CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH - COURT NO. II

Excise Appeal No. 54169 of 2018 (SM)

(Arising out of Order-in-Original No. BHO-EXCUS-002-APP-393-18-19 dated 27.09.2018 passed by the Commissioner (Appeals), Customs, Central Excise & Service Tax, Raipur.)

M/s Jai Baba Castings Private Limited **Appellant**
Plot No. 419&420, Village-Jarvay,
Surdurg, Bhilai,
Durg (CG)

VERSUS

Commissioner of Central Excise **Respondent**
And Service Tax, Raipur
Central Excise Building, Tikrapara
Raipur(CG)-492001

APPEARANCE:

Ms. Parul Sachdeva, Advocate for the Appellant
Ms. Tamanna Alam, Authorised Representative for the Respondent

CORAM:

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

FINAL ORDER NO. 50599 / 2022

Date of Hearing: 08.07.2022
Date of Decision: 08.07.2022

ANIL CHOUDHARY:

Heard the parties.

2. The issue involved in this appeal is whether on the basis of third party records, the demand of duty and penalty have been rightly made from the appellant.

3. Appellants herein are the manufacturers of MS ingots falling under Chapter 72 of Central Excise Act, 1985. Acting upon specific information that M/s.Pankaj Ispat Ltd., Raipur (PIL in short) have indulged in the clandestine procurement of raw-material, production and clearance of MS ingots and TMT Bars, flats, etc., that the Central Excise Officers of Headquarter Preventive Branch, Raipur visited the premises of M/s. PIL, inspected and verified the documents and also verified the stock of raw-material as well as the finished goods on 12.04.2012. Shortage of 1066.615 M.T. M.S. Ingots valued at Rs.3,57,31,603/- and that of 9.695 MT TMT Bars valued at Rs.3,64,290/- and 219.56 MT Sponge Iron valued at Rs.52,07,963/- was noticed. The incriminating documents were recovered vide Panchnama dated 12.04.2012. Statement of Director of M/s.PIL, namely, Shri Pankaj Agrawal, was recorded on 19.09.2012 and 02.10.2012 under Section 14 of the Central Excise Act, 1944. The Scrutiny of documents and further investigation revealed that the suppliers of unaccounted rawmaterial to M/s.PIL and their customers of finished goods included manufacturers /dealers, commission agents etc., were also involved in evasion of payment of Central Excise Duty, while facilitating M/s. PIL to remove the finished goods clandestinely.

4. On the basis of incriminating documents seized from the premises of M/s Pankaj Ispat Ltd. and also as per the statement of its Director, Mr. Pankaj Agarwal, revenue segregated the entries relating to this appellant as per private records of Pankaj Ispat, as mentioned in the Annexure A1 & A2 to the Show Cause Notice, wherein it appeared that this appellant had purchased rejected moulds from M/s PIL and have also sold Ingots, without accounting for the same in their

records regarding purchase, sales, production etc., they have also sold ingots. The statement of Manager of appellant Mr. V.N. Mishra was recorded during investigation, who *inter alia* stated that he looks after the work relating to sales, accounting etc. during 2010-11 and 2011-12 and also purchased/rejected moulds from PIL. Further stated that the consignment mentioned in their ledger (Books of Jai Baba Casting) submitted by them, where the actual transactions and rest of the entries shown in the chart were not sold by them and they do not know about such consignment. Similar statement was given by the Director, Mr. M.K. Agarwal of the appellant company.

5. It is further evident from the Show Cause Notice that neither M/s Pankaj Ispat Ltd. nor its director, Mr. Pankaj Agarwal has been made co-noticee. Thus, I find that the show cause notice is bad for non joinder of necessary party.

5. In view of my findings and observations, I allow this appeal and set aside the impugned order. The appellant shall be entitled to consequential benefits in accordance with law.

(Dictated in open Court)

Anil Choudhary
Member(Judicial)

sb