CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
OLD RED BUILDING, 38,M.G.Marg,CIVIL LINES, ALLAHABAD

Dated: 12/2/2016

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/ 70062/2016 dated 11/2/2016

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
	E/55708/2014	RAMAN ISPAT P LTD MEERUT ROAD MUZAFFARNAGAR(UP)

Name and Address of Respondent: CCE, MEERUT-I
EXCISE CHOWK, UNIVERSITY ROAD, MANGAL PANDEY NAGAR,MEERUT(UP)

Other Appellants and Respondents as per Annexure

Copy To

3Advocate(s) / Consultant(s SH AALOK ARORA,ADV
82-MISSION COMPOUND
SAHARANPUR(UP)

4 Bar Association, CESTAT, ALLAHABAD

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

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

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

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

9 Easy Service Tax Online Dot Com Pvt. Ltd., 407A, Iscon Mall, Satellite Road, Ahmedabad-15

10 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)
11 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi – 110070
12 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad – 38
13 The ICFAI society, 52, Nagarjuna Hill,Punjagutta Hyderabad.-500082
14 C.D.R. 15 Office Copy 16 Guard File

Asstt. Registrar
Regional Bench, Allahabad

In The Customs, Excise & Service Tax Appellate Tribunal
Regional Bench (Allahbad)

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Appeal No : E/55708/2014

(Arising out of OIA-31-CE/MRT-I/2014 Dated 25/04/2014 passed by Commissioner of Central Excise & Service Tax, Meerut-I)

M/s Raman Ispat (P) Ltd : Appellant (s)

Vs

CCE & ST, Meerut : Respondent (s)

Represented by:
For Appellant (s) : Ms. Rinki Arora
For Respondent (s) : Shri D.K. Deb. Authorised Representative

For approval and signature:

Mr. Anil Choudhary, Hon'ble Member (Judicial)

1.	Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	No
2.	Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	Yes
3.	Whether their Lordships wish to see the fair copy of the order?	Seen
4.	Whether order is to be circulated to the Departmental authorities?	Yes

CORAM:
MR. ANIL CHOUDHARY, HON'BLE MEMBER (JUDICIAL)

Date of Hearing : 08.02.2016

Date of Decision: 11.02.16

Final Order No. 70062/2016

Per: ANIL CHAUDHRY

The appellant is in appeal against order in appeal dated 30/04/2014 passed by the Commissioner appeals, Meerut-I.

2. The brief facts are that a search was conducted in the business premises of the appellant on 20/03/2012. The appellant is engaged in manufacture of MS Ingots. A Panchnama was drawn. Shortage of 18.060 MT in the stock of MS Ingots was found and in the stock of sponge iron 257.150 MT (raw material) shortage was found. A statement of Mr. Neeraj Kumar, Chief Accountant was recorded on the same day. As regards the shortage or discrepancy found he stated that on production of the MS Ingots, entry is made on estimated weight in the stock records. But at the time of sale, actual weight is the basis. He further stated that in view of the manner of stock verification adopted, wherein few sample ingots were weighed and the average weight of one ingot was multiplied with the number of ingots, hence, there is bound to be variation. Similarly, as regards shortage found in the stock of sponge iron, it was stated that for the manufacture of ~~import~~ ingot Sponge iron ~~responded either and~~ is used along with iron scrap in the furnace. As the sponge iron is not issued on actual weighment and the entries are made on approximate figure there is bound to be some variation and the apparent shortages do not indicate any clandestine removal. However to avoid controversy he agreed to deposit the tax on such shortage. In the course of inspection it was also pointed out that the appellant have taken Cenvat credit of Customs duty on goods

purchased from 100% EOU. In the statement it was stated that if the Cenvat credit is not available and wrongly taken the same shall be reversed under intimation to the Revenue. The appellant deposited the tax on the apparent shortage in the stock of finished goods and raw materials and also reversed the amount of Cenvat credit objected to. Subsequently, the show cause notice dated 19/10/12 was issued as it appeared to Revenue that the appellant have accepted the shortages and voluntarily deposited the duty and accordingly it appeared that the appellant have clandestinely removed the finished goods, that is MS Ingots, and raw material (sponge iron), which was found short and it further appeared that appellant have not maintained ~~in~~ proper records. As regards the Cenvat credit object to it is alleged in the SCN that the appellant have availed Cenvat credit in respect of the Customs duty paid on the goods received from a SEZ unit namely-M/s Unilinks Engg (P) Ltd., NSEZ, Noida in violation of Rule 3 (1) of Cenvat Credit Rules, 2004. It further appeared that the appellant availed Cenvat credit in respect of goods received from M/s TEVA API India Ltd., Gajraula (100 % EOU) in violation of Rule 3.~~9(~~(7) (a) of the Cenvat Credit Rules, 2004. It further appeared that the appellant had debited Customs duty of Rs. 6,74,218/- vide debit entry no. 1259 dated 21/03/2012 and also reversed the credit taken of Rs. 58, 070/- on account of education cess etc. on 21/3/12. The credit taken on the invoice of Teva Api India Ltd. of Rs. 76, 619/- was also reversed vide the debit entry number 1261 dated 21/03/12. It is further observed in the SCN that further investigation on this issue was not taken in view of the unconditional reversal of Cenvat credit by the appellant assessee. It is further observed that the appellant vide there letters dated 21/03/2012 and subsequent letter had informed the Revenue regarding the details of debit to the Cenvat credit alongwith copy of challan's showing voluntarily debit/deposit made by them. The show cause notice accordingly proposed to adjudicate Central Excise Duty of Rs. 7,00,560/- on account of shortage of finished goods and raw materials with proposal to appropriate from the pre-deposit already made and further proposed to adjudicate the inadmissible Cenvat credit totaling Rs. 8,08,907/- alongwith interest with proposal to appropriate from the deposit or reversal already made and further penalty was proposed under rule 15 ~~one~~ (1) of CCR for taking the inadmissible Cenvat credit and penalty was also proposed under Rule 25 readwith section 11 AC for contravention of the provisions of the Act and the Rules.

3. The appellant contested the show cause notice. As regards the shortage in the stock of finished goods, it was stated that the average weight of one ingot was multiplied with the number of ingots and under such method of value only figure of approximate~~ly~~ value is known and there is bound to be variation on comparison with the book records. Further, in view of the fact that ingots were actually recorded on the basis of approximate weight on production and actual weighment is only made at the time of sale, the variation of about 15% is normal. It is further contended that the production of MS ingots for the previous day was yet to be recorded which has also resulted in variation with the records. It was further contended that there is no instance of any clandestine removal and only for the apparent shortage in stock, no adverse inference to the effect that there is clandestine removal/clearance could be drawn. So far sponge iron is concerned it

was mentioned that in the course of handling the sponge Iron, bags are damaged and as such loose~~s~~ sponge iron is also lying scattered on the floor of the factory. Although a small quantity of 0.022MT have been considered as loose quantity of sponge iron but the same does not reflect the actual stock lying scattered. So far Cenvat credit wrongly taken is concerned it was stated that the same is a matter of clerical error by Assistant and the same was reversed in the next day on being so pointed out. The SCN was adjudicated vide order-in-original dated 31/12/2013, the proposed demand was confirmed and appropriated and further penalty of Rs. 7,00560/- was imposed under rule 25 readwith Section 11 AC of the act and further penalty of Rs. 8,08,907/- was imposed under rule 15 (1) of CCR read with section 11 AC of the Act.

4. Being aggrieved the appellant preferred appeal before learned Commissioner (Appeals), who vide the impugned order was pleased to reject the appeal. Being aggrieved the appellant is in appeal before this Tribunal. The learned counsel for the appellant urges the defence taken before the Court below. The learned Counsel further relies on the ruling of this Tribunal in the case of Rana concast Ltd vs. CCE, Meerut-I 2004 (177) E.L.T 483 (Tri.-Del.), held that stock verification report shows that weighment was recorded on approximate basis and no actual weighment was conducted, moreover, runners & risers of different shapes & sizes, hence ~~runners~~ excess calculated on approximate basis cannot be a ground for confiscation. Reliance is also plead on the ruling in the case of Nilesh Steel & Alloys Pvt. Ltd. vs CCE, Aurangabad 2008 (229) E.L.T. 399 (Tri.-Mumbai) valuation of the stock of material

was by eye estimation, it was held that the same is prone to error and may result in wide variation, accordingly the demand for clandestine removal was set-aside. It is also stated that on the date of inspection the appellant had issued 74 MT of sponge Iron and 10.680 MT Iron scrap for production and there was production of 74 MT of ingot and 2.220 MT of runners and risers, while arriving at the stock position on 20 March 2012 the officers had not taken into account sponge iron issued for day's production. ~~If~~ Is considered along with the stock of sponge iron in the factory, there would be hardly any discrepancy. It is further stated that no penalty is exgible on the facts and circumstances and the whole allegation of clandestine removal is based on assumption and presumption and there is no finding of any actual removal of any goods clandestinely. Further, in view of the admission of the mistake in taking Cenvat credit and the same having been reversed immediately, no penalty is imposable.

5. The learnedly AR for Revenue is relies on the impugned order. He further points out that at the time of taking of statement on the date of inspection, the appellant have not given any plausible reason for the apparent shortages and as such the allegation of clandestine removal is established. Further the appellant have deposited the differential tax as worked out, which amounts to admissible on the part of the appellant.

6. Having considered the rival contentions I hold that in the facts and circumstances and the valuation method adopted by the inspection team, there is bound to be variation of the stocks ~~to~~ value

determined with the book records. Further the contention of the appellant that they record production on estimated weight basis and actual weighment of the ingots is done only at the time of removal, have not been found to be untrue. In the case of MS Ingots, the variation in the physical quantity of MS Ingots and book records is about 15% and in the case of sponge iron, is about 11%. Such variation is considered to be normal in the facts and circumstances. Accordingly I hold that no case of clandestine removal of finished goods and raw material is made out. So far as, Cenvat Credit is concerned, it is evident from the statement recorded on the date of inspection that there is no element of malafide in taking of credit. Accordingly no penalty is imposable for the same. So far as the ~~very~~ levy of interest on Cenvat credit reversed is concerned, following the ruling of Honourable Karnataka High Court in the case of CCE, Bangalore vs. Bill Forge Pvt. Ltd. 2012 (26) S.T.R. 2004, I hold that interest is not payable on the amount of credit so, reversed which was not utilized before reversal. Accordingly I remand to the Adjudicating Authority on this. If It is found that the appellant have utilized any part of Cenvat credit, during the period the credit was lying available, interest for such user will be payable. Thus, the appeal is allowed and the impugned order is set aside as indicated above except the question of interest payable on the Cenvat Credit reversed which shall be verified as directed, and interest demanded accordingly.

(Operative portion of the order pronounced on 11-02-16)

(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

G.Y.

प्रमाणित प्रति / Certified True Copy
17.2.16
सहायक पंजीकार / Asstt. Registrar
सीमाशुल्क, उत्पादशुल्क एवं सेवा कर
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