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: 24/10/2017

To

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

Final Order No. A/71270-71271/2017-SM[BR] dated 17/10/2017

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/70108/2016	**Mamta Steel India Pvt Ltd** Peeparpur,(santha),amethi CHHATRPATI SAHU JI MAHARAJ NAGAR UP
2	E/70109/2016	**Lal Padmakar Singh Director** C/o Mamta Steel India Pvt Ltd,peeparpur,(sanha),amethi CHHATRPATI SAHU JI MAHARAJ NAGAR UP
		Name and Address of Respondent
3		C.C. & C.E. & S.T.-Allahabad 38...M G MARG...CIVIL LINES, ALLAHABAD, UTTAR PRADESH-211001
4		C.C. & C.E. & S.T.-Allahabad 38...M G MARG...CIVIL LINES, ALLAHABAD, UTTAR PRADESH-211001

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Other Appellants and Respondents as per Annexure

Copy To

5Advocate(s) / Consultant(s):

S. P. Ojha
299, Baghambari Housing
Scheme, Allahpur,
Allahabad,
Uttar Pradesh

6 Bar Association, CESTAT, Allahabad

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

8 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, Opp ICICI Bank of Defence Colony New Delhi-3

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

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

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

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

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

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

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

16 C.D.R. 17 Office Copy 18 Second Folder Copy 19 Guard File

Asstt. Registrar

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

REGIONAL BENCH : ALLAHABAD

COURT No. I

APPEAL Nos. E/70108 & 70109/2016-EX[SM]

(Arising out of Order-in-Appeal No. 394-395-CE/APPL/LKO/LKO/2015 dated 14/10/2015 passed by Commissioner of Central Excise, Service Tax & Customs (Appeals), Lucknow)

M/s Mamta Steel India Pvt. Ltd. (in Appeal No. E/70108/2016) **&**

Shri Lal Padmakar Singh, Director of M/s Mamta Steel Pvt. Ltd. (in Appeal No. E/70109/2016) **Appellant(s)**

Vs.

Commissioner of Central Excise, Allahabad **Respondent(s)**

Appearance:

Shri S.P. Ojha (Consultant) for Appellant(s)
Shri Gyanendra Kumar Tripathi (AC) AR for Respondent(s)

CORAM:

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

Date of Hearing : 17/10/2017
Date of Decision : 17/10/2017

FINAL ORDER NOs-71270-71271/2017

Per: Anil G. Shakkarwar

Present both appeals are directed against Order-in-Appeal No. 394-395-CE/APPL-LKO/LKO/2015 dated 14.10.2015 passed by Commissioner (Appeals) Customs, Central Excise and Service Tax, Lucknow. Since both appeals are arising out of same impugned Order-in-Appeal, they are taken together for decision.

2. Brief facts of the case are that the M/s Mamta Steel India Pvt. Ltd (M/s Mamta) was engaged in manufacture of MS Ingots, falling under Tariff Item No. 72061090 of schedule to Central Excise Tariff Act, 1985. M/s Mamta's manufacturing unit was visited by Central Excise Officers on 30.11.2011 and certain records were checked. The stock of raw material and finished goods was also checked. The officers found shortage of 72.078 MT of MS Ingots involving Central Excise Duty of Rs. 2,00,449/-. The officers resumed various records such as RG-1 register, Form IV register and various invoice books under Panchnama dated 30.11.2011. On the basis of scrutiny of record a show cause notice was issued to both the appellants being show cause notice dated 22.03.2013 wherein invoice wise details of invoices issued was given in the form of a chart after Para No. 5 of the said show cause notice. It was alleged in the said show cause notice that M/s Mamta had indulged in receipt of uncounted raw materials and in suppression of production and clandestine removal of finished goods by resorting to issue of forged invoices with the intention to evade Central Excise Duty. It was also alleged that the other appellant was involved in dealing the goods clandestinely removed. The said show cause notice had a proposal to demand Central Excise Duty of Rs. 2,00,449/- on the shortages of MS Ingots found in the factory, Central Excise Duty of Rs. 36,46,346/- not paid on finished goods removed clandestinely under the cover of

duplicate and forged invoices from the factory of M/s Mamta. Further, there was a proposal for imposition of personal penalty on the other appellant. The issue was adjudicated through Order-in-Original dated 02.01.2015. The Original Authority confirmed both the demands and imposed equal penalty on M/s Mamta. Further equal penalty was also imposed on other appellant Shri Lal Padmakar Singh under Rule 26 of Central Excise Rules, 2002. Aggrieved by the said order appellants preferred appeal before Commissioner (Appeals). Learned Commissioner (Appeals) decided appeals through impugned Order-in-Appeal. Learned Commissioner (Appeals) at Para 5.3.1 of his Order-in-Appeal has observed that by detecting forged and parallel invoice book the Department has discharged its burden to prove that there was clandestine clearance. In Para 5.8 the learned Commissioner (Appeals) has also recorded that the appellants instead of giving any positive explanation and defence even on the points needed to be explained by them has adopted a general approach of stating that Department could not give any conclusive evidence to prove the charge and that as discussed earlier the Department has discharged the initial 'burden of proof' by discovering the forged and parallel invoice book. In view of such finding learned Commissioner (Appeals) dismissed both the appeals filed before him. Aggrieved by the said order the present appeals are filed before this Tribunal.

3. Heard the learned counsel for the appellants who has made following submissions:-

(i) The weight of MS Ingots was determined by eye estimation and not by actual weightment and, therefore, the demand of duty of shortage of ingots is not sustainable.

(ii) It is admitted in Para 6 of the show cause notice that invoice no. 31 dated 30.11.2011 issued from the forged invoice book was issued to M/s United Steel Industries for removal of 32.860 MT of MS Ingots but in follow-up action conducted on 01.12.2011 no discrepancy was found.

(iii) The Director of the appellant never admitted removal of MS Ingots without payment of duty and that the Department has not come out with any evidence to prove allegation.

(iv) As reflected in Para 6 and 15 of show cause notice both M/s United Steel Industries and M/s Kumar Industries has categorically denied having received any goods other than goods received through the invoices produced by them.

4. Heard the learned AR who has supported impugned Order-in-Appeal.

5. Having considered the rival contentions and on perusal of record it is notice from the show cause notice dated 22.03.2013 that invoices with same numbers such are Invoice

No. 26 was issued on various dated such as 01.11.2011, 02.11.2011, 03.11.2011, 04.11.2011, 05.11.2011 and 06.11.2011 indicating various quantities of ingots cleared and similar situation was in Invoice No. 27 or Invoice No. 28 etc. Further, in the invoice book mentioned at Serial No. 8 of Annexure A, Invoice No. 3 was issued several times. No convincing defence was put forth against issue of number of invoices with the same number on various occasion to different purchases containing different information about the quantity of ingots cleared. Therefore, I do not find any infirmity in the order passed by the learned Commissioner (Appeals). I, therefore, declined to interfere with the impugned Order-in-Appeal. Both the present appeals are dismissed.

(Dictated and pronounced in Court)

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

Ankit

प्रमाणित प्रति/Certified True Copy
01/11/17
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