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: 29/11/2017

To

Appellant as per address in table below
Respondent as per address in table below

Final Order No. A/71687/2017-SM[BR] dated 24/11/2017

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/1824/2012	**Sarvottam Rolling Mills Pvt Ltd** Meerut Road, Muzaffarnagar (u.p.)
		Name and Address of Respondent
2		C.C.E. & S.T.-Meerut-i EXCISE CHOWK...UNIVERSITY ROAD,MANGAL PANDEY NAGAR, MEERUT, UTTAR PRADESH-250005

Copy To
3Advocate(s) / Consultant(s):

Aalok Arora,Adv
82 - Mission Compound,
Saharanpur,
Uttar Pradesh

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, Opp ICICI Bank of Defence Colony 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 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)

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

11 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad -- 38

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

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

14 C.D.R. 15 Office Copy 16 Second Folder Copy 17 Guard File

Asstt. Registrar

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH : ALLAHABAD
COURT No. I

APPEAL No.E/1824/2012-EX[SM]

(Arising out of Order-in-Appeal No.48-CE/MRT-I/2012 dated 12/02/2012 passed by Commissioner(Appeals), Central Excise, Meerut-I)

M/s Sarvottam Rolling Mills Pvt. Ltd. **Appellant**

Vs.

C.C.E. & S.T.- Meerut-I **Respondent**

Appearance:

Shri Alok Arora (Adv) for Appellant

Shri Pawan Kumar Singh, (Supdt.) (AR) for Respondent

CORAM:

Mrs. Archana Wadhwa, Hon'ble Member (Judicial)

Date of Hearing/Decision : 24/11/2017

FINAL ORDER NO-71687/2017

Per: Mrs. Archana Wadhwa:

After hearing both the sides I find that the appellant is engaged in manufacture of M.S. Bars, falling under chapter 72 of the Central Excise Tariff Act. Their factory was visited by the Central Excise Officers on 29.04.2008, in a follow up action as a result of interception of a truck. As a result of stock verification, the officers found shortages in the appellant's final product involving duty of around Rs.3,78,619/-.

2. The appellant's Director, Shri Sanjay Jain admitted the shortages and deposited the duty in question. However, they

could not give any explanation for the said shortages before the visiting officers.

3. On the above basis, proceedings were initiated against them vide show cause notice dated 19.02.2009 alleging clandestine removal of their final product, equivalent to the shortages detected at the time of the visit and proposing confirmation of demand and imposition of penalty. The said show cause notice culminated into an order passed by the Original Adjudicating Authority and upheld by the Commissioner(Appeals). Hence the present appeal. Learned advocate appearing for the appellant submits that such shortages in this stock were not real and were pseudo inasmuch as it is not possible for the officers to complete weighment in the short span of time, spent by them in the factory. Further, there are no inventories made by the officers and no weighment slips prepared so as to come to the actual stock taking.

4. In any case and in any view of the matter, he submits that apart from the said shortages, there is virtually no other evidence on the record to show that the appellant have cleared the said product without payment of duty. There is no inculpatory statement of any authorized representative of the assessee nor has the Revenue been able to identify the buyers, the transporters or the suppliers of the raw material. Even though the Revenue has resumed all the statutory records of the appellant but nothing worth relying was found by them. By relying upon various decisions, he submits that

mere shortages cannot lead to the conclusion of clandestine removal.

5. Learned AR appearing for the Revenue, reiterates the reasoning of the lower authorities and submits that as the appellant could not explain the shortages, it has to be held that the same were cleared by the appellant in a clandestine manner.

6. After appreciating the submissions made by both the sides I find that apart from the fact that the Revenue has not enable to substantiate the actual weighment of the material, the entire case of the Revenue is based on only the shortages detected at the time of visit. I find that the issue stands decided by umpteen numbers of the decisions of the various courts. Particular reference can be made to the Hon'ble High Court decision in the case of Commissioner Vs. Minakshi Casting: 2011 (274) E.L.T. 180 (All.), which stands followed by this Tribunal in the case of Amba Steels Vs. Commissioner of Central Excise, Meerut : 2016 (335) E.L.T. 97 (Tri.-All). Inasmuch as apart from the shortages there is no other evidence produced by the Revenue, I find no merits in the Revenue's stand. Accordingly, the impugned order is set aside and appeal allowed with consequential relief to the appellant.

(Dictated and pronounced in Court)

Sd/-
(Archana Wadhawa)
Member(Judicial)

प्रमाणित प्रति/Certified True Copy
03/01/18
सहायक पंजीकार/Asstt. Registrar
C.E.S.T.A.T.
ALLAHABAD-211001

as