**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL**
**SOUTH ZONAL BENCH, CHENNAI**

**E/00098-00101/2007**

[arising out of Order-in-Original No.2/2006, dated 07.11.2006 passed by the Commissioner of Central Excise (Madurai)]

M/s. DINDIGUL STEEL ROLLING MILLS (P) LTD. APPELLANT
M/S. NEW HINDUSTAN STEELS
M/S. M.M. STEELS
V. RAMASAMY

Versus

COMMISSIONER OF CENTRAL EXCISE, MADURAI RESPONDENT

Appearance:

For the M/s. DSRM Shri A. Jayakumar, Adv.
For the Respondent Shri B. Balamurugan, AC (AR)

CORAM:

Hon'be Smt. Sulekha Beevi C.S, Member (Judicial)

Hon'ble Shri Madhu Mohan Damodhar, Member (Technical)

Date of hearing 19-07-2017
Date of pronouncement 31-08-2017

FINAL ORDER NOs. 41903-41906/2017

Per Bench:

The issue involved in all these appeals being connected they were heard together and are disposed by the common order.

Brief facts are that appellants, M/s. DSRM are engaged in manufacture of CTD bars and rods. Based on information that M/s. DSRM are engaged in unaccounted manufacture and clandestine removal of CTD bars, the officers of DGCEI searched the premises of the M/s. DSRM's factory, the residence of the Managing Director of the Company, residential premises of material supplier, dealers premises simultaneously on 29.07.2003 and seized incriminating documents. During the search, the physical stock was verified and found that production records/RG-I register tallied with physical stock of CTD bars. However, on verification of raw material accounts i.e., showed 707.940 MTs of MS Ingots, whereas, only 83.085 MTs. of Ingots were physically available. Thus, there was apparent shortage of 624.855 MTs of MS Ingots [main raw material]. The Managing Director of the Company Shri Ramasamy admitted the shortage and that it was used for unaccounted production. He made payment of Rs.40 lakhs on the same day as duty liability towards unaccounted production. Search was conducted in the premises of supplier of raw materials and incriminating documents were recovered which indicated raw materials were moved to M/s. DSRM's factory without issue of invoices. Search operations were conducted at M/s. New Hindustan Steels (NHS), M/s. Anand Steel Mart (Anand), M/s. Madurai Steel Syndicate, Dindigul (MSSD), M/s. MMS Steels Dindigul (MMSD), Sri Sithi Vinayagar Steel Madurai (SSVS) etc., which revealed that M/s. DSRM procured unaccounted raw materials and used for unaccounted manufacture and clandestine clearances. Statements were also recorded. Based upon such evidences show-cause notice dated 20.04.2005 was issued, which, after due process of law, culminated in confirming duty demand of Rs.56,34,585/- for the period 2001-02 to 2003-04 along with, interest and imposed equal penalty. Besides, personal penalty of Rs.2 lakhs on Managing Director of the Company Shri Ramasamy, Rs.1 lakh penalty each on M/s. NHS, M/s. MMSD and Rs.2 lakhs on M/s. Anand. Being aggrieved, the M/s. DSRM are before the Tribunal.

2. Before proceeding to discuss the contentions put forward by the parties, it would be worthwhile to state the summary of allegation in the case, which are as under:-

- The short found quantity of 624.855 Tonnes of MS Ingots (primary raw materials for manufacture of CTD bars) had also been utilized by M/s. DSRM in the unaccounted manufacture and illicit clearance of the same without payment of duty. As short found quantity of 624.855 Tonnes of Ingots were found utilized in the illicit manufacture of CTD bars and duty on illicitly manufactured CTD bars is being demanded, the proposal for reversal of Cenvat credit on the shortage of 624.855 MTs is not made;
- The 345.135 MTs of Ingots received from M/s. MMSS illicitly had been utilized in the unaccounted manufacture of CTD bars (as per Annexure-III);
- M/s. DSRM had cleared 615.28 MTs of CTD bars illicitly and sold the same in the name of M/s. MMSD during the period from2001-02 to 2003-04 (as per Annexure-II);
- M/s. DSRM had illicitly cleared 1219.89 MTs of CTD bars to M/s. NHS during 04/2003 to 07/2003 (as per Annexure 1/1B to show-cause notice);
- M/s. DSRM had illicitly cleared 445.17 MTs of CTD bars to ANAND and their group of concerns during 04/2003 to 07/2003 (as per Annexure-IV to show-cause notice);

- The initial admission statements and voluntary payment of Rs.35 lakhs by T.R-6 Challans supports the fact of illicit clearance made by M/s. SSRM.

3. On behalf of the M/s. DSRM, the learned counsel Shri A. Jayakumar, *inter alia*, submitted the following grounds.

3.1 Though, department detected shortage of raw materials, the demand is not raised on the basis of such shortage. Instead, the department conducted search of the premises of the suppliers of raw material and demand in the show-cause notice is quantified on the basis of documents recovered from them.

3.2 Though, physical stock taking was conducted by the officers and ascertained shortage of 624.855 MTs of Ingots as on 29.07.2003, the demand of duty proposed in the above notice has been quantified as follows:-

(Amt. in Rs.)

| **Sl. No.** | **Name of the party** | **Period** | **Duty demand** |
|---|---|---|---|
| (1) | (2) | (3) | (4) |
| 01. | 1219.89 MTs of CTD Bars received by **M/s.NHS** on the basis of one notebook recovered from NHS | 02.04.2003 to 31.07.2003 | 31,96,509/- |
| 02. | 615.28 MTs of CTD Bars received by **M/s. MMSD** – on the basis of deposition made by various dealers | 18.06.2001 to 03.10.2003 | 12,90,032/- |
| 03. | 445.17 MTs of CTD Bars received by **M/s. Anand Steel Mart** and other group companies – on the basis of chits recovered from the residence of Shri M.C. Nagarathinam | 01.04.2003 to 11.07.2003 | 11,48,044/- |
| | | **TOTAL** | 56,34,585/- |

3.3 In this case, except for the shortage of input material (ingot) of 624.855 MTs found there is no other evidence recovered from the M/s. DSRM. The department could have at the most demanded reversal of credit taken on such quantity of ingots, inasmuch as, there is no evidence even to provide that such quantity has been utilized by the M/s. DSRM in clandestine manufacture and removal of final products. Even presuming without admitting that the M/s. DSRM had indulged in clandestine manufacture and clearance, except for the shortage of ingots found, there is absolutely no other evidence to establish supply/purchase of ingots required for manufacture and clearance of 2280 MTs of finished product and the entire allegation and proposal made to demand duty on such 2280 MTs of final products is without any substantial at all.

3.4 Further, the entire demand proposed is based on the third party evidences and statements recorded from the key persons of such third party, which is not otherwise corroborated independently from any records recovered from the M/s. DSRM, and hence, not substance at all.

3.5 With regard to the proposal to demand duty on 1219.89 MTs on the basis of one notebook recovered from M/s NHS and a statement recorded from Shri M. Natarajan, Partner of M/s. NHS, it is submitted that in the absence of any examination of the said Shri M. Natarajan in terms of section 9D of the Central Excise Act, 1944, the allegations made in the impugned proceedings itself is not sustainable at all. The above provisions of section 9D would equally apply to adjudicating proceedings as held by the Hon'ble High Court in the case of *M/s. J.K. Cigarettes Ltd. Vs Collector of Central Excise* as reported in *2009 (242) E.L.T. 189 (Del.)*. In view of the above provisions, in all other cases other than clause (a), the person from whom the statements have been recorded by the department during an investigation have to be examined by the adjudicating authority before admitting the statement recorded as an evidence against the notice/M/s. DSRM. In this regard, reliance is placed on the recent decision of the Hon'ble High Court of Punjab and Haryana in the case of M/s. *Jindal Drugs Pvt. Ltd.,* Vs Union of India reported in *2016 (340) E.L.T. 67 (P&H).*

3.6 With regard to the demand of duty on 615.28 MTs. Allegedly received by M/s. MMSD on the basis of statements recorded from various dealers, it is submitted that the investigation has come to conclusion that M/s. MMSD has received the final products from the M/s. DSRM clandestinely for the reason that the dealers were not existing in the addresses mentioned in the invoices issued in their name and there is no other evidence to substantiate that the M/s. DSRM have supplied their final products clandestinely to M/s. MMSD. It is also very much relevant that there is no other incriminating evidence recovered from the M/s. DSRM/M/s. MMSD in support nor there is any statement recorded from the key persons of M/s. MMSD also. None of the dealers from whom statements have been recorded have been examined by the adjudicating authority to admit such evidences. As such, the allegations made and demand proposed in this regard is clearly very bald and is not sustainable at all.

3.7 With regard to the demand of duty proposed on 445 MTs allegedly received by M/s. Anand Steel Mart and their group of Companies on the basis of chits seized from the residence of Shri M.C. Nagarathinam, Partner and statements were recorded from him immediately after seizure of such chits, but nothing was recorded from him with regard to such chits. Further, during the cross-examination also the above witness made contradictory observations and hence, the statement recorded from him cannot be relied upon in this proceedings.

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3.8 It is also submitted that no statements have been recorded from the Directors of the M/s. DSRM with regard to the alleged clandestine manufacture and clearance to the extent of 2280 MTs except for the shortage of inputs (ingots) found on the first day of investigation.

3.9 Though study relating to the power consumption by the Unit was conducted by the department through a Chartered Engineer, the same has not be relied upon for the above demands proposed against the M/s. DSRM. Further, such study report also has been contested by the M/s. DSRM and in the absence of any other evidence relating to purchase/transportation of raw materials and payments made for the same, manufacture of final products within the Unit of the M/s. DSRM and labour charges paid, sale/transportation of final products clandestinely and receipt of payments for the same in support of the alleged unaccounted production and clearance, the said report cannot be relied upon at all and it is not admissible as an evidence at all. The M/s. DSRM also wish to place reliance on the decision of the Hon'ble Allahabad High Court in the case of *Commissioner of Central Excise, Meerut-I Vs R.A. Castings Pvt. Ltd.,* reported in *2012 (26) S.T.R.262 (All.)*, in this regard.

3.10 It is settled in law that in order to allege clandestine manufacture and clearance of excisable products, cogent evidence from the purchase of required quantity of raw materials, payments for such purchases, transportation of such purchased materials to the factory of manufacture, details of labour utilized for such manufacture, electricity consumed, capacity of production, clearance of excisable goods clandestinely, transportation of such excisable goods, receipt of payment for such clearances etc., are required. The M/s. DSRM wish to place reliance on the following recent decisions, in this regard:-

(i) A.R. Shanmugasundaram Vs. Commissioner of Central Excise, Salem reported in 2016 (333) E.L.T.158 (Tri.-Chennai);

(ii) Commissioner of Central Excise, Chennai-I Vs M/s. Indian Steel and Allied Products reported in 2016 (344) E.L.T.292 (Tri.-Chennai); and

(iii) M/s. Arya Fibres Pvt. Ltd. Vs Commissioner of Central Excise, Hyderabad-II reported in 2014 (311) E.L.T. 529 (Tri.-Ahmd.).

4. Against this, the learned Authorised Representative, Shri B. Balamurugan reiterated the findings in the impugned order and made the following main submissions.

4.1 It is submitted that the clandestine removal in the name of M/s. MMSD in the show-cause notice and Order-in-Original) have been established in the investigation that M/s. MMSD had raised bogus bills in the name of various bogus suppliers and shown transportation through bogus vehicle numbers to off-set the clandestine purchase made from M/s.DSRM. Verifications made with the Commercial Tax Officers' had revealed that the trading companies (from whom M/s. MMSD accounted to have purchased the CTD bars) are not existing or are not regular traders. The verification reports received from the CTOs have been market as RUD under Sl.Nos.19, 20 35 & 36 of the Annexure-A to the show-cause notice.

4.2 Similarly, some of vehicle owners had denied having deployed their vehicles for transportation of goods, as discussed in para 14.6 of the show-cause notice and in para 50 (ii) of the Order-in-Original. Further, verification with the Regional Transport Authorities

(RTOs) had revealed that the vehicle registration numbers said to have been used by such (fictitious) traders are either bogus or of two wheelers or passenger cars. Those verification report have been earmarked as RUD vide Sl.No.A-14 of the Anneuxre-A to the show-cause notice.

4.3 In para 16 of the show-cause notice, the details of issuance of bogus bills by M/s. Madurai Steel Syndicate, Dindigul to M/s. MMSD and the payback of the amount involved in such bills to Shri Mohanasundaram, Director of M/s. DSRM, has been admitted by Shri Jainulabdeen, Proprietor of M/s. MMSD in his statement dated 14.08.2003 and market as RUD No.A-22 in the show-cause notice. These allegations have been confirmed by the adjudicating authority, in para 55 & 56 of the Order-in-Original and concluded that M/s. DSRM had used M/s. MMSD as a camouflage to make illicit removal of goods.

4.4 Further, Shri T. Selvakumar, Proprietor of M/s. SSVS, Madurai had in his statement stated 31.07.2003, stated that he used to place orders for supply with M/s. DSRM only. However, M/s. DSRM used to send the goods under the bills of M/s. MMSD also. That when enquired M/s. DSRM had informed him that M/s. MMSD bills were also their bills only. That M/s. DSRM supplied the goods under the bill of M/s. DSRM with Central Excise duty or under the bills of M/s. MMSD without mentioning any tax. That the fact that the goods under the bills of M/s. MMSD were also dispatched from M/s. DSRM could be confirmed by the same type of weigh bridge slip and freight charges slip received with the goods and the freight slips were signed by the same persons (paras 10.1 & 10.2 of the show-cause notice) and confirmed by the adjudicating authority in para 56 of the Order-in-Original.

4.5 Moreover, it is submitted that the CESTAT, Eastern Regional Bench, Calcutta, in the case of M/s. A.N. Guha & Co. Vs Commissioner of Central Excise, Bhubaneshwar reported in 1996 (86) E.L.T. 333 (Tri.) had held that " in all such cases of clandestine removal, it is not possible for the department to prove the same with mathematical precision". The adjudicating authority had relied on the case of Collector of Customs, Madras & Ors. Vs D. Bhoormull reported in 1982 (13) E.L.T.1546 (S.C.) wherein it is held that "the department is not required to prove the case with mathematical precision, but what is required is the establishment of such a degree of probability that a prudent man may on its basis believe in the existence of facts in issue."

4.6 In Annexures – 1, 1A & 1B of the show-cause notice:

The details of quantity of 1219.89 MT and assessable value of Rs.1,99,78,180/- involved in the clearances effected to M/s. NHS are as per the notebook maintained by them. The said notwbook was recovered as per Sl. No.8 of the mahazar, dated 02.08.2003 drawn at M/s. NHS and have marked as RUD under Sl.No.7 (iv) the Annexure-A to the show-cause notice. The details of the amounts given to M/s. DSRM by M/s. NHS for unaccounted clearances are enumerated in Annexure – 1A of the show-cause notice as per the file [containing chits with daily transaction details], recovered as per Sl.No.6 of the mahazar, dated 02.08.2003 and included as RUD Sl.No.7(ii) in the Annexure–A to the show-cause notice. The accounted bills as per RUD

Sl.No.7 (iii) of (the Annexure-A to the show-cause notice) have been detailed in Annexure-1B to the show-cause notice.

4.6.1 In Annexure-II of the show-cause notice:

The details of purchase bills for 2001-02 to 2003-04 were submitted by M/s. MMS as per their letter, dated 01.08.2003 (market as RUD Sl.no.11 in the Annexure-A to the show-cause notice). As the above bills represented the bogus purchases of CTD bars by M/s. MMSD and actually received from M/s. DSRM, as established in the investigation (as detailed in the reply to the query (ii) above), the same have been detailed for demand as per Annexure-II of the show-cause notice.

4.6.2 Annexure-IV of the show-cause notice:

The details of purchase made from M/s. DSRM by M/s. Anand Steel Mart and their group companies, as derived from the chits recovered from the residence of Shri M.C. Nagarathinam, Partner of M/s. Anand Steel Mart have been enumerated in the Annexure-IV to the show-cause notice. These chits (01 to 78) (filed in a made-up file) have been recovered under a mahazar, dated 29.07.2003 and market as RUD No.38 in the Annexure-A to the show-cause notice.

4.7 Therefore, it is submitted that taking into cognizance of the material evidences placed before the adjudicating authority as mentioned above with that of the statements recorded from the various persons and applying the law on the subject issue, the learned adjudicating authority has passed a reasoned order determining the duty evaded in this case. The learned adjudicating authority after taking into consideration that in the evasion cases like these evidences could not be required for each and every removal. Further, as per the

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settled legal position, there is no need to prove the removal with mathematical precision and it is enough to determine the tax liability based on the "preponderance of probability", the order has been passed.

5. Undisputedly, at the time of physical verification done on 29.07.2003 there was shortage of 624.085 MTs. of Ingots/raw materials. Interestingly, the quantification of duty demand is not based on this shortage of raw materials. Instead, department conducted search operations at the premises of buyers of finished products (M/s. NHS, M/s. Anand Steel, M/s. MMSD) and suppliers of raw materials (M/s. MMSS) and the quantification of duty is based on the evidences like note book, chits etc., recovered from the premises of the above and also the statements. The other evidence relied upon is the power consumption pattern given by a Chartered Engineer on the basis of conduct of trial production. The learned counsel for M/s. DSRM has strongly opposed the quantification of duty demand whereas Revenue relies upon the findings in the impugned order.

6. As narrated in the table in para 3.2, the demand of Rs.31,96,509/- is on the basis of note book recovered from M/s. NHS. According to department as per this note book a quantity of 1219.890 of finished products/CTD bars was removed from M/s. DSRM to M/s. NHS without payment of duty. Apart from the note book, the evidence relied by department is the statement of Shri Natarajan, Managing Partner of M/s. NHS. It is stated that unaccounted finished products after being cleared to M/s. NHS, the bills were collected back by the M/s. DSRM and only some bills were shown in the account. Along with bills most often chit was sent which contained the actual details.

6.1 We note that department has not obtained any further evidence to corroborate the authenticity of the said notebook or , for that matter, to support the allegations made on the basis of that notebook. The only other evidence on which the department heavily leans is on the statement of one Shri Natarajan, Managing Partner of M/s. NHS. It appears that Shri Natarajan in his statement had admitted that they received CTD bars from M/s. DSRM as per the details contained in the said notebook; that most of the times, when payments for the goods received from M/s. DSRM were collected from them by Shri Mohanasundaram, Director or the partner of the transport lorry after showing in their accounts; that there would not be bills for all the goods purchased by them and this was the reason why there was excess quantity shown as received in the above notebook; that M/s. DSRM used to mention some bills, description, weight and value in their bills but send the chit with the goods which would only contain actual details of the goods sent; that the bills contained in the chits alone were entered in the notebook; and that when the bills received are returned to M/s. DSRM, they were given an abatement of Rs.200 per tonne. Discernibly, the entire edifice of the department's case rests only on the so-called "admittal statements" of Shri Natarajan. The *modus operandi* as emerged from the said statements, to say the least, is very confusing and convoluted. There are holes galore in this case built-up by dept. It is difficult to fathom, if the bills accompanying the goods from M/s. DSRM, did not carry the complete or actual details, what was the necessity for M/s. DSRM to allegedly collect those bills back from M/s. NHS or for that matter, when the accompanying bills themselves did not have correct facts, what is the need for further chits to be sent along with the said bills. All these purported *modus operandi* as alleged by the department is only based on the one notebook and statement of one person. It is not forthcoming from the facts on record that even all or any of the alleged "chits" which were supposedly retained by M/s. NHS were recovered by department during the course of investigation. In any case, M/s. DSRM has contended that no cross-examination was extended to Shri Natarajan in terms of section 9D of the Central Excise Act, 1944, hence the allegations made in the impugned proceedings would thus not be sustainable. We find merit in this contention. There are any number of decisions by higher appellate courts that adjudication proceedings gets vitiated for not extending cross-examination of concerned persons. We also find merit in the arguments of the learned advocate that provisions of section 9D would equally apply to adjudication proceedings as held by the Hon'ble High Court of Delhi in the case of *J.K. Cigarettes Ltd. Vs Collector of Central Excise* reported in *2009 (242) E.L.T.189 (Del.)*. In all other cases, clause (9) of section 9D, the person from whom statement have been recorded by the department during an investigation has to be examined by the adjudicating authority before admitting the statement recorded as evidenced against the notice-appellant. Merit is also found in the learned advocate's arguments relying upon the ratio laid down by Hon'ble High Court of Punjab and Haryana in *Jindal Drugs Pvt. Ltd. Vs Union of India* reported in *2016 (340) E.L.T. 67 (P&H)*.

Viewed in this light, we are of the considered opinion that the allegation concerning quantity of removal of 1219.80 MTs of CTD bars and the demand confirmed in the impugned order of Rs.31,96,509/- neither do have any sound basis or adequately supported by any corroboratory evidence. This being so, the demand of Rs.31,96,509/- will not sustain and will have to be set aside, which we hereby do.

7. An amount of Rs.11,48,044/- is raised as duty demand for 445.17 MTs of CTD bars clandestiney cleared by M/s. DSRM to M/s. Anand. The evidence in this regard is the chits recovered from the residential premises of Shri M.C. Nagarathinam, Partner of M/s. Anand and also his statement. Shri Nagarathinam was cross-examined. He has identified the chits. Further, M/s. NHS and M/s. Anand are co-noticees to these proceedings. Therefore, it cannot be said that they are third parties. Thus, we do not find any ground to interfere with the quantification of duty demand made in respect of M/s. NHS and M/s. Anand.

8. An amount of Rs.12,90,032/- is demanded as duty on clandestine clearance of 615.24 MTs. of CTD bars for the period 18.06.2001 to 03.10.2003. The search operations were conducted at M/s. DSRM's premises on 29.07.2003. The show-cause notice was issued on 20.04.2005. This duty demand is based on the search conducted at M/s. MMSD, M/s. SSVS, M/s. MSSD and M/s. SSS, Trichy. It has to be noted that M/s. MMSD was initially owned by Smt. R. Rajamani wife of Shri V. Ramasamy, who is the Managing Director of the M/s. DSRM-Company. Subsequently, it was owned by their Senior Manager Shri Nandakumar. M/s. MMSD was a trader dealing in CTD bars. In their accounts it was shown that they purchased CTD

bars from M/s. Arasan Hardwares, M/s. Ramya Steels, M/s. K.R. Traders, M/s. MSSD, M/s. SSS, Trichy etc. On verification, it was found that some of them were non-existant or not registered with commercial taxes for dealing in CTD bars. The verification at the transporters end and Regional Transport Authority revealed that the vehicles mentioned in the purchase bills did not pertain to lorry but to two wheelers and cars. The department recorded statement of various persons like Proprietor of M/s. MSSD, M/s. SSS, Trichy etc., to conclude that M/s. MMSD (the related Unit of the M/s. DSRM) has not purchased CTD bars from M/s. MSSD, M/s. SSS, Trichy etc. Based on this, they arrived at the conclusion that M/s. DSRM had cleared unaccounted CTD bars to M/s. MMSD (the related Unit) through which the said goods were sold to buyers. That M/s. DSRM had obtained bogus bills from M/s. MMSD, M/s. SSS, Trichy etc., showing purchase of CTD bars by M/s. MMSD (the related Unit of M/s. DSRM) and gave cheques to such traders, who would give back the money by cash showing it as for his personal use. Shri A. Jaimulabdeen was cross-examined and he has denied these allegations. Instead, he has stated that M/s. MSSD had purchased CTD bars from M/s. MMSD. To the discrepancy in lorry numbers, he has stated that he used to check only the weight and noted the vehicle number as stated by the person. Similar retraction is seen to be done by other traders in their cross-examination. The other evidence which department relies upon to demand duty on this count is the electricity consumption pattern. This evidence of electricity consumption cannot be made the basis for establishing clandestine clearance and demand of duty. As the statements given by Shri Jaiulabdeen, Shri M. Shajahan of M/s. SSS, Trichy are retracted, we have to say that department has not been able to sufficiently establish the basis of duty demand to the tune of Rs.12,90,032/-. However, we cannot ignore the fact that M/s. MMSD was a related Unit of M/s. DSRM. But merely being a related Unit cannot be the basis for the demand of duty. Thus, we are of the considered view that the issue in respect of Rs.12,90,032/- has to be further looked into, which requires remand of the matter.

9. From the above discussion, we, therefore, hold:-

- The demand of Rs.31,96,509/- in respect of 1219.89 MTs of CTD Bars allegedly received by M/s. NHS, is set aside.
- The demand of Rs.11,48,044/- in respect of 445.17 MTs of CTD Bars received by on M/s. Annad Steel Mart is sustained.
- The issue concerning demand of Rs.12,90,032/- in respect of 615.28 MTs of CTD Bars allegedly received by M/s. MMSD is remanded to the adjudicating authority for *de novo* consideration.

10. Coming to the penalty, we hold that equal penalty under section 11AC is justified in this case. We find that penalty of Rs.56,34,585/- has been imposed on M/s. DSRM under section 11AC of the Central Excise Act read with Rule 173Q. However, in view of the modifications ordered in respect of various demands, in para 10 (supra), the penalty under section 11AC imposed will have to be relative to the final/revised duty liability that would be determined in the *de novo* proceedings. Ordered accordingly.

11. Keeping in mind all the aspects of this case as also in view of the discussions herein above, we further order modifications in the penalties on the other appellants as follows:-

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| Sl.No. | Name of Assessee/s | Penalty imposed (in Rs.) | Reduced to (in Rs.) |
|---|---|---|---|
| (1) | (2) | (3) | (4) |
| 1 | M/s. New Hindustan Steels | 1,00,000/- | Nil |
| 2 | Shri V. Ramasamy, Managing Director, M/S. DSRM | 2,00,000/- | 30,000/- |

Penalty with regard to M/s. MMS, Dindigul will be dependent on the outcome of the *de novo* adjudication.

Appeals are disposed of as above.

(~~To be~~ Pronounced in open court on 30·8·2017)

(MADHU MOHAN DAMODHAR)
MEMBER (TECHNICAL)

Sulekha Beevi C.S
(SULEKHA BEEVI C.S)
MEMBER (JUDICIAL

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31-08-2016