IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 365 OF 2011

M/s. ISMT Ltd., Ahmednagar .. **Appellant**
Versus
Commissioner of Central Excise, Aurangabad .. **Respondent**

Mrs. Charuta Sunil Deshmukh, Advocate for the Appellant.
Shri D. S. Ladda, Advocate for the Respondent / Sole.

CORAM : S. V. GANGAPURWALA &
A. M. DHAVALE, JJ.

DATE : 8th February, 2018

PER COURT :

1. The appellant assails the order of the CESTAT, the order of Commissioner of Appeals and the order in original.

2. Mrs. Deshmukh, learned advocate for the appellant submits that the authorities have erroneously come to the conclusion that the appellant has not reversed the entry of Rs.8,26,649 twice. In fact the duty is paid by the appellant twice. Only because in the books of account the entries could not be pointed out would not be sufficient to discard case of the appellant. The appellant relied on the documents, such as, the triplicate copy of the Cenvat register which shows the amount of Rs. 8,26,649/- is debited for the entry No. 905 dated 25.6.2004.

So also, the triplicate copy of Input Cenvat Register showing the amount of Rs.5,08,570/- debited vide Cenvat entry No. 1250 dated 16.7.2003 and the entries in the Input Cenvat Register showing consolidated amount of Rs. 3,18,079/-/-. According to the learned advocate, these documents have been discarded by the office of the respondent. The learned advocate also relies on the letter issued by the Superintendent, Custom and Central Excise dated 6th March, 2008 to submit that the appellant has reversed for the second time Rs.8,26,649/-. The amount was required to be paid by the appellant twice upon the insistence of the department. The learned advocate submits that all these authorities have ignored the documents referred to above.

3. Mr. Ladda, learned advocate submits that it is the case of review. For the first time loss has been occasioned to petitioner. It is not a case of payment of duty twice. Even the Chartered Accountant's Certificate shows that the amount of Rs. 8,26,649/- is open in the financial records as a wrong debit that is not reflected in the balance sheet.

4. We have considered the submissions.

5. The authorities have observed that the assessee was asked to produce all the relevant documents and evidence for inspection and verification either before the Range Superintendent or before the adjudicating authority. The assessee earlier requested for

adjournment and on the date of hearing produced the work sheet and the balance sheets. The authorities have concurrently observed that the contention of the appellant that they have reversed twice, once before the audit and secondly at the time of audit, is not substantiated by any documentary evidence. Although the Range Superintendent confirmed the second reversal, the Range Superintendent has not confirmed when it was reversed first time and the Commissioner (Appeals) in his order has clearly observed that no document conclusively prove that the appellant has reversed the CENVAT credit twice. Without any documentary evidence the appellant is not entitled for the refund claim. This amount is open in financial records as a wrong debit to be received from Excise Department. After entry of this document the assessee has not produced any valid document that bars any unjust enrichment. It was observed that the assessee had produced work sheet before the Range Superintendent and had produced one statement showing details of reconciliation of scrap but has not produced any documents in support of the said processing loss.

6. Considering the above, the authorities have arrived at a plausible conclusion. The concurrent findings of fact has been arrived at. No substantial question of law arises.

7. The first appeal is dismissed. No costs.

[A. M. DHAVALE, J.] **[S. V. GANGAPURWALA, J.]**

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