IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, REGIONAL BENCH : ALLAHABAD

1-3) E/70712/2017-EX[DB], E/70078/2017-EX[DB], E/50739/2015-EX[DB]

(Arising out of Order-in-Original No.37/Commr./HPR/2014-15 dated 09.12.2014 passed by Commissioner, Customs, Central Excise & Service Tax, Hapur.)

1) M/s. Advance Impex Pvt.Ltd.
2) Shri Rajendra Kumar Garg, Director
3) Shri Sunil Kumar Agarwal

…APPELLANT(S)

VERSUS

Commissioner of Customs, Central Excise & Service Tax, Hapur

RESPONDENT (S)

APPEARANCE

Shri Rajiv Tuli, Advocate for the Appellant (s)
Shri Mohd. Altaf (Asstt.Commr.) (A.R.) for the Revenue

CORAM:

MRS. ARCHANA WADHWA, HON'BLE MEMBER(JUDICIAL)
SHRI ANIL G. SHAKKARWAR, HON'BLE MEMBER(TECHNICAL)

DATE OF HEARING : 04.09.2018
DATE OF DECISION : 15.11.2018

FINAL ORDER NO.72602-72604/2018

Per ANIL G. SHAKKARWAR :

Above-stated three appeals are arising out of common impugned Order-in-Original No.37/Commr./HPR/2014-15 dated 09.12.2014 passed by Commissioner, Customs, Central Excise & Service Tax, Hapur. Therefore, they are taken together for decisions.

2. Brief facts of the case are that the appellants were engaged in the manufacture of MS bars and MS ingots etc. falling under chapter 72 of schedule to Central Excise Tariff Act, 1985. The appellants were appointed as franchisee of M/s.Kamdhenu Ispat Ltd. through an agreement dated 19.07.2007. The main terms of agreement were that the appellants were eligible to use trade mark 'Kamdhenu' for sale of steel bars on payment of royalty charges to M/s.Kamdhenu Ispat Ltd.. The agreement required to pay one time charge of Rs.5.00 Lakhs and monthly minimum royalty payment was Rs.3.00 lakhs. Further the royalty was to be paid @ Rs.150/- per M.T.. The appellants were required to pay Service Tax on royalty to M/s.Kamdhenu Ispat Ltd.. A search was conducted by officers of DGCEI on 12.11.2008 on several premises of M/s.Kamdhenu Ispat Ltd. which resulted in recovery of various records in respect of liability of Service Tax of M/s.Kamdhenu Ispat Ltd. on the royalty charges. The appellant was one of the service recipient of M/s.Kamdhenu Ispat Ltd.. on 03.05.2013 statement of Shri Shivkumar Garg, Direcctor of the appellant was recorded. As per the said statement the appellant had manufactured 7746.355 MTs of MS bars during the period from April 2008 to September 2008 and paid royalty of Rs.20,22,480/-. The Central Excise authorities got the recovered documents examined through Government Examiner of Questioned Documents (GEQD) and on the basis of such reports appellants were issued with a show cause notice dated 07.05.2013. It was alleged in the said show cause notice that as per the data retrieved by GEQD during the above-stated period appellant had

dispatched 12,063 MTs of MS bars whereas as per the ER-1 filed by appellant, the dispatches of MS bar were 7746,355 MT. Therefore, it appeared to Revenue that appellant had suppressed manufacture and clearances of 4316.645 MT of MS bars and the same was not reflected in ER-1 return therefore appellant were required to pay Central Excise duty to the tune of Rs.2,26,72,715/- on the said quantity. Therefore, through said show cause notice Central Excise duty of Rs.2,26,72,715/- was demanded and the said show cause notice also had proposal to impose personal penalty on the other two appellants. The appellant, contested the said show cause notice on the issue of time bar. The other two appellants also contested the proposals in the said show cause notice. The original authority did not appreciate such contentions made before him and confirmed the demand with interest and equal penalty. Further the original authority imposed a penalty of Rs.20.00 Lakhs on Shri Rajendra Kumar Garg, Director and another personal penalty of Rs.10.00 Lakhs on Shri Sunil Kumar Agarwal, Director. Aggrieved by the said order above stated three appellants are before this Tribunal.

3. Heard the ld.Counsel for appellant. He has submitted that the alleged royalty payments made by the appellant in cash as retrieved from the Pendrive was without any corroborative evidence and was denied by the employees in their cross-examination. He has further submitted that as per para 18 of the show cause notice, appellant had paid royalty of Rs.2,67,815/- for the month of April, 2008 and the same was less than Rs.3.00 Lakhs agreed between two parties

therefore figures in the said show cause notice on the basis of which allegations were made are not reliable. He has further submitted that the show cause notice is presumptive.

4. Ld.A.R. has submitted that the original authority has held that there was no doubt that the data was retrieved from the devices which were recovered from the premises situated at J-1200 Palam Vihar, Gurgaon and it was established that said premises and said devices were being used by the employees of M/s.Kamdhenu Ispat Ltd. and that the retrieved data reflected that it contained details of the data stored for a whole period. He further submitted that the original authority has held that documents and materials recovered from the said premises were belonging to M/s.Kamdhenu Ispat Ltd. and the retrieved data was made available to the department by Government Examiner of Questioned Documents, Hyderabad and therefore the submissions made by the ld.Counsel are not sustainable.

5. We have carefully gone through the record of the case and submissions made by both the sides. We find that on the basis of data retrieved by Government Examiner of Questioned Documents from the electronic devices recovered, it is established that the appellant had indulged in suppression of quantity of MS bars manufactured by them therefore the contention of appellant that the show cause notice is time barred is not sustainable. Further, the appellant has not strongly contested on the other aspects of manufacture such as consumption of raw material, consumption of electricity, transportation of goods and availability of customers to whom such goods were cleared, therefore

we are of the opinion that the appellants have not made out any case to interfere with the impugned order. We therefore do not interfere with the impugned order and dismiss all the three appeals.

(Pronounced in the open Court on 15.11.2018.)

SD/
(ARCHANA WADHWA)
MEMBER (JUDICIAL)

SD/
(ANIL G. SHAKKARWAR)
MEMBER(TECHNICAL)

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