CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH- COURT NO. II

Excise Appeal No. 50973 of 2018

(Arising out of Order-in-Appeal No. BHO-EXCUS-002-APP-364-17-18 dated 31.10.2017 passed by the Commissioner (Appeals), Central CGST, Excise & Customs, Raipur)

M/s Sourabh Rolling Mills Private Ltd **....Appellant**
(Unit-II), Acholi Road,
Kanhera, URLA
Raipur C.G.

Versus

Commissioner of Central Excise & Service Tax, Raipur **...Respondent**
Central Excise Building,
Dhamtari Road, Tikrapara,
Raipur, Chhatisgarh-492001

AND

Excise Appeal No. 51983 of 2018

(Arising out of Order-in-Original No. BHO-EXCUS-002-APP-480-17-18 dated 16.02.2018 passed by the Commissioner (Appeals), Central CGST, Excise & Customs, Raipur)

M/s Pankaj Agrawal **....Appellant**
Director of Sourabh Rolling Mills Pvt Ltd
(Unit-II), Acholi Road,
Kanhera, URLA
Raipur C.G.

Versus

Commissioner of Central Excise & Service Tax, Raipur I **...Respondent**
Central Excise Building,
Dhamtari Road, Tikrapara,
Raipur, Chhatisgarh-492001

APPEARANCE:

Shri Anurag Mishra, Ms. Priyanka Goel and Shri K. Ganesh Singh, Advocates for the Appellant
Shri O.P. Bisht, Authorized Representative for the Department

CORAM:

HON'BLE MR. ASHOK JINDAL, MEMBER (JUDICIAL)
HON'BLE MR. C.L. MAHAR, MEMBER (TECHNICAL)

Date of Hearing: 29.03. 2023
Date of Decision: 06.04 2023

FINAL ORDER NO. 50428-50429/2023

ASHOK JINDAL

The appellants are in appeal against the impugned order wherein demand of duty has been confirmed against the appellants and also penalties on both the appellants have been imposed.

2. The facts of the case are that the officers of Director General of Central Excise Intelligence (DGCEI), Raipur has investigated the Unit 1 of the appellants. During the course of investigation, it was found that appellants are having the present Unit and in continuation, to that search in January 2014, the Unit was investigated. No raw material or finish goods were found and the unit was found closed during the course of investigation. Shri Pankal Agrawal, Director stated that the Unit has been closed since July 2013 and no production took thereafter. On demand, books of accounts were produced and as per the books, raw material namely sponge iron was found short in quantity of 403.51 metric ton and finish goods M.S. Ingot was found short of 1952.62 metric tons. As no explanation was given by the appellants, therefore after completion of investigation, a show cause notice dated 04.03.2016 was issued to the appellants to demand duty on yield production worked out on raw material and duty of finish goods as per the assessable value. The matter was contested and demand of duty was confirmed alongwith interest and penalties on both the appellants were imposed. Against the said order, appellants are before us.

3. Learned Counsel for the appellants appearing before us submitted that the Unit was searched in January 2014 without any search warrant, therefore the investigation is illegal. He further

submitted that as the Unit was closed since July, 2013 and no production took place as no electricity connection was there, in that circumstances, estimation of production is not sustainable. He, moreover submitted that appellant was not given an opportunity to explain how the shortage of finish goods and raw material took place, it might be a case of theft. He further submitted that the show cause notice issued on 04.03.2016 is barred by limitation. He also submitted that no cross-examination was granted to the appellant to demand duty on shortage of raw material and finish goods. Therefore, the impugned order is to be set aside.

4. On the other hand, learned AR supported the impugned order and submitted that it is a case of clandestine removal of goods and shortage of raw material without any explanation. In that circumstances, the duty is rightly demanded from the appellants.

5. Heard the parties considered submission.

6. On careful consideration of submission, we find that duty has been demanded from the appellant as further following chart:

Conversion table/Duty Liability Computation of M/s. Sourabh Rolling Mills Pvt Ltd., Unit-II, Raipur											
S.No.	**Description of Goods**	**Shortage in M.T.**	**Conversion yield% to M.S. Ingot**	**M.S. Ingot in M.T.**	**Asseeesable Value per M.T., in Rs.**	**Total Assessable Value per M.T., in Rs.**	**BED @ 12% in**	**Ed. Cess, @2 of BED, in Rs.**	**H&S Cess @ 1% of BED in Rs.**	**Total C.Ex. Duty, in Rs.**	**Assessable Value taken from Invoice No./Date**
1	2	3	4	5	6	7	8	9	10	11	12
1	Sponge Iron	403.51	87.03	351.17	27500	9657306	1158877	23178	11589	1193643	0122/06.07.2013
2	M.S. Ingots	1952.62	-	1952.62	27500	53697050	6443646	128873	64436	6636955	0122/06.07.2013
Total M.s. Ingot				**2303.79**		**63354356**	**7602523**	**152050**	**76025**	**7830598**	

7. On going through the said chart, demanding duty from the appellant on sponge iron @ yield of 87.03%, we find that in appellants own case, in the case of Unit 1 vide Final Order No. 51641-51642/2019 in Excise Appeal 51476-51477 of 2019, this Tribunal held that the charge of clandestine removal cannot be based on series of assumption and presumption, where it should be based on evidence like unaccounted purchase of raw material receipt and consumption of raw material etc. etc.

8. Therefore, we hold that the demand on the basis of yield production of raw material of sponge iron 403.51 metric ton found short is not acceptable, but at the same time, as no explanation was given by the appellant for shortage of raw material, we hold that (if any) Cenvat credit taken by the appellant on sponge iron is required to be reversed alongwith interest.

9. With regard to shortage of M.S. Ingot, no explanation was given by the appellant during the course of investigation and defence taken by the learned Counsel for the appellant that no search warrant was issued to the appellant, we hold that the Investigating Agency found during the course of investigation of another unit, some illegal activity like clandestine removal of goods found, in that circumstances, in continuation of search, the search of the Unit can be done. Therefore, the said argument is not acceptable. Further, the learned Counsel has submitted that show cause notice is barred by limitation. We hold that as if investigation could not have been done, the clandestine removal of goods could not be detected and investigation was continuing process and after completion of investigation, the show cause notice

has been issued to the appellant. Therefore, it cannot be held that show cause notice issued to the appellant is barred by limitation. Further, the learned Counsel for the appellant argued that cross-examination of has not been granted. On this point, we also find that it is an evidence based case as at the time of search, the raw material and finish goods were found short which is evident from the records and duty has been demanded on the basis of the said records. In that circumstances, we find that this case is based on the records found during investigation and no statement is relied to demand duty. Thereafter, we hold that the appellant is liable to pay duty on shortage of finish goods.

10. In view of this, we hold that the appellant is required to reverse Cenvat credit on shortage of sponge iron (if any) and liable to pay duty on M.S. Ingots found short.

11. The duty is payable alongwith interest and penalty imposed on the appellant shall be equivalent to duty payable. Penalty on Shri Pankaj Agrawal is reduced to Rs. 5,00,000/-.

12. In these set of facts, we dispose of the appeals.

(Order pronounced in the Open Court on 06.04.2023)

(ASHOK JINDAL)
MEMBER (JUDICIAL)

(C.L. MAHAR)
MEMBER (TECHNICAL)

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