CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

NEW DELHI

PRINCIPAL BENCH – COURT NO. – IV

Excise Appeal No. 50553 of 2019 [SM]

[Arising out of Order-in-Appeal No. BHO-EXCUS-002-APP-454-18-19 dated 30.11.2018 passed by the Commissioner of Central Excise, Customs & Service Tax (Appeals), Raipur]

M/s. Pankaj Ispat Ltd. **...Appellant**
Gogaon Industrial Area,
Ring Road No.2,
Raipur (C.G.)

VERSUS

Commissioner of Central Excise
and Service Tax, Raipur **...Respondent**
Central Excise Building,
Tikrapara,
Raipur-492001

WITH

Excise Appeal No. 50554 of 2019 [SM]

[Arising out of Order-in-Appeal No. BHO-EXCUS-002-APP-454-18-19 dated 30.11.2018 passed by the Commissioner of Central Excise, Customs & Service Tax (Appeals), Raipur]

Pankaj Agrawal **...Appellant**
Pankaj Ispat Ltd.,
Gogaon Industrial Area,
Ring Road No. 2
Raipur (C.G.)

VERSUS

Commissioner of Central Excise
and Service Tax, Raipur **...Respondent**
Central Excise Building,
Tikrapara,
Raipur-492001

AND

Excise Appeal No. 50555 of 2019 [SM]

[Arising out of Order-in-Appeal No. BHO-EXCUS-002-APP-454-18-19 dated 30.11.2018 passed by the Commissioner of Central Excise, Customs & Service Tax (Appeals), Raipur]

Narendra Agrawal **...Appellant**
Prop. Of Amit Steels,
E-64, Samta Colony,
Raipur.

VERSUS

Commissioner of Central Excise
and Service Tax, Raipur **...Respondent**
Central Excise Building,
Tikrapara,
Raipur-492001

APPEARANCE:

Ms. J. Kainaat, Advocate for the Appellants
Mr. Divey Sethi, Authorised Representative for the Respondent

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

DATE OF HEARING/DECISION: **08.09.2022**

FINAL ORDER No. 50883-50885/2022

DR. RACHNA GUPTA

Present order disposes of three appeals. Order-in-Appeal being common to three of them. The investigation as well as the issue is also same. The facts in brief are as follows:

1.1 The appellants are engaged in manufacture of Iron & Steel products namely, MS Ingot, TMT Bar etc. They are also availing the facility of Cenvat credit of duty paid on inputs and capital goods under Cenvat Credit Rules, 2004. Appellant Shri Pankaj Agrawal is the Director of appellant M/s. Pankaj Ispat Limited. The appellant Shri Narendra Agrawal, Proprietor of M/s. Amit steels is found engaged in trading activity of iron and steel products. On 07.04.2015 a search was conducted in his premises (factory as well as residential) by preventive officers of the Central Excise, Hqrs, Raipur. Based upon the information that M/s. Amit Steels is involved in facilitating clandestine removal of excisable goods by some of the iron and steel manufacturers of Raipur. Some incriminating documents/note pads were recovered from the premises during the said search as are detailed in the Panchnama of the even date. The investigating team recorded the statements of all concerned including Shri Narendra Agrawal (appellant), his brother Shri Naveen Agrawal, Shri Sailesh kasera, Factory Manager of M/s. Pankaj Ispat Limited and Shir Pankaj Agrawal, Appellant (Director of another appellant M/s. Pankaj Ispat Limited).

1.2 Based on those statements and the documents recovered from M/s. Amit Steels, department formed an opinion that the appellants are engaged in clandestine removal of their finished goods with the aid of Shri Narendra Agrawal, Proprietor of M/s. Amit Steels. Accordingly, vide the Show Cause Notice No. 13904 dated 16.09.2016 that central exicse duty for an amount or Rs.20,84,110/- on the alleged clandestine removal of TMT Bars, duty of Rs.1,72,358/- on the allegations of clandestine removal of MS Ingots and an amount or Rs.3,20,830/- equal to the proportionate Cenvat credit was proposed to be recovered along with the interest. Penalty was also proposed to be imposed upon Pankaj Ispat Limited (Appeal No. E/50553/2019), Shri Pankaj Agrawal (Appeal No. E/50554/2019) and Shri Narendra Agrawal (Appeal No. E/50555/2019). The said proposal was initially confirmed vide Order-in-Original No. 20/2018 dated 14.05.2018 except that demand of Rs.20,84,110/- with respect to M/s. Pankaj Ispat Limited was dropped. Those findings have been confirmed by Commissioner (Appeals) vide his order bearing no. 454-18-19 dated 30.11.2018. Still being aggrieved, the appellants are before this Tribunal.

2. I have heard Ms. J. Kainaat, learned Advocate for the appellants and Shri Divey Sethi, learned Authorized Representative for the department.

3. Learned Counsel for the appellants has mentioned that the demand against M/s. Pankaj Ispat Ltd. and Shri Pankaj Agrawal has wrongly been confirmed as there is no incriminating evidence against any of them. No search was conducted in their premises, none of the documents has direct bearing as far as their alleged involvement in clandestine removal of their finished products is concerned. The findings of Adjudicating Authority are noting but the outcome of their reliance on third party evidence. It is impressed upon that third party evidence can never be the proof for the allegations as that of clandestine removal. With respect to the appellant Shri Narendra Agrawal, it is submitted that penalty against him has already been dropped vide Final Order No. 50760-50762/2018 dated 23.02.2018 in the Appeal Nos. 51804, 51557 and 51944 of 2017 titled as B.K. Rolling Mills Pvt. Ltd. Vs. Commissioner of Central Excise & Service Tax, Raipur. Learned Counsel impressed upon that present appeals have also arisen out of the same investigation, same documents and the statements of similar people. For the said reason even penalty against Shri Narendra Agrawal is alleged to have wrongly been confirmed by the Commissioner (Appeals). Learned Counsel has relied upon the following decisions:

(i) Manmeet Ispat pvt. Ltd. Vs. CCE [2019 (368) E.L.T. 1101 (Tri.-Del.)]

(ii) Sourabh Rolling Mills Pvt. Ltd. Vs. CCE [F.O. No. A/51186/2021 (SM) dt. 23.03.2021]

(iii)Kailash Traders Vs. CCE [F.O. No. A/51580/2021 (SM) dt. 04.06.2021]

(iv) Fortune Metalicks Ltd. Vs. CCE [F.O. No. A/51639-51640/2018 (SM) dt. 24.04.2018]

(v) Rooplaxmi Industries India Pvt. Ltd. Vs. CCE [F.O. A/51591/2019 (SM) dt. 30.10.2019]

(vi) Sarthak Ispat Pvt Ltd. Vs. CCE [F.O. No. A/51564-51565/2019 (SM) dt. 23.10.2019]

Three of the appeals are accordingly prayed to be dismissed.

4. While rebutting these submissions learned Departmental Representative has impressed upon that Shri Narendra Agrawal was found to be a master mind in facilitating the manufacturers of MS Ingots, TMT Bars etc. while clearing their finished goods without payment of duty. It is due to the said reason that his premises only were searched. The documents recovered from his premises have meticulously been appreciated by the Adjudicating Authorities below, based whereupon that the demand has rightly been confirmed. Learned DR has impressed upon the findings in para 6 (6.1 to 6.5) of the order under challenge. Impressing upon no infirmity in those findings, the order under challenge is prayed to be upheld and three of the appeals are prayed to be dismissed.

5. Having heard the rival contentions and perusing the record of three of the appeals as well as the case law relied upon by the appellants, I observe and hold as follows:

5.1 The decision of the Tribunal in B.K. Rolling Mills Pvt. Ltd. is with respect to the investigation which originated out of the search in the premises of M/s. Amit Steels on 07.04.2015. The present appeals are also arising out of the same search and the same documents recovered during said search. Those documents have already been held insufficient to be admitted into evidence, as far as B.K. Rolling Mills Pvt. Ltd., the manufacturer of TMT Bars and MS Ingots is concerned, vide the final order of this Tribunal dated 23.02.2018 (as mentioned above). The appellants herein M/s. Pankaj Ispat Limited and its Director Shri Pankaj Agrawal are also the manufacturers of the same product. Same allegations based on the same documents of the above mentioned case have been used against both these appellants. Apparently and admittedly, no search was conducted in the premises any of these two appellants. The extract of the relevant statement of Shri Pankaj Agrawal dated 06.06.2016, it is perused that there is absolute denial of Shri Pankaj Agrawal about the documents recovered from M/s. Amit Steels and also about the statement given by its proprietor Shri Narendra Agrawal.

6. Further perusal makes it clear that the allegations of the department against the appellant arose only because of the reason that Shri Narendra Agrawal in his statement dated 07.04.2015 had stated that word "Vikki" stands for M/s. Pankaj Ispat Limited. I do

not find any document in any of these appeals which may corroborate the said statement of Shri Narendra Agrawal or such other document which sufficiently proves that "Vikki" stands for M/s. Pankaj Ispat Limited from no stretch of imagination there seems any correlation between the two. The findings under para 6.2 and 6.3 of Commissioner (Appeals) order about the noticed clearance of 491.400 MTs of TMT Bar is based upon the clearances as were found recorded against "Vikki". Since, mere statement of Shri Narendra Agrawal which has not undergone the test of Section 9D of the Central Excise Act, 1994, cannot solely be relied upon to hold that purchases from "Vikki" were the purchases from appellants, M/s. Pankaj Ispat Limited/Shri Pankaj Agrawal. I hold that the findings by the Adjudicating Authority below for confirming the allegations of clandestine removal of finished goods (TMT Bars and MS Ingots) by M/s. Pankaj Ispat Limted are without any basis and cogent evidence. The only evidence is third party evidence. No efforts were put by the investigating team to seek corroboration from the documents of M/s. Pankaj Ispat Limited. The confirmation of demand and of allegations on third party evidence is highly unacceptable. There has been catena of decisions wherein it has been held that third party evidence has no evidentiary value and that the same is not at all admissible in law. The relevant case law is in the case of **Bajranbali Ingots & Steel Pvt. Ltd. & Suresh Agarwal Vs. CCE, Raipur** in Appeal No. E/52062 & 52066/2018 heard on 16.11.2018, wherein it is held as follows:

> *"9. The law i.e. as to whether the third party records can be adopted as an evidence for arriving at the findings of clandestine removal, in the absence of any corroborative evidence, is well established. Reference can be made to Hon'ble Allahabad High*

> *Court decision in the case of* ***Continental Cement Company Vs. Union of India – 2014 (309) ELT 411 (All.) as also Tribunal's decision in the case of Raipur Forging Pvt. Ltd. Vs. CCE, Raipur-I – 2016 (335) ELT 297 (Tri.-Del.), CCE & ST, Raipur Vs. P.D. Industries Pvt. Ltd. – 2016 (340) ELT 249 (Tri.-Del.) and CCE & ST, Ludhiana Vs. Anand Founders & Engineers – 2016 (331) ELT 340 (P&H)****. It stand held in all these judgements that the findings of clandestine removal cannot be upheld based upon the third party documents, unless there is clinching evidence of clandestine manufacture and removal of the goods"*

7. As far as the proof of allegations of clandestine removal is concerned, it has been a settled law that such grave allegations cannot be confirmed merely on the third party evidence. There otherwise should be clinching evidence about nature of purchase of raw materials, use of electricity, sale of final products, clandestine removals, the mode and flow back of funds, demands cannot be confirmed solely on the basis of presumptions and assumptions. Clandestine removal is a serious charge against the manufacturer, which is required to be discharged by the Revenue by production of sufficient and tangible evidence. Hon'ble High Court of Allahabad in the case of **Continental Cement Company Vs. Union of India reported in 2014 (309) ELT 411 (All.)** has held as follows:

> *"On careful examination, it is found that with regard to alleged removals, the department has not investigated the following aspects :*
>
> *(i) To find out the excess production details.*
>
> *(ii) To find out whether the excess raw materials have been purchased.*
>
> *(iii) To find out the dispatch particulars from the regular transporters.*
>
> *(iv) To find out the realization of sale proceeds.*

(v) To find out finished product receipt details from regular dealers/buyers.

(vi) To find out the excess power consumptions."

8. The said decision was followed by this Tribunal also in the case of **Commissioner of Central Excise & Service Tax, Raipur Vs. P.D. Industries Pvt. Ltd. reported as 2016 (340) ELT 249 2016 (340) ELT 249 (Tri. Del.).** It is observed from the records that the investigating team has miserably failed to collect any of the above discussed evidencea as against M/s. Pankaj Ispat Limited. Therefore, I am of the opinion that allegations as grave as that of clandestine removal of finished products have wrongly been confirmed by Commissioner (Appeals). It is also observed that the Adjudicating Authority has failed to appreciate the lacunae of investigation and also the absence of compliance of mandatory statutory provisions.

9. With respect of appellant Shri Narendra Agrawal, this **Tribunal in B.K. Rolling Mills Pvt Ltd.** (supra) which was arising out of the same search as in the present case, has already dropped penalty against him. I do not find any such evidence in his appeal which may differentiate his case as with respect to the present appeal. It is accordingly held that the confirmation of imposition of penalty upon Shri Narendra Agrawal is also wrong due to the lack of cogent evidence about him in facilitating the alleged clandestine removal of the finished goods of manufacturers of TMT Bars and MS Ingots.

10. From the entire above discussion, I conclude that had the investigating team would have put some efforts to seek corroboration of the documents recovered from the premises of M/s Amit Steels, had at the stage of investigation itself search in the premises of various manufacturers, raw material providers, transporters etc. would also been conducted and had the persons who were recorded at the stage of investigation would have been produced before the Adjudicating Authorities as well, there could be the evidence to support the department's investigation at least the appeals of the manufacturers/traders would not have been allowed for the lack of evidence. Departmental authorities are therefore directed to take the cogent steps to formulate certain guidelines for their investigating teams with respect to the compliance of mandatory provisions as that of Section 9D of Central Excise Act and Section 138 B of Customs Act, 1962.

11. As a result of entire above discussion, order under challenge is hereby set aside. Consequent thereto three of the appeals stand allowed.

[Dictated and pronounced in the open Court]

(DR. RACHNA GUPTA)
MEMBER (JUDICIAL)

HK