CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
BANGALORE

REGIONAL BENCH - COURT NO. 1

Central Excise Appeal No. 223 of 2010

(Arising out of Order-in-Appeal No.163-165/2009 dated 27.10.2009 passed by the Commissioner of Central Excise (Appeals-I), Bangalore.)

M/s. M. J. Steel Re-Rolling Mill
Plot No.8K, 3rd Main,
III Cross, KIADB Industrial Area,
Pillgumpe Village,
Hoskote Taluk,
Bangalore – 562 114.

Appellant(s)

Versus

The Commissioner of Central Excise (Appeals-II)
No.16/1, 5th Floor,
S.P. Complex, Lalbagh Road,
Bangalore – 560 027.

Respondent(s)

WITH

Central Excise Appeal No. 224 of 2010

(Arising out of Order-in-Appeal No.163-165/2009 dated 27.10.2009 passed by the Commissioner of Central Excise (Appeals-I), Bangalore.)

B M Mastana, Partner
M/s. M. J. Steel Re-Rolling Mill
Plot No.8K, 3rd Main,
III Cross, KIADB Industrial Area,
Pillgumpe Village,
Hoskote Taluk,
Bangalore – 562 114.

Appellant(s)

Versus

The Commissioner of Central Excise (Appeals-II)
No.16/1, 5th Floor,
S.P. Complex, Lalbagh Road,
Bangalore – 560 027.

Respondent(s)

AND

Central Excise Appeal No. 225 of 2010

(Arising out of Order-in-Appeal No.163-165/2009 dated 27.10.2009 passed by the Commissioner of Central Excise (Appeals-I), Bangalore.)

Sri Jeevan Prakash, Partner
M/s. M. J. Steel Re-Rolling Mill
Plot No.8K, 3rd Main,
III Cross, KIADB Industrial Area,
Pillgumpe Village,
Hoskote Taluk,
Bangalore – 562 114.

Appellant(s)

Versus

The Commissioner of Central Excise (Appeals-II)
No.16/1, 5th Floor,
S.P. Complex, Lalbagh Road,
Bangalore – 560 027.

Respondent(s)

Appearance:

None	For the Appellant
Mr. H. Jayathirtha, AR	For the Respondent

CORAM:

HON'BLE DR. D.M. MISRA, MEMBER (JUDICIAL)
HON'BLE MR. PULLELA NAGESWARA RAO, MEMBER (TECHNICAL)

Final Order No. 21235 - 21237 / 2023

Date of Hearing: 14.07.2023
Date of Decision: 09.11.2023

Per : DR. D.M. MISRA

These three appeals have been filed against common Order-in-Appeal No.163-165/2009 dated 27.10.2009 passed by the Commissioner of Central Excise (Appeals-I), Bangalore.

2. Briefly stated the facts of the case are that the appellants are engaged in the manufacture of TOR Steel i.e., MS Bars/Flats falling under Chapter subheading No.7214 90/7216 10 of the

Central Excise Tariff Act, 1985. They have been availing SSI exemption under Notification No.8/2003-CE dated 01.3.2003 declaring that the total value of clearances is less than Rupees one crore. On the basis of intelligence, on scrutiny of their records, by Headquarters Preventive Unit on 18.8.2006, it was noticed that during the Financial year 2006-2007(up to Aug 2006), even though their total turnover has exceeded the SSI exemption limit of Rs.100 lakhs, they continued to clear the goods clandestinely without payment of duty. During the course of visit of the said appellant's unit by the Preventive Officers, it was noticed that the unit was not functioning and there were no raw materials lying in stock. On verification of the records, viz. purchase and sales invoices and further investigation, the officers recovered a notebook and diary from the possession of Mr. Bharat Yadav which contained details of purchase of raw materials received at the appellant's unit during the period from June 2006 to July 2006. On recording the statement of Shri Bharat Yadav it revealed that they had manufactured and cleared the goods by using the raw materials mentioned in the said note book. Also, on examination of the consumption of electricity during the said period and recording further statements from the partners Shri Jeeva Prakash and Mr. B.M. Mastana, it revealed that the appellant failed to discharge duty of Rs.4,44,291/- even though they had exceeded the SSI exemption limit of Rupees one crore in August 2006. Consequently, show-cause notice was issued on 5.9.2007 for recovery of the said duty with interest along with proposal for personal penalties on the partners of the appellants. Subsequently, two more show-cause notices were issued to the appellants on 10.10.2007 & 18.12.2007 for the period 01.09.2006 to 30.11.2006 & December 2006 to March 2007 demanding duty of Rs.3,62,925/- & Rs.2,29,616/-, respectively, for the clearances made during the said period without obtaining registration and without payment of duty.

3. The said show-cause notices have been adjudicated by passing a common Order-in-Original on 12.12.2008 confirming the demands raised in the respective show-cause notices with interest, imposition of personal penalty of Rs.50,000/- on Shri Jeeva Prakash and Rs.25,000/- on Shri B.M. Mastana. Aggrieved by the said order, appellants filed appeals before the learned Commissioner (A), who in turn rejected their appeals. Hence, the present appeals.

4. None present for the appellants. The matter has been listed on 30.05.2023, 20.06.2023 and 27.6.2023. On 27.06.2023, accepting to the written request for adjournment, this Tribunal observed that the matter be adjourned and listed on 14.7.2023 and if the appellant does not appear on the said date, the appeals be heard on merits. Consequently, the matter has been listed on 14.7.2023 and as the Appellant failed to appear the matter is taken up for disposal on the basis of record available.

5. The learned Authorised Representative for the Revenue has submitted that the appellants have been engaged in the

manufacture of iron and steel products and during the period 2006-07, declared to have their clearances below Rs.100.00 lakhs and accordingly availed SSI exemption under Notification No.8/2003-CE dated 1.3.2003. It is stipulated under the said Notification that an assessee would be allowed to clear the goods at 'Nil' rate of duty on the aggregate value of First clearances up to Rs.100.00 lakhs in a financial year; whereas on the appellant had exceeded the turnover of Rs. 100.00 lakhs in August 2006 but failed to discharge duty on the clearance thereafter after obtaining registration. The evidences collected by the departmental officers during their visit to factory on 18.8.2006 revealed that even though the appellant had been receiving raw materials and converting them into finished goods and clearing the same, but did not maintain proper records so as to remain within SSI exemption limit of Rs.100.00 lakhs. He has further submitted that the raw materials purchased during June and July 2006 as mentioned in the notebook recovered from the possession of Shri Bharat Yadav from various parties revealed that except in case of the suppliers viz., M/s. Bhuwalka Industries Ltd. and M/s. Nav Karnataka, Bellary, the quantities mentioned in the said notebook pages were tallying with the purchase invoices kept in the factory premises, whereas other purchase entries recorded in the said notebook did not have any records in the factory premises of the appellant. From the statement of the supervisor Shri Bharat Yadav, who was available in the factory at the time of visit of the officers, admitted the fact that the quantity of raw material recorded in the notebook had been purchased and used for manufacture of MS Rods and flats and cleared to various parties. Further, he has informed that the name of the parties to whom goods were cleared was not known to him and only the partners can explain. From the statement of the partner Shri B.M. Mastana, it revealed that he was only a dormant partner and the entire day-to-day affairs was being looked after by Shri Jeeva Prakash and the statements of Shri Jeeva Prakash would be binding on them.

6. The learned Authorised Representative further referring to the statements of Shri Jeeva Prakash dated 19.9.2006 submitted that wherein he has acknowledged that the total quantity of raw materials mentioned in the notebooks retrieved from Shri Bharat Yadav is 119.20 MTs and after adjusting the burning loss of 10% the quantity manufactured is 107.28 MTs and the value of the said quantity is Rs.77,24,592/- @ Rs.24,000/-PMT; adding the clearance of April & May 2006,the aggregate value of clearance becomes 1,03,62,600/-, which is in excess by Rs.3,62,000/- of aggregate clearance of SSI exemption limit of Rs.100 lakhs and paid Rs.60,000/- under protest. He submits that even though the appellant had claimed that there has been no production of goods during the period in question, however, the electricity consumption recorded when compared to other units was indicating that there was manufacture and clearance of finished goods from the factory without raising excise invoices. He has submitted that the notebook retrieved from the personal custody of Shri Bharat Yadav mentioned the name of the parties from whom they had received raw materials during the period

1.3.2006 to 2.8.2006. He submits that except the receipt from M/s. Bhuwalka and M/s. Nav Karnataka, the other purchases were not accounted for in the register and admittedly used in the manufacture of finished goods meant for clearance without payment of duty. Even though the partner of the appellant did not accept the statement of Shri Bharat Yadav, and later disputed the two pages of note book, however, no plausible explanation has been furnished. In these circumstances, the department could establish that there was clearance of the goods without payment of duty.

7. We have carefully considered the records of the case, the grounds of appeal and the submission of Ld. AR for the Revenue. The appellant in their grounds of appeal have disputed that except the documents retrieved from Shri Bharat Yadav who joined in July 2006; there is no tangible, corroborative and independent evidence pointing out manufacture and clearance of the finished goods. They have also submitted that statements of raw material suppliers have not been recorded to establish the correctness of the supplies made by them, if any, as recorded in the note book, which alleged to have been used in the manufacture of finished goods and cleared clandestinely. Further, they have stated that consumption of electricity cannot be the basis or yardstick to determine the production and clearance of the goods, when the same was not investigated from the partners. Further, they have contended that the partner Shri Jeeva Prakash disputed the authenticity of the chits or two pages of the notebook retrieved from Shri Bharat Yadav; also

categorically denied that they had not manufactured and cleared the excess quantity of goods, though paid duty of Rs.60,000/- under protest. Also, they have disputed the method of calculation of duty on allegedly excess quantity adopting the value as Rs.24000/- PMT which is arbitrarily and is without any basis as in their invoices, the price quaoted varied from Rs.18,000 to Rs.24,000 PMT. Also, disputing the show-cause notice dated 10.10.2007 for the period from 1.9.2006 to 30.11.2006 and subsequent notice dt.18.12.2007 for the period 01.12.2006 to 31.3.2007, it is submitted that the duty has been calculated and demanded on the basis of clearances noted in the show-cause notice dated 5.9.2007. It is their contention that during the period 2006-07, the total clearance value of goods manufactured stood at Rs.99,39,180/- which is certified by a Chartered Accountant and included in the Profit and Loss Account, hence, they have not exceeded the SSI exemption limit of Rs.100 lakhs for the Financial Year 2006-07.

8. On scrutiny of the evidences of alleged clandestine manufacture and clearance of goods narrated in the notice dated 5.9.2007, we find that the department on the basis of two pages notebook retrieved from the personal possession of Shri Bharat Yadav containing alleged details of purchase of raw materials during June & July 2006, as authentic, even though the same was later disputed by the partner of the appellant Shri Jeeva Prakash. The said notebook is enclosed at pages 127 to 130 of the appeal paper book. On going through the same we find that

except some entries in a tabular form, there is no indication about description of the material and any other particulars indicating that the entries were inputs/raw materials received and used in the manufacture of finished goods. Further, reliance is placed in decoding the said entries only on the basis of one statement dt. 18.8.2006 of Shri Bharat Yadav enclosed at page 120 of the appeal paper book. On going through the statement, we find that though he accepted that the said two pages recovered from his possession but the entries therein were not written by them but by one Shri Anand. No further investigation was carried out by confirming the said facts from Shri Anand nor any attempt was made in this regard by issuing summons to Shri Anand. Also reading the statement of the partner Shri Jeeva Prakash dt. 19.9.2006, we find that he has categorically denied the authenticity of the said documents and also the veracity statement of Shri Bharat Yadav relating to the entries for period for the period prior to his joining the Unit in July 2006. Under these circumstance, the very basis on which the case of clandestine removal has been alleged by the Revenue against the appellant seems to rest not on any credible piece of evidence. Revenue has also not collected the details of raw material suppliers nor any attempt was made investigating said raw material supplier from the either questioning shri Bharat Yadav or the partner. Also, not an iota of evidence was placed on record indicating clearance of the manufactured goods clandestinely by bringing on record the evidence of Transporters or the purchasers of finished goods. Besides the basis of consumption of electricity adopted unilaterally in calculating the manufacture and clearance of finished goods without verification of the same during investigation from the supervisor or the partner, or through any corroborative evidence, in our opinion, cannot be considered as basis for demanding duty on alleged clandestine removal of the goods. The appellants on the contrary placed the audited balance sheet for the year 2006-07 duly certified by the Chartered Accountant establishing the total turnover during the period which did not exceed Rs.100 lakhs. No contrary evidence has been produced by Revenue.

9. In these circumstances, we do not find merit in the impugned order. Consequently, the impugned orders are set aside and the appeals are allowed with consequential relief, if any, as per law.

*(Order pronounced in Open Court on **09/11/2023**.)*

(D.M. MISRA)
MEMBER (JUDICIAL)

(PULLELA NAGESWARA RAO)
MEMBER (TECHNICAL)

rv