IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.02.2022

CORAM :

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P.No.2465 of 2022
and W.M.P.Nos.2624 & 2626 of 2022

M/s.JKM Ferrotech Limited
Represented by its Authorised Signatory
Mr.Om Prakash, Plot No.K4, Phase II
SIPCOT Industrial Complex
Gummidipoondi 601 201. ... Petitioner

-Vs-

1.The Commissioner of GST & Central Excise
Chennai Outer, Newry Towers No.2054-I
II Avenue, Anna Nagar, Chennai 600 040.

2.The Joint Commissioner of GST & Central
Excise, Office of the Commissioner of GST
& Central Excise, H Avenue, Anna Nagar
Chennai 600 040.

3.The Superintendent of Central Excise
Office of the Superintendent of Central Excise
Gummidipoondi II Range
Gummidipoondi – 601 201. ... Respondents

Prayer : Writ Petitions under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus calling for the records in relation to the Order in Original No.58/2021(JC) DIN:20211159XL0000612E80 dated 02.11.2021 on the file of the 2nd respondent and quash the same as it is in gross violation of the principles of natural justice, judicial discipline, is arbitrary, perverse and violative of Article 14 and 19(1)(g) of the Constitution and consequently direct the 2nd respondent to furnish copies of the invoices relied upon in the show cause notice.

For Petitioner : Ms.Jayalakshmi P.

O R D E R

The prayer sought for herein is for a Writ of Certiorarified Mandamus calling for the records in relation to the Order in Original No.58/2021(JC) DIN:20211159XL0000612E80 dated 02.11.2021 on the file of the 2nd respondent and quash the same as it is in gross violation of the principles of natural justice, judicial discipline, is arbitrary, perverse and violative of Article 14 and 19(1)(g) of the Constitution and consequently direct the 2nd respondent to furnish copies of the invoices relied upon in the show cause notice.

2. The petitioner is engaged in the manufacture of Spheroid Graphite (SG) Iron Castings and Grey Iron Castings falling under Chapter 73 of the First Schedule to the Central Excise Tariff Act, 1985. According to the respondent, based on the intelligence gathered during the audit of the petitioner's accounts it was found that the assessee procured CRCA Scrap for use in the manufacture of final products, but invoices on which CENVAT Credit was taken mentioned other than CRCA Scrap, an investigation was initiated against the assessee by the Headquarters Preventive Unit, to find out whether there was any misuse of CENVAT Credit by the Assessee.

3. It is the case of the respondents that, on scrutiny of the internal records of the assessee for receipt of their raw materials like Good Receipt Note (GRN), Lab Test Reports and Inward Material Register revealed that, the assessee's requirement of raw materials was mostly CRCA Scrap obtained out of CRCA Sheet Metal Cuttings as majority of their production was SG Castings for which maximum limit of manganese content was 0.35%. The petitioner procured CRCA Scrap in bundled form for use in their manufacture of SG Iron Castings and it appeared that no heavy melting scrap or scrap of Hot Rolled Products could be used in the manufacture of SG Iron Castings, since such scrap contained manganese ranging from 0.6 to 1.0% and thus not suitable for use in their SG Iron Castings as per their customer requirements.

4. In this context, a show cause notice was issued on 28.08.2017 by the Revenue to the petitioner. According to the Revenue, the petitioner, after receipt of the show cause notice, has not given proper documents to substantiate their claim that, they have availed CENVAT Credit properly. In this context, it is the contention of the Revenue that, the credit of Rs.1,00,16,369/- availed based on the invoices shown in the annexure to the show cause notice was liable to be denied and recoverable from the petitioner, as the goods, according to the Revenue, appear to have been received only on paper. Even assuming that the assessee has specifically received those

goods, the fact remains, according to the Revenue that, they were not inputs/raw materials for their finished goods and therefore negates their eligibility as input credit.

5. On this basis, the Revenue proceeded to conclude the proceedings and ultimately passed an order on 02.11.2021, whereby they confirmed the proposal for demand for recovery of CENVAT Credit of Rs.1,00,16,369/- being ineligible CENVAT Credit during the period August 2012 to March 2016 in terms of Rule 14 of CENVAT Credit Rules, 2004 read with Section 11A(4) of the Central Excise Act, 1944. The Revenue also imposed a penalty of 100% ie., Rs.1,00,16,369/- under Rule 15 of the CENVAT Credit Rules, 2004 read with Section 11Ac of the Central Excise Act, 1944.

6. Felt aggrieved over the said order dated 02.11.2021 passed by the Revenue, the petitioner has filed the present writ petition.

7. At the outset, when this Court posed a question to the learned counsel for the petitioner as to why the petitioner has not chosen to file an appeal against the impugned order and the reason for choosing to file a writ petition before this Court, Ms.Jayalakshmi learned counsel for the petitioner would submit that, when the petitioner specifically asked for invoices pertaining to the year August 2012 to August 2013 as those invoices were not readily available with the petitioner for verification and since those invoices were the 'relied upon documents' by the Revenue, as the same have not been given to the petitioner, the impugned order is vitiated as it violates the principles of natural justice.

8. In this context, learned counsel for the petitioner has pointed out the letter written in this regard by the petitioner to the Revenue dated 23.09.2021, where the following has been asked for.

> " We received the Annexure 1 to SCN on 10.02.2020 and on verification, it is noted that the Invoices listed in the Annexure 1 was removed from our Purchase Bills File for listing by your office and also noted that the Invoices pertaining to the year August 2012 to August 2013, given to your office in 2014, is not available in the copies handed over to us. The same was also communicated to your Office.
>
> It is unfortunate that in-spite of repeated reminders asking for the copies of relied upon documents, seized by the Department, we are not able to furnish our

reply in time, for the query raised in the SCN."

9. Learned counsel for the petitioner further contended that, in view of the said fact that, despite the asking of the petitioner for certain invoices during the year August 2012 to August 2013, which are going to be relied upon by the Revenue, and that was not supplied or copies of the same not given to the petitioner for verifying the same to put forth their case as defence to the show cause notice, the entire proceedings is vitiated. Therefore, on that ground, the petitioner can very well challenge the impugned order by filing the present writ petition instead of going before the appellate authority, she contended.

10. I have heard the learned counsel for the petitioner and have perused the documents which are placed before this Court.

11. The only ground raised by the petitioner for invoking Article 226 of the Constitution of India by filing the present writ petition before this Court is that, the documents sought for by the petitioner have not been supplied.

12. In this context, in the impugned order at Para 21, the following has been stated by the Revenue.

> " 21. As regards non-supply of documents I find that most of the documents I find that most of the documents required were handed over to the assessee with their due acknowledgment on 03.02.2020. If they were aggrieved that some of the purchase invoices are still required they could have obtained copies of it from their original suppliers since their invoice number, supplier name etc., are furnished in the Annexure I to the show cause notice. More over, if the assessee M/s.JKM Ferrotech were convinced that what has been procured under the disputed invoices were CRCA Scrap, it is for them to substantiate the same with evidence. Therefore, I reject their plea that they had received only CRCA Scrap vide the invoices mentioned in Annexure I to the notice."

13. It is the case of the Revenue in this regard that, an annexure has been given, where a list of invoices with invoice numbers also had been given and those are the invoices claimed to have been given by the suppliers to the petitioner while supplying CRCA Scrap which was claimed to be an input for the purpose of claiming CENVAT Credit by the petitioner and if the petitioner wants to verify the same, they can verify the same with the copy of the invoices from their suppliers and moreover most of the documents required by the petitioner have been

handed over to the petitioner assessee with their due acknowledgment on 03.02.2020. Therefore, the question of non-supply of documents in this case does not arise.

14. From the said assertion made by the Revenue, it could be concluded that, most of the documents have been given to the petitioner which has been acknowledged by the petitioner on 03.02.2020.

15. Insofar as certain invoices are concerned, normally that kind of invoices must be kept intact by the petitioner. But, for the reasons best known to the petitioner, it was the stand taken by the petitioner that those invoices were not readily available with the petitioner.

16. Be that as it may. Since the invoice numbers have been given with the suppliers name since those suppliers have claimed to have supplied the input ie., the CRCA Scrap to the petitioner, from them those transactions could very well be verified by the petitioner. Therefore, in this case it cannot be treated that the documents sought for by the petitioner have not been furnished.

17. Moreover, it has been made clear after investigation by the Revenue that, what is the exact raw material which they use and based on which their finished product requires such a raw material as an input claimed to have been purchased from the suppliers were required for manufacturing process itself was unearthed by the Revenue and this also has been given in detail in the impugned order, where the Revenue has stated the following.

> " 19. In view of the above, the credit of Rs.1,00,16,369/- availed based on the invoice as shown in Annexure I to the show case notice is liable to be denied and recoverable from M/s.JKM Ferrotech Ltd. The goods appear to have been received only on paper. Even assuming that the assessee has physically received the goods, the fact that they were not inputs for their finished goods negates their eligibility as input credit. In terms of Rule 3 of the Cenvat Credit Rules, 2004 credit is eligible only in respect of inputs used in or in relation to the manufacture of final products. The definition of inputs in terms of Rule 2k of the Cenvat Credit Rules, 2004 specifically mentions that input excludes any goods which have no relationship whatsoever with the manufacture of a final product. Therefore, I hold that the credit of Rs.1,00,16,369/- taken by M/s.JKM Ferrotech Ltd in contravention of Rule 3 of the Cenvat Credit Rules is

liable to be recovered in terms of Rule 14 of the Cenvat Credit Rules 2004 read with Section 11A(4) of the Central Excise Act, 1944."

18. Having gone through these documents, this Court is of the considered view that, the case projected by the petitioner as if that the documents mainly relied upon by the Revenue, though had been sought for, have not been supplied to the petitioner is not factually correct and it is the case where most of the documents have been supplied to the petitioner and even with regard to the invoices sought for by the petitioner for which the Revenue has given a reply that the numbers of the invoices has been given in the annexure and the same can very well be verified by the petitioner with their suppliers.

19. This kind of gesture shown by the respondent, in the considered view of the matter, cannot be treated as non-supply of documents and therefore, for that reason, it cannot be considered in this case that there has been a violation of principles of natural justice. Therefore, on that ground, the petitioner is not entitled to invoke the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India.

20. Accordingly, the writ petition fails and it is dismissed. No costs. Consequently, connected miscellaneous petitions are also dismissed.

Sd/-
Assistant Registrar(CS-VI)

//True copy//

Sub Assistant Registrar

KST

To

1.The Commissioner of GST & Central Excise
Chennai Outer, Newry Towers No.2054-I
II Avenue, Anna Nagar, Chennai 600 040.

2.The Joint Commissioner of GST & Central Excise, Office of the Commissioner of GST & Central Excise, H Avenue, Anna Nagar
Chennai 600 040.

3.The Superintendent of Central Excise
Office of the Superintendent of Central Excise
Gummidipoondi II Range
Gummidipoondi - 601 201.

+1cc to Mr.Muthu Venkataraman, Advocate SR.No.9974

AD(CO)
GMY(21/03/2022)