**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, WEST ZONAL BENCH AT MUMBAI**

REGIONAL BENCH - COURT NO. 01

**Excise Appeal No. 87947 of 2018**

(Arising out of Order-in-Appeal No. IM/CGST A-I/MUM/322 to 324/17-18 dated 27.03.2018 passed by Commissioner of Central Tax (Appeals-I), Mumbai )

**M/s. Mittal Corp Limited** .....**Appellant**
Plot No. 159, Sector-III, Industrial
Area, Pithampur, Distt. Dhar,
Madhya Pradesh - 401483

*VERSUS*

**Commissioner of Central Goods and Service Tax, Mumbai South** .....**Respondent**
13th Floor, Air India Building,
Nariman Point, Mumbai-400021

**WITH**

**Excise Appeal No. 87974 of 2018**

(Arising out of Order-in-Appeal No. IM/CGST A-I/MUM/322 to 324/17-18 dated 27.03.2018 passed by Commissioner of Central Tax (Appeals-I), Mumbai )

**Heeralal Kanungo** .....**Appellant**
Room No.19, 2nd Floor,
Shakti Niwas Building,
11, 7th Khetwadi Lane,
Mumbai-400004

*VERSUS*

**Commissioner of Central Goods and Service Tax, Mumbai South** .....**Respondent**
13th Floor, Air India Building,
Nariman Point, Mumbai-400021

**AND**

**Excise Appeal No. 87976 of 2018**

(Arising out of Order-in-Appeal No. IM/CGST A-I/MUM/322 to 324/17-18 dated 27.03.2018 passed by Commissioner of Central Tax (Appeals-I), Mumbai )

**M/s. Nakoda Ferromet** .....**Appellant**
Room No.19, 2nd Floor,
Shakti Niwas Building,
11, 7th Khetwadi Lane,

Mumbai-400004

*VERSUS*

**Commissioner of Central Goods and Service Tax, Mumbai South** .....**Respondent**
13th Floor, Air India Building,
Nariman Point, Mumbai-400021

**Appearance:**

Ms. Payal Nahar and Shri Stebin Mathew, Advocates for the Appellant
Shri Sanjay Hasija, Authorized Representative for the Respondent

**CORAM:**

**HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)**

**FINAL ORDER NO. A/87039-87041/2021**

Date of Hearing : 27.10.2021
Date of Decision: 27.10.2021

**PER: S.K. MOHANTY**

Briefly stated, the facts of the case are that the appellant herein M/s. Nakoda Ferromet is engaged in trading of SS Scrap and for that purpose, is registered with the Central Excise Department as a dealer. During the investigation carried out by DGCEI, it was observed that the said appellant had issued the invoice without actual supply of goods to the other appellant M/s. Mittal Corp Limited. Accordingly, it was contended by Revenue that the invoices were issued intending to facilitate availment of irregular Cenvat credit by the recipient. The show cause proceedings initiated in this regard by the department was culminated into the adjudication order dated 30.12.2016, wherein Cenvat credit was disallowed along with interest and order for recovery from the appellant M/s. Nakoda Ferromet. The goods seized from M/s. Mittal Corp Limited was confiscated and redemption fine of Rs.9,75,490/- was imposed on it. Besides, the adjudication order also imposed penalties on all the appellants involved in these appeals. On appeal against the said adjudication order, the learned Commissioner (Appeals) vide the impugned order dated 27.03.2018 has modified the original order to the extent of setting aside confirmation of the Cenvat demand and also reducing the quantum of redemption fine to Rs. 2,43,873/-. Feeling aggrieved with the impugned order, the appellants have filed these appeals before the Tribunal.

2. The learned Advocate appearing for the appellant M/s. Mittal Corp Limited submitted that there is no proposal in the show cause notice for confiscation of goods and imposition of penalty on the appellant and accordingly, the action taken by the department in confiscation and as well as imposition of redemption fine cannot be sustained. She also pleaded that since there is no specific allegation in the show cause notice regarding the nature of contravention of the statutory provisions, imposition of penalty under Rule 15A of the Cenvat Credit Rules, 2004 is also not legal and proper. The learned Advocate appearing for the other appellants M/s. Nakoda Ferromet and Shri Heeralal Kanungo submitted that imposition of equal amount of penalty under Rule 26(2) of Central Excise Rules, 2002 is not sustainable and he pleaded for reduction in the quantum of penalty imposed in the adjudication order and subsequently confirmed in the impugned order.

3. Heard both sides and perused the records.

4. I find that the show cause notice dated 05.04.2016 at para 13.1 had proposed for confiscation of goods and imposition of penalty on M/s. Nakoda Ferromet. However, the adjudication order had confiscated the seized goods and imposed penalty on M/s. Mittal Corp Limited. Since, the show cause notice did not implead M/s. Mittal Corp Limited, seeking confiscation of goods as well as imposition of redemption fine, the adjudication order confirming such demand cannot be considerd as legal and proper. Therefore, the impugned order confirming confiscation of goods and imposition of redemption fine is set aside and the appeal to such extent is allowed in favour of the appellant M/s. Mittal Corp Limited. With regard to imposition of penalty under Rule 15A *ibid,* I find that receipt of the impugned goods in the factory premises have not been accounted for in the statutory records as mandated in the Central Excise as well as Cenvat statutes. Thus, the appellant M/s. Mittal

Corp Limited is exposed the penal consequences provided under Rule 15A *ibid.*

4.1 In view of the above discussions, the appeal filed by Mittal Corp Limited is partly allowed in setting aside the impugned order, insofar as it has upheld confiscation and imposition of redemption fine.

5. Considering the overall facts and circumstances of the case, I am of the view that the quantum of penalty imposed on the other appellants namely, M/s. Nakoda Ferromet and Heeralal Kanungo can be reduced in the interest of justice. Accordingly, the impugned order is modified to the extent of reducing the quantum of penalty to 50 per cent on both the appellants.

6. The appeals are disposed of in above terms.

(Dictated and pronounced in the open Court)

**(S. K. Mohanty)**
**Member (Judicial)**

*HK*