FAX : 0532-2400149

REGISTERED / AD

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
38,MG Marg Civil Lines,Old Red Building,Allahabad-211001
Regional Branch, Allahabad

Dated: 30/12/2016

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/71197-71199/2016-SM[BR] dated 18/11/2016

I am directed to transmit herewith a certified copy of order passed by the Tribunal under section 35-C(1) of the Central Excise and Salt Act, 1944.

Asstt. Registrar

Application	Appeal	Name and Address of Appellant
1	E/1488/2010	**ANJANI STEELS LTD.** (EARLIER ANJANI STEEL PVT. LTD.) A-17 & A-28, SIDA, 2, SATHARIYA JAUNPUR (UP).
2	E/1489/2010	**PREM CHANDRA SINHA** M/S. ANJANI STEELS LTD. (EARLIER ANJANI STEEL PVT. LTD.) A-17 & A-28, SIDA, 2, SATHARIYA JAUNPUR (UP).
3	E/1490/2010	**SANJAY KUMAR DIRECTOR** M/S. ANJANI STEELS LTD. (EARLIER ANJANI STEEL PVT. LTD.) A-17 & A-28, SIDA, 2, SATHARIYA JAUNPUR (UP).
		Name and Address of Respondent
4		-C.C.E Allahabad 38,M.G.Marg, civil Lines, Allahabad
5		-C.C.E Allahabad 38,M.G.Marg, civil Lines, Allahabad

6

-C.C.E Allahabad
38,M.G.Marg, civil Lines,
Allahabad

Other Appellants and Respondents as per Annexure

Copy To

7 Advocate(s) / Consultant(s):

BIPIN GARG & CO.
ADVOCATES(ALLD)
102, MAHALAXMI ENCLAVE (ADJ.
INCOME TAX OFFICE), STANLEY
ROAD, CIVIL LINES, ALLAHABAD
(U.P.)-211001

8 Bar Association, CESTAT, Allahabad

9 Director Publications, Customs, Excise. I.P. Estate, Delhi

10 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm-Pitamah Marg, New Delhi-3

11 Company Law Institute of India Pvt. Ltd., No.2 (old no.36), Vaithyaram Street, T. Nagar, Chennai-17

12 Taxmann Allied Service Pvt. Ltd., 59/32, New Rohtak Road, New Delhi-110005

13 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)

14 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi - 110070

15 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad – 38

16 The ICFAI society, 52, Nagarjuna Hill,Punjagutta Hyderabad.-500082

17 M/S Knowledge Processing Pvt. ltd.(taxmanagementindia.com),FF-19,1st Floor,Cross River Mall,CBD Ground,Near Karkardooma Court,Delhi-110032

18 C.D.R. 19 Office Copy 20 Guard File

Asstt. Registrar

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

Appeal Nos. : E/1488, 1489 & 1490/2010-EX[SM]

Arising out of OIA Nos. 55-57/CE/ALLD/2010 dated 24.02.2010 passed by Commissioner (Appeals), Central Excise, Allahabad.

i) Anjani Steels Ltd.
ii) Prem Chandra Sinha.
iii) Sanjay Kumar, Director.

...APPELLANTS

VERSUS

...RESPONDENT

C.C.E., Allahabad

APPEARANCE

Shri Bipin Garg & Ms. Stuti Saggi, Advocates for the appellants.
Shri Harish J., Dy. Commr. (A.R.) for the Department

CORAM:

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

DATE OF HEARING & PRONOUNCEMENT : 18. 11. 2016

FINAL ORDER NO. 71197 - 71199/2016

Per Mr. Anil G. Shakkarwar :

The above three appellants were issued with common show cause notice, therefore the appeals are taken together for decision.

2. The appellants were issued with a show cause notice C No. VI(MP)Dem(12)Adj-147/07 dated 07.02.2008. The allegations in the said show cause notice were that the finished goods namely M.S. Angles, M.S. Bars, TMT Bars and M.S. Missrolls were proposed to be

confiscated under Rule 25 of the Central Excise Rules, 2002. There was also a proposal to demand Central Excise duty of Rs. 11,30,006/- under proviso to sub Section (1) of Section 11A of Central Excise Act, 1994 on short found finished goods and also a proposal to impose penalty on M/s. Anjani Steels (P) Ltd. under Section 11AC of Central Excise Act, 1944. There was also proposal to impose penalty under Rule 26 of Central Excise Rules, 2002 on Shri Prem Chandra Sinha and Shri Sanjay Kumar, Director. The officers of the Central Excise visited the manufacturing unit on 17.08.2007. As per show cause notice, raw material and finished goods were weighed and there were discrepancies found with the physical stock as compare to the stock recorded in the record of the unit. M.S. Ingots was raw material and as per show cause notice there was shortage of 229.98 MT of M.S. Ingots, so on shortage of raw material Central Excise duty to the tune of Rs. 6,25,361/- was demanded in the said show cause notice. M.S. Channel were goods manufactured by them. The allegation in the show cause notice was that there was shortage of 155.440 MT of M.S. Channel and the duty demanded on said shortage was Rs. 5,04,645/-. As per show cause notice M.S. Angel, M.S. Bars, TMT Bars and Miss Roll were excess in the stock respectively 359.435 MT, 306.810 MT, 92.095 MT & 15.000 MT. The said excess goods were seized and there was proposal in the show cause notice for confiscation of the same. The appellants contended before Original Authority that the show cause notice was on the basis of presumptions and the calculation of weight of excess quantity and shortage quantity alleged in the show cause notice was on the basis of calculation and it cannot be relied upon as substantive evidence to make an allegation. They further contended that the weighment of stock was done by method of calculation. The appellants submitted before the Original Authority that they themselves weight the entire stock as well as raw material on 18 & 19th August, 2007 and found them according to recorded balance and accordingly they filed representation to the Commissioner, Central Excise on 20th August, 2007. They further submitted that the confiscation of the goods cannot be based on evidence which are not sound. The Original Authority did not appreciate the submission before him and ordered the confiscation of seized finished goods. He imposed penalty of Rs. 10 lacs on M/s. Anjani Steels Ltd. and confirmed the demand of Rs. 11,30,006/-. He imposed equal penalty on M/s. Anjani Steels Ltd. under Section 11AC of Central Excise Act, 1944. He further imposed penalty of Rs.2 lacs on Shri Sanjay Kumar, Director and Rs. 1 lacs on Shri Prem Chandra Sinha under Rule 26 of Central Excise Rule, 2002 through Order-in-Original No. MP(Dem-13/2008)07 of 2009 dated 29.01.2009. Aggrieved by the said Order-in-Original appellants preferred appeal before Commissioner (Appeals). Commissioner (Appeals) decided the aforesaid appeals vide Order-in-Appeal No. 55-57/CE/ALD/2010 dated 24.02.2010. Learned Commissioner (Appeals) upheld Order-in-Original and rejected the appeals. Aggrieved by the said Order-in-Appeal appellants are before this Tribunal.

3. Heard the learned counsel for the appellants who has taken me through the show cause notice. He has pointed out that the show cause notice states in para-3 as follows :-

"......... In the above process, quantity of every item was ascertained on the basis of the calculation chart prepared and signed by the authorized representative of the party Shri Prem Chandra Sinha (RUD-ii) who along with other staff of his factory staff carried out the whole process of stock taking in the presence of Central Excise Officers. The details of the above calculation chart were subsequently verified and admitted by above Shri Prem Chandra Sinha in his voluntary statement dated 17.08.2007..........."

He has further taken me through the statement dated 17.08.2007 recorded by Shri Prem Chandra Sinha before the Superintendent, Central Excise under Section 14 of the Central Excise Act, 1944. He has shown me that in reply to Question 4 in the copy of the statement which is available at page 127 of the appeal paper book the words in the statement initially were "estimated physical verification" from which word "estimated" is struck off. On next page of statement at four places "estimated physical verification" is manipulated to "physical verification" ~~is~~ by sticking off of word "estimated". He has urged that initially it was stated that as estimated physical verification, raw material and finished goods whereas subsequently "estimated" was struck off as a result the statement appears to be physical verification of finished goods and raw material. Further, in reply to Question 5 the phrase estimated physical verification was not manipulated and remained as such.

4. Learned A.R. has submitted a copy of letter dated 10.05.2016 received from Assistant Commissioner, Central Excise, Allahabad wherein there is a chart showing stock verification report as on 16.08.2007 and method of calculation wherein the total weight of

Ingots was 1059.80 MT. Learned A.R. has supported the Order-in-Original and Order-in-Appeal.

5. I have carefully gone through the said statement through which learned counsel for appellant has taken me and find that clearly there are marks of manipulation in the said statement where "estimated" word is struck off at several places, as a result it appears to me that all the figures given by Mr. Sinha were estimated figures and by eliminating word "estimated" the authorities issued show cause notice treated them as physically verified weighment of the raw materials and finished goods and on such presumptions the show cause notice was issued, therefore, the show cause notice is not sustainable. As a result the Order-in-Original and Order-in-Appeal are set aside and all the three appeals are allowed.

(Pronounced and dictated in the open Court)

Sd/-
(Anil G. Shakkarwar)
Member (Technical)

Patel/-

प्रमाणित प्रति / Certified True Copy
6.1.17
सहायक पंजीकार / Asstt. Registrar
सीमाशुल्क, उत्पाद शुल्क एवं सेवा कर
अपील अधिकरण / (C.E.S.T.A.T.)
38, एम. जी. मार्ग, इलाहाबाद-211001
38, M. G. MARG, ALLAHABAD-211001