CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD

REGIONAL BENCH - COURT No. I

Excise Appeal Nos.71179, 71195 & 71196 of 2018-[SM]

[In Excise Appeal No.71179 of 2018]

(Arising out of Order-in-Original No. 01/COMM/CX/GZB/2018-19 dated 21/05/2018 passed by Commissioner of Central Goods & Service Tax, Ghaziabad)

M/s Mayank Metals, **.....Appellant**

(B-193, Vivek Vihar, Phase-I, Delhi-110095)

VERSUS

Commissioner of Central Excise, **....Respondent**

(Ghaziabad)

APPEARANCE:

MsStutiSaggi, Advocate for the Appellant
Shri Santosh Kumar Agarwal, Authorised Representative for the Respondent

WITH

Excise Appeal No.71195 of 2018

(Arising out of Order-in-Original No. 01/COMM/CX/GZB/2018-19 dated 21/05/2018 passed by Commissioner of Central Goods & Service Tax, Ghaziabad)

M/s Vasudev Udyog, **.....Appellant**

(D-288, Vivek Vihar Delhi-110095)

VERSUS

Commissioner of Central Excise, **....Respondent**

(Ghaziabad)

APPEARANCE:

Shri Rajesh Chhibber, Advocate for the Appellant
Shri Santosh Kumar Agarwal, Authorised Representative for the Respondent

AND

Excise Appeal No.71196 of 2018

(Arising out of Order-in-Original No. 01/COMM/CX/GZB/2018-19 dated 21/05/2018 passed by Commissioner of Central Goods & Service Tax, Ghaziabad)

M/s Shivam Metal, **.....Appellant**

(A-4, First Floor, Ashoka Niketat, Delhi-110092)

VERSUS

Commissioner of Central Excise, **....Respondent**

(Ghaziabad)

APPEARANCE:

Shri Rajesh Chhibber, Advocate for the Appellant
Shri Santosh Kumar Agarwal, Authorised Representative for the Respondent

CORAM: **HON'BLE MR. ANIL G. SHAKKARWAR, MEMBER (TECHNICAL)**

FINAL ORDER NOS-71977-71979 / 2019

DATE OF HEARING : 09 December, 2019
DATE OF DECISION : 09 December, 2019

PER: ANIL G. SHAKKARWAR

The above stated three appeals are taken together for decision since they are arising out of common impugned Order-in-Original No. 01/COMM/CX/GZB/2018-19 dated 21/05/2018 passed by Commissioner of Central Goods & Service Tax, Ghaziabad.

2. After hearing learned Advocate MsStutiSaggi appearing on behalf of M/s Mayank Metal and Shri Rajesh Chhibber, learned Advocate appearing on behalf of M/s Shivam Metal and M/s Vasudev Udyog and Shri Santosh Kumar Agarwarl learned Authorised Representative appearing on behalf of Revenue, I note that Revenue had taken up investigation in respect of one

M/s Sandeep ManufacturingStrips who were manufacturing Copper Wires and Strips. During the said investigation revenue came to know that M/s Sandeep Manufacturing Strips was getting supply of Copper Ingots from the present three appellants. Investigations were alsocarried out in the factory premises of the present appellants and certain goods were detained. In the case of M/s Shivam Metal and M/s Vasudev Udyog and in case of Mayank Metal goods were removed from the factory and they were en-routeto M/s Sandeep Manufacturing Strips. The goods which were removed by M/s Mayank Metal were seized and the goods which were within the factory in respect of M/s Shivam Metal and Vasudev Udyog were also seized. Thereafter, show cause notice was issued on 25.01.2011 for confiscation of the said seized goods. The proceedings were finalized through the impugned Order-in-Original wherein the said seized goods were confiscated and option to redeem the same on payment of redemption fine was ordered and in respect of goods which were still within the factory, in case of M/s Shivam Metal and Vasudev Udyog, duty was demanded and in case of goods which were cleared by M/s Mayank Metal there was proposal to appropriate the duty already paid and said proposal of show cause notice was confirmed through the impugned Order-in-Original. Aggrieved by the said order, above stated appellants are before this Tribunal.

3. After hearing both the sides and on perusal of record, I note that in case of M/s Mayank Meatal it was proposed in para 32.1 of the said show cause notice that the goods which were

removed from the factory and wereen-route to M/s Sandeep Manufacturing Strips were proposed to be confiscated. It was also stated that duty of Rs.84,046/- was paid on the said goods and the said amount was proposed to be appropriated. From the pleadings and on perusal of record, I note that the said duty was paid by the appellant during the normal course of business and the goods were also reflected in their ER-1 return. The said return was also filed before the issuance of said show cause notice. Once the goods are reflected in ER-1 return and duty liability on the same has been accepted then even if the duty is not paid on the due date the recourse available with revenue is to resort to provision of Section 11 of Central Excise Act, 1944 and recover duty with interest and such goods do not become contravening goods and there is no provision in Central Excise Law to confiscate the goods which are not contravening goods. I, therefore, set aside the impugned order in so far as the same is in respect of M/s Mayank Metal.

4. In so far as the goods confiscated and duty demanded in respect of M/s Shivam Metal and M/s Vasudev Udyog, I note from the pleading and record that all the goods which were confiscated were still within the factory and they had not been cleared from the factory.In case some goods are found in the factory which are in excess of the book balance then the provisions are that the manufacture is made to record the excess finished goods in his RG-1 register so that the goods suffer Central Excise duty on clearance. When the goods have not been removed from the factory without payment of dutythey do not

become contravening goods and the same are not liable for confiscation. The Original Adjudicating Authority should have directed the appellant to record the excess found finished goods in RG-1 register so that they suffer duty on their clearance. I note that the goods were in the present case still within the factory and therefore, they were not liable for confiscation. Therefore, I set aside the impugned order in respect of goods belonging to M/s Shivam Udyog and Vasudev Udyog with directions to the respective appellants to record the said goods in their RG-1 register & if already recorded in RG-1 register & cleared as payment of appropriate Central Excise duty then no action to be taken. In case of M/s Vasudev Udyog raw materials were also confiscated. Central Excise Act deals with the manufacture and so long as the goods are not manufactured the Central Excise duty is not due on the same.The authorities under Central Excise Act do not have power to seize and confiscate the raw material. Therefore, confiscation of raw material belonging to M/s Vasudev Udyog is also set aside.

5. In above terms, the impugned order is set aside and all the three appeals are allowed. All the appellants are entitled for consequential relief, as per law.

(Dictated and pronounced in open court)

(Anil G. Shakkarwar)
Member (Technical)

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