IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

CENTRAL EXCISE APPEAL NO.85 OF 2006

Commissioner of Central Excise,
Mumbai-V, 5th Floor, Utpad Shulk
Bhavan, Plot No.C-24, Sector-E,
Bandra Kurla Complex, Bandra (E),
Mumbai – 400 051. .... Appellant

- Versus -

1. M/s. Mahindra & Mahindra Ltd.
   (Auto Divn.), Akurli Road, Kandivali,
   Mumbai – 400 101.

2. M/s. Mehta Trading Corporation,
   301-302, Vertex Vikas, 'A' Wing,
   Opp: Andheri Rly. Station,
   Andheri (E), Mumbai – 400 069.

3. M/s. Agarsha Enterprises,
   211, Loha Bhavan, P.D'Mello Road,
   Mumbai – 400 009.

4. M/s. Kohinoor Trading Co.,
   224, Kolsa Bundar Road,
   Darukhana, Mumbai – 400 010.

5. M/s. Ayushman Steels Ltd.,
   A-69, MIDC Area, Taloja,
   Dist: Raigad – 410 206.

6. M/s. Loha Ispat Ltd.,
   A-69, MIDC Area, Taloja,
   Dist: Raigad – 410 206.

7. M/s. B. Melaram & Sons
   Powder Works Bunda,
   Darukhana, Mumbai – 400 010.

8. M/s. M.H. Steel Corporation,
   220, Kolsa Bundar Road,
   Darukhana, Mumbai – 400 010. .... Respondents

WITH
CENTRAL EXCISE APPEAL NO.154 OF 2006

The Commissioner of Central Excise
& Customs, Kendriya Rajaswa Bhavan,
Gadkari Chow, Nashik – 422 002. .... Appellant

- Versus -

1. M/s. Business Combine Ltd.,
   Plot No.16, MIDC, Satpur,
   Nashik.

2. M/s. Kohinoor Trading Co.,
   224 – A, Kolsa Bundar Road,
   Darukhana, Mumbai – 400 010.

3. M/s. H.H. Steel Corporation,
   220, Kolsa Bundar Road,
   Darukhana, Mumbai – 400 010.

4. M/s. National Steel Traders,
   (2nd Stage Dealer),
   175, Vidyanagary Marg,
   Santacruz (E), Mumbai.

5. M/s. Mehta Trading Corporation,
   (2nd Stage Dealer),
   301-302, Vertex Vikas,
   A-Wing, Opp: Andheri Railway

Station, Andheri (E),
Mumbai – 400 069. .... Respondents

WITH
CENTRAL EXCISE APPEAL NO.155 OF 2006

The Commissioner of Central Excise
& Customs, Kendriya Rajaswa Bhavan,
Gadkari Chow, Nashik – 422 002. .... Appellant

- Versus -

M/s. H.H. Steel Corporation,
220, Kolsa Bundar Road,
Darukhana, Mumbai – 400 010. .... Respondent

WITH
CENTRAL EXCISE APPEAL NO.157 OF 2006

The Commissioner of Central Excise
& Customs, Kendriya Rajaswa Bhavan,
Gadkari Chow, Nashik – 422 002. .... Appellant

- Versus -

M/s. National Steel Traders,
(2nd Stage Dealer),
175, Vidyanagary Marg,
Santacruz (E), Mumbai. .... Respondent

WITH
CENTRAL EXCISE APPEAL NO.158 OF 2006

The Commissioner of Central Excise
& Customs, Kendriya Rajaswa Bhavan,
Gadkari Chow, Nashik – 422 002. .... Appellant

- Versus -

M/s. Mehta Trading Corporation,
(2nd Stage Dealer),
301-302, Vertex Vikas, A-Wing,
Opp: Andheri Railway Station,
Andheri (E), Mumbai – 400 069. .... Respondent

Ms P.S. Cardozo i/by Mr. Vipul A. Bajpayee for the Appellant in all appeals.

Mr. Anil R. Wani with Ms Supriya Devergudi i/by M/s. ANS Law Associates for Respondent No.1 in CEXA-85/2006.

Mr. V. Sridharan, Senior Counsel with Mr. Prakash Shah & Mr. Jas Sanghavi i/by M/s. PDS Legal for Respondent No.2 in CEXA-85/2006 and Respondent No.1 in CEXA-158/2006.

Mr. Ashutosh Mishra i/by Mr. P.K. Shetty for Respondent No.1 in CEXA-154/2006.

CORAM: S.C. DHARMADHIKARI &
B.P. COLABAWALLA, JJ.

DATE : FEBRUARY 27, 2017

ORAL JUDGMENT (Per Shri S.C. DHARMADHIKARI, J.)**:**

1. These appeals of the Revenue were admitted on substantial question(s) of law.

2. The substantial question of law on which Central

Excise Appeal No.85 of 2006 was admitted reads thus:-

> *" Whether it was correct and proper for the Tribunal to set aside the impugned order-in-original and allow modvat credit in question when due to indifference in the description of goods in the subject invoices, no correlation could be established between the input scrap actually received and used in the manufacture of excisable goods and the scrap described in the invoices under which input scrap was received? "*

3. The substantial questions of law on which the other four appeals were admitted are common to all the appeals and they read as under:-

> *" (A) Whether on the facts and in the circumstances of the case and in law, the CESTAT was right in allowing the Modvat/Cenvat Credit availed by M/s Business Combine on the invoices of M/s. Mehta Trading Corporation and M/s Steel Traders and setting aside the demand for Rs.1,05,18,891/- confirmed by the Commissioner of Central Excise under Rule 57(i)(ii) read with Rule 57AH(i) and Rule 12 of Central Excise Rules, 2001 read with proviso to section 11A of the Central Excise Act, 1944?*
>
> *(B) Whether on the facts and in the circumstances of the case and in law, the CESTAT was justified in setting aside the penalty of Rs.1,05,18,891/- equal to amount of duty imposed by the Commissioner Central Excise upon M/s Business Combine Ltd. under Rule 13(O) of the*

CENVAT Credit Rules, 2001 read with section 11AC of Central Excise Act, 1944?

(C) Whether the CESTAT was justified in setting aside the order of the Commissioner of Central Excise in respect of interest at the appropriate rate on the duty amount of Rs.1,05,18,891/- under the provisions of Rule 57-I(5) read with Rule 57AH(i) of CENVAT Credit Rules, 2001 and section 11AB of the Central Excise Act, 1944?

(D) Whether the CESTAT was justified in law in setting aside the imposition of penalty of Rs.2 lacs each on M/s M.H. Corporation, M/s Kohinoor Trading Corporation, M/s Mehta Traders Corporation, M/s National Steel Traders, Mumbai under Rule 209A read with Rule 26(2) of the Central Excise Rules, 2002? "

4. We would take the facts from Central Excise Appeal No.85 of 2006. A common order was passed by the Customs, Excise & Service Tax Appellate Tribunal (CESTAT), West Zonal Bench at Mumbai allowing the appeals of the assessees. This order is dated 23-11-2005.

5. The Revenue had relied on the findings in the order passed by the Commissioner of Central Excise, Mumbai-V, styled as the Order-in-Original. That was founded on a show cause notice. That show cause notice alleges that M/s. Mahindra &

Mahindra (Auto Divn.) Ltd., Kandivali (East), Mumbai is a holder of Central Excise Registration. The said assessee manufactures motor vehicles and parts thereof, including castings of motor vehicles parts manufactured in their Foundry. Those were falling under Chapter 87 of the First Schedule to the Central Excise Tariff Act, 1985 (for brevity's sake hereinafter referred to as "the said goods"). The allegation is that there was a Modvat Scheme enabling the availing of credit on inputs. That existed prior to 31-3-2000. The allegation is that Rule 57A, Rule 57AA, Rule 57G and Rule 57AE(2)(a) which were brought in by the Cenvat Credit Scheme have been violated with an intent to evade the payment of central excise duty. The allegation is that the assessee Mahindra & Mahindra, in collusion with the central excise registered dealers, have fraudulently availed Modvat/Cenvat Credit on Punched Bundled Cold Rolled Closed Annealed Scrap, known as Market Scrap or Bazar Scrap generally generated during the process of manufacture of stamping, lamination, PP Caps, etc., received from such dealers in place of the original goods, namely, Off Cuts of M.S. Sheets, M.S. Scrap, Ferrous Waste & Scrap, C.R. Trimming Scrap, CR & Silicon Scrap, CRC Steel Scrap, Iron & Steel Scrap, etc., which have been shown in the duty paying documents for the purpose of availment of Modvat/Cenvat Credit. In other words, the registered dealers have substituted the goods received from the original manufacturers as described in the duty paying documents and in its place supplied punched bundled scrap of CRCA to Mahindra & Mahindra and to further facilitate the availment of Modvat/Cenvat Credit on such substituted goods. These original manufacturers had issued modvatable documents giving reference of the particulars mentioned in the original duty paying documents received from the original manufacturers/suppliers against the punched bundled scrap of CRCA. After elaborating all these allegations, the Revenue relied upon several searches carried out at the premises of the said Mahindra & Mahindra. The Revenue relied upon certain photographs of the samples, the samples which were examined, the reports thereof and the statements of various officials of Mahindra & Mahindra as also of the suppliers.

6. The duty evasion, according to the Revenue, stands established by these materials. Based on the same that the Order-in-Original was passed by the Competent Official/Authority.

7. There were appeals and which came to be preferred by all these aggrieved parties.

8. The main order was delivered in the case of M/s. Business Combine Limited and others on 15-7-2005. In that the Tribunal concluded that it is not possible to agree with the Revenue and for the reasons recorded in that order. The Tribunal's conclusion on each of the findings in the Order-in-Original are set out. The main issue was, whether the description of CRCA scrap actually observed and M.S. Off Cuts, etc., mentioned on the duty documents would lead to a conclusion that the inputs allegedly received and taken credit were not covered by the duty paid documents. The Tribunal held that the Commissioner was carried away into believing the

statement of functionaries of Mahindra & Mahindra that M.S. Sheet Off Cuts were not received but orders were placed for supplying CRCA sheet punched scrap and the same was received. One Mr. Patankar, Senior Material Manager and Mr. Barve stated before the authorities that CRCA sheet punched scrap was received. However, the Tribunal has faulted the Commissioner for having not referred to the statements in their entirety. In para 2.3 of the order passed in the case of M/s. Business Combine Limited, the Tribunal refers to the Statement of one Mr. Barve. That statement was that in the Modvat invoice the description is Off Cuts of M.S. Sheet and in commercial invoice it is mentioned as CRCA scrap. The Off Cuts of M.S. Sheets are also a type of CRCA scrap though there is a difference in the wordings or description. The Tribunal holds that no material is shown to the Tribunal Members to come to a conclusion that CRCA scrap is not the Off Cuts of sheets. The Tribunal comes to a factual finding that when duty has been paid on a lesser value, then the remedy is not to deny the benefit of credit of actual duty paid but was to alert the manufacturers that proceedings can commence to enhance the scrap values. The credit cannot be denied as availed. The Tribunal concluded that there is no material on record to indicate that Off Cuts are differently valued from CRCA sheet scrap per unit. In fact the charge are of higher values for CRCA scrap than M.S. Sheet Off Cut scrap is the case of the Revenue. It is in these circumstances that the Tribunal referred to all the factual data and brought on record. From paras 2.3 onwards, the Tribunal has referred to the relevant statements and has arrived at the conclusion that the duty, interest and penalty orders deserve to be set aside. The Tribunal found that denial of credit on the dealers' invoices cannot be upheld when no efforts are made to bring this activity of the dealers under excisable manufacture. If the dealers' status is not questioned, then, their records, as maintained, cannot be faulted. The Tribunal found that the quantum of credit as availed of cannot be denied because as per the documents, there is nothing to indicate that the physical quantity is short or that there is duty quantum difference which could be said to be found. The Tribunal has found that there is no allegation or finding of short receipt of scrap than as shown as quantity in the Modvat Credit availing documents mentioned/accompanying the goods. Even if scrap from two or more lots has got mixed and part of the consignment of these mixed lots is sent, no excess or short quantity than that shown on duty paid documents is alleged or found to be dispatched from both dealers and received by the assessee.

9. To our mind, therefore, the Tribunal found that there are no reasons for taking a different view in the other appeals. In fact in the order passed in Mahindra & Mahindra's case, the Tribunal has held that it can safely rely on the order passed in the case of M/s. Business Combine Limited. No attempt can be countenanced for distinguishing the view taken in that case for the simple reason that an argument and loosely canvassed on the basis of recovery of a solitary umbrella handle in one of the bundles of the scrap would not enable it to hold that it was a bazar scrap which was physically received and the documents indicating duty paid scrap from the various manufacturers/dealers were received which do not cover the

said goods. Such an argument cannot be accepted. It is in these circumstances that no order has been passed.

10. From a perusal of the paper-book in the main appeals, we find that the attempt of the Revenue while arguing these appeals is to try and convince this Court that a vital piece of evidence has been over-looked and the Tribunal's order is perverse. However, merely contending thus is not enough. The questions of law is based on the argument and seriously canvassed that the CESTAT failed to appreciate that the assessee Mahindra & Mahindra did not inform the Department that they received only punched bundled scrap of CRCA against the description of goods in the subject invoices. Then the argument was that the employees of the assessee Mahindra & Mahindra admitted in unequivocal term that only CRCA punched sheet scrap, in bundle form, was received by them and no other scrap was received. Thus, we cannot reappreciate or reappraise the materials placed on record. The Tribunal did not appreciate that all the documentation such as vendor audit, purchase order, delivery challan and commercial invoices reflect that the

assessee received only CRCA punched sheet scrap, in bundle form while the Modvat invoices were issued by the dealers carrying different description altogether.

11. We have seen from the record that the assessee throughout argued that all types of scraps were used by them (Mahindra & Mahindra). There was, therefore, no need to give any specific instructions for supplying a particular variety of scrap. How that scrap can be used in induction furnace was duly explained. This is not, therefore, a case of irregular availment of the Modvat Credit. In such circumstances, we cannot undertake the exercise as desired by the Revenue's counsel.

12. We find that the order passed by the CESTAT and referring to all the materials on record cannot be termed as perverse or vitiated by any error of law apparent on the face of the record. The argument that there should be co-relation established between the input scrap actually received and used in the manufacture of excisable goods and the scrap described in the invoice under which the input scrap was received does not

merit any acceptance. Eventually when the documents placed on record themselves point out that all types of scrap were utilised by the assessee, then, one cannot just pick and choose any statement or single out a document to deny the Modvat Credit. The fraud, as alleged, has thus not been established and proved.

13. We find no merit in any of these appeals. They are dismissed with no order as to costs.

(B.P. COLABAWALLA, J.) (S.C. DHARMADHIKARI, J.)