CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
<u>BANGALORE</u>

REGIONAL BENCH - COURT NO. 1

Central Excise Appeal No. 21057 of 2014

(Arising out of Order-in-Original No. 01/2014 dated 31.01.2014 passed by the Commissioner of Central Excise, Bangalore II Commissionerate, Bangalore.)

M/s. VSL Steels Limited,
Paramenahalli Village,
Hiriyur Taluk,
Chitradurga – 570 143.

Appellant(s)

VERSUS

Commissioner of Central Excise,
Bangalore II Commissionerate,
Office of the Commissioner of Central Excise,
No. 16/1, 5th Floor, SP Complex,
Lalbagh Road,
Bangalore – 560 027.

Respondent(s)

<u>APPEARANCE:</u>

Mr. B.G. Chidananda Urs, Advocate for the Appellant

Mr. Sanjay Venkat, Superintendent (AR) for the Respondent

CORAM: HON'BLE DR. D.M. MISRA, MEMBER (JUDICIAL)
HON'BLE MRS R BHAGYA DEVI, MEMBER (TECHNICAL)

<u>Final Order No. 21112 /2024</u>

DATE OF HEARING: 25.10.2024.
DATE OF DECISION: 25.10.2024.

PER : DR. D.M. MISRA

This Appeal is filed against Order-in-Original No. 01/2014 dated 31.01.2014 passed by Commissioner of Central Excise, Bangalore – II Commissionerate, Bangalore.

2. Briefly stated the facts of the case are that the appellants are engaged in the manufacture and clearance of excisable

goods viz., Pig Iron and Skull falling under Chapter 72 and Granulated Slag falling under Chapter 26 of Central Excise Tariff Act (CETA), 1985. On verification of the annual account statement, it was noticed that they had consumed a total quantity of 1,43,08,000 KW of power in their unit for the financial year 2008-09 for manufacture of Pig Iron. Also, it is mentioned in the said financial accounts that they had consumed 174.04 KW of power for production of one tonne of Pig Iron. Consequently, on comparison of their ER-1 returns figures of manufacture for the period April 2008 to March 2009 with the consumption of power for production of pig iron, it was noticed that 5,634.75 MT tonne of Pig Iron had not been accounted and accordingly, alleging that the same had been cleared without payment of duty, show-cause notice was issued to them on 19.08.2011 demanding a total duty of Rs.2,72,31,975/- along with the interest and penalty. On adjudication, the demand was confirmed by the Commissioner along with interest and penalty.

3. The learned advocate at the outset has submitted that the appellants are manufacturers of Pig Iron, Skull and Granulated Slag in their factory during the aforesaid period. As per the balance sheet, during the period April 2008 to March 2009, it is stated that they had consumed a total quantity of 1,43,08,000 KW of power for manufacture of finished products i.e. Pig Iron. Since, it is mentioned in the financial accounts that 174.04 KW of power was used for production of one tonne of Pig Iron, accordingly, the department calculated the total quantity of Pig Iron to have been manufactured during said period by the appellant was 82,210.98 MT; further, since they have accounted clearance of Pig Iron of 76,576.23 MT, the remaining quantity i.e., 5634.75 MT was alleged to have been cleared without payment of duty. In explaining the said allegation in their reply to the show-cause notice, they have submitted that while mentioning the conversion factor in the Director’s Report in their financial statement, the production of Pig Iron and Skull had been considered to arrive at the power consumption per MT of

finished goods. The difference, thus, is clearly the quantity of Skull which was generated and considered for calculation of electricity consumption per ton of Pig Iron. Further, he has submitted that the appellant had cleared Skull on payment of Central Excise Duty involving a total quantity of 7204.68 tonnes during the said period, which is not in dispute. Therefore, the demand was on a wrong assumption that the per ton consumption of electricity only relates to Pig Iron which is incorrect. He has submitted that the said mistake was explained to the Commissioner during the course of hearing, however, the same was not considered by the Adjudication Authority and the demand was confirmed along with interest and penalty. He submits that there is no other evidence except the calculation based on the annual report to support the allegation of the department that huge quantity of 5634.76 MT pig iron had been removed clandestinely without payment of duty. There is no evidences like purchase of raw material, consumption of electricity and identification of the purchaser, etc., hence the demand cannot be sustained. Further, he has submitted that such a huge demand has been issued to them even without recording a single statement from any of the employees of the company to furnish explanation. In support, he has referred to the following judgments:

- **Commissioner of Central Excise & ST vs. Mittal Pigment Pvt. Ltd.: 2018 (16) GSTL 41 (Raj.)**
- **Southern Ispat Ltd. vs. Commissioner: 2009 (248) ELT 270 (Tri.-Bang.)**
- **Commissioner vs. Venus Alloys Pvt. Ltd.: 2016 (337) ELT 561 (Tri.-Del.)**
- **Bhawani Shanker Castings Ltd. vs. CCE: 2009 (246) ETL 332 (Tri.-Del.)**

4. The learned Authorised Representative for the Revenue reiterated the findings of the learned Commissioner.

5. Heard both sides and perused the records.

6. The short issue involved in the present appeal for consideration is, whether during the period 2008-2009, the appellant had cleared 5634.758 MT of pig iron clandestinely without payment of duty.

7. We find that on the basis of analysis of their annual report by the AG Audit, it was noticed that in the said report consumption of power for production of one tonne of pig iron for the financial year 2008-09 was shown as 174.04 MT. Applying the said parameter, the total quantity of pig iron cleared during the said period was arrived at 82,210.98 MT since the power consumption for the whole period was 1,43,08,000 KW. Comparing the said figure of production with the entries made in their statutory records, it was alleged by the department that there was shortage in the figure of production to the extent of 5,634.75 MT of pig iron, which had been cleared clandestinely without payment of duty. Explaining the discrepancy, the appellant in their reply to the show-cause notice as well as before the Tribunal submitted that in the Director's report while arriving at the power consumption, it has taken both pig iron as well as skull manufactured during the said period but it was incorrectly mentioned as consumption per unit for production of one tonne of pig iron. He has submitted that during the said period, there was production of 76,576.23 MT of pig iron, 5640.38 MT of skull and 25,889.95 MT of granulated slag as mentioned in their reply to the show-cause notice. Further, it is submitted that they have discharged duty on skull and it is not disputed. We find that the Commissioner though recorded the submissions but did not accept the same on the ground that the appellant had not submitted the revised annual report. We find that to make the allegation of clandestine clearance, the department has not proceeded with any investigation in the matter and also they have not recorded any statements seeking explanation about the said discrepancy. Once it is submitted by

the appellant that while arriving at the per unit consumption of electricity for production of one tonne of pig iron quantity, skull manufactured during the said period was also clubbed but not specifically mentioned in the Director's report that the consumption of power for production of one ton of pig iron and skull, there is no contrary evidence placed by the Revenue to rebut the said averments of the appellant. Also, no evidence of clandestine procurement of raw material, transportation of raw material as well as clandestine manufacture of finished goods have been placed on record. In these circumstances, we do not find any merit in the impugned order which is solely based on assumptions and presumptions without any evidence about manufacture and clearance of 5,634.75 MT of pig iron, based on an incorrect mention of power consumption referring only to pig iron and not the consumption of both pig iron and skull.

8. In the result, the impugned order is set aside and the appeal is allowed with consequential relief, if any, as per law.

(Operative portion of the order was pronounced in open court on conclusion of hearing.)

(D.M. MISRA)
MEMBER (JUDICIAL)

(R BHAGYA DEVI)
MEMBER (TECHNICAL)

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