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

Excise Appeal No.40613/2015

(Arising out of Order in Original No. 11/2014 dated 31.12.2014 passed by the Commissioner of Central Excise, Madurai)

M/s. Indo Steel Rerollers **Appellant**
No. 159, Sadayan Kuppam Village
Manali, Chennai – 600 103.

Vs.

Commissioner of GST & Central Excise **Respondent**
No. 4, Lal Bahadur Shastri Marg
C.R. Buildings
Bibikulam, Madurai – 625 002.

APPEARANCE:

Shri S. Venkatachalam, Advocate for the Appellants
Shri M. Selvakumar, Authorized Representative for the Respondent

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Hon'ble Shri M. Ajit Kumar, Member (Technical)

Final Order No.41063/2024

Date of Hearing :02.08.2024
Date of Decision: 08.08.2024

This appeal is filed by the appellant M/s. Indo Steel Rerollers against common impugned order No. 11 of 2014 dated 31.12.2014 passed by the Commissioner of Central Excise, Madurai.

2. Facts of the case are that M/s. Vaibhav Corporation are engaged in the manufacture of MS ingots. On the basis of intelligence that M/s.Vaibhav Corporation have evaded central excise duty payable on the clearance of MS ingots, the officers of DGCEI, Madurai Regional Unit searched the factory and its premises on 12.11.2008. Based on the investigations conducted, it appeared that M/s. Vaibhav Corporation have violated the provisions of section 6 of the Central Excise Act, 1944 read with the Central Excise Rules, 2002 (**CER 2002**)

with intention to evade payment of central excise duty. After due process of law, the adjudicating authority confirmed the demand on M/s. Vaibhav Corporation and also imposed penalties. The adjudicating authority also imposed a penalty of Rs.10,00,000/- under Rule 26 of C.E.R. 2002 on the appellant herein who was allegedly concerned in purchasing the said clandestinely removed ingots. Aggrieved by the imposition of penalty, the present appellant has filed the appeal.

3. I have heard learned Advocate Shri S. Venkatachalam for the appellants and Shri M. Selvakumar, learned Authorized Representative for the respondent-department.

3.1 The learned counsel on behalf of the appellant **M/s Indo Steel Rerollers**, submitted that the appellant is not at all concerned in any transaction with the said M/s Vaibhav Corporation, Madurai or heard of them. Their name has unnecessarily been dragged in by M/s Vaibhav Corporation without any basis to save their (Vaibhav's) skin. As such the impugned order in so far as it relates to M/s Indo Steel Rerollers is not sustainable. He hence prayed that the part of the impugned order which relates to the present appellant may be set aside.

3.2 The learned Authorized Representative for the respondent-department took me through the impugned order and reiterated the points given therein.

4. I have carefully gone through the appeal and have heard the rival parties. At the outset it must be stated that it is for the department to establish by methods known to law that duty was evaded and to bring out the role of the parties alleged to have been involved in a satisfactory manner. That onus cannot be shifted to the parties against whom allegations have been made. It is only when sufficient evidence,

either direct or circumstantial, in respect of its allegations was disclosed by the Revenue that adverse inference could be drawn against the noticees. In the case of imposition of penalty, it has to be proved further by revenue that the person penalised was involved in the blame worthy act with which he is charged.

5. On enquiry it was informed by revenue that the main noticee M/s. Vaibhav Corporation, Madurai has not filed an appeal. I find that the impugned order is very cryptic about the part played by the appellants. Para 53 of the impugned order which records the findings of the Ld. Adjudicating Authority against the appellant is reproduced below:

> *"53. I also observe that the clearance details of ingots shown in the 'Scrap-Ingor register, 'Loading Details' register and 'Roots' register for the relevant period, seized from the premises of Vaibhav are not imaginary ones but shows the actual details of clearances made to the 13 Nos. of steel units (to whom notice has been served) to whom the clandestinely removed 'Ingots' were shown to have been cleared in private documents. The details of quantity of ingots cleared to above mentioned 13 Nos. of buyers and the period of clearance were detailed in para 6 of show cause notice. Though, all the consignees have denied receipt of the clandestinely removed Ingots from Vaibhav, I observe that the consignees are manufacturers of TMT bars, which also attract' excise duty and therefore admission of receipt of the Ingots would automatically result in admission of suppression of their production, making them liable for appropriate recovery and penal proceedings under Central Excise Act and hence it is obvious that they preferred to deny such illicit procurement. The 'Roots Diary 2007 maintained by Vaibhav and recovered from them on which basis Annexure-IV to the show cause notice has been prepared indicating date wise despatches from Vaibhav to the aforesaid 13 steel units showing vehicle number, No. of pieces of Ingots and their weight. All these evidences having incriminating nature cannot be simply brushed aside and has enough ground to invoke penal provisions under Rule 26 of the Central Excise Rules, 2002 against the aforesaid 13 steel units who had knowingly purchased the clandestinely cleared goods despite their illicit nature. The arguments of the above said steel units that penalty under Rule 26 of Central Excise Rules, 2002 is imposable only on a person and not on a firm or company is not acceptable. Though 'person' is not defined in the Central Excise Act, 1944, 'person' includes any company or association or body of individuals whether incorporated or not. Therefore, in case of a contravention of any of the provisions of the Central Excise Act, its partners in charge of the business are responsible for the conduct of the same are liable unless such contravention took place without their knowledge or they exercised*

> *all due diligence to prevent such contravention. In this regard, reliance is placed on the judgment of Hon'ble Supreme Court in the case of "Agarwal Trading Corporation and Others Vs Asst. Collector of Customs, Calcutta and Others [1983(13) ELT.1467(SC)]."*

6. From the portion of the order extracted above the averments made by the appellant are correct. The case against the appellant has been bunched together with others and disposed of in a single para on generalities without discussing the specific wrong doings in their individual case. The Department has built up the case of clandestine removal against the appellant based on the third-party documents which were recovered and statements that were recorded from the M/S. Vaibhav Mercantile without any evidence collaborating the alleged activity at the appellants end, like goods receipt register, stock register, transporters trip sheets, consignment note, VAT assessment of the appellant on the particular period, profit & Loss account/ yearly balance sheet of the appellants, statements etc. In such a situation it is difficult to sustain the charge of blame worthy conduct by the appellant merely on assumptions and presumptions and hence no penalty could have been imposed on the appellant. Revenue has failed to prove its case and hence the impugned order merits to be set aside.

7. Having regard to the discussions above, I set aside the impugned order in as much as it relates to the appellant. The appellant is eligible for consequential relief, if any, as per law.

(Order pronounced in open court on 08.08.2024)

(**M. AJIT KUMAR**)
Member (Technical)

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