CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH – COURT NO. IV

Excise Appeal No. 50552 of 2019 - SM

(Arising out of Order-in-Appeal No. 488(SM)CE/JPR/2018 dated 22.11.2018 passed by the Commissioner (Appeals), Central Excise & Service Tax, Jaipur)

M/s Mani Mahesh Ispat (P) Limited **Appellant**
SP-1192, RIICO Industrial Area Bhiwadi
District-Alwar, Rajasthan-301019.

Versus

Commissioner , Central Goods & Service Tax, Customs & Central Excise, Alwar **Respondent**
GST Bhawan, Surya Nagar,
Alwar (Rajasthan)

Appearance

Shri B.L. Yadav, Consultant for the appellant

Shri Y. Singh, Authorised Representative for the respondent

CORAM:
HON'BLE MS. RACHNA GUPTA, MEMBER (JUDICIAL)

Date of Hearing/Decision: 15.04.2021

Final Order No. 51552/2021

Rachna Gupta:

Present is an appeal vide which the Order-in-Appeal No. 488/2018 dated 22.11.2018 has been assailed. The appellant herein is engaged in the manufacture of MS ingots. Department got an information about appellant who have been indulged in evasion of Central Excise duty by way of suppression of production and clearing the same clandestinely without payment of duty and without issue of any invoices. In furtherance thereof officers of Preventive Branch of Central Excise division, Bhiwadi visited the factory premises of appellant on 30.12.2013, they checked various records/documents maintained by the appellant and also took physical stock verification of the finished goods i.e. M.S. ingots and it was found that 182.340 MT of M.S. ingots valued at Rs. 57,71,061/- involving the Central Excise duty amounting to Rs. 7,13,303/-. The officers also recovered certain documents/slips from the lab office of the appellant's company and on reconciliation thereof it was noticed that 2486 Nos. of M.S. ingots were not entered in the production on the respective days in the appellant's record. Accordingly, vide show cause notice No. 2914 dated 17.5.2017 the amount of duty involved on both the counts i.e. shortage as well as the clandestine removal along with the interest and disproportionate penalty was proposed to be imposed upon the appellant. The said proposal was confirmed initially vide Order-in-Original No. 72/2017-18 dated 1 March, 2018 the appeal thereof has been rejected vide the order under challenge. Being aggrieved, the appellant is before this Tribunal.

2. I have heard Shri B.L. Yadav, learned Counsel for the appellant and Shri Y. Singh, learned Departmental Representative for the Department.

3. It is submitted on behalf of the appellant that the Department has confirmed the demand against the appellant without any evidence proving the alleged guilt. The adjudicating authority has merely relied upon the physically noticed shortage and the loose parchies as were recovered from the lab office. It is submitted that the shortage as noticed was only for three to four days and was due to the reason that these used to be certain defective ingots

which need to be remanufactured as fresh finished products. The explanation was well given by the Director of the appellant Shri Navnitya Prakash Goyal whose statement was recorded during the investigation itself on 10 March, 2014. It is submitted that the said explanation has not been considered by the adjudicating authorities below. Learned Counsel further impressed upon that the loose parchies cannot be the admissible evidence to hold appellant guilty. The department has failed to produce any positive evidence for proving the allegations as levelled in the show cause notice. Absence of evidence goes in favour of the appellant. Learned Counsel has relied upon the following case laws to support that the allegation of clandestine removal cannot based merely on the shortage of goods detected on stock taking nor it could be based on the recovered loose documents :

(i) Smart Steels, Haryana Rolling Mill, Euro Pratik Ispat Private Limited, Pragati Ingots & Power Private Limited Versus Pr. Commissioner of Central Tax – 2019 (8) TMI 1022-CESTAT New Delhi.;

(ii) M/s Bharat Alloys Private Limited Versus Commissioner of CGST & Central Excise Commissionerate, Ranchi – 2020 (6) TMI 659 – CESTAT Kolkata;

(iii) Auto Gallow Industries Pvt. Ltd. Versus Commr. of C. Ex. Rohtak – 2015 (317) ELT 139 (Tri.-Del.) affirmed High Court Allahabad in 2018 (360) ELT 29 (All.);

(iv) Commissioner of Central Excise, Raipur Versus ABS Metals (P) Ltd. – 2016 (341) ELT 429 (Tri.-Del.) Affirmed by High Court of Chhatisgarh – 2017 (354) ELT A200 (Chhatisgarh).

4. The order under challenge is, accordingly prayed to be set aside and appeal is prayed to be allowed.

5. Per contra, the learned Departmental Representative has submitted that not only appellant's Director Shri Jha who was found to be available at the time of visit by the preventive officers

in the appellant's premises admitted the noticed shortage in the quantity of the ingots but also the amount of duty involved was got deposited by the appellant, in view of said admission and the said deposit. There was nothing for the department to prove the allegation any further. With respect to the clandestine removal based upon the loose parchies, it is submitted that the recovery of those parchies is also not been denied except that Shri Santosh, Lab Assistant was mentioned to have the sufficient explanation for the same but said Santosh has never been produced by the appellant. Accordingly, there is no infirmity in the order under challenge when adverse inference has been drawn against the appellant. Appeal is accordingly, prayed to be dismissed.

6. After hearing the parties and perusing the record, I observe and hold as follows that the demand has been confirmed on two counts:

(1) Shortage of 182.340 MT of M.S. ingots was noticed at the time of physical verification of M.S. ingots;

(2) 2486 Nos. of M.S. ingots were not found entered in the production record for the respective day. Accordingly, the clandestine clearance thereof was confirmed.

I observe that there is no denial on the part of the appellant about the noticed shortage of 182.340 MT of M.S. ingots. However, it is submitted that the same has duly been explained in the terms that the defective M.S. ingots were sent for being recycled/remanufactured. Apparently and admittedly, there is no evidence on record to support/corroborate the said explanation. Admittedly, the appellant was not maintaining any record of such defective M.S. ingots the noticed shortage which has otherwise not been denied to be a huge quantity shortage i.e. 292.560 MT ingots were found short out of 474.900 MT. It was mandatory for the appellant to maintain the requisite record.

7. Rule 10 of Central Excise Rules, 2002 makes it mandate upon each assessee to maintain proper records that too on daily basis, in a legible manner indicating the particulars regarding description of the goods produced or manufactured, opening balance, quantity produced or manufactured, quantity removed, inventory of goods etc. In view of the admission that such huge defective ingots were nowhere recorded by the appellant that too for the production of over three four days the same is held to be the definite non compliance of Rule 10 of Central Excise Rules, 2002 which has been one of the main reasons for issuing show cause notice to the appellant and the confirmation of proposal therein by the adjudicating authority below. Admissions are the best evidence and need no further proof as is the established principle of Indian Evidence Act in Section 58 thereof. Hence the argument of the appellant that the department has not produced any evidence is not sustainable in the eyes of the admission of the appellant’s Director for the noticed shortage and for simultaneous non compliance of Rule 10 thereof.

8. Coming to the alleged clandestine removal thereof no doubt the allegation have been confirmed based upon the loose parchies

as were recovered from the lab of the appellant's premises the person namely Shri Jha in whose presence the documents were recovered admittedly has not stated anything about the documents. Apparently Shri Navnitya Prakash Goyal also has not tendered any explanation about those documents except he mentioned that the same will be explained by Shri Santosh, Lab Assistant thereof. However, no efforts were made by the appellant to produce Santosh before the adjudicating authority or too at least tendered his statement or any explanation given by him in the form of affidavit or by any other admissible mode of giving evidence before the adjudicating authority. In the given circumstances, I do not find any infirmity in the order of Commissioner (Appeals) where he has taken adverse inference of the absence of Shri Santosh no doubt the allegations of clandestine removal.

9. No doubt these allegations cannot be based merely on the noticed shortage of M.S. ingots but definitely such allegations can sustain in the absence of any explanation for the noticed shortage. As already discussed above, there is no proper explanation/evidence given by the appellant for the noticed shortage. The entire noticed shortage is not appealable to be defective. The only explanation given by the appellant is about those ingots to be defective without giving any supporting document of those defective ingots to either be recycled or remanufactured or cleared after being remanufactured. In such circumstances, I hold that the opinion that the entire case law as relied upon by the appellant is not applicable to the given facts and

circumstances. Resultantly, the order under challenge is hereby upheld and the appeal stands dismissed.

(Dictated & pronounced in open Court)

(Rachna Gupta)
Member (Judicial)

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