

R.M. AMBERKAR
(Private Secretary)

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.**

CENTRAL EXCISE APPEAL NO. 116 OF 2018

Exide Industries Ltd .. Appellant

Versus

Commissioner of CGST, Raigad .. Respondent

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- Mr. Rajesh Ostwal a/w Mr. Jas Sanghvi i/by PDS Legal for the Appellant
 - Mr. J.B. Mishra for the Respondent
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**CORAM : AKIL KURESHI &
M.S. SANKLECHA, JJ.**

DATE : DECEMBER 12, 2018.

P.C.:

1. The appellant - assessee was visited with a show cause notice issued by the department on 8.9.2014 calling upon the assessee to show cause why CENVAT credit of Rs. 5,39,224/- be not recovered with interest and penalties. The case of the department was that the assessee had shown to have purchased raw material in the nature of Lead Ingots from the supplier in Jammu & Kashmir whereas the goods in fact had never been received. The assessee had claimed bogus CENVAT credit on purchase of such goods.

2. The assessee opposed the show cause notice and contended that the goods were in fact received and consumed in the manufacturing process. The adjudicating authority, however, rejected the contention of the assessee and confirmed the demands. In detail order, he gave reasons why the assessee was unable to establish that the goods were indeed received in the factory of the assessee.

3. Before the Appellate Commissioner, the assessee reiterated the averments and also produced additional documents. The Commissioner, however, dismissed the appeal upon which the assessee carried the matter in further appeal before the Tribunal. The Tribunal, by the impugned judgment, dismissed the appeal. In addition, to confirming the findings of the adjudicating authority, the Tribunal also examined the assessee's contention that there were valid reasons for discrepancy in the vehicle numbers which had supposedly transported the goods from Jammu and Kashmir to the assessee's factory and those mentioned in the invoices and other documents. The Tribunal, however, did not accept the assessee's explanation. It appears that the

explanation assessee offered was that there could have been break down of the vehicles. The Tribunal rejected the contention observing that there may be break down in isolated vehicle but it is highly improbable that all vehicles would suffer from break down.

4. Having heard the learned counsel for the parties and having perused the documents on record, we find no error in the view expressed by the Excise Authorities and the Tribunal. The Excise Authorities and the Tribunal have concurrently come to the conclusion that the goods in question were never received by the assessee in its factory and therefore, the assessee's claim of having consumed the same was not genuine. These findings are pure findings of facts. No question of law arises. The appeal is dismissed.

[M.S. SANKLECHA, J.]

[AKIL KURESHI, J]