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

Appeal No. E/3690/2010-EX[SM]

[Arising out of Order-in-Appeal No. 237/RPR-I/2010 dated 18.08.2010, passed by the Commissioner of Central Excise, Raipur]

CCE, Raipur ....Appellant

Vs.

Shri Ambica Ispat (I) (P) Ltd. .....Respondent

Appearance:
Sh. R.K. Mishra, AR for the Appellant
Sh. Somesh Arora, DR for the Respondent

CORAM:
Hon'ble Shri V. Padmanabhan, Member (Technical)

Date of Hearing: 25.01.2017

Final Order No. 51903 /2017-Ex[SM]

Per V. Padmanabhan

The present appeal filed by Revenue is directed against the Order-in-Appeal dated 18.08.2010 passed by the Commissioner (Appeals), Raipur. The respondent is a manufacturer of sponge iron. During the course of visit of the officers to the respondent factory on 08.01.2008, the officers checked the stock of finished product i.e. sponge and compared the same with the recorded stock in the statutory records. They concluded that there was a shortage of stock of 332.315 MT in respect of sponge iron. Further, the

Departmental officers also recovered some other documents in the form of loose papers from the possession of Shri Shakeel Ahmed, laboratory in-charge of the respondent factory. These documents contained certain figures indicating the production and clearances of sponge iron. On the basis of these loose papers, the officers concluded that sponge iron of total quantity 347.600 MT was not accounted and cleared without payment of duty. The Show Cause Notice was issued on conclusion of the investigation and the Original Authority vide his order dated 08.02.2010, confirmed the demand of excise duty amounting to Rs 16,80,750/- on a total quantity of (332.315 MT + 347.600 MT)= 679.915 MT alleged to have been cleared clandestinely. He also imposed penalty of an equal amount and ordered for payment of interest and appropriation of an amount of Rs 8,21,483/-, which has already deposited by the respondent.

2. The respondent challenged the Original Order before the Commissioner (Appeals), who set aside the entire demand by passing the impugned order. Aggrieved by the impugned order, Revenue has filed the present appeal.

3. With the above background, I heard Shri R.K. Mishra, ld. AR as well as Shri. Somesh Arora, ld. Advocate appearing for the respondent.

4. Ld. DR submitted that the shortage in the finished product was made out on the basis of estimation of the quantity with the concurrence of the representative of the respondent and hence it cannot be argued later that it was not done correctly. Further, the loose sheets of paper were recovered from parts of the factory itself and hence cannot be ignored. Accordingly, he submitted that the impugned order be set aside and Order-in-Original re-instated.

5. The Ld. Advocate for the respondent submits that the finished product, namely Sponge iron, is stored in huge silos containing 10's of thousands of tonnes of finished product. Estimating such huge stock of finished products by the technique of eye estimation or dip-reading method will not give accurate result and the alleged shortage of 332.315 MT cannot be presumed to be cleared clandestinely. Out of the above, 250 MT, was infact, stored outside the bunkers, which was not taken into account. After subtracting this figure, the resultant shortage is negligible in relation to the quantum of finished product in stock and the same should be ignored.

6. With reference to the loose sheets recovered by the officers from Sh. Ahmed, based on which demand of duty on 332.315 MT has been raised, he submitted that Shri Shakeel Ahmed, was working as laboratory incharge. Even the statement of Shri Shakeel Ahmed was not recorded by the officers. He was also not presented for cross examination. As such he submitted that the demands

based on the above evidences cannot be sustained as has been held by ld. Commissioner (Appeals), in the impugned order.

7. Regarding the alleged shortage 332.315 MT, it has been submitted that the shortage has been ascertained on the basis of eye estimation and no physical verification has been carried out. The respondent has further submitted that the officers have failed to take into account 250 MT sponge iron, which was not stored in bunkers. The Commissioner (Appeals) has held that the above stock of Sponge iron lying in the factory was not correctly arrived at and hence, demand is not sustainable. I am in agreement with the above findings of the Commissioner (Appeals) and I find no reasons to interfere with the same.

8. It has been alleged that there has been an unaccounted production and clearance of 347.60 MT. Revenue has arrived at this figure on the basis of a few loose sheets recovered from the laboratory incharge. This piece of evidence has been seriously assailed by the respondent. I find that demand has been raised only on the basis of these loose sheets. The authencity of these documents has not been established. It has further been argued that Shri Shakeel Ahmed, the lab incharge, is not the owner of these documents. In any case, I find that Revenue has not bothered to carry out any further investigations to support allegation that the stock of 347.600MT of sponge iron has not been accounted and cleared clandestinely in the absence of any

corroborative evidences. The demand raised on this count cannot be sustained, I order accordingly.

9. In view of the above discussions, I find no reason to interfere with the Impugned order and the same is sustained and the appeal filed by Revenue is dismissed.

[Dictated and Pronounced in the open court]

V. Padmanabhan
(Member Technical)

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