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REGISTERED / AD

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

Dated: 15/11/2017

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. **A/71370-71371/2017-SM[BR]** dated **29/09/2017**

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/70481/2017	**Raghuveer Ispat Pvt Ltd** Bithoor Road,chaubeypur KANPUR UP
2	E/70482/2017	**Ramesh Kumar Dixit Director** C/o Raghuveer Ispat Pvt Ltd Bithoor Road,chaubeypur KANPUR UP
		Name and Address of Respondent
3		C.C.E. & S.T.-Kanpur 117/7...SARVODYA NAGAR, KANPUR, UTTAR PRADESH-208005
4		C.C.E. & S.T.-Kanpur 117/7...SARVODYA NAGAR, KANPUR, UTTAR PRADESH-208005

Other Appellants and Respondents as per Annexure

Copy To

5Advocate(s) / Consultant(s):

AMIT AWASTHI
ADVOCATE
7/116A, H-1, 1ST FLOOR,
RADHEY APARTMENT,
SWAROOP NAGAR,
KANPUR- 208002

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/70481-70482/2017-EX[SM]

(Arising out of Order-in-Appeal No. 114-115/CE/APPL/KNP/2017 dated 27/04/2017passed by Commissioner of Central Excise & Customs (Appeals), Kanpur)

M/s Raghuveer Ispat Pvt. Ltd. &

Ramesh Kumar Dixit Director **Appellants**

Vs.

Commissioner of Central Excise& S.T., Kanpur **Respondent**

Appearance:

ShriAmitAwasthi, Advocate for Appellant
ShriSandeep Kumar Singh, Deputy Commissioner (AR), for Respondent

CORAM:

Hon'ble Mr. Anil Choudhary, Member (Judicial)

Date of Hearing : 29/09/2017
Date of Decision : 29/09/2017

FINAL ORDER NOs.-71370-71371/2017

Per: Anil Choudhary

The issue in these two appeals is whether the impugned Order-in-Appeal, conforming the confiscation with respect to raw material and finished goods apparently found in excess at the time of stock verification, on inspection, is justified wherein the learned Commissioner (Appeals) have noticed anomalies in the findings of the Original authority and have been pleased to reduce the redemption fine and penalty.

2. The brief facts of the case are that the appellants are a manufacturer of M.S. Angles and M.S. Flats and their raw material is M.S. Ingot and Billet & Cutting. There was an inspection in the factory cum office premises by the officers of Central Excise–DGCEI (New Delhi) on 30/07/2014. Upon search/inspection a panchnama was drawn and as stated therein various records of the appellant like Central Excise bills, miscellaneous loose files, purchase file, sale bill file, raw material purchase file, form-4 register for 2014–15, coal stock register, RG-1 register 2014–15, RG–23A part-I and II and part-I Service Tax for 2014–15, PLA register, RG-23C part-I and II as well as the CPU of the computer were resumed. Further physical stock verification was done and it is stated in the panchnama that the same was done with the assistance of the Manager Mr. D.K. Mishra and some employees/workers. It is further mentioned in the panchnama that Mr. Mishra along with his staff counted the number of M.S. Ingots pieces and then took the weight of 5 M.S. Ingots pieces on random basis, which comes to 550 Kgs. Thus, the average weight of one piece of M.S. Ingots comes to 110kgs.and Shri Mishra accepted the average weight of one piece of M.S. Ingots as 110 kgs. Similarly, Shri Mishra with the help of their

staff took the physical stock of M.S. Angle, M.S. Billets and End cuttings and found excess quantity of 63.11MT of M.S. Angles & 50.825MT of Billets. Since, the entries were made up to 24.07.2014 in the Central Excise records and no records were available about the receipt of raw material and production of finished goods during 25.07.2014 to 29.07.2014. Hence, the visiting officers took the record of stock of 24thJuly 2014 to determine the difference of stock. The details of excess stock found, as per Annexure-A to the panchnama is as follows:-

Sl. No.	Item	Quantity as per physical verification (in pieces)	Weight/piece (in Kg)	Total weight (in MT)	Stock as per excise records as on 24.07.2014	Excess/shortage of stock (in MT)	Rate/MT	Total value (in Rs.)
1.	Billets	647	125	80.875	30.05	50.825	34500	17,53,463
2.	M.S. Ingots	4946	110	544.060	174.55	369.510	32600	1,20,46,026
3.	M.S. Angle			90.30	27.190	63.11	37500	23,66,625
	Total							**1,61,66,114**

The officers on reasonable belief that the said excess found excisable goods were procured without payment of duty and finished goods were procured with intent to clear without payment of duty, issued detention memo on 30.07.2014. Subsequently, vide communication dated 29thAugust, 2014 the I.O. of DGCEI, Delhi zonal unit converted the detention into seizure under terms of Rule

24 of Central Excise Rules, 2002 read with the provisions of the Customs Act. The appellant had also in the meantime vide their letter dated 01/08/2014 explained that the records were not updated till 30thJuly, 2014 (date of inspection) because the person maintaining the records did not attend the factory/office during the intervening period. It was also pleaded that only for the reason of the statutory records being not updated, due to absence of the concerned clerk, does not *ipso facto* lead to the conclusion that the appellant had intention of clearing their goods manufactured, clandestinely.

3. Thereafter, show cause notice dated 28.01.2015 was issued, alleging that the appellant have contravened the provisions of Rule 10,9(5)&12 of CER, 2002. Further, alleging that the excess stock of raw material/finished goods was as the result of clandestine activity and malafide intention on their part and accordingly, it was proposed to confiscate the finished goods of M.S. Angles weighing 63.11MT in excess valued at Rs.23,66,625/- and also the excess raw materials being billets and M.S. Ingots weighing in total 420.335MT and collectively valued at Rs.1,37,99,489/- under Rule 25 of CER, 2002 with further proposal to impose penalty under Rule-25.

Further, penalty was also proposed under Rule 26 on the Director Shri R.K. Dixit.

4. The SCN dated 28.01.2015 was adjudicated on contest vide Order-in-Original dated 30/03/2016, confirming the proposed confiscation of raw materials and finished goods. Further, giving option to redeem, as regards finished goods on payment of redemption fine of Rs.4 lakhs and as regards raw materials on payment of redemption fine of Rs. 21 lakhs, further penalty under Rule 25 was imposed on the appellant's company for Rs.5 lakhs and further penalty of Rs.2 lakhs was imposed on the Director– Shri R.K. Dixit.

5. Being aggrieved, the appellant preferred appeal before the learned Commissioner (Appeals) on the ground that that drawing of panchnama is defective and against the provisions of law, as the same was drawn with the assistance of interested witnesses who had accompanied the inspection team from New Delhi, Whereas the panchnama was drawn at Bithoor, Kanpur. The provisions of the Criminal Procedure Code, as made applicable to the Central Excise Act require that search/inspection needs to be done in presence of two independent witnesses of the locality where the search is being done, further ground taken is that the so called

stock verification was done only by way of eye estimation and no inventory of goods undertaken on the basis of weight, size and quantity of product. Further, the appellant uses the ingots in their products, after cutting the same to appropriate similar size. There was also several cut pieces of ingots lying in the factory which has not been properly counted and as such, have been counted as full length ingots, which was reason for wrong conclusion of visiting officers. Further, it is admitted fact from perusal of the panchnama that no proper weighment was done as the method of weighment had not been disclosed. It is not physically possible for a person or two persons to weight ingots which weight, about 100-110 kg. Thus, the whole proceeding was done by way of eye wash and/or rough estimation and no reliance can be placed on the same.

6. It is also explained that the whole case of the revenue is based on defective stock verification report and as such the adverse inferences drawn fit to be set aside. It was also alleged that the so-called one of the panch witness is a cab driver working for the DGCEI, Delhi zonal unit, Delhi and thus no reliance can be placed on such defective panchnama. Further, the stock verification report is part of the panchnama which is also

not reliable on this score also. It is further pleaded that it is evident from the panchnama that several records including statutory records were seized/resumed by the officers but they have failed to point out any incidence of clandestine activity of either receipt of raw material or of clearance of any finished goods and as such the Order-in-Original is not tenable. It was also urged that the statement of Mr. R.K. Dixit which was recorded in the course of investigation, wherein he had stated that – "I admit the fault that we had not accounted the said goods, which were detained at our factory premises and further converted into seizer, as we had intention to clear the said manufactured goods clandestinely without paying Central Excise duty and also procured the said materials clandestinely without bills". This statement was given in response to question asking– that why you have not accounted the same and also sign on the last page of the panchnama, detention memo, which was later on converted to seizer.

7. It was urged that the said statement is very vague and does not lead to any adverse inference against the appellant in absence of any co-rroborative evidence. Further, the said Mr. Dixit had retracted the said statement subsequently, by affidavit/sworn on

Acn

22ndNovember, 2015. It was also urged that not a single instance of attempt to remove goods clandestinely was found by the revenue, except bold allegation made in the show cause notice.

8. The learned Commissioner (Appeals) have recorded the findings that the appellant was maintaining records which were maintained up to 24/07/2014 and no entries were available about the receipt of raw material/production of finished goods during 25th July, 2014 to 29th July, 2014. As regards the ground taken regarding defect in stock verification the learned Commissioner (Appeals) observed that the appellant also did not maintain their records up-to-date. Accordingly, the order of confiscation is justified. So far the details filed by the appellant of their transactions for the period 25thJuly,2014 to 29thJuly,2014based on the books of accounts and vouchers etc. maintained by them. The learned Commissioner (Appeals) observed– that appellant have submitted copy of form-4 register, wherein stock of M.S.Billets duly accounted for, weighing 1,74,055Kg, supported with invoice of valid purchase were also placed before the Adjudicating authority and in the non-speaking order, the submissions of form-4 register, though the fact of the case have been noted but there are

absolutely no observations in the discussion and finding which is just stereo type observation in view of allegations made in the show cause notice. The learned Commissioner (Appeals) have also recorded that the adjudicating authority have rejected the evidences led by the appellant whimsically without a speaking order and as such benefit of doubt goes in favour of the appellant. The appellants claim is based on documentary evidence. With such findings he was pleased to uphold the order of confiscation. However, he reduced the amount of redemption fine and penalty. As regards appellant Shri R.K. Dixit the learned Commissioner (Appeals) observed that he is old person of about 68 years of age, rarely visits the factory and there is absolutely no complicity on his part. In fact the whole exercise of physical weigment was orchestrated by the officers. There is no definite role on his part to make him liable for invocation of the panel provision under Rule 26 of CER, 2002.

9. Being aggrieved, the appellants are before this Tribunal. The learned Counsel further urges that although the Commissioner (Appeals) have appreciated the defect in the stocktaking and have also appreciated the reconciliation filed before him that there is no actual discrepancy in the stock on the date of inspection, have

erred in confirming the confiscation, which is fit to be set aside. Accordingly, by way of consequential relief redemption fine and penalty also need to be set aside.

10. The learned A.R. for revenue relies on the impugned order.

11. Having considered the rival contentions, I find that the manner of stocktaking is defective on the date of inspection. It cannot even be called a good eye estimation. Further, the stocktaking being part of the panchnama cannot be relied upon in view of the apparent defect in the panchnama for violation of the provisions of the criminal procedure code, as made applicable to the provisions of Central Excise Act, as regards search and seizure. I also notice that under the principles of accounting the manner of stocktaking done is wrong and defective. Inspite of records of inputs received and clearance of finished goods vide invoices, the same were ignored and not taken into account for no reason. Thus, the impugned orders are bad for selectively relying on the evidence available on record. I also find that there is no specific instance found inspite of all the exercise, of clandestine removal or attempted clandestine removal on the part of the appellants.

12. In this view of the matter, I allow these appeals and set aside the impugned orders. The appellants shall be entitled to consequential benefits, in accordance with law. Order be issued Dasti.

(Dictated in Court)

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

akp

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15/11/17
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