

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

Dated: 14/1/2016

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/ 70809/2016 SM dated 07/1/2016

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 Sst Act, 1944.


Asstt. Registrar

Application	Appcal	Name and Address of Appellant
E/55864/2014	SHAMLI STEELS LTD	INDUSTRIAL AREA, PANIPAT ROAD, SHAMLI, UP

Name and Address of Respondent
CCB, MEERUT EXCISE CHOWK, UNIVERSITY ROAD, MANGAL PANDEY NAGAR, MEERUT 250005

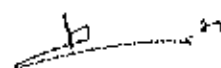
Other Appellants and Respondents as per Annexure

Copy To

3 Advocate(s) / Consultant(s): SH RAJESH CHIBBER, ADV
FA-9, KAVI NAGAR
GHAZIABAD(UP),

- 4 Bar Association, CESTAT, Delhi
- 5 Director Publications, Customs, Excise, I.P. Estate, Delhi
- 6 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, New Delhi-5
- 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, Jscou Mall, Satellite Road, Ahmedabad-15
- 10 LAWCKITX 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 ICPAI society, 52, Nagarjuna Hilla, Panjagutta Hyderabad.-500082
- 14 C.D.R. 15 Office Copy 16 Guard File


Asstt. Registrar
Regional Bench, Allahabad

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

Ex.Appeal Nos.55864/14

Arising out of OIA No.30-CE/MRT-I/2014 dated 25/04/2014 passed by the Commissioner (Appeals), Central Excise & Customs, Meerut.

For approval and signature:

HON'BLE MR. ANIL CHOUDHARY, 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 His Lordship wishes to see the fair copy of the Order? : Seen
 4. Whether Order is to be circulated to the Departmental Authorities? : Yes

M/s Shamli Steels Ltd.

...APPELLANT(S)

VERSUS

Commissioner of C.Ex., Meerut I

RESPONDENT (S)

APPEARANCE

Shri Rajesh Chibber, Adv. for the Appellant (s)
Shri D. K. Deb, Asstt. Commr. (A.R.) for the Respondent

CORAM:

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

DATE OF HEARING & PRONOUNCEMENT : 07.01.2016

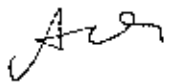
Final ORDER NO. 70009/2016



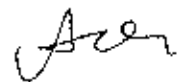
Per Mr. Anil Choudhary :

The appellant, manufacturer of M.S.TMT Bars, M.S.Angles, M.S.Channel & M.S.Ingot, is in appeal against levy of duty of Rs.19,38,056/- and equal amount of penalty under Rule 25 of Central Excise Rules, 2002 read with Section 11AC of the Central Excise Act, 1944 and penalty of Rs.5,000/- under Rule 27 of the Central Excise Rules, 2002 along with interest on the alleged clandestine removal of goods found short in the course of stock taking during inspection on 21/22.09.2011 and confirmed by the impugned OIA passed by the Commissioner (Appeals) of Central Excise, Meerut I.

2. Brief facts are that an inspection was carried out in the factory premises. The stock of M.S.TMT Bars, M.S.Angles, M.S.Channel & M.S.Ingot, was verified. For the purpose of physical verification, the inspection officer, with the help of the staff of the appellant, took one representative bundle of some bars or Ingots and weight the same. Thereafter, the said average weight was multiplied with the number of bundles or bars in arriving at the stock (by weight) available in the factory. In this manner, the weight arrived at was compared with the stock records. In case of M.S.TMT Bars, the stock record as per Book was 1314.325 MT and shortage found was 391.767 MT. The stock tallied in case of MS angle, MS Channels, being negligible difference of two tons. In case of MS Ingots, the stock as per book record was 1785.059 MT and the stock physically found was 1560.790 MT, there has been difference and shortage of 224.269 MT. During the course of stock verification, the exercise was started at 9.15 hours on



21.09.2011 and ended at 2.05 hours on 22.09.2011. Regarding the manner to be adopted for stock taking of M.S.Ingots, the statement of Shri Ritesh Jain, Authorized Signatory was recorded, wherein he stated that he is satisfied with the manner of stock taking. In respect of difference in stock, he stated that the difference may have occurred because they are issuing for production of the same in their records on counting basis only and there are chances of errors. Such error may have lead to difference in the stock in books and physical verification. However, for the discrepancy, he agreed to deposit the tax on the shortage so determined. The tax was also deposited by way of debit entry as is evident from the Panchanama and balance was paid through PLA Account. Subsequently, show-cause notice dated 08.10.2012 was issued, as it appeared to Revenue that the appellants have removed finished products, namely, MS Ingots, MS TMT Bars valued at Rs.62,79,532/- and 1,25,36,544/- respectively clandestinely, with intent to evade the payment of duty and did not pay duty leviable thereon and did not pay duty on the goods removed clandestinely and further did not enter the removed quantity in the relevant record and also did not issue invoices for such quantity of finished goods removed by them. In view of the fact that the appellants have deposited tax on the stock found short, it appeared to Revenue that there is an admission on the part of the appellant. Accordingly, they were required to show cause as to why the Excise duty amounting to Rs.19,38,056/- be not demanded and appropriated from the amount already deposited and further why the penalty be



not imposed under Rules 25,27 of CER, 2004 read with Section 11AC of the Act.

3. The appellant contested the show-cause notice stating that the valuation of stock was on estimation basis and there is bound to be variation. In such circumstances, no case of clandestine removal is made. The appellant further contended that there are two independent shed in the factory, one is for Ingot furnace and the other is for rolling mill. They manufacture ingot and also purchase the same, which are kept separately. When the manufactured ingot are transferred to re-rolling section, then the same merge with purchased ingot (Input) in the re-rolling mill. Some part of ingot manufactured, are in hot condition pursuant to manufacture and some ingot are always in the furnace of re-rolling mill, which cannot be seen as manufacturing process require high temperature. Further, during the course of inspection, the stock of raw materials as well as finished goods was tallied except MS Ingot and MS TMT Bar. As regards shortage of MS Ingots, It is stated that as per Panchanama, the lying and countable Ingots in the factory was 14189, and 500 ingots having the approximate weight was lying in the hot rolling mill furnace. Thus, as per Panchanama, the total ingot was 14689 having the weight of 1615.790 MT while at the time of preparation of Annexure A the weight is wrongly mentioned as 1560.790 MT. Thus, the actual difference is 169.269 MT instead of 224.269 MT. However, only actual weight of sample bundles was taken and thereafter, the stock was counted and multiplied with the sample weight and accordingly, the stock by weight was ascertained. In this method of estimation, there

is bound to be variation and the variation of about 10% as explained does not call for any adverse inference. So far as the shortage of MS Bar during the course of inspection, is concerned, it was stated that the Central Excise Officers conducted the verification of stock of MS Bars, which was in bundle form. The factual position is that the bars are also lying in the loose form near to cooling bed, of different size and manual bundling was in process. Thus, the loose MS bars, which also formed part of the stock, were not considered at the time of verification. This fact was also pointed out at the time of inspection. It was also pointed out that the error in weighted sample bundles is also not ruled out as the weightment was done on weigh-bridge, having the capacity of 60,000 Kg., when the weight of bundle is 88 kg. to 94 kg. It is further stated that in such matter, the valuation is only approximation and the difference so found approximately 10%, no adverse inference is called for.

4. SCN was adjudicated vide OIO and the demand was confirmed and appropriated and further interest was demanded and penalty was imposed of equal amount under Rule 25 read with Section 11AC of the Act and Penalty of Rs.5,000/- under Rule 27 of the CCR, 2002.

5. Being aggrieved, the appellant preferred an appeal before the Id.Commissioner (Appeals), who has rejected the appeal observing that the contentions of the appellant as regards method of stock taking are not tenable as the stock of the goods was valued with their assistance and it is the appellant who has to satisfy the Revenue about difference quantity of stock. As regards the contention regarding limitation that the extended period is not attracted, The inspection

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was done on 21/22/09/2011, whereas show-cause notice was issued after more than one year on 08.10.2012. It was observed that the unexplained shortage of stock of the goods came to notice of the Department at the time of physical verification and the essential ingredients of the provision under Rule 25 (1) of CCR read with Section 11AC of the Act, are unambiguously present. It was further observed that in view of the shortage noticed presumption drawn as to clandestinely removal stands.

6. Aggrieved, the appellant have preferred an appeal before this Tribunal on the ground that as the matter of stock taking is only approximation, there is bound to be difference and the Id.Commissioner (Appeals) have erred in treating adverse conclusion under the presumption that there is clandestine removal. At the time of inspection, the various persons have stated that some variation is bound to be there as they issued inventory for production on the basis of counting of the ingots, whereas stock is calculated by weight. It is further urged that the variation explained to the extent of 56 MT in the stock of ingot, thereby lead to net discrepancy of 169.269 MT, which is about 10% of the stock and amounts to normal variation. The Id.Counsel relies on the ruling of the co-ordinate benches of this Tribunal in the cases of (i) Micro Forge (I) Pvt. Ltd. Vs. Commr. of Central Excise, Rajkot : 2004 (169) ELT 251 (Tri.-Mumbai), (ii) Commr. of Central Excise, Meerut I Vs. Sarvottam Rolling Mills (P) Ltd. : 2013 (297) ELT 385 (Tri.-Del.), (iii) RHL Profiles Ltd. Vs. Commr. of Central Excise, Kanpur : 2012 (285) ELT 103 (Tri.-Del.), wherein in the similar circumstances of stock taking, where physical verification



was done by taking average weight of a sample or bundle of goods and then multiplied number of pieces of the relevant items, held on such basis only on average estimation and such method of stock taking can only lead to a suspicion of shortage, but cannot be a substitute for proof of shortage, unless the Department is in a position to clearly demonstrate the fact of shortage through actual physical weighing of entire stock. On basis of shortage of stock consequent inference of illicit removal of finished goods is not sustainable. On the point of limitation, the Id.Counsel relies on the ruling of the Hon'ble Supreme Court in the case of Commr. of Central Excise, Mangalore Vs. Pals Microsystems Ltd. : 2011 (270) ELT 305 (S.C.), wherein under the fact that assessee was a registered manufacturer of machines availed benefit of Modvat Scheme. On inspection by Revenue and investigation of stock of goods, it was noticed that there was a vast difference between physical stocks available and that shown in RG 23A Part I Register. The Managing Director had admitted that the actual physical stock of inputs and entries in the Register, did not tally because the assessee had removed the modvatable inputs for sales and warranty replacements. Further, shortage was admitted and stated, due to reason that their Office Assistant, who was maintaining their books of accounts, was only a matriculate and being a non-technical person, committed mistake. The Hon'ble Supreme Court observed that it is not disputed that the alleged suppression of payment of duty by the respondent, was brought to notice of the authority on 25.10.1996, when the Superintendent of Central Excise had inspected the premises of the assessee, whereas the show-cause



notice was issued on 26.06.2000. The Department could not establish that there was any suppression of facts or a fraud on the part of the respondent assessee. It was held that the honest mistake committed in maintenance of stock register etc. was admitted by the Managing Director of the respondent assessee and in absence of any willful misstatement, fraud or suppression of facts, the extended period of limitation is not attracted. Accordingly, he prays for allowing the appeal.

7. The Id.A.R. for the Revenue relies on the impugned order. He further states that the competent person or the authorized signatory of the appellant, have expressed satisfaction at the time of inspection to the method of stock taking and have further agreed to pay tax on the discrepancy found and subsequently, deposited the same. Under such circumstances, the Revenue is justified in drawing the conclusion of clandestine removal of the goods, found short.

8. After considering the rival contentions, I hold that in the method of valuation adopted being in the nature of estimation/approximation, there is bound to be some variation. In reply to the show-cause notice, the appellant had raised the discrepancy in the method of stock taking and had also pointed out that the stock of ingots weighing 55 tons, (approx.) had escaped in computing weight of ingots. Further, I find that the balance difference in the weight of ingots is approximately 10%, which I consider normal variation and no adverse inference can be drawn. So far as the difference in the stock of MS TMT Bars is concerned, I find that the difference is more than 10%. Accordingly, I allow 10% variation as normal, but over and above

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10%, in absence of cogent explanation, I hold that the assessee is liable to duty on the same. So far the ground of limitation raised by the assessee is concerned, in view of the difference of more than 10% in the stock of MS TMT Bars and for want of cogent explanation, I hold that the extended period of limitation is applicable and invokable. So far as the penalty is concerned under Rule 26, in absence of any confiscation of goods and in absence of any evidence of clandestine removal except a strong presumption, penalty is set aside. Penalty under Rule 27 is confirmed.

9. Thus, I allow the appeal in part. The appellant will be entitled to consequential benefit in accordance with law.

(Dictated and pronounced in the open Court)

mm


(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

प्रमाणित प्रती / Certified True Copy
21/11/16
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राज्यपाल न्यायालय, पुणे
अधीनस्थ न्यायालय / (C.E.S.T.A.T.)
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38, M. G. ROAD, PUNE-411001