CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
SCO 147-148, SECTOR 17-C, CHANDIGARH-160017

DIVISION BENCH
Court-I

Appeal No.E/27-29/2011-Ex

(Arising out of OIA No.451-453/BK/RTK/2010 dt.3.11.2011 passed by the CCE (Appeals), Delhi-III, Gurgaon)

Date of hearing/Decision:19.03.2018

M/s. Tarush Steel & Alloys Pvt. Ltd. **Appellant**
Shri Vinod Kumar Garg,
Shri ShripalAgarwal

Vs.
CCE, Rohtak **Respondent**

Present for the Appellant: ShriV.M.Doiphode, Advocate
Present for the Respondent: ShriAtulHanda,AR

Coram: Hon'ble Mr. Ashok Jindal, Member (Judicial)
Hon'ble Mr.Anil G.Shakkarwar, Member (Technical)

FINAL ORDER NO. 62273-62275/2018

PER: ASHOK JINDAL

The appellants are in appeal against the impugned order wherein the demand of duty has been confirmed on the charge of undervaluation along with interest and penalties were imposed on all the appellants.

2. The facts of the case are that the appellants are manufacturer mild steel ingots and Stainless steel Ingots and availing the exemption under Notification No.8/03-CE dated 1.3.2003. On 5.12.2007, the factory of the appellants was visited on the premise that the appellants were manufacturing stainless steel ingots but clearing them as MS ingot. On verification, 31 SS Ingots, 10 SS ingots still in moulds, SS scrap weighing 99 MT and MS scrap of one MT was

lying in the factory. Therefore, on reasonable belief that the appellant was engaged in the production of SS ingots or purchase of SS scrap which was not recorded in their records, the proceedings were initiated against the appellant for the period January to November, 2007. Various statements of the appellants as well as of their buyers were also recorded. On the basis of investigation, it was found that the appellants are manufacturing SS ingots under the guise of MS ingots, therefore, undervalued their goods. Consequently, if the value of SS ingots is taken into account, they have crossed SSI exemption limit, therefore, they are liable to pay duty. The matters were adjudicated and it was held that the appellant is manufacturing SS ingots, as the appellant has crossed the SSI exemption limit, the duty was demanded along with interest. Various penalties were also imposed on them. It was also alleged that the appellants were entitled to avail credit on MS scrap for the period January, 2007 to March, 2007. On appeal before the Commissioner (Appeals), Cenvat credit was allowed on MS scrap and the demand of duty as proposed in the show cause notice was confirmed and various penalties were also imposed on them. Against the said order, the appellant have filed appeals before us.

3. Ld.Counsel for the appellants submits that in this case on the hand, the Commissioner (Appeals) has allowed cenvat credit on MS scrap and on the other hand the Commissioner (Appeals) has held that during the period, the appellant was manufacturing SS ingots. The basis for confirmation of demand against the appellant is the statement recorded during investigation. But when statements were examined it was found that none of the buyers has stated that they

have received SS ingots in fact the statement of the buyer is that that they have received the goods as per invoices and admittedly the invoices were issued for MS ingots, therefore, the impugned orders to be set aside.

4. On the other hand, Ld.AR supported the impugned order and submits that as it is admitted by the appellants themselves that they were manufacturing SS ingots and clearing the same under the guise of MS ingots, therefore, the proceedings were rightly initiated against the appellants. He also reiterated the findings of the Commissioner (Appeals).

5. Heard the parties and considered the submissions.

6. We find that during the impugned period at the time of investigation, MS scrap was also found and furnace/machinery used for manufacture of MS ingots as well as SS ingots. The statements of buyers do not reflect that they have received only SS ingots. The case of the Revenue that they have cleared SS ingots in the guise of MS ingots, in the absence of any corroborative evident on record to show that during the impugned period, the appellant were manufacturing SS ingots only, the benefit of doubt goes in favour of the appellants. Moreover, the Commissioner (Appeals) has allowed the cenvat credit on MS scrap found nil stock which shows that the appellants were also manufacturing MS ingots. The question of MS scrap found in the factory is not disputed, therefore, the show cause notices were issued to the appellants on assumptions and presumptions without any corroborative evident on record. In the absence of the same, the proceedings against the appellants are not

sustainable merely on suspicion. Therefore, the impugned order is set aside. In the result, the appeals are allowed with consequential relief, if any.

(Dictated and pronounced in the court)

(ANIL G.SHAKKARWAR)
MEMBER (TECHNICAL)

(ASHOK JINDAL)
MEMBER (JUDICIAL)

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