CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI
PRINCIPAL BENCH COURT No. II

EXCISE APPEAL NO. 52288 OF 2018

[Arising out of the Order-in-Appeal No. BHO-EXCUS-002-APP-425-17-18 dated 15.02.2018 passed by the Commissioner (Appeals) Central, GST, Excise & Service Tax (Appeals), Raipur]

SANJAY KUMAR GOYAL **Appellant**

Director, M/s S R Ingots Pvt Ltd.
Siltara, Industrial Area,
Raipur (CG)

Vs.

COMISSIONER, CENTRAL EXCISE & CUSTOMS-RAIPUR **Respondent**

Central Excise Building, Dhamtari Road
Raipur (C.G)

And

EXCISE APPEAL NO. 52542 OF 2018

[Arising out of the Order-in-Appeal No. BHO-EXCUS-002-APP-424-17-18 dated 15.02.2018 passed by the Commissioner (Appeals) Central, GST, Excise & Service Tax (Appeals), Raipur]

S R INGOTS PVT LTD. **Appellant**

Plot No. 19 & 20, AKVN Phase,
Siltara, Raipur (C.G)

Vs.

COMISSIONER, CENTRAL EXCISE & CUSTOMS-RAIPUR **Respondent**

Central Excise Building, Dhamtari Road
Raipur (C.G)

Appearance:
Shri Vinay K. Jain, Advocate for the appellant
Shri Ravi Kapoor, Authorised Representative for the respondent

CORAM:
HON'BLE MR ANIL CHOUDHARY,MEMBER (JUDICIAL)

Date of Hearing: 16/11/2021
Date of Decision: 13/05/2022

FINAL ORDER NOS. 50419-50420/2022

ANIL CHOUDHARY

1. The appellant M/s S R Ingots Pvt Ltd. engaged in the manufacture of iron and steel products, that is MS ingots, which are dutiable. The other appellant Shri Sanjay kumar Goyal is the Director of the appellant company and responsible for all the day today activities and particularly looks after the sale and purchase and liaisoning. The appellant is registered with the department. In the course of search in the premises of another manufacturer, namely, Pankaj Ispat Limited, which was conducted on 12th April, 2012, there appeared certain discrepancies like shortage of 1066.615 MT of MS ingots, 9.695 MT TMT bar and 219.56 MT sponge iron. The search in the said premises resulted in recovery of several incriminating documents showing unaccounted purchase and sale of finished goods.

2. In the course of search in the premises of Pankaj Ispat, the statement of its director Mr. Pankaj Agarwal was recorded, wherein he *inter alia* stated that the records recovered under panchanama contained entries of both accounted and unaccounted transactions made by them. He further stated that the entries in the ledger books seized related to consignment wise transaction for sale and purchase by Pankaj Ispat. Also stated that the cash transaction and bank

transaction of unaccounted and accounted sale and purchase were entered in the said books. Weighment slips recovered under panchanama are related to purchase of ingots from various parties by them. From the scrutiny of the documents, it was revealed that Pankaj Ispat has procured unaccounted MS ingots (inputs) during the period June, 2010 to March, 2012, without accounting the same in their statutory records. Further the production records also revealed unaccounted production or suppression of production. Further from examination of the incriminating documents, it appeared that MS ingots were purchased without being accounted, from the entries of movement of goods (A-3 size sheets) for the period June, 2010 to April 2012, both for purchase and sales with bifurcation as furnace in, furnace out, and rolling mill in and out. The second copy of one such document showing clearance of MS ingots by this appellant, mentioned in para 4 of the SCN, wherein details like vehicle number, party name and description of item/ingot, number of pieces weight etc., is given. The time of arrivals in the factory of Pankaj Ispat is also given and is also contained in the weighment slips. Further said entries were also corroborated by the statement of Shri Raj Kishore Das, accountant and authorised signatory of Pankaj Ispat, accordingly as per the records of Pankaj Ispat, it appeared that this appellant/ SR ingots have clandestinely cleared 806.506 MT of MS ingots during the said period clandestinely, without paying duty.

3. To verify facts, Revenue issued summons to the appellant to produce relevant documents and to submit oral evidence, but the summons were returned with remark-factory is closed. Accordingly, based on the evidences collected at the end of Pankaj Ispat, Revenue issued show cause notice dated 1 July, 2015 on these appellants, alleging clandestine removal by them to Pankaj Ispat of 806.576 MT ingots, the value worked out at Rs. 2,20,75,524/- and the duty allegedly evaded was worked out at Rs. 22,73,779/-. Further penalty was proposed on director of the appellant company-Shri Sanjay Kumar Goyal under Rule 26.

4. The show cause notice was adjudicated on contest and the proposed demand was confirmed with interest and equal amount of penalty. Further penalty at Rs. 1 Lakh was imposed on Shri Sanjay Kumar Goyal, Director under Rule 26 of Central Excise Rules.

5. Being aggrieved the appellant preferred appeal before the Commissioner (Appeals), who vide the impugned order-in-appeal was pleased to reject the appeals, observing it does not find any reason to interfere with Order-in-Original. Being aggrieved the appellant is before this Tribunal.

6. Learned counsel for the appellants Shri Vinay K Jain, inter alia alleges that the whole demand has been raised with penalty, based on unsubstantiated third party records. There is no admission on the part of the appellant or its Director or any officer of the appellant company. Further, Revenue have

not examined or investigated the records of the appellants and have issued the show cause notice and confirmed the demand in a mechanical manner without application of mind. Learned counsel states that the charge of clandestine removal and demand of duty, have got grave civil consequences on the appellants, and such demand cannot be raised in a mechanical manner. The allegations of Revenue are bald and unsubstantiated, as there is no corroborative evidence. Learned counsel further urges that this Tribunal in similar facts and circumstances in the case of **Ramniwas Ispat pvt Ltd. and ors. vs. CCE, Raipur vide Final Order No. 52254-52255/2018 dated 19.06.2018** under similar facts and circumstances of alleged clandestine clearance to Pankaj Ispat, have allowed the appeal holding that demand and penalty is not sustainable on the basis of the third party evidence, in absence of any corroborative evidence/ admission on the part of the assessee.

7. Learned counsel also states that, the Revenue have failed to examine its witness in the adjudication proceedings and thus for the absence of compliance of the mandate of Section 9D of the Act, the demand raised relying on the statement of Director of Pankaj Ispat is not tenable, and is fit to be set aside.

8. Learned AR for Revenue Mr. Ravi Kapoor placed reliance on **M/S Antarctic Industries Limited vs Commissioner Of Central Excise, Ludhiana [2013 (294) ELT 365 (P & H).**

9. Having considered the rival contentions I find that the demand have been confirmed against the appellants with penalty in a mechanical manner. I further find there is lack of sufficient evidences or corroborative evidences in support of the allegations of the Revenue. Further following the precedent decisions of this Tribunal in the case of **Ramniwas Ispat (supra)**, I allow both appeals and set aside the impugned order. Both appeals are allowed with consequential benefits.

(Order pronounced on **13.05.2022)**

(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

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