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

Dated: 06/02/2017

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/70139-70141/2017-EX[DB] dated 17/01/2017

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/1843/2007	**PREMIER ISPAT LTD.** F-4 & 5, UPSIDC, Indl. Area, Jainpura, Kanpur, Dehat
2	E/1844/2007	**SHRI AJAY KUMAR JAIN DIRECTOR OF PREMIER ISPAT LTD.** F-4 & 5, UPSIDC Indl. Area, Jainpur, Kanpur, Dehat
3	E/1845/2007	**SHRI AMIT JAIN DIRECTOR OF PREMIER ISPAT LTD.** F-4 & 5, UPSIDC Indl. Area, Jainpur, Kanpur, Dehat
		Name and Address of Respondent
4		-C.C.E. KANPUR 117/7, Sarvodaya Nagar, Kanpur 208005. -
5		-C.C.E. KANPUR 117/7, Sarvodaya Nagar, Kanpur 208005. -
6		-C.C.E. KANPUR 117/7, Sarvodaya Nagar, Kanpur 2080

Other Appellants and Respondents as per Annexure

Copy To

7Advocate(s) / Consultant(s):

Amit Awasthi
H-1, IST FLOOR, RADHEY
APPARTMENT,
PLOT NO. 7/116A,
SWAROOP NAGAR,
KANPUR,
UTTAR PRADESH
208002

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

9 Bar Association, CESTAT, Allahabad

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

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

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

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

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

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

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

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

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

19 C.D.R. 20 Office Copy ~~21~~ Guard File

Asstt. Registrar

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

REGIONAL BENCH : ALLAHABAD

COURT No. I

APPEAL No. E/1843-1845/2007-EX[DB]

(Arising out of Order-in-Original No. 04/Commissioner/2007 dated 09/04/2007 passed by Commissioner of Central Excise, Kanpur)

M/s Premier Ispat Ltd. (In Appeal No. E/1843/2007)

Shri Ajay Kumar Jain, Director of (M/s Premier Ispat Ltd.) (In Appeal No. E/1844/2007) &

Shri Amit Kumar Jain, Director of (M/s Premier Ispat Ltd.) (In Appeal No. E/1845/2007) **Appellant**

Vs.

Commissioner of Central Excise, Kanpur **Respondent**

Appearance:

Shri Bipin Garg, Advocate. for Appellant
Shri Rajeev Ranjan, Joint Commissioner (AR). for Respondent

CORAM:

Hon'ble Mr. Anil Choodhary, Member (Judicial)
Hon'ble Mr. Anil G. Shakkarwar, Member (Technical)

Date of Hearing & Date of Decision : 17/01/2017

FINAL ORDER NO. 70139 - 70141/2017

Per: Anil G. Shakkarwar

The present three appeals are filed by the appellants, M/s Premier Ispat Ltd., Shri Ajay Kumar Jain & Amit Kumar Jain, against Order-in-Original No. 04/Commissioner/2007 dated 09/04/2007 passed by Commissioner of Central Excise, Kanpur. The above stated three appeals are arising out of same the Order-in-Original. Therefore, they are taken together for decision.

2. The brief facts of the case are that the appellant, M/s Premier Ispat Ltd., were engaged in the manufacture M.S. Bars falling under Chapter Sub-heading 721390 of schedule to Central Excise Tariff Act, 1985. On 15/07/2002, Officers of DGCEI visited the manufacture unit of appellant and searched the premises and drawn a Panchnama dated 15/07/2002 wherein they have recorded that there was some shortage of the finished goods in the factory as compared to the production recorded in the RG-1 Register & 11 loose slips were retrieved by them. Subsequently, they carried out the investigations and recorded statements. They carried out the investigations with 4 transporters and collected 129 GRs from the said transporters and recorded statements of said transporters. On the basis of said investigations, Show Cause Notice dated 28/09/2006 was issued to M/s Premier Ispat Ltd., calling upon them to show cause as to why Central Excise duty of Rs.143,736/- on 79.500 MT of M. S. Bars found short, Central Excise duty of Rs.30,57,948/- on 1659.4785 MT of M.S. Bars and 45.00 MT of M.S. Scrap involved in 11 loose slips recovered and Central Excise duty of Rs.26,49,514/- on 1465.439 MT of M.S. Bars valued at Rs.1,65,59,460/- which were involved in 129 GRs recovered from various premises of transporters should not be demanded from them under proviso to Sub-section (1) of Section 11A of Central Excise Act, 1944. There were proposals for interest and penalty and for personal penalty on

Shri Ajay Kumar Jain & Shri Amit Kumar Jain. The appellant contended before the Original Authority that in reply to the question No. 2 to the statement dated 13/11/2002, Shri Amit Jain clearly stated that the said 11 loose slips were not recovered from the factory premises of the Noticee and that those slips were brought from outside factory premises and placed, in front of Shri Amit Jain in one of the company's old file, by Officers just to make out a case against the Noticee. They, further, contended that one slips shown as 6P indicating that M.S. Bar of 6 mm and contended that they never manufacture M.S. Bar of 6 mm and stated that said 11 loose slips, stated to have been recovered, actually were not recovered from their record. They, further, contended that the sale of the finished goods by them was always ex-factory and there was no question of engaging any vehicles by the appellants for transportation of finished product. They also requested that the records procured from the possession of such transporters may be made available to them by the Department. They, further, contended that they did not have installed capacity of production of such huge quantity of finished goods, stated to have been clandestinely cleared by them and that the Show Cause Notice did not indicate any evidence about purchase of raw material and contended that it is settled possession of law that on the basis of unsubstantiated statements or transporter's GRs bearing no of name have such allegations of clandestine manufacture and clearance could not be made out. The Original Authority did not appreciate the arguments putforth and confirmed the demand and appropriated an amount of Rs.1,43,736/- deposited by appellant. The Original Authority imposed equal penalty on M/s Premier Ispat Ltd. and further imposed penalty of Rs. 5 lakh each on Shri Ajay Kumar Jain & Shri Amit Kumar Jain, under Rule 26 of Central Excise Rules, 2002. Aggrieved by the said order the appellant is before this Tribunal.

3. The grounds of appeal are as follows:-

A) 11 loose slips were not recovered from their factory premises and therefore they cannot be relied upon as evidence.

B) The statements of transports & GRs were recovered from transporters are third party evidences and there are a large number of rulings by various judicial fora which have held that third party record cannot be relied upon to establish an allegation of clandestine removal unless separately corroborated. They relied on case law reported at 1995 (85) ELT-260 (Tribunal), 2005(185) ELT-425 (Tri. – Kolkata) & 2001(130) ELT-271 (Tri. – Kolkata).

C) Penalty can be imposed under Rule 26 of Central Excise Rules, 2002 only when there a proposal for confiscation of the goods. In the present case, there was no proposal for confiscation of goods. Therefore, penalty imposed under Rule 26 of Central Excise Rules, 2002, is without authority of law.

4. Heard the ld. Counsel, Shri Bipin Garg, for the appellants. He has contended that the statement of Shri Amit Jain on 13/11/2002 has clearly established that 11 loose slips were not recovered from the manufacturing factory of the appellant. Further, on the basis of the said 11 loose slips in para ~~69~~ 6 of the Show Cause Notice, it is stated that the information of various numbers written on these slips relates to serial number of the truck, quantity of different thickness of M.S. Bars etc. whereas there was no statement on record on the basis of which such inference could be drawn by Revenue. He has contended that the entire inference drawn by Revenue on the basis of 11 loose slips was presumptive and there was no evidence to establish as to who prepared the said slips and who purchased the finished goods. Further, he contended that 129 GRs do not have the name of the consigner and consignee and the quantity alleged to have been cleared reflected in the said 129 GRs has not established clandestine manufacture of goods by them by way of any additional evidence of procurement of raw materials and the purchaser of the goods. He has, further, contended that the entire demand on the basis of GRs recovered from transporters is third party information and the GRs were not reliable evidence because their names have not figured on them. He has further relied on Final Order in the case of Sakeen Alloys Pvt. Ltd. *Versus* Commissioner of Central Excise, Ahmedabad reported at 2013 (296) E.L.T. 392 (Tri. –

Ahmedabad), which was affirmed by Hon'ble High Court of Gujarat at Ahmedabad as reported at 2014(308) E.L.T. 655 (Gujarat) and further submitted that SLP was filed against said ruling by Hon'ble High Court of Gujarat at Ahmedabad which was dismissed by the Hon'ble Supreme Court of India as reported at 2015 (319) E.L.T. A117 (S.C.)

5. Heard the ld. D. R. who has supported the impugned Order-in-Original.

6. Having considered the rival contentions and on perusal of record, we find that the said 11 loose slips have not been established by Revenue to have been recovered from the record maintained at the manufacturing unit of the appellant as it was on the record that as per the statement dated 13/11/2002 of Shri Amit Kumar Jain, it was very clearly stated by him that the said 11 loose slips did not belong to them and were placed by Officers in the record. Though, subsequently a statement were recorded by Revenue of Shri Amit Kumar Jain on 27/01/2004 wherein contradictory was stated by him but because of the presence of contradictory statements on record it was not ~~be~~ proved beyond doubt that the said 11 loose slips were recovered from the record maintained by the appellant. Therefore, we do not find any merit in the allegations made in the Show Cause Notice on the basis of the said 11 loose slips. We, further, find that the allegations of evasion of Rs.26,49,514/- were based on GRs obtained from transporters and the copies of the GRs

submitted do not have consigner and consignees name and therefore they could not be relatable to the appellants. We, further, find that no evidence has been brought on record about the procurement of raw materials and the clearances of the finished goods and the purchasers to whom such goods were cleared and how the sale proceedings were recovered and accounted for. We, therefore, hold that allegations in respect of evasion of Central Excise duty to the tune of Rs.30,57,948/- on the basis of the said 11 loose slips and allegation of evasion of Central Excise duty of Rs.26,49,514/- on the basis of the said 129 GRs is presumptive. Therefore, we hold that the said Show Cause Notice is not sustainable for demand of Central Excise duty to the tune of Rs.30,57,948/- & Rs. 26,49,514/-. Therefore, the impugned Order-in-Original is set aside which relates to confirmation of demand on the basis of said two amounts of Central Excise duty demanded in the said Show Cause Notice. Further, there was no proposal for confiscation of finished goods, therefore, penalty imposed under Rule 26 of Central Excise Rules, 2002 was not sustainable. Therefore, we modify the impugned Order-in-Original by retaining the confirmation of demand to the extent of Rs.1,43,736/- and equal penalty imposed on the same and remaining part of the Order-in-Original is set aside and the impugned Order-in-Original is modified to that extent. Thus, appeal filed by the M/s Premier Ispat Ltd., is partially allowed and appeals filed by other two appellants are allowed. The appellants shall be eligible for consequential relief, as per law.

(Dictated and pronounced in Court)

-Sd/-
(ANIL CHOUDHARY)
Member (JUDICIAL)

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

Ansari

प्रमाणित प्रति / Certified True Copy
8.2.17
सहायक पंजीकार / Asstt. Registrar
सीमाशुल्क, उत्पादशुल्क एवं सेवा कर
अपील अधिकरण / (C.E.S.T.A.T.)
38, एम. जी. मार्ग, इलाहाबाद-211001
38, M. G. MARG, ALLAHABAD-211001