu Kumar Pati)**
**Member (Judicial)**

**(C J Mathew)**
**Member (Technical)**

*Prasad*