IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CENTRAL EXCISE APPEAL NO.22 OF 2013
(The Commissioner of Central Excise, Customs and Service Tax vs. M/s. SKM Steels Limited, Mumbai and another)

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's orders

CORAM : B.P. DHARMADHIKARI AND P.N. DESHMUKH, JJ.

DATED : AUGUST 26, 2015

Heard Adv. Deshpande for appellant. Perused show cause notice as also order-in-original. The order dated 21/3/2013 passed by CESTAT is questioned. Our attention is invited to the ground raised as ground no.3 in the grounds of appeal. The said ground reads as under :

> "3. M/s. SKM Steel Ltd. made payments for the said goods to M/s. International Steel Corporation, who had supplied the same directly to M/s. Ferro Alloys Corporation Ltd. However, the payments made for these purchases were not as per the rates specified in its purchase orders or the suppliers Central Excise Invoices received along with these

consignments, but (payments) were made according to quality/size and chemistry, i.e. chemical composition contained in the said raw materials supplied/received. Thus, M/s. SKM Steel Ltd. knew or had reasons to believe that the goods being purchased from and supplied by M/s. International Steel Corporation Ltd. to M/s. Facor Steels Ltd. on which Cenvat credit was being availed, was other than the one described and billed in its supply invoices and were, in fact, bazaar/commercial scrap, which had not suffered any Central Excise duty thereon and hence, no Cenvat Credit is admissible thereon. Knowing or having reasons to believe that such Cenvat Credit so being passed on was irregular and inadmissible under the provisions of the Cenvat Credit Rules, 2001/2002 and thereby M/s. SKM Steel Ltd. rendered themselves liable for payment of penalty under Rule 26 of the Central Excise Rules, 2002 (Para 32 of the SCN dated 28.12.2005)."

CESTAT has found that total three Companies were involved in events as per show cause notice or order-in-original confirming it. In paragraph 17 of its order, CESTAT has concluded as under :

"17. Another contention of the appellants is that extended period is not invokable in this case. We have already come to the conclusion that goods described in the Invoices were not received in the appellant's unit. Such a thing cannot happen

> without active connivance of appellant and undoubtedly is a case of fraudulent availment of credit. We therefore reject this contention of the appellant and hold that extended period is rightly invoked."

The learned Counsel for appellant submits that on the same analogy, the appeal filed by present respondent no.1 i.e. M/s. SKM Steels Ltd. also should have been dismissed.

With the assistance of learned Counsel for appellant and in the backdrop of ground mentioned supra, we have perused the impugned order. The impugned order in para 20 mentions that appellant before CESTAT, namely, M/s. SKM Steels Ltd. is engaged in importing S.S. scrap and nickel and selling the same on High Seas to M/s. Facor. CESTAT has noted that the role of Companies relating to local purchase of scrap, i.e. from M/s. ISC was to be looked into. It has recorded a finding of fact that during investigation, no statement has been recorded either from Officers of M/s. Facor or Officers from M/s. ISC or third appellant that third appellant was/is in any way involved in local purchases. CESTAT has found that material on record does not indicate any connivance or knowledge of this change of material supplied to M/s. Facor. It has noted that appellant was only financing the purchase of scrap and that financing was not only for purchase from M/s. ISC, but from also other two scrap suppliers, against whom nothing adverse was found by the Department.

Insofar as contention that rate at which payment was made varied, CESTAT has found that item like scrap whenever sold can have some variation in final payment and settlement thereof is based upon quantity or contents. The contention of M/s. SKM Steels Ltd. that they have been making payments to suppliers of scrap as per advice of M/s. Facor and they were not part of purchase process has been accepted. Thus, CESTAT has accepted that present respondent no.1 M/s. SKM Steels Ltd. was only a financier and was not required to go into details of scrap, transportation, test reports, etc.

These findings of CESTAT are findings of facts and they are not demonstrated to be perverse. No substantial question of law, therefore, arises. Hence, the appeal is rejected.

<u>JUDGE</u> <u>JUDGE</u>

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