

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI**

PRINCIPAL BENCH – DIVISION BENCH

EXCISE APPEAL NO. 51633 OF 2022

[Arising out of Order-in-Appeal No. 24(SM)CE/JPR/2022 dated 08.03.2022 passed by Office of the Commissioner (Appeals), Central Excise & CGST, Jaipur]

M/s. Nirmal Inductomelts Private Limited Appellant
F-167-169, Udyog Vihar, Jaitpura, Jaipur

vs.

Commissioner of Central Excise And CGST, Jaipur – IRespondent

WITH

EXCISE APPEAL NO. 51456 OF 2022

[Arising out of Order-in-Appeal No. 05(SM)CE/JPR/2022 dated 31.01.2022 passed by Office of the Commissioner (Appeals), Central Excise & CGST, Jaipur]

M/S. Purvi Sales Corporation Appellant
504, Balaji Tower-1, Near Soni Hospital, Vidhyadhar Nagar
Jaipur, Rajasthan-302039

vs.

Commissioner of Central Excise And CGST, Jaipur – IRespondent

APPEARANCE:

Mr. B. L. Sharma, Consultant and Ms. Priyanka Goel, Advocate for the appellant
Mr. Bhagwat Dayal, Authorized Representative for the Respondent

**CORAM: HON'BLE MR. ASHOK JINDAL, MEMBER (JUDICIAL)
HON'BLE MR. P. ANJANI KUMAR, MEMBER (TECHNICAL)**

FINAL ORDER NO. 50633-50634/2025

Date of Hearing : 09.04.2025

Date of Decision : 08.05.2025

ASHOK JINDAL

1. The appellants are in appeal against the impugned order wherein cenvat credit has been denied to the main appellant namely, M/s. Nirmal Inductomelts Pvt. Ltd. Consequently, penalty is imposed on both the appellants.

2. The facts of the case are as under:

"2.1 Brief facts of the case are that acting upon an intelligence that some of the registered dealers of excisable goods were passing cenvat credit to manufacturers of MS Ingots either directly or through

second stage dealer on the basis of invoices of non-existent manufacturers, an investigation was taken up by the regional unit of DGCEI, Jamshedpur. Searches at the premises of four manufacturers, 11 first stage dealers and 15 second stage dealers were conducted. Further enquires were also conducted by various Central Excise Commissionerates. On the basis of the above intelligence of DGCEI, letter received from Commissioner, Central Excise, Kolkata – III and Superintendent Central Excise Range, Kulti, investigation in respect of sales made by 6 second stage dealers was initiated by the anti-Evasion Branch of erstwhile Central Excise Commissionerate, Jaipur which revealed that they had passed on the cenvat credit on the basis of invoiced issued by the non-existent manufactures, fake invoices of some manufactures who actually had never issued said invoices and only invoices issued by some first stage dealers, without actual movement of any goods pertaining to said invoices. It was revealed that they had passed on cenvat credit to the appellant having Central Excise Registration Number AABCN8927BXM001 and engaged in the manufacture of M/s. Ignots, Angels, Channels, Flats and rounds falling under Chapter 72 of the first scheduled to the Central Excise Tariff Act, 1985 on the basis of invoices (goods less) of first stage dealers i.e. Hariom Udhyog Purulia, WB M/s. Surya Udhyog Corporation, WB and M/s. Maa Parvati Engg. And Csasting, Kulti, Bardawan, WB and who had issued those invoices on the basis of non-existent manufactures i.e. m/s. OHM Metals and Engineering Corporation, M/s. Vedic Chemicals P. Ltd. and Ganpati Enterprises etc. As a result, a case of wrong availment of cenvat credit of Rs. 82,78,275/- on the basis of invoices without actual movement of goods was booked the appellant.

2.2 Show Cause Notice was issued in the matter, proposing therein recovery of wrongly availed cenvat credit along with interest and imposition of equal penalty to the appellant. Imposition of penalty under Rule 26 of the Central Excise Rules, 2002 upon the 6 firms was also proposed. The adjudicating authority after following the due process vide the impugned order confirmed the demand along with interest and imposed penalty equal to

the amount of cenvat credit on the appellant and also imposed penalty upon the other firms. "

3. The said order was challenged by the appellants before the learned Commissioner (Appeals) who, upheld the order of the adjudicating authority, aggrieved for the said order, appellants are before us.

4. Learned Counsel appearing on behalf of the appellant submits that there is no evidence that the Ganpati Enterprises, Dhanbad is a non-existent manufacturer neither there is any investigation report of any authority nor there is any statement of any person in this regard. Only statement of some non relevant persons have been relied upon which are in nature of third party evidence therefore the said statements are not admissible as held by this Tribunal in the case of CCE, Indore vs. Prag Pentachem Pvt. Ltd. 2018 (360) ELT1025(Tri. Del.) and in the case of GS Alloys Castings Ltd. vs. CCE Guntur 2016(331)ELT 310 (Tri. Bang.). It is further submitted that no investigation report of any authority in support of allegation that the first stage dealer M/s. Maa Parvati Engineering & Castings have issued fake invoices without supply of goods, no document has been made as relied upon document in support of this allegation, there is no statement in this regard. It is further submitted that there is no evidence in support of the allegation that appellant has issued invoices without supply of goods. In support of this allegation there is only one evidence i.e. the statement of Shri Nitin Sanghi dated 23.07.2018 partner of the co-appellant here. The said statement also remained uncorroborated by any other evidence, therefore, the same is not acceptable. He further submitted that the appellant Nirmal Inductomelts (Appellant No. 1) has procured the inputs through the invoices issued by second stage dealer and the said inputs have been used in manufacture of the final product which has been cleared on payment of duty. No statement of any transporter has been recorded to

allege that non receipt of the goods. In that circumstances, cenvat credit cannot be denied.

5. On the other hand, authorized representative submitted that the 7 show cause notices were issued but only one appellant has come forward. The manufacturers who were shown as manufacturer of the inputs have not paid duty, in that circumstances, cenvat credit is not available to the appellant. On the basis of the invoices issued by the second stage dealer. In that circumstance, cenvat credit cannot be allowed.

6. Heard the parties considered submissions.

7. We find that in this case, only issue here is that whether the Appellant No. 1 is entitled to take cenvat credit on the basis of invoices issued by second stage dealer alleging that only invoices has been issued, no goods have been received by the Appellant No. 1.

8. We find that in this case this allegation has been made against the appellant for non receipt of input on the basis of the investigation conducted by DGCEI wherein it is alleged that the manufacturer of the goods shown in the invoice as manufacturer has not paid duty consequently, the first stage dealer has also not received the goods against those invoices and further second stage dealer has not supplied the goods to Appellant No. 1. The Appellant No. 1 never said that they have not received the inputs containing invoices issued by the second stage dealer. Moreover the second stage dealer was found to be existent. The case of the revenue is that first stage dealer or the second stage dealer are non existent during the impugned period. The Appellant No. 1 has taken the credit against invoice issued by the second stage dealer and have received the goods which were entered in the statutory records and further used in the manufacture of final product on which they have paid the duty. If case of the revenue is that the Appellant

No. 1 has not received the inputs then question arises from where the Appellant No. 1 has received the inputs, the investigations has not been done to that extent. There is no investigation done at the end of the transporter to find out whether the Appellant No. 1 has received inputs or not? The Appellant No. 1 is entitled to take cenvat credit on the basis of the invoices issued by the second stage dealer along with inputs and all the requirements of the invoices has been fulfilled in terms of Rule 9(2) of the Cenvat Credit Rules, 2004 which were found to be correct in the invoices issued by the second stage dealer and the Appellant No. 1 has made payment through account payee cheque. In that circumstances, it cannot be said that in the absence of any supporting evidence, that Appellant No. 1 has not received the goods in the factory premises. Similar view has been taken by the Hon'ble Allahabad High Court in the case of Commissioner of Central Excise & Service Tax vs. Juhi Alloys Ltd. 2014 (302) ELT 487 (All.) wherein the Hon'ble High Court observed as under:

"7. In the present case, both the Commissioner (Appeals) and the Tribunal have given cogent reasons to indicate that the assessee had taken reasonable steps to ensure that the inputs in respect of which he has taken the cenvat credit are goods on which the appropriate duty of excise, as indicated in the documents accompanying the goods, has been paid. Admittedly, in the present case, the assessee was a bona fide purchaser of the goods for a price which included the duty element and payment was made by cheque. The assessee had received the inputs which were entered in the statutory records maintained by the assessee. The goods were demonstrated to have travelled to the premises of the assessee under the cover of Form 31 issued by the Trade Tax Department, and the ledge account as well as the statutory records establish the receipt of the goods. In such a situation, it would be impractical to require the assessee to go behind the records maintained by the first stage dealer. The assessee, in the present case, was found to have duly

acted with all reasonable diligence in its dealings with the first stage dealer.

The view which the Tribunal has taken is consistent with the judgment of the Jharkhand High Court in Commissioner of C. Ex., East Singhbhum vs. Tata Motors Ltd. – 2013 (294) E.L.T. 394 (Jhar.), where it was held as follows:-

"..... Once a buyer of inputs receives invoices of excisable items, unless factually it is established to the contrary, it will be presumed that when payments have been made in respect of those inputs on the basis of invoices, the buyer is entitled to assume that the excise duty has been/will be paid by the supplier on the excisable inputs. The buyer will be therefore entitled to claim modvat credit on the said assumption. It would be most unreasonable and unrealistic to expect the buyer of such inputs to go and verify the accounts of the supplier or to find out from the department of Central Excise whether actually duty has been paid on the inputs by the supplier. No business can be carried out like this, and the law does not expect the impossible."

8. The judgment of the Division Bench of the Himachal Pradesh High Court in A.B. Tools Limited vs. Commissioner of Central Excise – 2010 (256) E. L. T. 382 (H.P.), on which reliance has been placed by the revenue, does not indicate that any contrary view of the law has been taken.

9. Ultimately, the issue in each case is whether, within the meaning of Rule 9(3) of the Rules of 2004, the assessee has taken reasonable steps to ensure that the inputs in respect of which he has taken cenvat credit were goods on which appropriate duty of excise was paid. Once it is demonstrated that reasonable steps had been taken, which is a question of fact in each case, it would be contrary to the Rules to case an impossible or impractical burden on the assessee."

Same view was taken by the Tribunal in the case of Addi Alloys (P) Ltd. vs. Commissioner of Central Excise, Ludhiana 2017 (346) ELT 113 (Tri. Chan.). Wherein this Tribunal observed as under:

"6. I find that in the matter in hand no investigation conducted at the end of manufacturer/supplier or the

transporter to reveal the truth whether manufacturer/supplier has supplied the goods in question to M/s. S.K. Garg & Sons or the transporter has transported the goods to the premises of the appellants which is vital evidence to reveal the truth. Further, M/s. S. K. Garg & Sons was registered dealer during the impugned period and all the ER-1 returns were filed by M/s. SK Garg & Sons which were accepted by the department. Therefore, in the absence of any corroborative evidence to show that the appellant have not received the goods, it cannot be alleged against the appellant that they have received the invoices and not the goods merely on the ground that there was no storage facility specifically when the landlord made a statement that the godown was let out to the dealer. In the case of M/s. Dhawan Steel Industries (supra), this Tribunal has examined the issue wherein M/s. SK Garg & Sons was the dealer who supplied the goods to M/s. Dhawan Steel Industries and case has been booked against M/s. Dhawan Steel Industries that they have not received the goods from M/s. SK. Garg & Sons. In that circumstances, cenvat credit was sought to be denied to M/s. Dhawan Steel Industries but this Tribunal after examining the issue held as under:-

"4. After considering the submissions made by Id. AR and on perusal of the record, I find that the invoices issued by M/s. SK Garg and Sons giving details of manufacturers as well as manufacturer/supplier of the goods. No investigation was conducted at the end of manufacturer/supplier as well as transporter of the goods to reveal the truth. The case has been made against the respondent on the presumption that supplier dealer is not existing firm therefore there was only paper transaction. Cases cannot be booked merely on the presumption and assumption; there should be corroborative evidence to prove the allegation. In this case, allegation has not been supported with tangible evidence. Therefore, learned Commissioner (Appeals) has rightly set aside the proceedings against the respondent. In these circumstances, I do not find any infirmity in the impugned order and same is upheld. Appeal filed by the revenue is dismissed."

7. The same issue came up before this Tribunal in the case of Sadhashiv Casting P. Ltd. vide F. O. No. 233/2016-CHD dated 23.03.2016 wherein this Tribunal relying on the precedent decision of the Tribunal in the

case of M/s. Dhawan Steel Industries (supra) and M/s. Jain Steel Tubes and other vide Order Nos. 96-102/16 CHD, dated 11.02.2016 as discussed above, I hold that in the absence of any investigation at the end of manufacturer/supplier or the transporter, the cenvat credit cannot be denied to the appellant."

9. Therefore, following the judicial discipline, we hold that the appellant has correctly taken the cenvat credit on the invoices issued by second sage dealer accompanying the goods and in the absence of any evidence placed on the record by the revenue that if the Appellant No. 1 has not received the goods then from where they procured the inputs to manufacture the final products on which they have paid the duty.

10. In these circumstances, we do not find any merit in the impugned order the same is set aside. Consequently, no penalty is imposable on the appellants. In view of this, we allow the appeals with consequential relief, if any.

(Order pronounced on 08.05.2025)

(ASHOK JINDAL)
MEMBER (JUDICIAL)

(P. ANJANI KUMAR)
MEMBER (TECHNICAL)

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