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: 08/09/2016

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/70793-70800/2016-SM[BR] dated 22/08/2016

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/58773/2013	SUNITA ISPAT PVT LTD 9TH KM STONE, JANSATH ROAD MUZAFFARNAGAR U.P.
2	E/58774/2013	ANIL KUMAR AGARWAL C/O SUNITA ISPAT PVT LTD, 9TH KM STONE, JANSATH ROAD MUZAFFARNAGAR UP
3	E/58775/2013	SUNITA AGARWAL C/O SUNITA ISPAT PVT LTD, 9TH KM STONE, JANSATH ROAD MUZAFFARNAGAR UP
4	E/58776/2013	SAURABH AGARWAL C/O SUNITA ISPAT PVT LTD, 9TH KM STONE, JANSATH ROAD MUZAFFARNAGAR U.P.

	Name and Address of Respondent
5	SAURABH AGARWAL DIRECTOR OF M/S SUNITA ISPAT P LTD,9TH KM STONE JANSATH ROAD,MUZAFFARNAGAR,,U.P

6 ANIL KUMAR AGARWAL
AUTHORIZED SIGNATORY OF M/S SUNITA ISPAT P LTD,9TH KM.STONE,JANSATH ROAD,MUZAFFARNAGAR
,U.P

7 C.C.E. & S.T.-MEERUT-I
EXCISE CHOWK...UNIVERSITY ROAD,MANGAL PANDEY NAGAR,
MEERUT,
UTTAR PRADESH-250005

8 SUNITA AGARWAL
DIRECTOR OF M/S SUNITA ISPAT P LTD,9TH KM STONE JANSATH ROAD,
MUZAFFARNAGAR
,U.P

9 SUNITA ISPAT P LTD
9TH KM STONE JANSATH ROAD,,
MUZAFFARNAGAR
,U.P

Other Appellants and Respondents as per Annexure

Copy To
10 Advocate(s) / Consultant(s):

RAJESH CHIBBER
FA-9, KAVI NAGAR,
GHAZIABAD,
UP

11 Bar Association, CESTAT, Allahabad

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

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

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

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

16 Easy Service Tax Online Dot Com Pvt. Ltd., 407A, Iscon Mall, Satellite Road, Ahmedabad-15
17 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)
18 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi - 110070
19 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad – 38
20 The ICFAI society, 52, Nagarjuna Hill,Punjagutta Hyderabad.-500082
21 M/S Knowledge Processing Pvt. ltd.(taxmanagementindia.com),FF-19,1st Floor,Cross River Mall,CBD Ground,Near Karkardooma Court,Delhi-110032
22 C.D.R. 23 Office Copy 24 Guard File

Asstt. Registrar

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

Ex. Appeal Nos.58773-58776/13

Arising out of OIO No.45/Commr/MRT-I/2013 dated 31.03.2013 passed by Commissioner of Central Excise, Meerut I

M/s Sunita Ispat Ltd.
Mr.Anil Kr.Agarwal, Authorized Signatory of M/s Sunita Ispat Ltd.
Ms.Sunita Agarwal, Director of M/s Sunita Ispat Ltd.
Mr.Saurabh Agarwal, Director of M/s Sunita Ispat Ltd.

...APPELLANT(S)

VERSUS

Commissioner of Central Excise, Meerut I

RESPONDENT (S)

Ex. Appeal Nos.58892-58895/13

Commissioner of Central Excise, Meerut II

...APPELLANT(S)

VERSUS

M/s Sunita Ispat Ltd.
Mr.Anil Kr.Agarwal, Authorized Signatory of M/s Sunita Ispat Ltd.
Ms.Sunita Agarwal, Director of M/s Sunita Ispat Ltd.
Mr.Saurabh Agarwal, Director of M/s Sunita Ispat Ltd.

RESPONDENT (S)

For approval and signature:

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

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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

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APPEARANCE

Shri Rajeev Ranjan, Joint Commr. (A.R.) for the Department/Revenue
Shri Rajesh Chibber, Advocate, for the Assessee

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

DATE OF HEARING & PRONOUNCEMENT : 22.08.2016

Final ORDER NO. 70793-70800/2016

Per Mr. Anil Choudhary :

The Assessee and the Revenue are in appeal against the common Order-in-Original No. 45/Commr/MRT-I/2013 dated 31.03.2013 passed by Commissioner of Central Excise, Meerut I.

2. Brief facts of the case are that the main appellant, M/s. Sunita Ispat Ltd., is engaged in the manufacture of MS ingots from scrap. The remaining three co-appellants are partners thereof. On 03-08-2007 investigation was conducted in the factory of the appellant and at the residence of Shri Anil Kumar Agarwal, co-appellant. During the course of investigation, it was found that there was a shortage of finished goods of 69.93 MT of MS ingots and from the residence of Shri Anil Kumar Agarwal certain katcha chits were found which were showing the purchase of scrap during the period from January, 2007 to March, 2007, indicating a purchase of about 437.58 MT of scrap. It was also observed that power consumption for one MT of MS ingots varies from 990 units to 3703 units per MT. Therefore, a case has been booked against the appellant on account of manufacturing of MS ingots on the basis of consumption of electricity as per the report of Dr. N.K. Batra,

Professor, IIT Kanpur that for manufacture of one MT of MS ingots 1046 units of electricity is required. On the basis of consumption of electricity, the production of appellant was calculated for the period 2005- December 2007 and demand of duty of Rs.2,26,80,122/- was sought to be demanded from appellant. For shortage of 96.93 MT of MS ingots found during the course of investigation, allegation was made against the appellant on the premise that as these goods were found short, therefore they have been removed clandestinely, therefore duty of Rs.3,03,523/- was also sought to be appropriated which has been paid by the appellant during the course of investigation. Penalties were also proposed to be imposed on the appellants. During the course of adjudication, it was held that on the basis of electricity consumption demand is not sustainable to allege that goods have been removed by the appellant clandestinely. Therefore, demand of Rs.2,26,80,122/- was dropped but on the basis of katcha slips found at the residence of Shri Anil Kumar Agarwal for procurement of scrap, it was observed in the impugned order that same has been used to manufacture MS ingots which have been cleared clandestinely, therefore the demand of duty of Rs.13,70,150/- was confirmed along with interest and demand of Rs.3,03,523/- was also confirmed on account of shortage of finished goods which were removed clandestinely and various penalties on the appellants have been confirmed. Aggrieved from the said order, appellant is before us.

3. The Revenue is in appeals aggrieved by dropping of the demand of Rs.2,13,09,972/-, which was worked out on the basis of standard

adopted by the Revenue of standard consumption of electricity per M.T of manufacture based on report of Prof.N. K. Batra of IIT, Kanpur. Further, it is submitted by the Revenue that the adjudicating authority has erred in dropping the demand as in the course of inspection supporting evidences in the nature of katcha slips/loose slips showing purchase of quantities of 437.58 MT of MS Scrap. Further, in the statement recorded, Mr.Anil Kr.Agarwal, Authorized Signatory of M/s Sunita Ispat Pvt. Ltd., stated that they maintained loose slips, which were found to be un-recorded in any of the record maintained by them. Thus, it can be deduced that the appellant consumed 437.58 MT of scrap for manufacture of same quantity of MS Ingots, which were later removed clandestinely. Further, on stock verification, the shortage of 96.935 MT of MS Ingots was found and the same was accepted by the Respondent Company and the authorized signatory and they also deposited the duty calculated on the same amounting to Rs.3,35,523/-. Thus, findings of the Revenue are supported with corroborating evidences and as such the demand of Rs.2.13 Crores is sustainable. The ld.A.R. for the Revenue also prays for increasing the quantum of penalty imposed on the Directors/Authorized Signatory, namely, (i) Mr.Anil Kr.Agarwal & (ii) Ms.Sunita Agarwal & (iii) Mr.Saurabh Agarwal. The ld.A.R. for the Revenue, also relies on the ruling of the Hon'ble Allahabad High Court in the case of M/s Bajrang Petro Chemicals (P) Ltd. Vs. CCEx., Kanpur : 2014-TIOL-2254-HC-ALL-CX and he also relies on the decision of the Tribunal in the case of M/s Nashik Strips Pvt. Ltd. Vs. CCEx., Nashik : 2010 (256) ELT 307 (Tri.-Mum.)

4. Learned Counsel for the assessee company and the Directors, submits that in this case the main case made against the appellant is that they have clandestinely manufactured excess quantity of MS ingots by utilizing the electricity and goods have been removed clandestinely. The said charge against the appellant has been dropped by the adjudicating authority holding that the quantum of electricity consumption on the basis of report of Shri N.K. Batra, Professor of IIT, Kanpur, is not authenticated report and electricity consumption cannot be determined on the formula derived from that report as held by Apex Court in the case of R A Casting [2011 (269) ELT A 108 (SC)]. He further submits that as the major demand sought to be confirmed against the appellant on account of clandestine removal has been set aside, therefore the allegation of clandestine manufacture and removal is not sustainable, and demand of duty of Rs.13,70,150/- is to be set as there is no demand proposed in the Show Cause Notice on account of katcha chits, found during the course of investigation for purchase of scrap. He further submits that there is no admission on behalf of the appellant that shortage of finished goods during the course of investigation has been removed clandestinely, there is only a presumption by the Revenue authorities. Therefore, as appellant is not contesting the demand of duty, penalties are not imposable. He relied on the decision of Hon'ble High Court of Allahabad in the case of Meenakshi Castings [2011 (274) ELT 180 (Allahabad)] and also submits that in this case no interest has been demanded on finished goods found short in their factory, as charge of clandestine removal stand unproved. The ld. Counsel for the assessee also points

out that so far the issue of addition on the ground of Katcha/loose slips and strips are concerned, the same issue has been considered by the Hon'ble High Court in CEA No.304/2013 in the present case against the stay order, reported at 2014 (300) ELT 326 wherein, the Hon'ble High Court has observed ~~with~~ in the show-cause notice, that the duty was not demanded on the basis of un-accounted purchase of scraps, demand on that basis could not be confirmed in the Order-in-Original. There must be a demand in the SCN to be confirmed in the adjudication order. In these circumstances, it is prayed that impugned order except confirming demand of duty with regard to shortage of finished goods, is required to be set aside.

5. On perusal of the Show Cause Notice, we find that in the Show Cause Notice two charges have been alleged against the appellant viz. (A) that for demand of duty of Rs.2,13,09,972/- on account of excess electricity consumption and on the basis of excess electricity consumption, the appellant is manufacturing excess quantity of finished goods which have been removed clandestinely on the basis of Dr. N.K. Batra, Professor of IIT, Kanpur and demand of Rs.3,03,523/- was proposed on the ground of shortage of finished goods found during the course of investigation.

6. For the demand of Rs.2,13,09,972/- the charge against the appellant has been dropped on the ground that on the basis of report of DR. N.K. Batra, Professor IIT, Kanpur is not acceptable as held by Hon'ble Apex Court in the case of R A Casting (supra). Such charge of clandestine manufacture of goods and clandestine removal of the

goods has already been held by the ld. Commissioner as not sustainable in the facts of this case. Therefore, demand of Rs.13,70,150/- is also not sustainable as the same has been confirmed on account of clandestine manufacture and clandestine removal of goods. Further, we find that in the Show Cause Notice although it is discussed that certain katcha slips were found during the course of investigation in the custody of Shri Anil Kumar Agarwal, partner, for purchase of scrap on the basis of these slips, no demand of duty is proposed. As there is no duty demand in the Show Cause Notice, therefore, we hold that demand of Rs.13,70,150/- is not required to be confirmed against the appellant, therefore same is set aside. As demand has been set aside, consequently the demand of interest and imposition of penalty on this count is also set aside.

7. During the course of investigation finished goods were found short and the appellant has paid the duty thereon. Thereafter, conclusion was drawn by the department that as they have paid the duty therefore these goods have been removed clandestinely. In this case, there are other charges on the appellants that goods have been removed clandestinely by the appellants but the charges of clandestine removal have been dropped and therefore, in these circumstances, it cannot be held that goods have been cleared clandestinely. Although the appellants has paid the duty that might be to settle the issue at that stage, but from the records it is not coming out that the charge of clandestine removal has been proved with any supportive evidence except the goods were found short during the course of investigation.

In these circumstances, although the appellant is not contesting the duty demand, therefore the same is not issue before us. Further, we find that in this case, when the appellant has paid the duty but there is no demand of interest proposed, in these circumstances we hold that charge of clandestine removal stands unapproved. Therefore, question of imposing penalty does not arise on the appellant. As the appellant is not contesting demand of duty of Rs.3,03,523/- therefore appellant cannot claim refund thereof in consequence of this order. In the result, impugned order qua demand of duty of Rs.13,70,150/- along with interest and imposition of penalty on the main appellant and penalties on co-appellant is set aside. Appeals are allowed.

8. In view of our findings recorded above, we dismiss all the appeals of the Revenue being Appeal Nos. E/58892-58895/2013 & we allow all the appeals of the appellant company and their Directors and Authorized Signatory being Appeal Nos.E/58773-58776/2013, as indicated above.

9. The appellant assessee will be entitled consequential benefits, if any, in accordance with law.

(Dictated and pronounced in the open Court)

Sd/-
(ANIL G. SHAKKARWAR)
MEMBER (TECHNICAL)

Sd/-
(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

nnn

प्रमाणित प्रति / Certified True Copy
5/10/16 /SPS
सहायक पंजीकार / Asstt. Registrar
सीमाशुल्क, उत्पादशुल्क एवं सेवा कर
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38, M. G. MARG, ALLAHABAD-211001