IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, CHENNAI

Excise Appeal No.40679 of 2020

(Arising out of Order-in-Original No. MDU-CEX-COM-17-2020 dated 31.7.2020 passed by the Commissioner of GST & Central Excise, Madurai)

M/s. Dindigul Steel Rolling Mills P. Ltd. **Appellant**
S.F. No. 411/1, Karur Road
Kulathur - 624005

Vs.

Commissioner of GST & Central Excise **Respondent**
Central Revenue Building
Bibikulam, Madurai – 625 002.

AND

Excise Appeal No.40680 of 2020

(Arising out of Order-in-Original No. MDU-CEX-COM-17-2020 dated 31.7.2020 passed by the Commissioner of GST & Central Excise, Madurai)

M/s. M.M. Steels **Appellant**
6B, Begampur, Batlagundu Road
Dindigul – 624 002.

Vs.

Commissioner of GST & Central Excise **Respondent**
Central Revenue Building
Bibikulam, Madurai – 625 002.

APPEARANCE:

Shri M. Karthikeyan, Advocate for the Appellant
Smt. Sridevi Tritula, ADC (AR) for the Respondent

CORAM

Hon'ble Ms. Sulekha Beevi C.S., Member (Judicial)

Final Order Nos. **42450-42451 / 2021**

Date of Hearing : 22.11.2021
Date of Pronouncement: 25.11.2021

The appellant M/s. Dindigul Steel Rolling Mills Pvt. Ltd. (herein after referred to as M/s. DSRM) are the manufacturers of CTD bars and rods and is registered with the Central Excise

Department for payment of excise duty. Officers of DGCEI visited the premises of the appellant on 29.7.2003 and recovered certain documents. They also conducted simultaneous search at the residential premises of the Managing Director of the company, at the premises of the raw material supplier, premises of the dealers and seized incriminating documents. On examination of the physical stock of finished products, it was found to tally with the stock recorded in RG-I register. However, on verification of the physical stock of raw materials namely MS ingots, it was seen that though the accounts reflected the stock of 707.940 MTs of MS ingots, only 83.085 MTs of ingots were physically available. Thus, there was a shortage of inputs to the tune of 624.855 MTs. 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 had procured unaccounted raw materials and used such raw materials for unaccounted manufacture for CTD bars and clandestine clearances. Statements were also recorded. Based upon such evidences show-cause notice dated 20.4.2005 was issued to the appellant. After due process of law, the adjudicating authority confirmed duty demand of Rs.56,34,585/- for the period 2001-02 to 2003-04 along with interest and imposed equal penalty. Besides this, personal penalty of Rs.2 lakhs was imposed on the Managing Director of the appellant-company Shri Ramasamy, penalty of Rs.one lakh each on M/s. NHS, M/s. MMSD and Rs.2 lakhs on M/s. Anand. Aggrieved by such order, the appellant M/s. DSRM, M/s. NHS, M/s. MMS and Shri Ramasamy filed appeals before the Tribunal. The matter was heard by the Tribunal and vide Final Order No. 41903 to 41906/2017 dated 31.8.2017, the Tribunal set aside the demand of Rs.31,96,509/- in respect of 129.89 MTs of CTD bars alleged to be received by M/s. NHS. The duty demand of Rs.11,48,044/- in respect of 445.17 MTs of CTD bars received by M/s. Anand Steel Mart was sustained. The issue in regard to duty demand of Rs.12,90,032/- in respect of 615.28 MTs of CTD bars alleged to be received by M/s. MMSD was remanded to the adjudicating authority for denovo consideration. In regard to the penalty imposed by the adjudicating authority, it was held by the Tribunal that in view of the modification ordered in respect of various demands, the penalty under section 11AC imposed will have to be revised and to be determined in denovo proceedings. The penalty imposed on M/s. NHS was set aside and the penalty imposed on Shri Ramaswamy, MD of M/s. DSRM was reduced from Rs.2 lakhs to Rs.30,000/-.

2. Pursuant to the direction of remand in regard to the duty demand of Rs.12,90,032/- denovo adjudication was carried out by the Commissioner of Central Excise, Madurai, who passed the following order:-

> *"(i) I confirm the total demand of Rs.21,15,379/- (Rupees twenty one lakh fifteen thousand three hundred and seventy*

nine only) towards duty liability on the CTD bars removed by DSRM, illicitly during the period from 2001 – 02 to 2003 – 04 under the proviso to Sec. 11A(2) of the Central Excise Act, 1944. This amount includes Rs.11,48,044/- already confirmed by the Hon'ble CESTAT in their remand order dated 31.8.2017.

(ii) I confirm the demand of interest at the appropriates rates from DSRM under Section 11AB of Central Excise Act, 1944 on the above amount.

(iii) I impose a penalty of Rs.21,15,379/- (Rupees twenty one lakh fifteen thousand three hundred and seventy nine only) on DSRM under Section 11AC of Central Excise Act, 1944 read with erstwhile Rule 173Q of Central Excise Rules, 1944 and Rule 25 of Central Excise Rules, 2001 / 2002.

(iv) I impose a penalty of Rs.1,00,000/- (Rupees one lakh only) on M/s. M.M. Steels, Dindigul under Rule 26 of Central Excise Rules, 2001 / 2002."

3. Aggrieved by the confirmation of demand, interest and penalty, the appellants are once again before the Tribunal.

4. The learned counsel Shri M. Karthikeyan appeared and argued on behalf of the appellants. He submitted that while remanding the matter relating to the duty demand of Rs.12,90,032/- in respect of 615.28 MTs of CTD bars, allegedly received by MMSD, the Tribunal had actually dealt with all the allegations and evidences on this issue in para 8 of the final order and concluded that the department has not been able to sufficiently establish the basis of the duty demand. However, the Tribunal observed that since DSRM and MMSD are related units, it requires to further look into the matter and remanded the same.

5. As per the findings of the Commissioner in the earlier proceedings, the demand was upheld in three aspects as

Rs.31,96,509/-, Rs.11,48,044/- and Rs.12,09,032/-. Out of this only, the third issue was remanded. However, in the denovo proceedings against the duty demand of Rs.12,90,032/- remanded by Tribunal, the adjudicating authority has confirmed duty of Rs.9,67,335/-. The adjudicating authority has arrived at this amount after considering the shortage of inputs recorded at the time of search. He adverted to page 179 of the appeal paper book and submitted that after the search, the department had taken away as part of evidence the input register maintained by them. They were then asked to start a new input register from the date of the search (29.7.2003). At the time of search and seizure, stock of inputs as per the input register was 707.940 MTs. The quantity physically available was noted as 83.085 MTs. The department alleged that there was a shortage of raw materials of 624.855. However, the opening balance in the new register started from 29.7.2003 would show the opening balance (carried forward from old register) as 707.940 MTs. This is endorsed by the officers of the DGCEI in Col. 13 and 14 of the said new register.

6. He then adverted to the mahazar prepared during the search proceedings on 29.7.2003 and submitted that the appellant had requested for cross-examination of the mahazar witnesses by their letter dated 3.12.2005. This request was made for the reason that while the mahazar records a shortage of inputs, the Senior Intelligence Officer before whom the mahazar

was drawn had certified in the new Form 4 register that the stock of the impugned goods as 707.940 MTs. The shortage recorded by the officers were disputed by the appellant. The physical stock was available as shown in the records and the appellant wanted to bring out this evidence by cross-examination of the mahazar witnesses. This request was denied by the adjudicating authority as per the order dated 21.11.2005. Even in the denovo proceedings, the said request was not considered by the adjudicating authority. Hence the allegation of shortage in raw materials is false.

7. The other evidence relied by the department is the statement of Shri R. Manoharan, Director of MMSS who is said to have supported the unaccounted clearance of finished products. In para 24, the adjudicating authority has stated that the appellant did not request for cross-examination of Shri R. Manoharan and therefore his statement can be accepted in evidence. He pointed out that Shri R. Manoharan had retracted his statements given before the officers. Further, as per section 9D of Central Excise Act, 1944, without examining the said person, his statement cannot be accepted as evidence. He submitted that Shri R. Manoharan having already retracted his statement by sending a telegram dated 30.7.2003 to DGCEI, Chennai, the Commissioner could not have relied upon his statement to confirm the demand. In the earlier round of litigation, the Tribunal in para 8 of the Final Order had held that

since the statement of Shri A. Jaimulabdeen and Shri M. Shajahan have been retracted, department has not been able to sufficiently establish the basis of duty demand. Further, the Tribunal had relied upon the decision of the Hon'ble High Court in the case of Jindal Drugs – 2016 (340) ELT 67 (P&H) to hold that the statement cannot be relied in evidence unless the witnesses have been examined as required under sec. 9D of Central Excise Act.

8. In para 25 of the impugned order, the Commissioner has applied the input-output ratio as per SION norms (C 513) contained in EXIM Policy to calculate the quantity of unaccounted raw material in respect of duty demand for which the matter was remanded. These calculations are without any basis and not in accordance with the remand directions. He submitted that the demand confirmed in the denovo adjudication is merely on the allegation of unaccounted raw materials and the department has not been able to establish any unaccounted production of CTD bars or clandestine removal of the same. Further third-party records cannot be accepted as evidence for arriving at the conclusion that goods have been clandestine removed. Any third-party document has to be corroborated by other reliable evidence. He referred to the judgment of the Hon'ble High Court of Allahabad in the case of Continental Cements Ltd. Vs. Union of India – 2014 (309) ELT 411 (All.).

9. The learned AR Smt. Sridevi Tritula supported the findings in the impugned order.

10. As narrated above, this is the second round of litigation. In the earlier round of litigation before the Tribunal, the issues considered by Tribunal as adjudicated and proposed in the Show Cause Notice were as under:-

S. No.	**Name of the party**	**Period**	**Duty Demand**
(1)	**(2)**	**(3)**	**(4)**
1.	1219.89 MTs of CTD bars received by M/s. NHS on the basis of one notebook recovered from NHS	2.4.2003 to 31.7.2003	31,96,509/-
2.	615.28 MTs of CTD bars received by M/s. MMSD on the basis of deposition made by various dealers	18.6.2001 to 3.10.2003	12,90,032/-
3.	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	1.4.2003 to 11.7.2003	11,48,044/-
		Total	56,34,585/-

11. As per the earlier Final Order, issue No. 1 with regard to demand of duty of Rs.31,96,509/- was set aside by the Tribunal. Issue No. 3 with regard to duty demand of Rs.11,48,044/- was upheld by the Tribunal. Only the second issue with regard to the duty demand of Rs.12,90,032/- was remanded for fresh adjudication. The Tribunal while remanding the matter observed that M/s. MMSD was a related unit of the appellant M/s. DSRM and therefore this issue requires to be relooked whether the duty demand of Rs.12,90,032/- would sustain. This is because the wife / son of Shri Ramaswamy (Managing Director of DSRM) was the Director of M/s. MMSD. The allegation in the Show Cause Notice in regard to this duty demand is that the appellant M/s. DSRM clandestinely cleared the unaccounted finished products through M/s. MMSD. That in order to cover up these clandestine

clearances, it was shown that M/s. MMSD had purchased the finished products (CTD bars) from various other persons namely Ramji Traders, Dindigul, M/s. Priyam Steels, Trichy, M/s. Andavar Traders, Karumandapam, M/s. Ramya Steels, Trichy. It was stated in Show Cause Notice that certain documents were recovered with regard to the method of clandestine clearances adopted by the appellant using the entity M/s. MMSD. The Commissioner though merely reiterated some facts with regard to these traders in para 22, has not analysed the issue of cash flow from M/s. MMSD to these local traders. So also the evidence of transportation from these traders to M/s. MMSD has not been established properly. In the denovo, the Commissioner has approached the issue on a different angle. He has attempted to find out the balance shortage of MS ingots that would be available for manufacture of CTD bars relating to the duty demand of Rs.12,90,032/-. The shortage of raw materials at the time of search and seizure was 624.855 MTs of MS ingots. The quantity of finished products material in regard to the duty demand upheld by the Tribunal in respect of M/s. Anand Steel Mart is 445.17 MTs. The adjudicating authority applied the input output ratio given in the EXIM Policy, and calculated that 476.37 MTs ingots is required for manufacture of 445.17 MTs of CTD bars. The adjudicating authority then deducted this quantity from total shortage of 624.85 MTs (624.85 - 476.33) to arrive at the balance unaccounted raw material quantity as 148.525 MTs. In the Show

Cause Notice, it was alleged that 345.135 MTs of unaccounted raw materials were received from M/s. MMS, Karikal. The said quantity was added to 148.525 MTs to arrive at 493.66 MTs of raw material. He then concluded that 461.37 MTs of CTD bars can be manufactured from unaccounted raw material quantity of 493.66 MTs (493.66 ÷ 1.07). In para 26, the Commissioner has noted that for the duty demand of Rs.12,90,032/- the quantity of raw material required is 615.28 MTs. That since the balance raw material quantity is 461.37 MTs, he calculated the duty for CTD bars clandestine removed as Rs.9,67,335/-. Thus the duty demand was reduced from Rs.12,90,032/- to Rs.9,67,335/-.

12. When the Tribunal had not made any observations with regard to the shortage of raw materials and had clearly remanded to look into the transactions between the traders and M/s. MMSD and the method adopted by the appellant to clandestinely clear the finished products through M/s. MMSD, the quantification of shortage of raw materials on the basis of EXIM Policy, in my view was totally unwarranted and purposeless. The input output ratio given in the EXIM Policy (Sl. No. C513) has been adopted to calculate the input output ratio of manufacture of CTD bars. The appellant herein has neither imported raw materials nor do they export their finished products. This ratio has not been made the basis for quantification of duty in the Show Cause Notice. For this reason, I have to say that the Commissioner has travelled beyond

the scope of Show Cause Notice to arrive at the duty demand of Rs.9,67,335/-.

13. Again, though the remand was to look into the demand of Rs.12,90,032/-, the duty confirmed in the impugned order is Rs.21,15,379/-. This is because the Commissioner has added Rs.11,48,044/- which has been already upheld by the Tribunal to the amount of Rs.9,67,335/- arrived by him. I cannot understand the logic of the adjudicating authority in adding the amount that has already been upheld by the Tribunal. Though the Tribunal has remanded the matter to look into the penalty that has to be imposed after readjudication of the issue of Rs.12,90,032/- that has been remanded, the issue of penalty in regard to Rs.11,48,044/- has to be recorded separately. The duty demand that has been already upheld by the Tribunal cannot be added to the amount of adjudication in denovo adjudication. The adjudicating authority has confirmed the total demand of Rs.21,15,379/-. There is no demand of Rs.21,15,379/- at the time of adjudication. The demand adjudicated is only Rs.12,90,032/-. There cannot be confirmation of a higher amount.

14. This apart, the main argument put forward by the learned counsel for the appellant is that the Commissioner has relied upon the statement of Shri R. Manoharan, who is the Director of M/s. MMS, Karaikal. The said person had retracted his statement within a week. He has not been put to examination as required

under sec. 9D of the Central Excise Act, 1944. Therefore, the said statement cannot be relied at all. The evidence necessary to bring out the allegation that the appellant, M/s. DSRM, had clandestinely removed the finished products through M/s. MMSD has not been brought forth by any further evidence in the second round of adjudication.

15. The Commissioner having analysed merely the shortage of raw materials, the argument of the learned counsel that they requested for cross-examination of mahazar witnesses and the adjudicating authority did not allow the same acquires relevance.

16. As already stated, though in the Show Cause Notice it is alleged that 615.28 MTs of CTD bars were clandestinely removed through M/s. MMSD and duty demand of Rs.12,90,032/- was raised, in the present order, the adjudicating authority has held that the CTD bars unaccounted would be 461.37 MTs only. Then it has to be explained through which of the traders, the same were shown to be purchased. The allegation on this issue is that the clearance was camouflaged through fake invoices of many traders. The evidences in this line are not discussed.

17. From the foregoing, I am of the view that department has not been able to establish with preponderance of probability the duty demand in respect of 615.28 MTs of CTD bars received by M/s. MMSD as alleged in the Show Cause Notice. I therefore hold that the demand of Rs.9,67,375/- confirmed in regard to the CTD

bars received by M/s. MMSD requires to be set aside, which I hereby do.

18. Since the remand was for reconsidering the penalty, the duty demand upheld by the Tribunal with respect to Rs.11,48,044/- having attained finality, I am of the view that the equal penalty confirmed in the earlier adjudication order would sustain.

19. In the result, the impugned order is modified as under:-

(a) The duty demand which has already been upheld by the Tribunal to the tune of Rs.11,48,044/- (which has been included in the demand of Rs.21,15,379/-) along with applicable interest and equal amount of penalty under section 11AC of Central Excise Act, 1944 r/w erstwhile Rule 173Q of Central Excise Rules, 1944 and Rule 25 of Central Excise Rules, 2001 / 2002 is upheld.

(b) The demand of duty of Rs.9,67,335/- is set aside. Consequently, the penalty of Rs.one lakh imposed on M/s. MMSD under Rule 26 of Central Excise Rules, 2001 / 2002 is also set aside.

(c) Appeal No. E/40679/2020 is partly allowed in above terms. Appeal No. E/40680/2020 is allowed with consequential reliefs, if any.

(Pronounced in open court on 25.11.2021)

(**SULEKHA BEEVI C.S.**)
Member (Judicial)

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