

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

REGIONAL BENCH - COURT NO. I

EXCISE APPEAL No. 85149 of 2021

(Arising out of Order-in-Appeal No. DL/52/APPEALS THANE/ME/2021-22 dated 07.09.2020 passed by the Commissioner of GST & Central Excise, Appeals-Thane, Mumbai)

Star Metal & Tubes Corporation

Saki Vihar Road, Opp. to L&T, Powai
Mumbai – 400 072.

.... Appellants

VERSUS

**Commissioner of Central Goods and Service Tax
Mumbai East**

9th Floor, Lotus, Parel, Lotus Infocentre
Near Parel Station, Parel (East)
Mumbai – 400 012.

.... Respondent

APPEARANCE:

Shri Tejas Thakkar, Company representative for the Appellants

Shri Vinod S. Chettiparambil, Authorized Representative for the Respondent

CORAM:

HON'BLE MR. M.M. PARTHIBAN, MEMBER (TECHNICAL)

FINAL ORDER NO. A/85873/2024

Date of Hearing: 09.05.2024

Date of Decision: 09.09.2024

PER: M.M. PARTHIBAN

This appeal has been filed by M/s Star Metals & Tubes Corporation, Mumbai (herein after, for short, referred to as 'the appellants') against the Order-in-Appeal No. DL/52/APPEALS-THANE/ME/2021-22 dated 07.09.2020 (referred to, as 'the impugned order') passed by the Commissioner of GST & Central Excise, Appeals-Thane, Mumbai.

2.1 Briefly stated, the issue involved in the present appeal is summarized as follows:

2.2 On the basis of information received by Directorate General of Central Excise Intelligence (DGCEI), Mumbai Zone, it was observed that the appellants had availed the inadmissible CENVAT credit on the basis of

central excise invoices pertaining to copper bar/ingots issued by M/s Annapurna Impex Pvt. Ltd., (AIPL) Ludhiana, without physically receiving the goods covered under those invoices. Accordingly, the DGCEI had interpreted that the appellants have availed inadmissible CENVAT credit of Rs.14,67,774/- and utilized the same for payment of central excise duty, thereby they have contravened the provisions of Central Excise Rules, 2002. Further, it is also alleged by DGCEI that the appellants have aided and abetted M/s Mars International, Mumbai in availing of inadmissible CENVAT credit by arranging the central excise invoices of M/s AIPL, Ludhiana in the manufacture of other than copper tubes on job work basis with other material/inputs that were shown in the invoices of M/s AIPL, Ludhiana under supply to M/s Mars International. On completion of the investigation, DGCEI had issued show cause notice No. F. No. DGCEI/MZU/I&IS'C'/12(4)12/2009 dated 25.05.2009.

2.3 The said SCN dated 25.05.2009 was adjudicated by the Additional Commissioner, Central Excise, Mumbai-V in confirmation of the demand of Rs.14,67,774/- along with interest and equal amount of penalty, besides imposition of penalties on various noticees to the SCN under Rule 26 of Central Excise Rules, 2004 vide Order-in-Original dated 09.12.2009. Feeling aggrieved with the aforesaid original order, the appellants had preferred an appeal before the Commissioner (Appeals), who in his order dated 08.02.2011 had upheld the said order and rejected the appeal filed by the appellants. Being aggrieved with the said order, the appellants had filed an appeal before the Tribunal, in the first round of litigation. After carefully examining the facts of the case and the arguments raised by both sides, the Tribunal had remanded the matter back to the adjudicating authority with the direction to conduct cross examination of the witnesses and thereafter pass a speaking order by issue of Final Order No. A/88346-88348/17/SMB dated 25.05.2017.

2.4 In pursuance of the above directions of the Tribunal, the original authority have provided cross examination of 2 witnesses out of the total 7 witnesses, and on the basis of the available evidences had confirmed the adjudged demands by issue of Order in Original dated 06.06.2018. Feeling aggrieved with the above order, the appellants have preferred an appeal before the Commissioner (Appeals), Mumbai. After giving a personal hearing to the appellants on 12.08.2020, learned Commissioner (Appeals) had given a finding that the original authority had come to the conclusion

about the involvement of the appellants in the case of misuse of Excise invoices by availing inadmissible CENVAT credit, based on panchnamas, statements of various witnesses and therefore, he had held that the appellants are liable for penalty and payment of the amount confirmed. Accordingly, he upheld the order of the original authority and rejected the appeal filed by the appellants. Feeling aggrieved with the aforesaid Order in Appeal dated 07.09.2020, the appellants have preferred this appeal before the Tribunal.

3. Heard both sides and perused the case records. The additional submission made in the form written paper book in this case was also perused by me carefully.

4. The short issue for determination before the Tribunal is whether CENVAT credit taken by the appellants in respect of inputs sourced from M/s Annapurna Impex Pvt. Ltd. (AIPL), Ludhiana for an amount of Rs.14,67,774/- is admissible or not?, particularly in the context of the entire manufacturing operations through various job workers.

5. On perusal of the case records, it is noticed that CENVAT credit was denied to the appellants on the ground that they have received the invoices from M/s. AIPL; further, it was alleged in DGCEI investigation that M/s. AIPL, Ludhiana have not supplied the inputs covered under said invoice, as they do not have any manufacturing facilities in their factory. I find that in the first round of litigation, the Tribunal had seen the fact that the entire case was made out on the basis of mainly statements of various persons who are not related to the appellants but they are either representative of M/s. AIPL, broker, Octroi Agent etc. As regard the statements given by the appellant's partner, he has categorically stated that they have received input under cover of the invoices on which they have taken credit. In these circumstances, The Tribunal had ordered that the request of the appellants for cross examination of the witnesses should have been considered and the cross examination should have been allowed. When the statements of third party are relied upon by the adjudicating authority and if the person against whom the said statements are used, denied those statements, it is obligatory on the part of the adjudicating authority to conduct cross examination in terms of Section 9(d) of the Central Excise Act, 1944. Even if the cross examination is not asked for, and if the adjudicating authority wants to rely upon the third

party statements, then also the said statements cannot be used unless witnesses/persons, who have given such statements are cross examined. In view of this statutory provision, the adjudicating authority must have allowed the cross examination of the witnesses which he failed to do so, thereby the principle of natural justice was not complied and the matter was remanded to the adjudicating authority for passing a fresh order.

6. I find that the adjudicating authority, in de novo adjudication out of the total seven witnesses was able to provide cross examination of only two witnesses to the appellants viz., Shri Jaswantbhai Shah, Manager of Star Metal & Tubes Ltd., and Shri Arvind Ghevarchand Jain, Broker in metal market, as the other five witnesses did not turn up. Out of this two witnesses, Shri Jaswantbhai Shah, Manager during cross examination had confirmed that he had received the invoice of M/s Annapurna Impex Pvt. Ltd., Ludhiana along with the material, and therefore he is under *bona fide* belief that the goods were received from them. Shri Arvind Ghevarchand Jain, Broker had stated that he had studied upto 10th Standard and can write and read English. He is aware of the existence of the job worker M/s Mars International through Shri Jaswantlal of M/s Star Metal Tubes Ltd., he did not retract his earlier statement. On the above basis and on the basis of panchnama, the original authority had come to the conclusion that M/s Annapurna Impex Pvt. Ltd., (AIPL) Ludhiana did not have any manufacturing facility for manufacture of any copper rods or ingots in their factory, and therefore the invoices issued by them was without supply of the material. In the impugned order dated 07.09.2020, learned Commissioner (Appeals) had upheld the order of the original authority on the basis that upon examination of the statement of employee nothing new had come which shows that the involvement of appellants in the case was proved.

7. From the records of the case, I find that M/s AIPL, Ludhiana had disputed the allegation raised by the department that they had no facility for manufacture of copper ingots inside the factory premises etc., at the initial stage of DGCEI investigation, by filing a civil suit against the local Commissioner of Central Excise and Customs before the Civil Judge (Senior Division) Ludhiana. In disposal of such application filed by M/s AIPL, under Order 26 Rule 9 CPC this case had culminated into passing of an order dated 04.10.2006, wherein the said Civil Judge had appointed a Local Commissioner who shall visit the spot and report about the actual and

factual position of machinery lying installed in the factory of the plaintiff M/s AIPL. The said Local Commissioner Shri L.S. Rai had submitted the court that in compliance with the order of the Hon'ble Court, he went to the premises of the plaintiff M/s AIPL situated at 327, Industrial Area-A, Near Cheema Chowk, Ludhiana at about 03.30 P.M. on 14.10.2006 and he had prepared the presence sheet at the spot, and his observations at the spot are as under:-

"That the unit of the plaintiff company M/s Annapurna Impex Pvt.Ltd is in the areas about 6.30 Sq. Yards consisting of one big shed, office block, hall on first floor and the following machinery is installed in the said premises :

- i. Copper Melting Furnace.*
- ii. Copper rod manufacturing machine.*
- iii. Copper point flat and profile machine.*
- iv. Drawing machines.*
- v. High Speed drawing machines.*
- vi. Welding machines.*
- vii. Bar winding machines.*
- viii. Winding machines.*
- ix. Thin super enamel machines.*
- x. Copper annealed furnace.*
- xi. Blowers-2, one of Champion make with manufacturing date of 09.06.1998.*
- xii. Two generator sets of 75 K.W.A and 16 K.W.A.*
- xiii. Picking tank.*
- xiv. Drilling machine.*
- xv. Vacuum machine.*
- xvi. U.P.S.*

In addition to the said machines, there were two copper rods, Empty cones, finished products such as copper were upto 50 Kg approximately was also lying there.

All the said machinery seemed to be in good working condition but at that time, not a single machine was working and when I enquired about the same from Shri Navneet Aggarwal, M.D. of the plaintiff company, he told me that since the license of Central Excise Department was suspended of the Plaintiff Company by the Order of the said Department dated 17.07.2006, they have stopped the working of the company from that very date.

The machinery lying installed there seemed to be installed some eight to ten years back and I am of the strong view that no major machinery is installed in the premises of the plaintiff company in recent past. All the machines installed there are of old make and bear signs of normal wear and tear.

I also took my digital camera with me and took various photographs of the machinery installed there and which also corroborate my above detailed observations and are at Annexure-III to XVIII."

The aforesaid affidavit duly bearing the stamp of the Civil Judge (Sr. Division), and submitted by an independent local Commissioner appointed by the Civil Court Judge, Ludhiana, is an independent evidence to prove that M/s AIPL, Ludhiana, had the manufacturing facilities for production of copper ingots, from whom the appellants have obtained the copper ingots on payment of central excise duty under the cover of Central Excise Invoice. Therefore, the conclusion arrived in the impugned order that the CENVAT credit taken on the basis of invoice issued by M/s AIPL, Ludhiana is without receipt of material is contrary to the factual position, as indicated above. Further, during cross examination of the manager Shri Jaswantbhai Shah, he had clearly stated that he had received the invoice along with the material from M/s AIPL, Ludhiana. Therefore, I do not find any basis or any other evidence for coming to a conclusion that the receipt of copper ingots etc., by the appellants from M/s AIPL, Ludhiana, is improper.

8.1 In this regard, I find that the Tribunal in case involving similar facts and for the same disputed supplier M/s AIPL, Ludhiana, in the case of *STI Industries Vs. Commissioner of Central Excise & Service Tax., Vapi - 2015 (325) E.L.T. 910 (Tri.-Ahmd.)* have held that the CENVAT credit cannot be denied, as the documents produced show that M/s AIPL was in existence and supplied the material with invoices. The relevant paragraph of the said order is as follows:

"9.....In the present case, I find that appellant had produced several evidence in respect of receipt of inputs and the same were not disputed and the officers proceeded merely on the basis of statements and in this situation, denial of Cenvat credit cannot be sustained.

10. The case laws relied upon by the learned Authorised Representative are not applicable in the present case as, in that case, the assessee had not produced any document. The Commissioner (Appeals) had relied the various case laws where it has been held that as per general rule of law, it is the bounden duty of the purchaser to make all such necessary enquiries and to ascertain all the facts relating to the property to be purchased prior to committing in any manner and if he does not, it is at his peril. In the present case, I find that appellant produced documents that M/s. Annapurna was in existence during the material period as established by their invoices and the Central Excise monthly returns. So, the appellant has discharged their responsibility and therefore, Cenvat

credit availed on the basis of invoices of M/s. Annapurna cannot be denied.

11. In view of the above discussions, the impugned orders cannot be sustained. Accordingly, the impugned order is set aside. The appeal filed by the appellant is allowed with consequential relief."

8.2 For the reasons stated above, in the above order and as per the factual matrix of the case discussed by me in the preceding paragraphs, where the appellants have duly availed the CENVAT credit, I do not find any merits in the impugned order to the extent it had denied CENVAT credit facility and in confirmation of the adjudged demands on the appellants.

9. In view of the foregoing discussions and analysis, I do not find any merits in the impugned order passed by the learned Commissioner (Appeals)-Thane, Mumbai, as it does not stand the scrutiny of law. Therefore, by setting aside the impugned order dated 07.09.2020, the appeal is allowed in favour of the appellants, with consequential relief.

(Order pronounced in the open court on 09.09.2024)

(M.M. PARTHIBAN)
MEMBER (TECHNICAL)