CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH-COURT NO. IV

SINGLE MEMBER

Excise Appeal No. 51924 of 2018

(Arising out of Order-in-Appeal No. 192(AG)/CE/JDR/2018 dated 28.3.2018 passed by the Commissioner (Appeals), Central Goods & Service Tax, Jodhpur)

Rose Zinc Limited **Appellant**
Airport Road, Gudli,
Udaipur, Rajasthan

Versus

Commissioner, Central Goods & Service Tax, Excise, Customs, Udaipur **Respondent**
142-Hiran Magri, Sector-11,
Near Shahi Bagh,
Udaipur, Rajasthan.

<u>Appearance</u>

Ms. Priyanka Goel, Advocate - for the appellant

Ms. Tamana Alam, DR - for the respondent

CORAM:HON'BLE MS. ARCHANA WADHWA, MEMBER (JUDICIAL)

Date of Hearing: 11.02.2020
Date of Decision: 13.03.2020

Final Order No. 50602/2020

Archana Wadhwa :

The appellants are engaged in the manufacture of unwrought zinc, ingots and Brass cast bards and copper cast bars etc. falling under Chapter Heading No. 79 and 74 respectively, of the first schedule of the Central Excise Tariff Act, 1985.

2. During the course of audit, it was observed that there was considerable difference in the quantity of various excisable goods manufactured as shown under the heads of manufactured, cleared and under closing balance in the records maintained for central excise purpose viz-a-viz quantity shown in the balance sheet for the financial year 2008-2009.

3. As per the audit, the appellants had shown the closing stock of 724.79 MT, 60.687 MT in respect of zinc sulphate hepta and brass ingot respectively. Whereas in their excise records appellants have shown the closing stock of 721.09 MT and Nil quantity of zinc sulphate hepta and brass ingot respectively. Further taking the ground of Balance Sheet, the audit was of the view that the appellants had cleared excess quantity of 57.420 of Brass ingots. It was thus alleged that the appellants have cleared 118.107 MT Brass ingots in excess without payment of duty as per the details given in Annexure to the Show Cause Notice.

4. On being asked, appellants provided the reconciliation statement duly certified by CA stating that closing stock of 60.688 MT of brass cast were lying at their depot. Further, appellants stated that quantity of 32.528 MT lead scrap as clearance of brass ingots.

5. On the above basis, proceedings were initiated against them by way of issuance of a show cause notice dated 21.2.2013 alleging evasion of duty to the extent of Rs. 30,22,661 /-. Accordingly, by invoking the extended period the notice proposed to confirm the demand along with confirmation of interest and imposition of

penalty. The same resulted in passing of an order by the original adjudicating authority and upheld by the Commissioner (Appeals) and hence the present appeal.

6. The learned Advocate appearing for the appellant contended that the entire case of the Revenue is based upon the mis-match of figures in the excise record and their account record, without there being any other evidence to show clearance of the brass ingots. By relying upon various decisions of the Tribunal, she submits that in absence of any corroborative evidence, the allegation of clandestine removal cannot be upheld. For the above proposition, she relied upon various decisions of the Tribunal. The demand was also challenged on limitation by submitting that the same was raised after the normal period of limitation from the date of the audit and relied upon the Hon'ble Allahabad High Court in the case of **CCE & ST, Vs. Triveni Engineering & Industries Limited – 2015 (317) ELT 408 (All.)**

7. After hearing the learned Authorised Representative and on going through the impugned order, I find that admittedly the entire case of the Revenue is based upon the mis-match of quantities as reflected in the excise records and the account records of the assessee. There is no evidence to show the receipt of the excess raw materials, manufacture of the excess final product and transportation of the same as also the identification of the customers. Tribunal in the case of **M/s SAC Polymers Vs. Commissioner of Central Excise, Customs & CGST, New Delhi – 2018 (7) TMT 523-CESTAT NEW DELHI** have observed that charge of clandestine removal cannot be established merely on the

ground of difference in the balance sheet and the statutory record unless the same is corroborated by any other evidence showing receipt of raw material, consumption of the same, production and removal of the final product. To the same effect is the Tribunal's decision in the case of **M/s Navbharat Explosives Co. Ltd. Vs. CCE, Raipur – 2018 (3) TMI 617 –CESTAT NEW DELHI.**

8. It is well established that the onus to prove the charges of clandestine removal lies very heavily upon the Revenue and is required to be discharged with production of sufficient positive evidences. The same cannot be based upon assumptions and presumptions. Admittedly, in the present case, there is no evidence produced by the Revenue indicating the clandestine clearance of the goods except the difference in the figures. The same cannot be adopted as sufficient evidence for upholding the charge of clandestine removal. Accordingly, I set aside the impugned order and allow the appeal with consequential relief.

(Pronounced in Court on 13.03.2020)

(Archana Wadhwa)
Member (Judicial)

RM