IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI PRINCIPAL BENCH, COURT NO. IV

Appeal No. E/1060/2008-EX(SM)

[Arising out of Order-in-Appeal No. 30-31/CE/DLH/2008 dated 01.04.2008, by the Commissioner (Appeals), Central Excise, Delhi]

C.C.E. Delhi-II ....**Applicants**

Vs.

M/s. B.R. Industries Ltd. ....**Respondent**

Appearance:

Shri R.K. Mishra, DR for the Applicants
None present for the Respondent

CORAM:
Hon'ble Ms. Archana Wadhwa, Member (Judicial)

Date of Hearing: 02.02.2017

FINAL ORDER NO. 51857/2017-EX(SM)

Per Archana Wadhwa:

Being aggrieved with the order passed by Commissioner (A) Revenue has filed the present appeal.

2. After hearing Shri R. K. Mishra, I find that the respondent is engaged in the manufacture of electrical lamination copper ingots, etc. were falling under the Cenvat Credit facility. Scrutiny of their records revealed that they had availed Cenvat Credit on inputs i.e. Solder wire which was not used in the manufacture of their final product. Accordingly proceedings initiated for denial of Cenvat Credit of Rs.5,38,367/- along with imposition of penalty, attained finality by the impugned order of Commissioner (A). Apart from above, demand of Rs.14,12,237/- was also raised against the

respondent on the findings of the clandestine removal by taking into account the input output ratio. It was alleged by the Revenue that they had imported 408.917 MT of laminated scrap during the year 2000-01 and they have suppressed the production of their final product under the guise of sub standard imported material by claiming more wastage. The Revenue arrived at the hypothetical figure of their final product and issued demand. The demand was initially dropped by Adjudicating Authority on the ground that there is virtually no evidence on record to show that they had manufactured excess quantity of their final product out of the said imported material. As the demand was based upon the assumption, original adjudicating authority vacated the show cause notice to that extent.

3. Being aggrieved with the order, Revenue filed the appeal before Commissioner (A). The appellate authority also rejected Revenue's appeal by observing as under:

> *"Regarding the Revenue's appeal, I find that the statement dated 17.06.2003 of Shri Rajesh Aggarwal, Managing Director wherein he disclosed the input-output ratio by stating that in normal cases, the recovery of finished goods by using aluminum scrap is 70% when used in the manufacture of aluminum ingots, has heavily been relied upon but the declaration of Shri Rajesh Aggarwal, that the ratio applies only to the normal cases, has been ignored by the Revenue. In other words, the statement can only be applied only to the normal cases whereas in the instant case the appellants had submitted that the scrap imported was sub-standard and recover of metal was substantially low. The Revenue also ignored the fact that the allegation of*

clandestine removal has been leveled against the appellants by the department and the onus to substantiate the same by placing some concrete and tangible evidence lies on the department only and not on the appellants. I also find that recovery of aluminum metal from the aluminum scrap is not constant and depends on the quality and nature of scrap. The wastage or process loss cannot be fixed by the department and denied to the appellants without placing on record some evidence contrary to the claim of the appellants. The statement of the appellants cannot be applied in general to all the production arising out of different types of scrap imported and used in the manufacture of final products and the demand of duty merely based on arithmetical calculation and assumptions / presumptions is not sustainable in the light of well settled principle laid down by the Hon'ble Supreme Court in the case of Oudh Sugar Mills vs. UOI 1978 (20) ELT (J172) SC followed by the Hon'ble Tribunal in number of judgments. The adjudicating authority had correctly dropped the demand on the ground that same had been raised on account of assumptions and presumptions without placing on record any evidence in support of the allegation of clandestine removal leveled by the department against the appellants and correctly relied on the aforesaid judgments. I find no infirmity in the order of the adjudicating authority where under he has dropped the demand of Rs.14,12,237/-. I do not find sufficient force and substance in the Revenue's appeal too and reject the same."

4. Hence the present appeal by the Revenue.

5. The Revenue in their memo of appeal have reiterated the same reasoning that there is nothing on record to show that the

imported scrap was sub-standard. Appellant must have manufactured the goods from the said imported scrap.

6. However, I find that apart from that there is virtually no evidence on record to establish the manufacture of final product and clearance of the same without payment of duty. There is no evidence of manufacture, their clearance and identification of the buyers and transporters.

7. I am of the view that both the authorities below have rightly concluded in favour of the Respondent. I find no reason to interfere in the impugned orders of the authorities below. Accordingly Revenue's appeal is rejected.

[Operative part of the order Pronounced in the open Court]

(Archana Wadhwa)
Member (Judicial)

Bhanu