Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench At Ahmedabad

REGIONAL BENCH- COURT NO.3

Excise Appeal No. 12396 of 2019

(Arising out of OIO-VAD-EXCUS-002-COM-009-19-20 dated 12/07/2019 passed by Commissioner of Central Excise, Customs and Service Tax-VADODARA-II)

Rajputana Stainless Ltd **.........Appellant**
213, Madhwas, Halol- Kalol Road Taluka-Kalol
Panchmahal, Gujarat

VERSUS

C.C.E. & S.T.-Vadodara-ii **.........Respondent**
1st Floor... Room No.101,
New Central Excise Building,
Vadodara, Gujarat-390023

WITH

Excise Appeal No. 12563 of 2019

(Arising out of OIO-VAD-EXCUS-002-COM-009-19-20 dated 12/07/2019 passed by Commissioner of Central Excise, Customs and Service Tax-VADODARA-II)

Shri Shankar D Mehta **.........Appellant**
M/S. Rajputana Stainless Limited,
213, Madhwas, Halol- Kalol Road Taluka-Kalol
Panchmahal, Gujarat

VERSUS

C.C.E. & S.T.-Vadodara-ii **.........Respondent**
1st Floor... Room No.101,
New Central Excise Building,
Vadodara, Gujarat-390023

AND

Excise Appeal No. 12586 of 2019

(Arising out of OIO-VAD-EXCUS-002-COM-009-19-20 dated 12/07/2019 passed by Commissioner of Central Excise, Customs and Service Tax-VADODARA-II)

Suraj Limited **.........Appellant**
Survey No. 779/a, Thol, Kadi Sanand Highway, Taluka Kadi
Mehsana, Gujarat

VERSUS

C.C.E. & S.T.-Vadodara-ii **.........Respondent**
1st Floor... Room No.101,
New Central Excise Building,
Vadodara, Gujarat-390023

APPEARANCE:

Shri H.G Dharmadhikari (Advocate) & Shri. Anil Gidwani (Consultant) for the Appellant
Shri T.G Rathod, Additional Commissioner (AR) for the Respondent

CORAM: HON'BLE MEMBER (JUDICIAL), MR. RAMESH NAIR
HON'BLE MEMBER (TECHNICAL), MR. RAJU

Final Order No. A/ 10267-10269/2022

DATE OF HEARING: 30.11.2021
DATE OF DECISION:17.03.2022

RAMESH NAIR

Appellant have filed these appeals against Order-In-Original No.VAD-EXCUS-002-COM-009-19-20 dated 12.07.2019. For the sake of convenience, the brief facts are as under:

1.1 The main appellant i.e. M/s Rajputana Stainless Ltd. are engaged in the manufacturing of Stainless Steel Billets, Bright Bars, Rounds, Flats etc. They are availing the benefit of Cenvat Credit facility. During the investigation of DGGSTI, Mumbai Zonal Unit, conducted at the premises of M/s Suraj Ltd., observed that the said party is providing sales invoices of scraps to its buyer without supplying the goods and the buyers were making payment for the said goods in cheque and said party returning the said amount back to the buyers in cash. These transactions were recorded in the private ledger which was seized from the computer of M/s Suraj Ltd. The investigation revealed that one such buyer's name which appeared in the said ledger was the Appellant. The said ledger was also showing M/s Suraj had also received cash amounts on various dates from Appellant. On the basis of such information a search was conducted at factory premises of the Appellant and documents/ records/ Laptop were seized and statement of person was also recorded. Officers also conducted the search at transporters premises/offices and recorded the statements of persons. On the basis of investigation, the DGGI alleged that the appellants were indulged in evasion of Central Excise duty by way of fraudulent availment of Cenvat credit on the basis of invoices issued by M/s Suraj Ltdwithout receipt of goods. A show cause notice was issued for recovery of Cenvat credit of Rs. 8,14,80,722/- along with interest and penalty. The Adjudicating Authority confirmed the demand proposed in show cause notice vide above impugned order. The appellants are thus before the Tribunal.

2. On behalf of appellant Shri H.G. Dharmadhikari, Learned Counsel explained the background of initiation of investigation conducted by DGCEI / DGGI and details of the credit availed by the appellant. He submits that it is settled preposition of law that on fulfilment of condition under Cenvat Credit Rules, 2004 the Cenvat Credit should not be denied. Appellant has availed the Cenvat Credit on the inputs/ raw material received from M/s Suraj Ltd. which has been used by the Appellant in manufacture of its final products. The allegation of department that the appellant have availed the Cenvat Credit without receipts of goods from M/s Suraj is based on a mere suspicion that too on the basis of statements of various persons without any cogent or physical evidence. Further, in the cross -examination transporters have specifically stated that they have lifted the goods from Suraj Ltd. and delivered it to the factory of Appellant. Similar the director of Supplier Company i.e Suraj Ltd. in his cross -examination also reiterated that goods are supplied to Appellant and not only invoices as alleged.

2.1 He also draw the attention that before recording the statement of director of appellant's company the coercive measure was applied by beating director in his cabin. The CCTV footage in pen drive supported by affidavit under Section 36B of the Act submitted.

2.2 He submits that all the scrap received by Appellant duly accounted for in books of accounts and entered in to RG23A Part-I and was issued for production and maintained in FORM-IV records. Appellant paid the duty on final products. The confirmation of demand by disallowing the Cenvat Credit on the inputs which are received by the Appellant and as admitted by the Suppliers and transporters in cross examination is unsustainable. The

Appellant have fulfilled the conditions for availment of Cenvat Credit. He relies upon the following judgments:-

- G.S. Alloys Castings Ltd. Vs CCE - 2016(331)ELT429
- CCE Vs Juhi Alloys Ltd. – 2014(328) ELT 429 (Tri. Ahmd)
- Commissioner of Cus.&C.Ex, Kanpur Vs. Juhi Alloys Ltd – 2013(296)ELT533
- Monarch Metals Pvt. Ltd. Vs. CCE Ahmedabad – 2010(261 ELT 508 (Tri.-Ahmd.)
- Gian Castings Pvt. Ltd. Vs. CCE, Chandigarh – 2015 (319) ELT 339 (Tri. Del)
- Commissioner Vs Dhanlaxmi Tubes & Metal Industries 2012 (282)ELT 206 (Guj.)
- Adhunik ferro Alloys Ltd. Vs CCE, Chandigarh -2009 (233) ELT 131 (Tri. Del)
- Adhunik Steel Ltd Vs CCE, Ludhiana/ Chandigarh 2007(213)ELT 97 (Tri Del)

2.3 Further, he submits that the DGCEI officers have conducted the stock taking and they did not find any excess stock of raw material or shortage of raw material. Therefore, when the accounted raw material vis-à-vis physical raw material are tallying, it support the contention of the appellant that all input/ raw materials referred hereinabove as allegedly not received from M/s Suraj Ltd. are in fact received and used in the manufacturing of final products and therefore, the quantity shown as balance in the raw material account tallied with the physical stock. This scientific based evidence cannot be brushed aside. The Ld. Adjudicating authority has also not considering this aspect and has solely confirmed the allegation raised without substantial proof in respect of the core issue of non- receipt of raw material. In support of this contentions he placed reliance on the following Judgments:

- Askhay LPG Valves Vs CCE 2016(337)ELT 129(Tri. Hyd)
- Monarch Metals Pvt. Ltd. Vs CCE 2010(261) ELT 508 (Tri. Ahmd)
- Bhakti Alloys Pvt. Ltd. Vs CCE 2016(41) STR 554 (Tri. Ahmd)

2.4 He further submits that it is not the case of the department that the supplier of input M/s Suraj Ltd., has not paid the Central Excise Duty under the invoices on which Appellant have availed the credit. It is not the case of department the said availed credit is not utilized by the Appellant for the purpose of excise duty payable on the final products. In the impugned show cause notice there is no physical evidence adduced for non- receipt of the goods nor there is evidence brought on record of having replaced such quantity which is allegedly not received by the Appellant. The utilization of quantity of the input is not in dispute considering the quantity of final products manufactured and cleared by the Appellant. Under the circumstances, in the absence of any tangible evidence, the allegation in the impugned show cause notice is not tenable.Merely based on the statement that too retracted and in the absence of any evidence of replacement of quantity of goods by any other alternative source the impugned order denying appellant cenvat credit under Rule 4 of Cenvat Credit Rules 2004 and demanding duty under Section 11A and penalty 11AC and interest under Section 11B is unsustainable. The Ld. Adjudicating authority without appreciating the aforesaid contention has also wrongly held in para 25.1 to Para 25.5 at internal page 43 of the impugned Order -In-Original that Appellant has taken the plea that the supplier has paid Central Excise Duty, therefore they are eligible to avail Cenvat Credit. However, finding of Ld. Adjudicating authority is not sustainable as the specific legal contentions along with corroborative evidence that goods were received at the premises of the appellant and used in manufacture of the Appellants final products was produced by the Appellant. He placed reliance on the following judgments:

- CCE Vs PragPantachem Pvt. Ltd. 2018(360) ELT 1025 (Tri. Del)
- Bhakti Alloys Pvt. Ltd. Vs CCE 2016(41) STR 554 (Tri. Ahmd)
- Adhunik Alloys Ltd. Vs CCE 2016(334) ELT 426 (Tri. Chan)
- Punjab Beverages Ltd. Vs CCE – 1996 (81) ELT 673 (Tribunal)
- Supreme Industries Ltd. Vs. CCE 2014(314) ELT 589 (Tri.- Mumbai)
- Eureka Conveyor Belting Pvt. Ltd. vs CCE 2011(272) ELT 285 (Tri. Del)
- Bhavani Transformers Pvt. Ltd. Vs CCE – 2006 (206) ELT 1035 (Tri. Bang.)

2.5 He submits that the Learned Adjudicating Authority in para 31.1 and 32 at internal page No. 61 of the impugned Order-In-Original by placing reliance on the retracted statements and print outs which was recovered from the computers of M/s Suraj Ltd has wrongly held that it being a quasi - judicial can on the basis of pre-ponderance of probability arrive at the conclusion that the goods were not received by the Appellant. This finding is unsustainable as the Original adjudicating authority has failed to understand the difference between probability and assumption. This cannot be the basis for confirmation of demand. In support of this contention, he placed reliance on the following judgments:

- CCE Vs Saakeen Alloys Pvt. Ltd. 2014(308) ELT 655 (Guj)
- Commissioner Vs Saakeen Alloys Pvt. Ltd. – 2015(319)ELTA117(SC)
- Bhakti Alloys Pvt. Ltd. Vs CCE Vadodara-I 2016(41) STR 554 (Tri.- Ahmd)
- Siddharth Bronze Products Pvt. Ltd. Vs CCE Bhavnagar- 2015(328) ELT 429 (Tri. Ahmd)

- Commissioner Vs. Motabhai Iron and Steel Industries 2015(316)ELT 374 (Guj.)
- Akshay LPG Vales Vs CCE;, Hyderabad -IV 2016(337)ELT 129(Tri. Hyd.)
- Monarch Metals Pvt. Ltd. Vs CCE Ahmedabad 2010(261) ELT 508 (Tri. Ahmd)
- CCE Vs PragPentachem Pvt. Ltd. 2018 (360) ELT 1025 (Tri. Del)
- M/s Shah Foils Order dated 18.01.2019.

2.6 He also submits that in matter of M/s Shah Foils Ltd the demand was made on the ground that the said party has availed the credit on the basis of invoices issued by the Suraj Ltd. without actual receipts of the goods. The Hon'ble CESTAT while recording its finding at para 2 has dropped the demand by observing that there is no statements of suppliers or other corroborative evidence as well as it has not been established any cash transactions as alleged. Similarly in case of the Appellant, the allegation of cash transactions based on non- admissible evidence of documents at page 67-141 of relied upon documents in the show cause notice is not at all established, which is rather negated by the Director of both the companies in their cross examination. They have plainly submitted in the cross that all the transaction were made in cheque or DD and no transaction was made in cash.

2.7 The supplier of raw material has consistently stated that goods are supplied by Suraj Stainless Steel. Even in the statement of Mr. Gunawant Shah which is recorded on 25.07.2015 he has clearly stated that the goods are supplied to the Appellant and the fact that only invoices were supplied to the Appellant was negated. Further the statements of the Directors of the Appellant was recorded under duress as can be seen from the evidence of video clips (CCTV Footage) of the date of search in which beating and man handling to Director is clearly visible and the said video was submitted along with the affidavit of person in order to comply the provision of Section 36B to admit the electronic evidence.

2.8 He also submits that in the present matter department's evidence is alleged computerized statement recovered from the office premises of Suraj Ltd at Mumbai which does not reveal the author or the person under whose control the said computer was. Further there is no affidavit as mandated under the provisions of Section 36B of Central Excise Act, 1944 are produced by the department by placing reliance on computer sheet which does not bear the signature of the author therefore such statement does not have evidentiary value. He placed reliance on the following decisions:

- S.N. Agrotech Vs CCE 2018(361) ELT 761 (Tri. Del)
- Ashutosh Metal Industries Vs CCE 2018(15) GSTL 384 (Tri. Del)
- Magnum Seel Ltd. Vs CCE 2017(358) ELT 529 (Tri. Kol)
- Shivam Steel Corporation Vs CCE 2016(339) ELT 310 (Tri. Kol)
- Premier Instruments & Controls Ltd. Vs CCE 2005 (183) ELT 65 (Tri.- Chennai)

2.9 He submits that statement of director of the Appellant's company has been retracted by executing an affidavit dated 29.10.2015. It is settled preposition of law that retracted statement cannot be used as evidence for fastening the duty liability. Statements are drawn by applying coercive measures does not have evidential value and therefore, cannot be relied upon because once it is retracted it loses its evidential value. Transporters' records without investigation with the truck drivers is not sufficient to deny the credit of inputs. The non-appearance of LR Nos. in the books of accounts does not lead to the conclusion that the goods are not transported without verifying the lorry nos. stated in the LR and its movement and the statements of drivers who actually delivered the goods. No corroborative evidence was produced by the department in supports of their allegation in the present case, hence demand is not sustainable. In support of his this contention, he relies upon the following cases:

- CCE Vs PragPentachem Pvt. Lt. 2018(360)ELT 1025 (Tri. Del)
- CCE Vs Vishnu & Co. Ltd. – 2016 (332)ELT 793 (Del)
- Adhunik Alloys Ltd. Vs. CCE – 2016(344)ELT 426 (Tri. -Chan.)

2.10 He also submits that the adjudicating authority held that the Appellant has made payment of certain amount of demand in installments therefore, the appellant has agreed to the fact that they have availed ineligible Cenvat credit. This finding is not sustainable as payment of duty was not tantamount to acceptance of liability unless specifically accepted or not contested at all by the Appellant. He placed reliance on the decision of J.G. Sponge & Power Ltd. vs. CCE & S.T. Meerut- 2017 (348) ELT 162 (Tri. All)

2.11 When the receipts of inputs and availment of credit is reported in the monthly returns then the allegation of suppression with the intention to avail undue credit is absent; in such situation extended period is not invokable.

3. On behalf of Revenue Shri T.G.Rathod, Additional Commissoner (AR) appeared. He reiterated the findings in the impugned order. He submits that from the investigations conducted by DGCEI /DGGI it is clearly brought out that Appellant has taken fraudulent credit without the receipts of materials/ goods in the factory. He strongly argued that, on enquiry at the end of suppliers and transporters revealed that Appellant have not received the goods. It isclear that as per the provisions of Cenvat Credit Rules 2004 the onus of proving admissibility to credit lies on the person who is availing the credit. 3.1 In the present case, the main appellant have not discharged this responsibility.He submitsthat the confirmation of demand, interest and the

equal amount of penalty imposed is legal and proper. During the investigation Director of the appellant company admitted the availment of cenvat credit without receipts of the goods and they also deposited part amount. He also submits that the adjudicating authority has elaborately dealt with all the points raised by the appellant. Adjudication order should be upheld in its entirety. He placed reliance on the following decisions:

- 2018(5)TMI 1456 – CESTAT, New Delhi - Guruharkrishan Industries Vs CCE, Delhi
- 2019(1) TMI 909 – CESTAT, Bangalore - KK Plastics Vs CST, Cochin
- 2018(361)ELT 1054 (Tri.-Del) – Laxmi Enterprises Vs. CC (Prev.) New Delhi
- 2020(372) ELT A33(SC) – Laxmi Enterprises Vs. Commissioner
- 2013(295) ELT 116(Tri. Bang) -Ramchandra Rexins Pvt. Ltd. Vs Commissioner
- 2008 (225) ELT 267 (Tri. Del) -Sai Synthetics Processors Vs CCE, Surat -II
- 2003 (152) ELT 352 (Tri.-Mum) ShaluDyg&Ptg Mills Vs CCE Surat
- 2010(251) ELT 123 (Tri- Kol) Shri Ram Rubber Products Vs CCE, Shilong
- 2009 (241) ELT 348 (Bom) Shailesh AmulakhJogani Vs Union of India
- 2017 (358) ELT 1149 (Tri. Del) -Prakash Industries Ltd Vs CCE Raipur
- 2017 (358) ELT 1014 (Tri- Bang) Usman Suleiman Darvesh Vs. CCE Calicut
- 2017 (350) ELT 474 (P&H) -CCE Panchkula Vs. Vardhman Strips Pvt. Ltd.

- 2021 (376) ELT 476(Mad) – K RahumanSait Vs CC, Trichy.
- 2017(346) ELT A149 (Guj.) – Principal Commissioner Vs. Rajputana Steel Casting Pvt. Ltd.
- 2020 (372) ELT 321 (Chhattisgarh) – N.R. Sponge Pvt. Ltd. Vs CCE, Raipur

4. We have carefully considered the submissions made by both the sides and also co-appellants. The case of the Revenue is that Appellant have availed the Cenvat Credit merely on the strength of invoices issued by the supplier i.e. M/s Suraj Ltd. without physical receipts of the goods in their factory. The case of revenue is also on the ground of transporters' admission that the goods were not supplied to the appellant.

4.1 We find that the goods received from M/s Suraj Ltd. properly recorded in the books and accounts of the Appellant. Further the Director of Suraj Ltd. during the cross-examination admitted the supply of goods to the Appellant. The relevant details of the cross -examination of Shri Gunvant T. Shah, Director of M/s Suraj Ltd. is being reproduced hereunder:

> *"5. In your statement dated. 23.07.2015, in answer to question 2 and 3, there is reference to the documents bearing page no. 67 to 141, which are computerized print out, what do you want to say about it?*
> *Ans. : It is wrong. I don't know when and from where the documents were recovered.*
> *Q6. Whether alongwith the computerized statement any affidavit of any person from whose computer, this print out are taken was shown to you, to use it as evidence by the department?*
> *Ans.: No. I don't know about this*
> *Q7. Whether the statements was recorded in fair and fearless atmosphere ?*
> *Ans. It was recorded under pressure and under the threat of arrest.*
> *Q. 10. Whether you were arrest by the department?*
> *Ans. Yes, I was arrested from 16.10.2015 to 09.11.2015. The details of arrest can be seen from show cause notice issued by the ADG, DGCEI, ZU Mumbai.*
>
> *Q.20. My suggestion to you is that M/s Rajputana had supplied the goods to your company alongwith invoices and your company M/s Suraj Ltd. had supplied the goods alongwith invoices to M/s Rajputana. Is it correct ?*

> *Ans. Yes, it is correct the supply was alongwith LR.*
> *Q21. Another suggestion is that whatever material you purchased from M/s Rajputana, you made payment by cheque and whatever your supplied to M/s Rajputana, you received the payment by cheque. In a nutshell, there were no cash transaction. Is it true or false?*
> *Ans. True, all transaction were made through cheque and there were no cash transaction."*

The above facts are established that the appellant have received the inputs from M/s Suraj Ltd. in their factory.

4.2 We further find that the appellant have recorded the receipt of the goods in their cenvat account i.e. RG-23A-Pt. I and Pt. II and the said disputed inputs used in the manufacture of dutiable goods. The purchase of the goods under the invoices in question were accounted for in in books of account. The payment against the said invoices were made through cheques. The Revenue could not bring any evidence that the goods covered under the invoices were diverted to any other place. It is also not the case of the department that the appellant have procured some unaccounted inputs to cover up the quantity of input shown in the invoices. There is no evidence that the inputs shown in the invoices received by the appellant were not used in the manufacture of final product. Department has not disputed the correctness of quantity manufactured by the appellant recorded in their daily stock account. In the absence of any contrary evidence, the Cenvat credit cannot be denied to the Appellant. The supply of disputed goods has been admitted by the supplier namely M/s Suraj Ltd. that they have supplied the goods to the appellant along with the duty paid invoices. In that situation, weare of the view that the have taken proper care while receiving the goods in their factory to avail theCenvat Credit.

4.3 We also find that the case of the Revenue for denial of credit is on the basis of private ledger which was retrieved from seized computer of M/s Suraj Ltd. it is necessary to examine whether such evidence gathered is admissible in terms of Section 36(B) of Central Excise Act, 1944. The relevant portion of Section 36(B) is reproduced below:

> ***"[S. 36B. Admissibility of micro films, facsimile copies of documents and computer print outs as documents and as evidence.*** *- (1) Notwithstanding anything contained in any other law for the time being in force, -*
>
> *(a) a micro film of a document or the reproduction of image or images embodied in such micro film (whether enlarged or not); or*
>
> *(b) a facsimile copy of a document; or*
>
> *(c) a statement contained in a document and included in a printed material produced by a computer (hereinafter referred to as a "computer printout"), if the conditions mentioned in sub-section (2) and the other provisions contained in this section are satisfied in relation to the statement and the computer in question, shall be deemed to be also a document for the purposes of this Act and the rules made thereunder and shall be admissible in any proceedings thereunder, without further proof or production of the original, as evidence of any of the contents of the original or of any fact stated therein of which direct evidence would be admissible.*
>
> *(2) The conditions referred to in sub-section (1) in respect of a computer printout shall be the following, namely :-*
>
> *(a) the computer printout containing the statement was produced by the computer during the period over which the computer was used regularly to store or process information for the purposes of any activities regularly carried on over that period by the person having lawful control over the use of the computer;*
>
> *(b) during the said period, there was regularly supplied to the computer in the ordinary course of the said activities, information of the kind contained in the statement or of the kind from which the information so contained is derived;*
>
> *(c) throughout the material part of the said period, the computer was operating properly or, if not, then any respect in which it was not operating properly or was out of operation during that part of that period was not such as to affect the production of the document or the accuracy of the contents; and*
>
> *(d) the information contained in the statement reproduces or is derived from information supplied to the computer in the ordinary course of the said activities."*

4.4 Ongoing through the said provisions, we find that Section 36B(2) provides the conditions in respect of computer printouts. But, the said procedure has not been followed by the Revenue while relying on the said computer printout /ledgers. Therefore, the said printouts cannot be the piece of evidence to demand cenvat credit from the appellant. As can be seen, one of the conditions for the computer printout to be anadmissibleevidence is that the said printout should have been produced by the computer during the period over which the computer was used regularly to store or process information for the purposes of any activities regularly carried on over that period by the person having lawful control over the use of the computer. In the present case during the cross-examination the Director of M/s Suraj Ltd. as regard the said computer print out sheet stated that *"I don't know when and from where the documents were recovered*". The Adjudicating Authority has not examined these aspects.There is also no investigation to find out whether the said computer data were forming part of the regular books of accounts maintained by the appellant and already found placed in these books. Further no statement of person was recorded who maintained the said data in computer. Therefore on the basis of said computer printout sheet demand of cenvat credit is not sustainable.

4.5 Learned Adjudicating authority in his order also heavily relied upon the statement of Director of Appellant company wherein he admitted that they did not received these goods physically but availed the cenvat credit only on the basis of invoices. However, it was on record that in the present case before recording the statement of Director of the Appellant's Company the coercive measure was applied for beating the directors in his cabin. The CCTV footage in Pen Drive supported by affidavit under Section 36B of the Act was also submitted by the Learned Counsel before us. Thus his statement could not have been relied upon and have no evidentiary value. We find that during the cross-examination the Director of Appellant's company admitted the facts that M/s Rajputana received the goods from M/s Suraj Ltd.

4.6 We further find in that neither the investigating officers nor the adjudicating authority questioned the duty paid on finished product by the Appellant, then it leads to inevitable conclusion that the Revenue is accepting the fact of receipt of raw material in the Appellant factory premises out of which finished goods were manufactured. In the absence of any contrary evidence adduced by the department of other materials being replaced by the Appellant or supplierwhen duty payment on finished goods is accepted by the Revenue then Cenvat credit is not deniable. Nothing objectionable has been mentioned in the panchnama of search at the factory premises of Appellant in respect of the stock of finished goods/inputs. Nothing has been brought on record to show as to how Appellantproduced their final products in the event of not having received the inputs in their factory.

4.7 The Hon'ble Gujarat High Court in the case of **Commissioner v. M/s. Motabhai Iron & Steel Industries - <u>2015 (316) E.L.T. 374</u> (Guj.)** on the identical situation, dismissed the appeal filed by the Revenue. It has been held as under:-

> *"19. From the findings recorded by the Tribunal, it is apparent that payment to M/s. Vasmin Corporation in respect of purchases as made through banking channels. Under the circumstances, the Tribunal has lightly held that the demand cannot be confirmed against the assessee. The Tribunal has further found that it is an undisputed fact that all the purchases were duly recorded in the statutory books of the assessee and the goods were also found to be entered in its statutory records. That the Department-had not made any investigation at the unit of the assessee, which could have supported the findings of the Adjudicating authority. None of the consignors of the goods have denied the clearance of goods to the assessee. There was no evidence on record to show that the records maintained by the assessee were not correct. The Tribunal, was accordingly, of the view that on the basis of statements of some transporters which were not corroborated by any material on record, a huge credit could not be disallowed. It is under these circumstances that*

> *the Tribunal has set aside the demands and the penalties imposed upon the assessee and the co-noticees."*

4.8 The Learned Adjudicating authority for denial of Cenvat Credit to Appellant also relied upon the documents/ records and statements of transporter. We find that apart from the above, there is no other evidence to reflect upon the fact that the inputs were not actually received by the appellant. However, on the basis of transporters' records and their statements itself, cannot be held to be sufficient for arriving at conclusion that the inputs were never transported to the appellant's factory. All the documentary evidence on record supports the appellant's case about the receipt of the input whereas there is no independent corroborative evidence by the Revenue produced on record. From the cross-examination records we also found that transporters also admitted that they have transported the goods from M/s Suraj Ltd. to Appellant company and vice -versa. The Tribunalin case of M/s. Ajay Industrial Corporation v. CCE, Delhi - 2009 (237) E.L.T. 175 (Tri.-Del.) and in case of M/s. Shree Jagdamba Castings (P) Ltd. v. CCE, Bhopal, 2006 (206) E.L.T. 695 (Tri.-Del.) it has been held that the credit availed on the basis of invoices issued by the registered dealer, cannot be denied on the ground that the transporters have admitted the fact of non-transportation of the goods and the addresses of truck owners were found to be fake. Similarly, in the case of M/s. Malerkotla Steels & Alloys Pvt. Ltd. v. CCE, Ludhiana, 2008 (229) E.L.T. 607 (Tri.-Delhi), it was held that a manufacturer cannot be denied the credit on the ground that registered dealer had not received the inputs. The Tribunal in case of M/s. Lloyds Metal Engg. Co. v. CCE, Mumbai, 2004 (175) E.L.T. 132 (Tri.-Mumbai) has held that burden to prove non-receipt of the inputs is required to be discharged by Revenue by sufficient evidence where disputed consignments are entered in RG-23A Part I and Part II in chronological order, the allegations of non-receipt of the inputs cannot be upheld.

5. In view of above observation, we are of the view that the impugned order denying Cenvat credit and ordering its recovery along with interest and imposing penalties cannot be sustained. The impugned order is set aside and the appeals are allowed with consequential reliefs, if any.

(Pronounced in the open court on 17.03.2022)

RAMESH NAIR
MEMBER (JUDICIAL)

RAJU
MEMBER (TECHNICAL)

Geeta