CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH AT AHMEDABAD

REGIONAL BENCH – COURT NO. 03

Excise Appeal No. 388 of 2012

[Arising out of OIA-58/2012/COMMR-A-/RBT/RAJ passed by Commissioner of Central Excise-RAJKOT]

M/s. Varsana Ispat Ltd **........Appellant**
Survey No. 116/1-2, 117, 117-P1, 118-121, 125, 126/1-2,
127/1, 128, 129, 129-P2, 135, 136,
Village : Varsana, Taluka : Anjar, Kutch, Gujarat .

VERSUS

C.C.E. & S.T.-Rajkot **........Respondent**
Central Excise Bhavan,
Race Course Ring Road...Income Tax Office,
Rajkot, Gujarat-360001

WITH

Excise Appeal No. 389 of 2012

[Arising out of OIA-58/2012/COMMR-A-/RBT/RAJ passed by Commissioner of Central Excise-RAJKOT]

M/s. Kunal Bubna **........ Appellant**
General Manager (commercial) Varsana Ispat Ltd.,
Survey No. 116/1-2, 117, 117-p1, 118-121, 125,
126/1-2, 127/1, 128, 129, 129-p2, 135, 136,
Village-varsana, Taluka-anjar, KACHCHH
GUJARAT

VERSUS

C.C.E. & S.T.-Rajkot **........Respondent**
Central Excise Bhavan,
Race Course Ring Road...Income Tax Office,
Rajkot, Gujarat-360001

APPEARANCE:
Shri. Amal Dave, Advocate for the Appellant
Sh. T.K. Sikdar, Authorized Representative (AR) for the Respondent

CORAM: HON'BLE MEMBER (JUDICIAL), MR. RAMESH NAIR
HON'BLE MEMBER (TECHNICAL), MR. RAJU

FINAL ORDER NO.A/ 12056-12057 /2019

DATE OF HEARING: 22.08.2019
DATE OF DECISION:01.11.2019

RAJU

This appeal has been filed by M/s. Varsana Ispat Ltd (VIL) against the confirmation of demand of Central Excise, interest and imposition of penalty under Section 11AC of Central Excise Act, 1944 read with Section 25 of the Central Excise Act, 2005. Appeal has also been filed by Shri.

Kunal Bubna, General Manager Commercial and Finance of M/s. Varsana Ispat Ltd.

2. On stock taking of the finished stock in appellant factory it was found that there was no stock of 12mm TMT bars whereas the daily stock account of the appellant showed 368.54 MT in the records. Sh. Deepak Arora, Manager Commercial admitted that there were shortage of TMT bars as compared to daily stock account but claimed that the said shortage is on account of the recording of the quantity manufactured without proper weighment of the same. He further pointed out that the manufacture of TMT bars had stopped since, May 2008 and hence, checking of stocks of goods on daily basis was not done, however, they paid Central Excise duty on the goods found short. Sh. Kunal Bubna noticee No. 2 in his statement stated that he was looking after day to day working of purchases, sale and production. He stated that they are manufacturing, MS Billets, MS Ingots, SS Billets, TMT bars, MS angles and beams since 2005 and were claiming Notification No. 39/2001-CE dated 31.07.2001. He pointing out that they were using there in-house kiln to manufacture billets/ingots. He pointed out that TMT bars, MS angles and beams were manufactured from billets. He admitted that there were a shortage. He also claimed that the shortage could be due to taking of approximate weight of production in daily stock account and due to the errors from a period of time the figure of 368.540 MT has been recorded. He also agreed not to litigate this issue at any stage in future and would not claim the benefit of Notification No. 39/2001-CE dated 31.07.2001 on the said quantity of TMT bars found short. He also stated that he would not claim refund of the duty paid. Thereafter the notice alleges that M/s. Varsana Ispat Ltd (VIL) failed to properly account for manufacture and clearance of the finished goods i.e. TMT bars in the statutory records. It also alleges that there was shortage of TMT bars as compared to their daily stock account and it was alleged that the same appears to have been cleared by them without payment of Central Excise duty. The Additional Commissioner dropped the proceeding relying on the Tribunal relying on following case laws.

- CCE, Aurangabad vs Dhanlaxmi Re-rolling Mills 2007 (208) ELT 104 (Tri. Mum.)
- Steel Authority of India Ltd. 2006 (200) ELT 229 (Tri. Bang.)
- Rashtriya Ispat Nigam Ltd. 2009 (235) ELT 248 (Tri. Bang.)

He also holds that there is no evidence of clandestine removal unearthed by the investigation. He also holds that since the appellants were working under Notification No. 39/2001-CE dated 31.07.2001 there could not be any intention to evade duty, as whatever duty was paid by them would have been available as refund through PLA under Notification No. 39/2001. Thus, it was held that the charge of clandestine removal is not sustainable. On this ground, he also dropped proceedings against Shri Kunal Bubna noticee No. 2. The revenue challenged the order before Commissioner (Appeals). The Commissioner (Appeals) relies on the decision of the Tribunal in the case of B.R. Industries Ltd.-2010 (259) ELT 292 (Tri.-Del) and in case of Swastic Industries-2002 (142) ELT 710 (Tri.-Kolkata) to uphold the charge of clandestine removal. He rejected the contention of the appellant that shortage was just 0.31% of the total production of the relevant period and the fact that there was no production of TMT bars in last one year. He also holds that the appellant had failed to explain the reason for shortage at the time of verification or subsequently.

2. Ld. Counsel for the appellants pointed out that under the similar circumstances in the case of Rashtriya Ispat Nigam Ltd. 2009(235) E.L.T 248 (Tri.-Bang.) demand was dropped. He also relied on the decision in the case of Widia India Ltd. 2007 (207) ELT 562 (Tri. Bang.), National Engineering Industries Ltd .2015 (330) ELT 681 (Tri. Del.) and ISIBARS Ltd. 2007 (209) ELT 250 (Tri. Mum.)

3. Ld. AR relies on the impugned order. He particularly relies on Para 13 of the said order wherein the noticee No. 2 had admitted that there was shortage and had paid Central Excise Duty thereon.

4. We have considered the rival submissions. We find that in the instant case on the visit of Central Excise Officer, no stock of TMT 12mm bars was found while the daily stock account showed the quantity of 368.540 MT. The Revenue recorded the statements of Shri Dipak Arora, Manager (Commercial) and Shri Kunal Bubna, General Manager (Commercial and Finance) both of them admitted that while there was no stock of 12mm TMT bars, the daily stock account showed 368.54 MT. However none of them admitted that there was any clandestine clearance. Both of them claimed that the said discrepancy was a result of the fact that while the when TMT bars was manufactured no actual weighment was done at the time of entering into the daily stock account.

The charge of clandestine clearance has been made without any other evidence and it is a conclusion drawn solely on the basis of the discrepancy in the physical stock vis a vis daily stock account. This discrepancy needs to be appreceiated in the background of the fact that the discrepancy consist of only 0.31% of the total production during the said period and also from the fact that the appellant do not stand to gain by evading Central Excise Duty as they were availing benefit of Notification No. 39/2001-CE which entitled them to claim refund duty paid through PLA in cash. In this background where the shortage was insignificantly low as compared to total production and the appellants were not gaining by clandestine clearance and in absence of any positive evidence of clandestine removal, the charge of clandestine removal cannot be sustained. We also find support from the following decisions:

- Rashtriya Ispat Nigam Ltd. 2009(235) E.L.T 248 (Tri.-Bang.)
- Widia India Ltd. 2007 (207) ELT 562 (Tri. Bang.),
- National Engineering Industries Ltd .2015 (330) ELT 681 (Tri. Del.)
- ISIBARS Ltd. 2007 (209) ELT 250 (Tri. Mum.)

The Commissioner (Appeals) has relied on the decision in the case B.R. Industries Ltd (Supra) wherein the Tribunal held that the shortage was significant unlike the present case where the shortage is merely 0.31% of the total clearance. Similarly, the Commissioner (Appeals) has relied on the decision in the case of Swastic Industries (Supra) where it has been held that unless the assessee is able to show the good reason for such discrepancy, charge of clandestine clearance cannot be brushed aside. We find that in instant case appellant has been able to show that plausible reason of the discrepancy and also the fact that there is no gain to be made by clandestine clearance in terms of Central Excise Duty thus decisions relied upon by the Commissioner (Appeals) are on significantly different facts. In view of above the demand is set aside and appeals are allowed.

(Pronounced in the open court on 01.11.2019)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)

Neha