

**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
MUMBAI**

WEST ZONAL BENCH

EXCISE APPEAL NO: 85098 OF 2013

[Arising out of Order-in-Original No: 25/CEX/COMMR/KOP/2012 dated 25th September 2012 passed by the Commissioner of Central Excise & Service Tax, Kolhapur.]

Rahulkumar N Patel

Tulip Castings Pvt Ltd
Plot No. 29, Opp: SBI, MIDC, Shirol
Kolhapur – 416 122

... Appellant

versus

Commissioner of Central Excise

Vasant Plaza, Rajaram Road, Bagal Chowk
Kolhapur – 416 001

...Respondent

WITH

EXCISE APPEAL NO: 85099 OF 2013

[Arising out of Order-in-Original No: 25/CEX/COMMR/KOP/2012 dated 25th September 2012 passed by the Commissioner of Central Excise & Service Tax, Kolhapur.]

Tulip Castings Pvt Ltd

Plot No. 29, Opp: SBI, MIDC, Shirol
Kolhapur – 416 122

... Appellant

versus

Commissioner of Central Excise

Vasant Plaza, Rajaram Road, Bagal Chowk
Kolhapur – 416 001

...Respondent

AND

EXCISE APPEAL NO: 85536 OF 2013

[Arising out of Order-in-Original No: 25/CEX/COMMR/KOP/2012 dated 25th September 2012 passed by the Commissioner of Central Excise & Service Tax, Kolhapur.]

Commissioner of Central Excise

Vasant Plaza, Rajaram Road, Bagal Chowk
Kolhapur – 416 001

... *Appellant*

versus

Kanungo Steel (India)

40 Nanalal Manchhalal Building, 2nd Floor
1st Carpenter Street, Near CP Tank, Mumbai - 400004

... *Respondent*

APPEARANCE:

Shri J N Somaiya, Advocate for the assessee-appellants

Shri Amrendra Kumar Jha, Deputy, Commissioner (AR) for the Revenue

CORAM:

HON'BLE MR C J MATHEW, MEMBER (TECHNICAL)
HON'BLE MR AJAY SHARMA, MEMBER (JUDICIAL)

FINAL ORDER NO: A / 86078-86080/2023

DATE OF HEARING: 10/05/2023
DATE OF DECISION: 10/05/2023

PER: C J MATHEW

These appeals of M/s Tulip Castings Pvt Ltd and of Shri Rahulkumar N Patel arise from order¹ of Commissioner of Central Excise & Service Tax, Kolhapur in which the proposal for demand under rule 14 of CENVAT Credit Rules, 2004 of ₹ 1,17,84,675/- availed as credit in 168 invoices, evidencing supply of inputs required

¹ [order-in-original no. 25/CEX/COMMR/KOP/2012 dated 25th September 2012]

for manufacture of stainless steel castings, was dropped only to the extent of ₹ 9,16,094/- while confirming recovery of ₹ 1,08,68,581/-, along with appropriate, interest and imposing penalty of like amount under rule 15 of CENVAT Credit Rules, 2004 as well as imposing penalty of ₹ 5,000/- on Rahul Navinchandra Patel under rule 15A of CENVAT Credit Rules, 2004.

2. Between August 2006 and March 2011, the appellant availed CENVAT credit of the amount proposed for recovery in the show cause notice for having been taken against invoices furnished by dealers of 'stainless steel scrap/melting scrap', which is their normal input, but investigations revealed these to have been mere document transfer for transaction of 'prime quality' and it was also alleged that the value therein permitted the appellant to avail credit of higher order. The adjudicating authority held that, though the appellant had claimed to be in possession of evidence that would rebut the allegations in the show cause notice and establish that goods covered by invoices had been received in the factory and used in production, these were not forthcoming. The portion of the demand, supported by 15 invoices so furnished which, on verification, turned out to be without any taint, was dropped in the impugned order.

3. According to Learned Counsel for appellant, sample invoices had been furnished to evince to the adjudicating authority that the case

made out against them was entirely incorrect. He argued that, instead of examining these in the context of that submission, the same were verified as though these were the only genuine transactions. He also submitted that, in the face of the clear finding by the adjudicating authority that the ostensible suppliers of goods did not deserve imposition of penalty, the finding on incorrect documents alleged to have been issued by them is also not tenable.

4. Learned Authorised Representative submitted that though one appeal has been filed against M/s Kanungo Steel (I), the non-imposition of penalties against the other dealers had also been subject of review by the competent authority. However, it is his submission that the appellant-Commissioner has opted to withdraw the appeals as the amount involved was below the threshold in the 'national litigation policy (NLP)' and submitted letter dated 9th May 2023 issued from LC/Civil-27/Misc Corrsp/KOP/21-22 from Commissioner of Central GST, Kolhapur. Accordingly, those appeals of Revenue are dismissed as withdrawn.

5. Learned Authorised Representative submits that the appellant had not furnished evidence similar to the others, accepted in the impugned order, and that, in the absence of such material on record, the adjudicating authority was correct in proceeding to confirm the demand based on the statements furnished by the principal

beneficiaries in the appellant-company.

6. It would appear that the dispute has continued to fester solely on the ground that evidence of documents, against which CENVAT credit had been availed, did not conform to the description of the goods as received. On record, we find that the adjudicating authority, had fairly taken note of the fifteen invoices that had been submitted and which, upon verification, was found acceptable. It is contended on behalf of the appellant that they are in possession of the documents pertaining to the other 153 invoices. This would need to be verified to ascertain the correctness of the claims for credit.

7. In view of the above, the impugned order is set aside and the matter remanded back to the original authority to decide afresh on the eligibility of credit of ₹ 1,08,68,581/- disallowed by the Commissioner of GST, Kolhapur. Appeal of Revenue is dismissed as withdrawn.

(Operative Part of the Order Pronounced in the open court on 10th May 2023)

(AJAY SHARMA)
Member (Judicial)

(C J MATHEW)
Member (Technical)