IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH : ALLAHABAD
COURT No. I

APPEAL No. E/58977/2013-EX[DB]

(Arising out of Order-in-Original No. 29/Commr./MRT-I/2013 dated 28/03/2013 passed by Commissioner, Central Excise & Customs, Meerut)

Commissioner, Customs & Central Excise, Meerut-I **Appellant**

Vs.

M/s Doaba Rolling Mills Pvt. Ltd. **Respondent**

Appearance:

Shri Gyanendra Kumar Tripathi (AC) (AR) for Appellant
Absent for Respondent

CORAM:

Hon'ble Mrs. Archana Wadhwa, Member (Judicial)
Hon'ble Mr. Anil G. Shakkarwar, Member (Technical)

Date of Hearing	:	02/07/2018
Date of Decision	:	02/07/2018

FINAL ORDER NO **71302 / 2018**

Per: Archana Wadhwa

Being aggrieved with the order passed by the Commissioner, Central Excise vide which he has dropped the demand of around Rs.6.53 crores against the respondent, Revenue has filed the present appeal.

2. Nobody appeared for the respondent. Accordingly we have gone through the appeal and have heard the learned DR.

3. As per facts on record the respondent are engaged in the manufacture of Ingots based upon the electricity

consumed by the respondent, which in turn was based upon technical opinion of one Shri Dr. Batra of IIT, Kanpur, Revenue entertained a view that respondent had indulged in clandestine manufacture and clearance of their final product. Accordingly, proceedings were initiated against them by way issuance of a show cause notice dated 05.07.2007 proposing to confirm the demand in question and to impose penalty.

4. While adjudicating, Commissioner took into consideration the identical proceedings in the case of M/s R.A. Castings Pvt. Ltd. wherein the demand was raised against an identical situate assessee, on the basis of the opinion of Shri Dr. Batra and electricity consumption. The said proceedings reached the Tribunal and Tribunal vide its Final Order dated 19.06.2008 held that clandestine activities cannot be confirmed on the opinion of said Shri Dr. Batra and the consumption of electricity. It is seen that being aggrieved with the said order of the Tribunal, the matter was taken up by the Revenue before the Hon'ble Allahabad High Court, who vide their decision reported as 2011 (269) ELT 337 (Allahabad) rejected the Revenue's appeal. The matter was further taken up by the Revenue before the Hon'ble Supreme Court by way of filing Special Leave Petition. However the Hon'ble Supreme Court also dismissed the Revenue's appeal vide their order 31.01.2011. By taking all these developments into consideration as also the fact that Revenue's view of filing

a Review Petition was not accepted by the Attorney General of India, the Adjudicating Authority dropped the entire demand. Hence the present appeal by the Revenue.

5. We have carefully gone through the grounds of appeal advanced by the Revenue and find that apart from making general comments that the Adjudicating Authority has not applied its mind to the facts of the case inasmuch as there was enough evidence on record to confirm the demand against the assessee, Revenue did not contend that the declaration of law in the case of R.A. Castings is not applicable to the facts of the present case. The Revenue has also simplicitor said that the facts of the present case are distinguishable from the facts in the case of R. A. Castings, without drawing our attention about such distinct facts. We note that the demand was primarily based upon electricity consumption, which issue stands decided right upto the Supreme Court in the case of R.A. Castings. As such, we find no justifiable reason to interfere in the impugned order of Commissioner. Revenue's appeal is accordingly rejected.

(Dictated and pronounced in Court)

Anil G. Shakkarwar)	**(Archana Wadhwa)**
Member (Technical)	**Member (Judicial)**

Ankit