IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

WEST BLOCK NO.2, R.K. PURAM, NEW DELHI-110066

BENCH-SM

COURT –III

Excise Appeal No.E/396/2009- SM]

[Arising out of Order-in-Appeal No.14/BPL/2009 dated 22nd January, 2009 passed by the Commissioner (Appeals), Customs, Central Excise & Service Tax, Bhopal]

M/s.Vidhya Cylinders P. Ltd. …Appellant

Vs.

C.C.E., Bhopal … Respondent

Present for the Appellant : Mr. Rajesh Chhibber, Advocate

Present for the Respondent: Mr.G.R. Singh, D.R.

Coram: HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)

Date of Hearing/Decision: 30/06/2017

FINAL ORDER NO. 54975/2017

PER: S.K. MOHANTY

This appeal is directed against the impugned order dated 22.01.2009 passed by the Commissioner (Appeals), Customs, Central Excise and Service Tax, Bhopal.

2. Brief fact of the case are that the appellant is engaged in the manufacture of LPG cylinders, falling under Chapter Heading No.7311.00 of the First Schedule to the Central Excise Tariff Act, 1985. During the course of manufacture of cylinders, in the process, steel scrap and zinc dust generated, which are classifiable under Chapter heading No.7204.90 and 2620.00 respectively of the Tariff Act and attracts payment of

Central Excise Duty on their removal from the factory. On 06.01.2005, the Income Tax Department conducted search at the factory and residential premises of the Directors of Mittal Group. During the course of search operation at the residential premises of Shri Ashish Mittal, a private ledger showing details of transactions relating to sale of scrap generated during the production of cylinders was recovered, which was seized by the Income Tax Authorities. Based on the investigation conducted by the Income Tax Department, the Central Excise Department proceeded against the appellant and upon further investigation, observed that the appellant had removed steel scrap from its factory without payment of Central Excise Duty and without issuing the excisable invoices. The show cause notice issued in this regard, culminated in the adjudication order dated 18.08.2008, wherein Central Excise Duty demand of Rs.19,22,640/- alongwith interest was confirmed against the appellant. Further, an amount of Rs.3,571/- was also confirmed on account of sale of the scrap items. Besides, penalty of Rs.19,22,640/- was imposed on the appellant under Section 11AC of the Central Excise Act, 1944. On appeal, the ld. Commissioner (Appeals) vide the impugned order has upheld the adjudicated demand.

3. The ld. Advocate appearing for the appellant submits that Shri Ashish Mittal, from whose premises, the private ledger was recovered was no way connected to the appellant company and thus, the contents in the said diary cannot be relied upon to confirm the duty demand against the appellant.

He further submits that out of 199 entries reflected in the seized ledger, only 11 entries relates to the appellant and in respect of those entries, the scrap items were removed from the factory on payment of appropriate Central Excise duty. He also submits that the Department proceeded against the appellant on the basis of the private ledger seized from Shri Ashish Mittal, whereas while adjudicating the show cause notice, the original authority has dropped the proposal for imposition of penalty on him on the ground that there was no cogent and tangible evidence of his indulgence in the clandestine removal of the goods. Thus, he submits that in absence of any plausible evidence against the appellant and in view of the fact that the proposed penalty against Shri Ashish Mittal was dropped in the adjudication order; proceedings cannot be initiated against the appellant for confirmation of the adjudged demand.

4. On the other hand, the ld. D.R. appearing for the Revenue reiterates the findings recorded in the impugned order.

5. Heard both sides and examined the case records.

6. I find that the submissions of the appellant that Shri Ashish Mittal was not the Director of the appellant company and that the consignments in respect of 11 entries made in the ledger were removed on payment of Central Excise duty, have not been specifically addressed by the authorities below. Rather, the Commissioner (Appeals) has simply relied on the findings recorded in the adjudication order to hold that goods

in respect of the entries made in the ledger were removed clandestinely from the factory. Since, the onus lies with the Department to prove clandestine removal of the goods has not been substantiated with any iota of evidence, I am of the view that the duty demand confirmed and penalty imposed on the appellant cannot be sustained and the same are liable to be set aside.

7. In view of the above, I do not find any merits in the impugned order. Accordingly, after setting aside the same, I allow the appeal in favour of the appellant.

[Dictated and pronounced in the Open Court]

(S.K. MOHANTY)
MEMBER (JUDICIAL)

Anita