CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.
COURT NO. II

Excise Appeal No. 50065 of 2019-SM
(Arising out of Order-in-Appeal No. 424-426 (SM) CE/JPR/2018 Dated 11.10.2018 passed by Commissioner (Appeals) Central Excise and Central Goods and Service Tax, Jaipur)

M/s Rathi Steel Dakshin Limited **Appellant**
SP-A1, RIICO Industrial Area, Kushkheda,
Bhiwadi, Distt-Alwar (Raj.)

Versus

Commissioner, Central Excise & Central Goods and Service Tax, **Respondent**
A-Block, Surya Nagar, Alwar (Rajasthan)-301001

with

Excise Appeal No. 50066 of 2019-SM
(Arising out of Order-in-Appeal No. 424-426 (SM) CE/JPR/2018 Dated 11.10.2018 passed by Commissioner (Appeals) Central Excise and Central Goods and Service Tax, Jaipur)

Ajay Kumar Malhotra **Appellant**
SP-A1, RIICO Industrial Area, Kushkheda,
Bhiwadi, Distt-Alwar (Raj.)

Versus

Commissioner, Central Excise & Central Goods and Service Tax, **Respondent**
A-Block, Surya Nagar, Alwar (Rajasthan)-301001

AND
Excise Appeal No. 50272 of 2019-SM
(Arising out of Order-in-Appeal No. 424-426 (SM) CE/JPR/2018 Dated 11.10.2018 passed by Commissioner (Appeals) Central Excise and Central Goods and Service Tax, Jaipur)

M/s Bhiwadi Rolling Mills Pvt. Ltd. **Appellant**
C/o Naveen Bindal, 2307/1, Sector,
38-C, Chandigarh

Versus

Commissioner of Central Goods and Service Tax, **Respondent**
A-Block, Surya Nagar, Alwar (Rajasthan)-301001

APPEARANCE:

Shri Bipin Garg & Ms. Rinki Arora, Advocates for the appellant
Ms. Tamanna Alam, Authorised Representative for the respondent

CORAM:

HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)

FINAL ORDER NOS. 50641-50643 / 2020

DATE OF HEARING: 09.09.2019
DATE OF DECISION: 17.03.2020

ANIL CHOUDHARY:

All the three appeals are filed against common impugned Order-in-Appeal. hence all the appeals are taken up together for disposal.

2. M/s Shree Rathi Steel (Dakshin) Ltd, (SRSDL, the appellant No.1)are engaged in manufacture of MS Bars falling under Chapter 72 of the First Schedule to Central Excise Tariff Act, 1985.

3. There is another registered dealer/manufacturer-M/s Bhiwadi Rolling Mill (P) Ltd. (BRMPL, the appellant No.3) who are engaged in the manufacture of M. S. Flat, Round etc. falling under chapter 72, to which appellant- SRSDL supplied rejected MS Ingot (called Miss-roll).

4. The officers of Director General of Central Excise Intelligence ('DGCEI') New Delhi, gathered information that Bhiwadi RMPL were indulging in clandestine removal and sale of finished goods manufactured by them without proper accounting and payment of Central Excise duty. A search was conducted by DGCEI in the factory of Bhiwadi RMPL at Bhiwadi on 06.09.2012. The officers recorded statements as well as resumed records during the search.

5. During investigation it is appeared to revenue that suppliers of raw material had supplied raw materials to Biwadi RMPL without payment of duty and without invoices. Inquiry was also conducted against the raw material suppliers including appellant No.1 who had supplied Miss-roll to BRMPL.

6. Based on the 'Tally' data from the laptop resumed from Bhiwadi RMPL It appeared that SRSDL has supplied 597.205 MT Miss-Rolls to BRMPL without payment of duty during the period 16.12.2011 to 01.09.2012, involving Central Excise Duty of Rs.24,53,544/-.

7. Statement of Shri Ajay Kumar Malhotra (Appellant No.2) Director of appellant No.1 was recorded on 22.12.2015 in which he denied supply of 597.205 MT Miss-Rolls to BRMPL. He stated that whenever they supplied Miss-Roll, it was cleared on payment of duty.

8. Accordingly show cause notice was issued to all the three appellants. The Adjudicating Authority confirmed the demand of Rs.24,53,544/- upon appellant No.1-shri Rathi, beside imposing penalty of equal amount. He also imposed penalty of Rs.2,50,000/- each upon appellant No. 2 & 3. The Commissioner (Appeals) also upheld the Order-in-Original.

9. I have heard Mr. Bipin Garg & Ms. Rinki Arora, learned Advocates for the appellants and Ms. Tamanna Alam, Learned Authorised Representative for the respondent-Revenue.

10. It has been argued on behalf of appellant No. 1 & 2 that the impugned order passed is based upon presumption and surmises. Whole of the case is based upon the Tally data taken from Laptop resumed from Shri Ankit Keriwal- Manager of BRMPL. That Appellant No. 2, director of appellant No.1 has specifically denied the allegation of supply of 597.205 MT of Miss-Roll to BRMPL. Hence case is based only upon third party record without any corroborative evidence. He further argued that the Commissioner (Appeals) observed that the appellant had business relations with BRMPL, and there are other collateral evidence supporting the fact of clandestine removal. However no collateral evidence is referred. No statement of any of the

truck driver who transported such a huge quantity of 597.205 MT Miss-Rolls, was recorded. He relied upon the following case laws:

(i) Rama Shyama Papers Ltd. vs CCE [2004 (168) ELT 494 (Tri. Del)].
(ii) R.A. Castings vs. CCE [2009 (237) ELT 674 (Tri. Del)].
(iii) CCE vs. Chhaju Singh Kanwal [2011 (272) ELT 202 (Guj.)].
(iv) CCE vs. Shingar Lamps Pvt. Ltd. [2010 (255) ELT 221 (P & H)].
(v) CCE & ST vs. PD Industries [2016 (340) ELT 249 (Tri. Del)]

11. It was further argued that the demand is wholly time barred and also no penalty is imposable.

12. Learned AR Ms. Tamanna Alam supports the impugned order passed by Commissioner (Appeals).

13. After hearing both the parties and considering the facts and circumstances I observe that whole of the case is based upon third party record. There is no corroborative evidence supporting the allegations of the department. The director of appellant No. 1- Sh. Ajay Kumar Malhotra specifically denied any clandestine clearance of Miss-Roll to BRMPL. The department neither made investigation from the transporter or the truck drivers who transported the goods from the factory of the appellant No. 1. There is no corroborative evidence that SRSDL received raw material, manufactured and cleared the goods clandestinely . Hence allegations made against SRSDL and Sh. Ajay Kumar Malhotra, appellant NO. 1 & 2 are not sustainable and their appeals are to be allowed.

14. As regard appellant No. 3 the counsel argued that penalty u/r 26 cannot be imposed upon a corporate body. The appellant is a private limited company hence penalty imposed is not sustainable. She also relied upon final order No.A/52349-52409/2017 Ex. (DB) dt. 09.03.2017 in the case of M/s Kailash Traders vs. CCE. I agree with the submissions made by the counsel on behalf of appellant No. 3 BRMPL, and hold, penalty imposed is not sustainable.

15. Thus the impugned order is not sustainable and set aside. All the appeals are allowed with consequential relief.

[Order pronounced on 17.03.2020]

ANIL CHOUDHARY
MEMBER (JUDICIAL)

JB