CUSTOMS EXCISE & SERVICE TAX APPLELLATE TRIBUNAL NEW DELHI.

Excise Appeal No.51623 of 2018 (SM)

[Arising out of Order-in-Original No.RPR-EXCUS-000-COM-037-2018 dated 15.03.2018 passed by the Principal Commissioner, GST & Central Excise, Raipur (C.G.)-492 001]

M/s. Hi Tech Abrasive Ltd. **Appellant**
740/I, Sector-B,
Urla Industrial Area,
Raipur (Chattisgarh).

Versus

Commissioner of Central Excise **Respondent**
Central Excise Building, Dhamtari Road,
Tikrapara, Raipur,
Chhattisgarh-492 001.

AND

Excise Appeal No.51705 of 2018 (SM)

[Arising out of Order-in-Original No.RPR-EXCUS-000-COM-037-2018 dated 15.03.2018 passed by the Principal Commissioner, GST & Central Excise, Raipur (C.G.)-492 001]

Shri Pankaj Tekriwal, **Appellant**
Director of M/s. Hi-Tech Abrasives Ltd.,
740/I & J, Sector-B,
Urla Industrial Area,
Raipur (Chattisgarh).

Versus

Commissioner of Central Excise **Respondent**
Central Excise Building, Dhamtari Road,
Tikrapara, Raipur,
Chhattisgarh-492 001

APPEARANCE:

Ms. Kaynat, Advocate for the appellant.
Ms. Tamnna Alam, Authorised Representative for the respondent /Department.

CORAM:

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

FINAL ORDER NOS.51582-51583/2020

DATE OF HEARING: 31.10.2019
DATE OF DECISION:05.11.2020

ANIL CHOUDHARY:

The appellant company and its Director, Shri Pankaj Tekriwal are in appeals against the impugned order-in-original, whereby excise duty has been demanded Rs.41,76,213/- along with equal amount of penalty on the allegation of clandestine manufacture and removal. Personal penalty of Rs.50,000/- has been imposed on the appellant – Director, Shri Pankaj Tekriwal under Rule 26 of Central Excise Rules.

2. The appellant company is engaged in the manufacture of M.S. Ingots, Runners & Risers and Steel Shots and Grits, which are dutiable. They are availing facility of cenvat credit on the inputs used in the manufacture of aforementioned final products. They were having two induction furnace for manufacture of M.S. Ingots of capacity 3.0 M.T. each. The main raw materials /inputs are Sponge Iron, Iron Scrap, Pig Iron, etc.

3. Revenue having intelligence that induction furnace units, in general, which were engaged in the manufacture of M.S. Ingots, were engaged in clandestine manufacture and removal and were not disclosing their true production and clearance to the Revenue. Revenue conducted search and inquiry with one Shri S.K. Pansari, Proprietor of M/s.Monu Steels (a broker engaged in the business of facilitating sale and purchase transactions of Iron & Steel products on behalf of manufacturer, seller and purchaser of Iron & Steel products on commission basis) and the office premises of M/s.Monu Steels were searched by the central excise officers on 15.01.2007. The search was conducted in the presence of Shri S.K. Pansari, Proprietor and two independent panchas and drawn panchnama on 15.1.2007. During the

course of search, an amount of Rs.3,50,000/- was recovered from the premises along with incriminating documents like diaries, files, ledger, etc. As M/s. Monu Steels could not give satisfactory reasons, as to source of amount, it was seized by the central excise officers, on the assumption that the amount is part of the sale proceeds of clandestinely removed excisable goods, on which the manufacturers have not paid the due central excise duty. Show cause notice dated 10.07.2007 was issued for confiscation of the aforesaid amount of Rs.3,50,000/- under Section 121 of the Customs Act, 1962 (vide Notification No.68/63 CE dated 4.5.63 amended) read with section 12 of the Central Excise Act, 1944 (as amended) and for imposition of penalty under provisions of Rule 26 and 27 of Central Excise Rules, 2002 on M/s.Monu Steels.

4. Further, the statement of Shri S.K. Pansari, Proprietor of M/s. Monu Steels, Raipur was recorded on 15.01.2007 under Section 14 of the Central Excise Act, 1944, wherein he inter alia stated as under:-

i) That he is working as Commission Agent for the last 2-3 years for his firm - M/s. Monu Steels, Near Deshbandhu Complex, Raipur (C.G.).

ii) That the buyers and sellers contact him over phone for the purchase or sale of iron and steel products.

iii) That the rate of goods and his commission is finalized over phone

iv) That on finalization of deal, the seller supplies goods to buyer and he takes the details of such supplies, and enters in his diary.

v) That the buyers sometimes send the payment directly to the suppliers and sometimes the payments are sent to him for disbursement to the suppliers, and in such case, he contacts the seller and makes the payment.

vi) That in case of ingots, he gets commission from both buyers and sellers as well.

vii) That in case of sponge iron, he gets commission from seller only

viii) That he receives the payment from the buyers either in cash or through cheque.

ix) That he receives the dispatch details from sellers over phone and makes the entries thereof in his diaries, which includes the name of buyer, name of seller, date, bill no., quantity , bill amount etc. and such entries are noted in his diary, and that normally he does not receive the copies of invoices issued by manufacturer or sellers.

x) That he has used many abbreviations in his diaries and records like (o), "®", "ND", Ëx" and "FOR" which means as under :-

"(o)"means material without bill, on which duty of excise has not been paid

"®" means Regular payment means payment in 10-15 days

"ND" means : Payment on next day.

"Ex" means : the material is purchased from the spot (i.e. factory gate)

"FOR" means the delivery of material is on FOR basis.

xi) That all the entries in his records relates to the year 2006.

xii) That the payment of goods mentioned against (o) is made in cash by the buyer either to the seller or to him, and he disburses the payment to the seller in such cases.

xiii) That the amount of Rs.3,50,000/- recovered from his premises pertains to cash balance of his firm.

5. Again Shri S.K. Pansari, Proprietor of M/s.Monu Steel in his statements recorded on 19.09.2007, 21.09.2007, 30.05.2008 and 2.6.2008 under Section 14 of the Central Excise Act, 1944 reiterated his submissions made by him in his statement on 15.01.2007 and also explained about the details of entries found mentioned in the records/diaries recovered from his office premises under Panchnama on 15.01.2007. He also identified the names of units mentioned in the diaries/recovered, supra, which apart from other ingot manufacturing units, included this appellant - M/s. Hi Tech Abrasives Ltd. He also explained about the mode and method of transactions entered into by him with the ingot manufacturing units as regards sale of MS Ingots through him on commission basis.

6. The scrutiny of records/documents withdrawn / recovered from the premises of M/s. Monu Steels, Raipur vide Panchnama dated 15.01.2007, revealed that apart from other ingot manufacturing units, M/s. Hi Tech Abrasives Ltd., Raipur (C.G.) had also cleared/sold M.S. Ingots through M/s. Monu Steels (Proprietor, Shri S.K. Pansari), Raipur on commission basis. The details of such sale transactions of appellant were found entered in the diaries/files recovered under Panchnama dated 15.01.2007 from the office premises of Monu Steels on 15.01.2007. These details include the details of total ordered quantity, name of manufacturer/consignor, name of purchaser/consignee. Transaction code as given by Mr.S.K. Pansari,

date of removal, quantity of goods removed , rate, date of receipt, amount received, date of payment, amount paid, etc.

7. In order to verify the genuineness of such transactions undertaken by appellant through Monu Steel and to verify as to whether proper cenral excise duty has been paid by them on such clearances of MS Ingots, summons were issued upon appellant, inter alia, asking them to furnish their sales details pertaining to the period 2006-2007.

8. In pursuance to the summons, Shri Manish Pandey, the Authorised signatory of appellant submitted the documents called, for on 15.06.2009 .Further, statement of Shri Manish Pandey, Authorised Signatory of appellant was also recorded under Section 14 of the Central Excise Act, 1944 on 15.06.2009 before the Superintendent (Prev.), Central Excise Hqrs., Raipur, wherein he deposed that the documents/records being submitted are in relation to production, storage and removal of goods by M/s.Hi Tech Abrasives Ltd., and expressed their willingness to cooperate with the investigation and also undertook to discharge any duty liability that may arise out of examination of the documents / records being submitted by them.

9. The details of entries mentioned in the private records recovered by the Central Excise Officers on 15.01.2007 from the office premises of M/s. Monu Steels (Proprietor Shri S.K. Pansari), wherein the details of clearances of MS Ingots by M/s.Hi Tech Abrasives Ltd. through Monu Steels, consisted the details viz. name of manufacturer/consignor, name of purchaser/consignee, transaction

code as given by Mr. S.K. Pansari, date of removal, description of goods removed , quantity of goods removed, rate PMT, total ordered quantity, date of receipt of goods by consignee, amount received, date of payment, amount paid, etc. have been compiled.

10. When the sales details of MS Ingots pertaining to appellant as mentioned in the records recovered from Monu Steels were compared vis-à-vis the sale details of appellant, as furnished by them, under statement dated 15.06.2009, it was observed that invoices have been issued and duty has been paid in respect of some of the clearances as detailed in Annexure 'A' to show cause notice. As per the details of clearances of MS ingots by appellant through Monu Steel as per recovered records, which reveals that M/s.Hi Tech Abrasives Ltd. had removed/cleared 2047.599 ingots valued at Rs.3,64,91,442/- to various parties during the period 2006-2007, through M/s.Monu Steels (Prop. Shri S.K. Pansari) clandestinely (as per Annexure 'C' to show cause notice), without payment of central excise duty and without issue of any central excise invoice.

11. Statement of Shri Pankaj Tekriwal, Director of M/s. Hi Tech Abrasives Ltd. was recorded under Section 14 of the Central Excise Act 1944 on 23.10.2009, wherein, he *inter alia* deposed that he is the Director of the company since 2001 and he looks after the purchase of sponge iron and sales of MS ingots in addition to the overall management of the company like production, sales, etc., and that their company is engaged in the manufacture of MS Ingots. They have two furnaces of 3.0 MT each and the furnace is of 'Inductotherm make'. The main raw materials in the manufacture of MS Ingots are - Sponge

Iron, C.I. Scrap and additives like Silico Manganese, Ferro Silicon, Aluminium Shots, Fluxes, Metcoke, Calcined Petroleum coke, etc. That after having seen all the entries pertaining to his unit and satisfying himself that Annexure-A has been prepared on the basis of such entries, he reiterated that they had not cleared /removed MS Ingots through the said commission agent without issue of sales invoices or without payment of central excise duty.

12. On being specifically asked during the course of recording of statement dated 23.10.2009 and upon his denial, having only genuine transactions through M/s.Monu Steels, (Prop. Shri S.K. Pansari), Shri Pankaj Tekriwal was shown the copy of statement of Shri S.K. Pansari recorded under Section 14 of the Central Excise Act, 1944 on 15.01.2007, wherein Shri S.K. Pansari has Stated that he has correctly entered in his records all the transactions of sale of MS ingots undertaken through him by various manufacturers. He was asked to clarify entries as recorded in the registers/diaries recovered by the central excise officers.

13. In reply, Shri Pankaj Tekriwal deposed that whenever they had any transactions with or through the said M/s.Monu Steels (Prop. Shri S.K. Pansari), Raipur they have recorded the same on their books of accounts, issued sales invoices and paid central excise due on the same. Regarding other entries as detailed in the records, he showed his inability to offer comments as these entries have been made by M/s.Monu Steels (Prop. Shri S.K. Pansari), Raipur and this aspect can better be commented by him. In reply to the question that why the name of his company has been mentioned in the diary of M/s.Monu

Steels. Shri Tekriwall submitted that this aspect can very well be explained by Shri S.K. Pansari only.

14. As per standard, the electricity consumption for the manufacture of 1 MT of MS Ingots is around 830 Units/MT. The monthly average consumption of electricity and production of MS Ingots by appellant reveals that during the period 2005-2006 to September, 2009, the electricity consumption (per MT of MS Ingots) varied from a high of 2718 MT to 760 units/MT, which clearly indicates that the daily stock account (RG-I) and the production of MS Ingots have been doctored to suit their malafide intention to remove MS Ingots without payment of duty clandestinely, since the parameters for production of mild steel in an induction furnace, is more or less same over a period.

15. Acting upon another intelligence that one M/s. Kailash Traders, Prop. Shri Kailash Agarwal was also working as a commission agent and was involved in arranging purchase and sale of sponge iron for manufactures, *inter alia,* involved in abetting clandestine removal of final products viz. sponge iron, through parallel invoices, etc. The Central Excise Officers conducted the search of the premises of M/s.Kailash Traders (Noticee No.4) on 20.12.2006 and proceedings were recorded under panchnama dated 20.12.2006 and seized incriminating documents viz. ledgers, diaries and loose sheets in respect of sales and purchases of sponge iron by various manufacturers.

16. Statement of Shri Kailash Agarwal, Prop. Of M/s.Kailash Traders, Raipur was recorded on 20.12.2006, wherein, he *inter alia* stated that:-

(a) He is the proprietor of his firm, M/s.Kailash Traders and was working as Commission Agent.

(b) That he brokers sale and purchase of sponge iron between the sellers and purchaser over telephone.

(c) Sometimes the sellers do not intimate the bill no./invoice nos. and in such case, he does not show bills nos. in his records. However, he receives the dispatch details from sellers in such cases.

17. In further statement of Shri Kailash Agarwal recorded on 7.8.2007, stated that :-

(a) That the removals of sponge iron from the manufacturers premises against which invoices have been issued are duly informed to him. It might be that some removals were either made without payment of duty or were made under parallel invoices.

(b) Whenever the seller does not intimate the invoice number in respect of the removals of sponge iron, the code mark "R" has been mentioned by him in his records/diaries against each of such transactions.

(c) That whatever tax evasion is done by the manufacturers of sponge iron, is evident from his records, he stated that he has not been benefited out of such evasion of tax, but has only received his commissions for brokering of deals.

18. On comparison with the purchase details of sponge iron as per the recovered private records of Kailash Traders, it appeared that the

appellants have made both accounted and unaccounted purchase of sponge iron. Such unaccounted purchase of sponge iron is 244.10 M.T. made on various dates during the period July to September, 2006, (as per Annexure 'F' to show cause notice). However, this allegation was denied by the appellants and they categorically stated that they have made only accounted purchase of sponge iron.

19. In his statement, Mr. Pankaj Tekriwal, Director stated that the manufacturer of furnace (inductotherm make) have not declared or prescribed the rate of consumption of electricity for manufacture of M.S. Ingots. On being asked to explain the excess consumption of electricity, he stated that the same is attributable to the lower quality of Raw materials, unskilled labour, breakdown of furnace, frequent power failure, recycling of slag in furnace, consumption of power by auxiliary equipment, more consumption of power at the time of manufacture of shots and grits. He further stated that the consumption of electricity varies with the type of raw materials charged. The consumption will be less if steel scrap is used and consumption is more when sponge iron and /or pig iron is used.

20. The Revenue was not convinced with the explanation given for excess consumption of electricity. Further, there also appear to be underutilisation of the furnace capacity, excess consumption of pig iron as a ratio of total raw materials.

21. Accordingly, on the basis of assumption that 830 units are sufficient for manufacture of 1 MT of ingots on the basis of the electricity consumption, the production was estimated. Such estimated production for each financial year was adjusted with the production

declared in ER-I Return and accordingly, suppressed production was worked out for the period April, 2005 to September, 2009 i.e. 19084.853 MT as detailed in para 8.6 of the show cause notice. On such suppressed production, central excise duty involved was worked out at Rs.6,61,12,473+13,22,249+3,18,685 = 6,77,53,407. Further, as regards suppressed production, on comparison with the records of the said Monu Steels estimated at Rs.2047.599 MT of ingots and the duty was worked out at Rs.59,55,404/- including cess.

22. Accordingly, show cause notice dated 31.03.2000 was issued invoking the extended period of limitation demanding duty of Rs.6,77,53,407/- including cess on the alleged suppressed production and clearance of 19084.853 MTs of M.S. Ingots during 2005-2006 to 2009-2010. Further, penalty was proposed under Section 11 AC, penalty under Rule 25 of Central Excise Rules, 2002 and the personal penalty was proposed on the Director, Shri Pankaj Tekriwal and also on Shri S.K. Pansari, Proprietor and Shri Kailash Traders under Rule 26 of Central Excise Rules, 2002.

23. The appellant contested the show cause notice by filing their reply. During the course of adjudication, Shri S.K. Pansari was crossed examined, wherein, he, *inter alia*, stated that diaries, etc. on the basis of which, clandestine clearance have been estimated by the Department was written by his nephew. Mr. Bal Mukund Pansari, who died sometime in 2008 -2009. Further, no statement of Mr. Bal Mukund Pansari was ever recorded. It is also stated that the recovered records of Monu Steels were maintained on the basis of the telephonic conversation communicated by Mr. S.K. Pansari to his nephew, late Bal

Mukund Pansari, who used to write down the same in the records. He has never examined the correctness of such entries nor has got any documentary evidence in support of such entries. Further, there was possibility of mistakes in the records. It was further urged that the allegation of suppressed production and clearance is bad in law, with reference to the report of the Joint Parliamentary Committee, which has specified 1800 units PMT of ingots, whereas National School of Secondary Steel Technology have specified 1427 units PMT. Further, the allegation of suppression is bad as not a single truck carrying unaccounted finished goods were intercepted by any Revenue Department during the period under dispute. The show cause notice was adjudicated vide impugned order-in-original dated 15.03.2018 by the ld. Commissioner, who was pleased to drop the proposed demand of duty on the basis of the estimated production based on the alleged standard of consumption of electricity, relying upon the ruling of this Tribunal in the case of **R.A. Castings Pvt. Ltd. – 2009 (237) ELT 674,** which was upheld by the Hon'ble Allahabad High Court reported at **2011 (269) ELT 337** and further, the SLP filed by the Revenue was also dismissed reported at **2019 (269) ELT A 108 (SC).**

24. Ld. Commissioner further observed that the allegation of suppression of production in the show cause notice is on the basis of the calculation of clandestine removal of 2047.599 MT of M.S. Ingots as per the incriminating records recovered from M/s.Monu Steels, under utilisation of installed capacity, disproportionate /excess consumption of raw materials and clandestine purchase of 244.100 MT of sponge iron as revealed from the incriminating records recovered from M/s.Kailash Traders.

25. It was further observed that as per the entries in the records of M/s.Monu Steels, the appellants have despatched 133 consignments to various buyers and on comparison of the records of the appellants, the clandestine clearance has been worked out at 2047.599 MT of ingots, as contained in Annexure – C to the show cause notice. Further, giving allowance for apparent error in the incriminating records of M/s.Monu Steels for duplicate and erroneous entries, quantity of 4404 MT was excluded. It was further observed that recovered records/diaries from M/s.Monu Steels were evidently maintained in the normal course of business and Mr. Pansari explained each and every entry by identifying the consignor and the consignee and other details of the transaction. Further, rejecting the contention of the appellants and also referring to some of the other manufacturers, who in the course of follow-up inquiry, pursuant to search at Monu Steels and Kailash Traders had admitted the unaccounted entries as per the records of the two brokers. Duty was confirmed with respect to the 1415.914 MT of ingots as follows:-

	Qty. Removed in MT	Total Value	C. Excise Duty	Cess	Total Duty
Quantification of demand in Annexure – C to SCN	2047.599	36491442	5838631	116773	5955404
Less: invoices submitted by the noticee	587.245	10055520	1608883	32178	1641061
Less: Double entries in Annexure- C to the SCN.	44.440	846289	135421	2709	138130
Total MS Ingots	1415.914	25589633	4094327	81886	4176213

Accordingly, duty of Rs.41,76,213/- including cess was confirmed on the alleged clandestine removal of 1415.914 MT of M.S. Ingots.

Further, equal amount of penalty was imposed under Section 11 AC and the balance proposed demand was dropped. Further, penalty of Rs.50,000/- was imposed on the appellant Director - Shri Pankaj Tekriwal under Rule 26 of the Central Excise Rules, 2002. Penalty was also imposed under Rule 26 on Shri S.K. Pansari and Shri Kailash Agarwal, the two brokers.

26. Being aggrieved, the appellants are before this Tribunal, amongst others the following grounds.

27. Ld. Counsel for the appellant urged that the allegations made in the show cause notice and confirmed by the lower authority are denied and not admitted. The show cause notice as well as the orders passed by the lower authority is illegal and not sustainable. The Adjudicating Authority erred in confirming the duty demand on the ground of assumption and presumption only. All the evidences placed and discussed by the authorities were related to the third party, recovered from premises of broker - M/s.Monu Steel without any corroborative evidence. The various statements furnished by Mr. S.K. Pansari are of a general nature, and do not reflect any concrete evidence in the case of the appellant. It has been held that in various rulings, that the demand cannot be confirmed on the basis of records seized from the premises of third parties, without any corroborative evidence, by the Department.

28. To support his contention, he relied upon the following case laws:-

(a) **Rudra Ventures Pvt. Ltd. -2016 (344) ELT 472 (Tribunal)**

(b) **CCE, Raipur Vs. P.D. Industries Pvt.Ltd.-2016(340) ELT 249**

(c) **Raipur Forging Pvt. Ltd. -2016(335) ELT 297 (T)**

(d) **CCE Vs. Chola Spinning Mills Pvt.Ltd.-2009(246)ELT 267 (Tribunal-Chennai).**

(e) **Agrasen Syntex Pvt.Ltd.-2003(154)ELT 431.**

In all the above cases, the Hon'ble Courts and Tribunal have held in clear terms that no duty can be demanded from a manufacturer on the basis of documents, which were not seized from their premises.

29. Ld. Counsel also urged that the entire case has been made out on the basis of third party documents and the statements of their proprietors (outsiders) recorded therein. Appearance of names in private records, raises doubt only, but it is not substantive evidence. It is urged that there is no confessional statements by any suppliers for delivery of sponge iron (without bill) at the unit of the appellant. Accordingly, ld. Counsel prays for allowing their appeals with consequential benefits.

30. Ld. Authorized Representative for the respondent - Revenue relies upon the impugned order and prays for dismissal of the appeals.

31. Having considered the rival contentions, I find that the demand has been confirmed only on the basis of the unsubstantiated evidence being the private records of the two brokers viz. M/s.Monu Steels and Kailash Traders and the statement of their proprietors. I further find that the author of private records of M/s. Monu Steels - Mr. Bal Mukund was never examined by the Revenue. Further, M/s. S.K.

Pansari during his cross examination has admitted that the said records were maintained under his instructions by Shri Bal Mukund Pansari. Further, Revenue have failed to find out any inconsistency in the records of the appellant, nor there is any seizure of any consignment of goods being raw materials or finished goods, being transported without the documents or clandestinely.

32. I further observe that although the third party records are good evidence of suspicion of clandestine activity, but the same cannot be adopted for concluding the charge of clandestine removal in the absence of corroborative evidence. Further, in spite of the names being found of the parties, to whom the alleged clandestine removal has been despatched, there is no further inquiry made from the alleged receivers of goods. Accordingly, I hold that the demand against the appellant is not sustainable, in absence of sufficient evidence of clandestine manufacture and removal of the goods. Accordingly, the appeals are allowed and the demand including the penalty is set aside against both the appellants. The appellants are entitled to consequential benefits in accordance with law.

[order pronounced on 05.11.2020.]

(Anil Choudhary)
Member (Judicial)

Ckp.