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

Date of Hearing/Decision: 5.6.2017

Appeal No. E/55376/2014-SM

(Arising out of Order-in-Appeal No.53/RPR-II/2014 dated 19.5.2014 passed by the Commissioner (Appeals), Customs, Excise & Service Tax, Raipur)

M/s Bhilai Auxiliary Industries — Appellant

Vs.

CCE, Raipur — Respondent

Appearance

Shri Abhishek Jaju, Advocate - for the appellant

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

CORAM: **Hon'ble Mr. Ashok K. Arya, Member (Technical)**

Final Order No. 53708/2017

Per Ashok K. Arya :

M/s Bhilai Auxiliary Industries is in appeal against Order-in-Appeal No. 53/2014 dated 19.5.2014 whereunder duty of Rs.1,66,551/- along with equivalent penalty has been confirmed.

2. The brief facts are that:

(i) The appellant is a manufacturer of steel pipes and tubes falling under Central Excise Tariff Heading No. 73061029.

(ii) On 24.12.2011, during verification of stocks of finished goods and raw material (inputs) lying in the factory premises of the appellant, shortage of finished goods on 36.750 MTs of steel pipes and tubes was discovered.

(iii) For this shortage, the appellant on 24.12.2011 remitted duty of Rs. 1,66,551/- through Cenvat credit account.

(iv) The Department issued show cause notice, which was adjudicated vide Order-in-Original No. 02/2014 dated 9.1.2014 confirming the duty of Rs.1,66,551/- along with imposition of equivalent penalty.

(v) The appellant went in appeal before Commissioner (Appeals), who sustained the duty and penalty.

(vi) Against said order in appeal, the appellant is now in appeal before the Tribunal.

3. Both sides represented by ld. Counsels, Shri Abhishek Jaju and Shri G.R. Singh, have been heard.

4. The ld. Advocate for the appellant pleads that admission of the chief executive officer itself cannot have evidentiary value and the charge cannot be sustained merely on that basis. He cited in support the Hon'ble Allahabad High Court decision in the case of *Continental Cement Company Vs Union of India* - 2014 (309) ELT 411 (All.).

5. After having carefully considered the facts of the case and submissions of both the sides, it appears that the appellant has not been able to prove that there was no shortage of finished goods and they did not clear the said goods clandestinely without payment of duty. Once the Chief Executive officer of the appellant assessee viz. Shri D.G.K. Nair admitted the shortage and appellant assessee paid the duty for the goods found short voluntarily, the plea of the appellant now that there was no shortage does not have sound footing. The Hon'ble Supreme Court in the case of *CCE Vs. Systems & Components Pvt. Ltd.* - 2004 (165) ELT 136 (SC) observed that it is basic and settled law that what is admitted need not be proved. The Hon'ble Allahabad High Court in the case of *Bajrang Petro Chemicals (P) Ltd. Vs. CCE* - 2015 (317) ELT 243 has observed as under :

> "**10.** We heard both the parties at length and gone through the materials available on record. From the record, it appears that there was a huge shortage of finished goods for which no explanation was offered by the appellant at the time of stock checking. It means that the appellant had admitted the shortage and paid the duty accordingly. Thus, the appellant was unable to give any suitable explanation for the shortage of the finished goods. **This is an admission by the appellant that the goods found short had been removed without payment of the duty. The method for clandestinely removal of the goods is not required to be explained. Since, it is a case of the shortage of the finished goods for which the appellant has no explanation, so the provision of Section 11AC for levy of the penalty and [Rule] 26 for levy of the penalty on the authorized signatory would be attracted."**

(Emphasis supplied)

5.1 The Hon'ble Madras High Court in the case of *Goyal Ispat Ltd. Vs. CESTAT, Chennai* - 2015 (324) ELT 392 (Mad.) has observed as under:

> **"9.** In the absence of any such material, there is no possibility for this Court to consider this issue at all. The next question is whether stock taking conducted on eye estimation is fatal to the case of the Department. We find that the order of the Tribunal is not on the basis of visual inspection, but based on mahazar records recording the shortage of goods, which has been done in the presence of the independent witnesses and such shortage was supported by the unretracted statement of Mr. Balaji, Manager of the assessee company. In this view of the matter, the non-recording of the correct quantity of goods in the statutory record, viz., RG.1 register maintained by the assessee establishes the case for demand of duty, more so in a case of statement accepting Central Excise violation."

5.2 For the present facts the case law cited by the appellant is not applicable. Following the Hon'ble Supreme Court and High Court decisions cited in para 5 above, the impugned order is sustained and appeal dismissed as without merits.

(Dictated & pronounced in open Court)

(Ashok K. Arya)
Member (Technical)

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