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

Date of hearing/decision: 09.03.2017

Sl. No.	Excise Appeal No.	Appellant	Respondent	Arising out of order & date	Passed by
1	55490/13	Goyal Pipes (P) Limited	CCE, Raipur	OIO No. Commissioner /RPR /CEX/1 10/202 dt.30.11.2012	Commissioner, CCE, Raipur
2	55498/13	Bhagwati Power & Steel Limited	-do-	-do-	-do-
3	55499/13	Rajhkumar Kejriwal	-do-	-do-	-do-
4	55523/13	Agrawal Round Rolling Mills	-do-	-do-	-do-
5	55991/13	Mahendra Strips Pvt. Ltd.	-do-	-do-	-do-
6	55992/13	Balajee Structurals (India) Limited	-do-	-do-	-do-
7	55993/13	Bajrang Metallics & Power Limited	-do-	-do-	-do-
8	55994/13	Real Ispat and Power Limited	-do-	-do-	-do-
9	55995/13	Gaurav Krishna Ispat Pvt. Ltd.	-do-	-do-	-do-
10	56032/13	Krishna Iron Strips & Tubes Pvt. Ltd.,	-do-	-do-	-do-
11	56037/13	Hanuman Ispat Pvt. Ltd.	-do-	-do-	-do-
12	56061/13	Goldstar Steel Pvt. Ltd.	-do-	OIO No. Commissioner/ RPR/CEX/110 /202 dt.30.11.2012	-do-
13	56086/13	Ashok Ispat Udyog	-do-	-do-	-do-
14	56173/13	Om Kiran Ispat Udyog	-do-	-do-	-do-
15	56174/13	S.R. Ingots Pvt. Ltd.	-do-	-do-	-do-
16	56231/13	Maruti Ferrous Pvt. Ltd.	-do-	-do-	-do-
17	56232/13	Shri Shyam Ingot & Castings Pvt. Ltd.	-do-	-do-	-do-
18	56233/13	Subhash Ispat Pvt. Ltd.	-do-	-do-	-do-
19	56234/13	Dadu Steel & Power Ltd.	-do-	-do-	-do-
20	56278/13	Saurabh Rolling Mills Pvt. Ltd.	-do-	-do-	-do-
21	56279/13	Steel Abrasive Ind.	-do-	-do-	-do-

		Ltd.			
22	56280/13	Prayash Steel	-do-	-do-	-do-
23	56281/13	Raghuveer Concast Pvt. Ltd.	-do-	-do-	-do-
24	56282/13	Jorawar Engg. And Foundry Forge Pvt. Ltd.	-do-	-do-	-do-
25	56298/13	Super Iron & Steel Ltd.,	-do-	O-I-O No. Commissioner/ RPR/CEX/110 /202 dt.30.11.2012	-do-
26	56299/13	Shri Bajrangbali Ingot & Steel Pvt. Ltd.	-do-	-do-	-do-
27	56300/13	Agrawal Structure Mills Pvt. Ltd.	-do-	-do-	-do-
28	56339/13	Hi-Tech Abrasive Limited	-do-	-do-	-do-
29	56373/13	Ganpati Ispat	-do-	O-I-O No. Commissioner/ RPR/CEX/110 /202 dt.30.11.2012	-do-
30	56435/13	N.S. Ispat (India) Pvt. Ltd.,	-do-	-do-	-do-
31	56502/13	Kailash Traders	-do-	-do-	-do-
32	56891/13	Aksh Ispat Pvt. Ltd.	-do-	-do-	-do-
33	56235/13	Jai Ambey Metal Works Pvt. Ltd.	-do-	O-I-O No. Commissioner/ RPR/99/2012 dt. 30.11.2012	-do-
34	56433/13	Ghankun Steels Pvt. Ltd.	-do-	O-I-O No. Commissioner /RPR/99/2012 dt. 5.12.2012	-do-
35	56501/13	Kailash Traders	-do-	-do-	-do-
36	56253/13	Shree Nakoda Ispat Ltd.	-do-	-do-	-do-
37	56254/13	Anant Dave, Director	-do-	-do-	-do-
38	56255/13	Sanjay Goel, Director	-do-	-do-	-do-
39	56500/13	Kailash Traders	-do-	OIO No. Commissioner/ RPR/CEX/110 /202 dt.30.11.2012	-do-
40	56303/13	Monu Steels	-do-	OIO No. Commissioner/ RPR/137-139/CEX/2012	-do-

				dated 31.12.2012	
41	56755/13	Shub Labh Ispat Limited	-do-	-do-	-do-
42	56756/13	Nawal Kumar Daga,	-do-	-do-	-do-
43	56757/13	Sajjan Kumar Belia	-do-	-do-	-do-
44	56903/13	Kailash Traders	-do-	-do-	-do-
45	56415/13	Drolia Electrosteels Pvt. Ltd.,	-do-	OIO No. Commissioner/ RPR/CEX/110 /202 dt.30.11.2012	-do-
46	56416/13	Anand Choudhary	-do-	-do-	-do-
47	56577/13	Kailash Agarwal, Prop.	-do-	OIO No. Commissioner/ RPR/CEX/130 /2012 dt 31.12.2012	-do-
48	56759/13	Sunil Sponge Pvt. Ltd.	-do-	-do-	-do-
49	56760/13	Anil Nachrani	-do-	-do-	-do-
50	57409/13	Euro Pratik Ispat Pvt. Ltd.	-do-	OIO No. Commissioner/ RPR/CEX/20/ CE/2013 dt 31.01.2012	-do-
51	57410/13	Rahul Singhvi –Ex. Director	-do-	OIO No. Commissioner/ RPR/20/CE/20 13 dt 31.01.2013	-do-
52	51037/14	Kailash Traders	-do-	OIA No. 362/RPR-I/2013 dt. 13.11.13	-do-
53	51038/14	Shilpy Steels Pvt. Ltd.	-do-	OIA No. 348-349/RPR-I/13 dt.12.11.2013	-do-
54	51039/14	Nitin Agarwal	-do-	-do-	-do-
55	51633/14	Kailash Traders	-do-	OIA No. 366/RPR-I/2013 dt.13.11.13	-do-
56	60242/13	Nitin Golechha	-do-	OIA No. 47 /RPR-II/2013 dt. 29.08.13	-do-
57	60241/13	Rajesh Jain	-do-	OIA No. 46/RPR-I/2013 dt. 29.08.13	-do-
58	60240/13	Topworth Steels & Power Pvt. Ltd.	-do-	OIA No. 45/ RPR-II/2013 dt. 29.08.13	-do-

59	51287/14	CCE, Raipur	Baldev Alloys (P) Ltd.,	OIA No. 402-403 /RPR-I/2013 dt.06.12.13	-do-
60	54268/14	-do-	Shilpy Steel Ltd.	OIA No. 348-349/RPR-I/13 dt. 12.11.13	-do-
61	54718/14	-do-	Hi-Tech Power & Steel Ltd.	OIA No. 121-125/RPR-I/2014 dt. 04.6.14	-do-

Appearance:

Sh.Somesh Arora, Sh. Manish Saharan, Sh. Bipin Garg, Sh. Kumar Vikram, Ms. Rinky Arora, Sh. Abhash Mishra, Sh. A. K. Prasad & Ms. Shreya Dahiya, Advocates for the assessee.

Ms. Kany Verma, Jt. CDR, Sh. G. R. Singh and Sh. H. C. Saini, ARs for the Revenue

Coram:

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

Final Order Nos. 52349 - 52409

Per: **As per Bench**:

The genesis of the present cases arises from the seizure of a diary from Sh Kailash Agarwal (Prop. of M/s Kailash Traders) and M/s Monu Steels (S. K. Bhansali) respectively in the month of December, 2006. In the diary systematic entries were maintained pertaining to the commission received from the sale of sponge iron and ingots. On the basis of the entries, the visits were made in the factories of M/s Bhagwati Power; and Steel Limited, M/s Sunil Sponge Pvt. Limited; and M/s Monu Steels. The documents were examined and evidences were collected from the transporter too. Finally, the department opined that there was clandestine removal of the ingots and sponge iron, so the demand was raised against the said companies. Penalties were imposed on the buyers as well as on the transporters. The lower authorities has dropped the demand in some cases. Being aggrieved, the department has filed the appeals. On the other hand, where the demand was sustained and penalties were imposed, the aggrieved parties are before the Tribunal.

2. With this background, we heard S/Shri Somesh Arora, Manish Saharan, Kumar Vikram, Abhash Mishra, A. K. Prasad, Bipin Garg, Ms. Rinky Arora and Ms. Shreya Dahiya, ld. Advocates for the assessee –appellant and Sh. G. R. Singh, H. C. Saini and Ms. Kanu Verma, ld. ARs for the Revenue.

3. After hearing both sides at length and on perusal of record, it may be mentioned that the Hon’ble Supreme Court in the case of ***Commissioner vs. Woodmen Industries – 2004 (170) ELT A307 (SC)*** observed that in such type of cases, no penalty can be imposed on a corporate entity. The penalty can be imposed only on a person and not on a firm. Similar views were expressed by the Tribunal in the case of ***Steel Tubes of India Limited vs. CCE, Indore – 2007 (217) ELT 506 (Tri. LB)***.

4. In view of above, the legal proposition is that the penalties in case where it was levied on a firm or legal entity is not desirable. However, the penalty levied on individual or proprietorship firm can be sustained.

5. Regarding the duty demand, it appears that the group matters of the appellant has come up before the Tribunal in the case of ***Sunil Spong Pvt. Limited & Ors. vs. CCE, Raipur*** (Final Order Nos. 53974-53977/2016) (also today at Sl. No. 67 of the cause list) and the Tribunal has remanded the matter to the original authority for **denovo** adjudication by observing that the impugned

order suffers from various inconsistencies with reference to appraisal of facts and also due to violation of principles of natural justice.

6. In the instant case, the ld. Counsel for the assessee have also argued that no physical verification, no cross-examination, no verification from the buyers, no investigation regarding raw material and electricity consumed were made by the department. Ld. Counsels also relied upon the ratio laid-down in the case of ***Continental Cement Company vs. Union of India – 2014 (309) ELT 411 (All.***) where certain guidelines were provided in the cases of clandestine removal. In other words, the corroborative evidence is required as per the ratio laid-down by the Allahabad High Court (supra). Further, there are various missing events and no *res gestai* (as per Section 6 of the Indian Evidence Act) is made out. When it is so, then we deem fit to remand the matters to the original authority to decide the issue **afresh** but by providing an opportunity of hearing to the assessees. Additional evidence, if necessary, may be admitted as per law.

7. However, it is made clear again that as per Rule 26 of the Central Excise Rules, 2002, the penalties can be imposed only on individual or the proprietorship concern as per the ratio laid-down by the Hon'ble Supreme Court (supra).

8. In the result, all the appeals are allowed by way of remand.

(Dictated and pronounced in the open Court).

(Ashok K. Arya)
Member (Technical)

(Justice (Dr.) Satish Chandra)
President

Pant