CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No.2, R. K. Puram, New Delhi, Court No. 1

Date of hearing/decision: 30.01.2017

Excise Appeal No. 124 of 2011
(Arising out of order in appeal No. IND/202/2010 dated 06.08.2010 passed by the Commissioner (Appeals-I), Customs & Central Excise, Indore).

M/s Rathi Iron & Steels Industries Limited Appellant

Vs.

CCE, Indore Respondent

Appearance:

Shri A. K. Prasad, Advocate for the appellant
Sh.H. C. Saini, AR for the Respondent

Coram:

Hon'ble Mr. Justice (Dr.) Satish Chandra, President
Hon'ble Mr. Ashok K. Arya, Member (Technical)

Final Order No. 50626/ 2017

Per: **Justice (Dr.) Satish Chandra**:

The present appeal is filed against the order in appeal No. IND/202/2010 dated 06.08.2010 passed by the Commissioner (Appeals-I), Customs & Central Excise, Indore.

2. The brief facts of the case are that the appellant during the period under consideration i.e. 01.04.2006 to 31.01.2009, was engaged in the manufacture of TMT/TOR steel bars. The assessee was selling the goods at the factory gate as well as at the gate of the consignment agent at different parts of the country. It is the submission of the ld. Counsel that the sale price is the same at the factory gate as well as gate of the consignment agent. The goods which was sold at gate of the consignment agent includes the freight charges and commission and the same was borned by the appellant. The department has demanded the duty on the

freight and commission. The submission of the ld. Counsel for the appellant is that the sale price is the same and this is the internal matter to provide freight as well as commission by them.

3. We have heard both the parties and perused the record. Ld. Counsel for the appellant has submitted that the price at the gate of the consignment agent includes the freight charges as well as commission but it has been borne by the appellant themselves. This aspect is proved from the fact that the appellant have not recovered any amount either in the name of freight or commission from the buyers in relation to the sale of goods from the premises of the consignment agents. Further, the department has not been able to prove that the goods were not sold at the normal transaction value. The sale price of goods at the factory gate as well as at the gate of agent is the same.

4. On the above submission, the Commissioner (Appeals) has not given any finding. He has not discussed the above mentioned fact. When it is so, then we set-aside the impugned order and remand the matter to the original authority to verify the abovementioned fact and decide the issue denovo but by providing reasonable opportunity to the appellant. Additional evidence, if need be, may be admitted as per law.

5. In the result, the appeal filed by the appellant-assessee is allowed by way of remand.

(Dictated and pronounced in the open Court).

(Ashok K. Arya) Member (Technical)	(Justice (Dr.) Satish Chandra) President

Pant

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