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

COURT NO. IV

DATE OF HEARING : 09/05/2017.
DATE OF DECISION : 09/05/2017.

Excise Appeal No. 50443 of 2017 (SM)

[Arising out of the Order-in-Appeal No. BHO-EXCUS-002-APP-303-2016-17 dated 21/12/2016 passed by The Commissioner (Appeals), Customs, Central Excise & Service Tax, Raipur.]

M/s Moonlight Alloys Pvt. Ltd. Appellant

Versus

CCE & ST, Raipur Respondent

Appearance

Shri J.M. Sharma, Consultant – for the appellant.

Ms. Kanu Verma Kumar, Authorized Representative (DR) – for the Respondent.

CORAM : **Hon'ble Shri B. Ravichandran, Member (Technical)**

Final Order No. 53198/2017 Dated : 09/05/2017

Per. B. Ravichandran :-

The appeal is against order dated 21/12/2016 of Commissioner (Appeals), Raipur. The appellants are engaged in manufacture of ferro alloys liable to Central Excise duty. They were registered with the Department and were discharging duty on clearance of goods. In August 2011, the Central Excise officers conducted certain verification with the appellant and followed up with further investigation regarding short payment of Central Excise duty due to un-accountal clearance of finished goods. On completion of investigation, proceedings were initiated against the appellant by issue of show cause notice dated 31/10/2013. The case was adjudicated by the Original Authority, who confirmed a Central Excise duty demand of Rs. 16,24,649/- and imposed penalty of equivalent amount in terms of Section 11AC of Central Excise Act, 1944. The Original Authority held that the appellants have not maintained proper records and have manufactured and cleared excisable goods without due accounting resulting in short payment of Central Excise duty. The case was based on certain private records recovered by the officers which was also cross verified with statements of authorized persons. Based on both the private records and the statutory records and further re-conciliation, the demand proceedings against the appellant were initiated. On appeal against the original order, the Commissioner (Appeals) confirmed the findings of the lower authority.

2. The learned Counsel for the appellant submitted that during the period in dispute, admittedly, the accounts were not properly maintained by the appellant due to inexperience of their staff. They have submitted a re-conciliation of various records to find out actual duty liability in terms of manufacture and clearances, made by them. For the period 28/11/2009 to 26/02/2010 the appellants are not contesting the demand confirmed against them. The duty demand as calculated as per the Annexure III

and IV of the show cause notice is also not being contested. However, the learned Counsel submitted that for the period 03/03/2010 to 04/04/2011 the lower authorities did not consider the submissions made by them for overall re-conciliation of already recorded clearances with clearances ascertained based on private records by the officers. It is pleaded that the Revenue calculated the duty demand only on the basis of shortage, wherever noticed, on accounted clearance vis-à-vis private records. However, there were instances where the duty paid clearance of some of the products was higher than the quantity arrived at based on private records. In such situation, due re-conciliation and adjustment has not been considered by the lower Authorities. He submitted the reason recorded by the Original Authority is not tenable as he refused to accept the claim of the appellant, without due examination. The impugned order did not give any finding on the claims of the appellant. The learned Counsel submitted that they had made a detailed calculation alongwith reasons, to reconcile the accounts for the period in dispute. Taking into account of the records (statutory as well as private) duty liability can be correctly arrived at for due discharge wherever not paid earlier.

3. The learned AR supported the findings recorded by the lower authorities. He submitted that the investigation carried out by the Revenue has clearly established that the appellants did not maintain the record for all clearances of excisable goods.

4. I have heard both the sides and perused the appeal records. The records are not properly maintained is not contested. The Central Excise duty liability due to non-accountal for certain periods is also not contested. However, for the period 03/03/2010 to 04/04/2011 the appellants are pleading that when the Department is considering quantification of unaccounted clearance, they should also necessarily consider the clearances as recorded, in the statutory records. There are instances where the recorded duty paid clearance is much higher than calculated production as made by the officers, based on investigation. In such situation, it is clear that the lower authorities should have recorded the finding as to the claim of the appellant regarding overall re-conciliation of quantum of excisable product, giving adjustment, recorded clearances vis-à-vis calculated clearances, so that the overall unaccounted clearance can be brought out properly. I note that the Original Authority's finding that the duty payment as calculated by the appellant based on ER-1 returns is not relevant to decide the case, appears to be not correct. Further, he did not consider the claim of the appellant for overall re-conciliation and adjustment on the ground that they have approached with such claim after two years of verification. I find these reasons recorded are not legally sustainable.

5. The fact remains that the short payment of Central Excise duty was calculated based on the private records maintained by the appellant and after comparing the same with statutory records. The demand is raised, wherever the private records

show higher quantity. However, it is necessary to note that in many cases the private records shown lesser clearance than compared to statutory record. This aspect certainly requires examination. If the basis of short levy is comparison of private records with statutory records, the impugned order did not give any detailed finding on this aspect at all.

6. In view of the above discussed position, I find it fit and proper to set aside the impugned order and remand the case to the Original Authority for a limited extent of examination of the claim of the appellant for adjustment of production, clearance data by reconciling all the evidences including statutory records available in the case. In case the duty demand could not be varied based on such re-conciliation the detailed reason for the same has to be recorded. With these observations, the appeal is allowed and the case is remanded back to Original Authority for a fresh decision. The appellant shall be given an opportunity to present their side of the case.

(Dictated and pronounced in open court)

(B. Ravichandran)
Member (Technical)

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