IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.

Date of Hearing: 7.3.2017
Date of Pronouncement:21.4.2017

Appeal No. E/55996. 56150, 56431-56432/2013-DB

(Arising out of Order-in-Original No. Comissioner/RPR/96/2012 dated 30.11.2012 passed by the Commissioner of Central Excise, Raipur)

M/s Shri Hanuman Loha Pvt. Ltd. Appellant
M/s Shri Ram Rolling Mill
M/s Ghankun Steels Pvt. Ltd.
Shri Narayan Gupta

Vs.

CCE, Raipur Respondent

Appearance

Ms. Reena Khair, Advocate - for the appellant
Shri Manish Saharan, Advocate
Shri Kumar Vikram, Advocate

Shri G.R. Singh, D.R. - for the respondent

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

Final Order No. 52963-52966/2017

Per Ashok K. Arya :

M/s Ghankun Steels Pvt. Ltd. and three others are in appeal against Order-in-Original No. 96/2012 dated 5.12.2012 passed by Commissioner, Central Excise & Customs, Raipur whereunder inter alia Central Excise duties of Rs.5,44,15,015/-, along with interest and equivalent penalty has been confirmed against the appellant assessee, M/s Ghankun Steel Pvt. Ltd.; a penalty of Rs. One crore has been imposed on the appellant Shri Narayan Gupta. Further, a penalty of Rs. one lakh each inter alia has been imposed on other two appellants namely Shri Ram Rolling Mill, M/s Shri Hanuman Loha Pvt. Ltd. Penalty of Rs. one lakh each also imposed on M/s Sunvijay Rolling & Engineering Ltd. and M/s Purwanchal Road Carriers but they are not the appellants in the present proceedings.

2.(i) The brief facts are that the appellant M/s Ghankun Steels Pvt. Ltd. is engaged in the manufacture of sponge iron and MS ingots falling under Chapter 72 of Central Excise Tariff.

(ii) On 5.3.2009, a search was conducted in the factory premises of the appellant and certain incriminating records/documents referred to as loading slips/weighment slips etc. were resumed.

(iii) After investigation, the department issued a show cause notice raising a total demand of Rs.5,44,15,015/- on the appellant . The break up is as follows:

(a) On the basis of the loose sheets, a demand of Rs.9,04,277/- was raised on alleged clearance of 346.100 MT of sponge iron without payment of duty during the period February, 2008 to March, 2009.

(b) A demand of duty of Central Excise of Rs.5,35,10,738/- was raised alleging clandestine removal of 18501 MT of MS ingots valued at Rs.42,88,33,272/- for the period 2007-08, 2008-09, 209-10, 2010-

11 and 2011-12, alleging that the consumption of power was in excess of the norm of 830 units -Kwh/PMT.

(iv) As mentioned earlier, the Revenue vide impugned order in original confirmed total duty demand of Rs.5,44,14,015/- along with interest and equivalent penalty; and individual penalties were also imposed. Hence, these appeals have been filed by the appellant before the Tribunal

3. With above background, we have heard on behalf of M/s Ghankun Steel Pvt. Ltd. and Shri Narayan Gupta, ld. Advocate, Ms. Reena Khair; on behalf of Shri Ram Rolling Mills, heard ld. Advocate, Shri Kumar Vikram; and on behalf of M/s Shri Hanuman Loha Pvt. Ltd., heard Shri Manish Saharan, ld. Advocate. Revenue has also been heard as represented by ld. AR, Shri G.R. Singh.

4. The main contentions on behalf of the appellants M/s Ghankun Steels Pvt. Ltd. and its Director, Shri Narayan Gupta are that in case of demand of Rs.5,35,10,738/-, it is based exclusively on the premise that the power consumption in the factory has been varying throughout the period, and in the months, where it exceeds 830 KWH (units) PMT, excess goods have been manufactured and removed clandestinely; the figure of 830 units (KW) PMT has been arbitrarily arrived at and no basis, whatsoever, has been provided,

for the same in the show cause notice; no expert testimony or any report has been relied upon by the department to support the figure of 830 units PMT; the basis, on which the Commissioner has determined the alleged duty demand is not known hence the entire demand is hypothetical.

4.1 Further, the ld. Advocate for the assessee appellant and Shri N. Gupta, Director inter alia at the strength of written submission stated that:

(a) No evidence of procurement of additional raw materials required for the production of the alleged quantity has been adduced.

(b) The power consumption, varies also on account of the voltage fluctuations. The consumption is higher, when the voltage is lower.

(c) The per unit consumption is affected also on account of other factors, such as quality of raw materials, power cuts, etc.

(d) The appellants had undertaken substantial expansion of production facilities by fabricating KILN, Stock House, Production House, Hopper, Conveyor etc.; the higher electricity consumption during the period 2007-08, is due to this expansion work.

(e) Power has been consumed in the factory for other activities including job work, manufacture of by -products, etc.

4.2 In the case of the other demand of Rs.9,04,277/- , ld. Advocate for the assessee-appellant has mainly submitted as follows:

(a) Weighment slips do not have the name of any item. They relate to *Muram.* Transport *bilties* of Jain Transport are found recorded in books of account. There are some records found for finished goods and consumption of raw material.

(b) Annexure C-2 prepared by the department for clandestine removal of 346.100 MT sponge iron has a number of discrepancies.

5. In the case of the appellant Shri Hanuman Loha Pvt. Ltd., the ld. Advocate Shri Manish Saharan has inter alia mentioned that their name has not appeared in the proceedings in the documents mentioned in the show cause notice and they cannot be related to the case proceedings.

5.1 In the case of the appellant Shri Ram Rolling Mills, ld. Advocate Shri Kumar Vikram, inter alia mentions that they are only the exporter of the assessee M/s Ghankun Steels; charges against them cannot be proved based on third party record. There are no incriminating documents against them and considering the CESTAT decision in the case of *Steel Tubes India Ltd. Vs. CCE* - 2007 (217) ELT 506 (Tri.-LB), penalty cannot be imposed on them.

6. The ld. AR, Shri G.R. Singh has reiterated the findings given in the impugned order.

7. After careful consideration of the facts of the case and submissions of both sides, it appears that the case of evasion of Central Excise duty of Rs.9,04,277/- is mainly based on the incriminating documents and evidences available in the form of loose slips and to support the same, there are confessional statements of the transporter viz. Purwanchal Road Carriers, Chief Executive officer - Shri Tushar Satish Goyal., Rajesh Shah - authorised signatory of assessee, M/s Ghankun Steels Pvt. Ltd. They have admitted the authenticity of the concerned incriminating documents and private records, based on which this demand has been confirmed. The impugned order inter alia observes that the evidence collected during the course of investigation reveal that the record of Noticee No. 2, M/s Purwanchal Road Carriers and resumed by the officers under Panchnama dated 2.11.2007 contain details of removals of sponge iron and MS ingots effected by the assessee. M/s Ghankun Steels Pvt. Ltd., through the said Noticee No. 2, M/s Purwanchal Road Carriers, who was engaged for the purpose of transportation of impugned goods during the relevant period. The

record maintained by the Noticee No. 2, M/s Purwanchal Road Carriers and resumed by the investigating officers contain the details viz. date of removal, name of the consignor (place of loading), description of goods, name of the consignee (place of unloading), rate (value per MT), total amount received from the consignee of the goods, amount paid in cheques as well as in cash against despatches of sponge iron and MS ingot by the assessee, M/s Ghankun Steels Pvt. Ltd. The details of transportation of sponge iron and MS ingot undertaken and recorded by the Noticee No. 2, M/s Purwanchal Road Carriers in their records, when reconciled with the sales details the assessee, it was revealed that sales invoices in respect of 346.100 MT of sponge iron and 268.320 MT of MS ingot had not been issued by the assessee. The details of the transportation of such goods were recorded in the books of Noticee No. 2, M/s Purwanchal Road Carriers, i.e. of the goods which had been removed by the assessee from their factory without payment of duty and without the cover of a Central Excise invoice. The assessee does not dispute the recovery of the documents from the premises of the Noticee No. 2, M/s Purwanchal Road Carriers. When it is so,, there is no scope to interfere with the demand of Rs.9,04,277/-, which is hereby sustained along with interest and equivalent penalty imposed by the impugned order against the appellant assessee M/s Ghankun Steels Pvt. Ltd.

8. In the case of the demand of Rs.5,35,10,738/- which has been confirmed along with interest and imposition of equivalent penalty, it appears that the main basis of the confirmation of this demand is consumption of electricity by the assessee viz. M/s Ghankun Steel Pvt. Ltd. for the period 2007-2008 to 2011-2012, where consumption of power has been found to be in excess of the normal 830 Units - kilo wat hour/PMT. The assessee appellant has given various submissions in this regard which are on record. However, it appears that the said submissions have not been thoroughly examined by the adjudicating authority before sustaining the demand. The documents which were submitted before the lower authority, not examined as alleged by the ld. Counsel for the appellants. Hence, the matter is remanded to original adjudicating authority, who shall examine all the evidence on record and give fresh opportunity of personal hearing to the appellants before arriving at the decision.

9. The other three appellants namely Shri Narayan Gupta, M/s Shree Ram Rolling Mill and M/s Shri Hanuman Loha Pvt. Ltd. are also in appeal against the penalties imposed. As the main demand of Rs.5,35,10,728/- is being remanded, the penalty against them are hereby set aside and their matters are remanded back to the original adjudicating authority for fresh examination and decision

accordingly for which they shall be given fresh opportunity of personal hearing by the adjudicating authority.

10. In the result, the impugned order is modified and appeals are allowed partly in above terms.

(Pronounced in Court on 21.4.2017)

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

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