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

Date of Hearing/Decision: 29.8.2017

Appeal No. E/1212-1213/2010-SM

(Arising out of Order-in-Appeal No. 60-61/CE/D-II/2010 dated 22.2.2010 passed by the Commissioner of Central Excise (Appeals), New Delhi)

M/s V.P. Realtors Pvt. Ltd. Appellant
Shri Rakesh Bansal, Director

Vs.

CCE, Delhi-II Respondent

Appearance

Shri V.K. Gupta, Advocate - for the appellant

Shri Ubhav Sengraj, A.R. - for the respondent

CORAM: **Hon'ble Mr. Ashok Jindal, Member (Judicial)**

Final Order No. 56378-56379/2017

Per Ashok Jindal :

The appellants are in appeal against the impugned order wherein duty has been demanded on copper rods and imposing penalty on the appellants.

2. The brief facts of the case are that the appellant is a manufacturer of copper rods and the main raw material of the appellant is copper ingots/copper scrap. During the course of investigation on 3.9.2008 the raw material copper ingot was found short. Therefore, the case has been made out against the appellant that they have cleared this copper ingots. The matter was

adjudicated demand of duty on copper ingots was confirmed and penalty on both the appellants were imposed. Aggrieved for the said part of said order, the appellant is before me.

3. The ld. Counsel for the appellant submits that as the appellant is not manufacturer of copper ingots, therefore, they are not liable to pay duty in terms of Section 11A of the Central Excise Act, 1944, because the appellant is required to pay duty on the goods manufactured by them. It is his further contention that the appellant has not availed any Cenvat credit on these copper ingots. Therefore, the impugned order is to be set aside for this demand.

4. On the other hand, ld. AR supported the impugned order.

5. Heard both sides considered the submissions.

6. By way of this appeal of the appellant is disputing the demand of duty on copper ingots which is a raw material of the appellant. As duty is to be demanded on the goods manufactured by the assessee and admittedly, it is fact on record that the appellant is not manufacturer of copper ingots therefore, no duty can be demanded on copper ingots. Further, I observe that as per Rule 3(5) of Cenvat Credit Rules, 2004, if raw material has been cleared clandestinely then the assessee is required to reverse Cenvat credit availed on

those inputs. It is further contention of the appellant in this case that they had not availed any Cenvat credit on copper ingots. This fact has not been disputed by the Revenue.

7. In that circumstances, I hold the duty cannot be demanded on copper ingots. Therefore, the impugned order qua demanding duty on copper ingot and imposing penalty on that account against both the appellants is set aside. Consequently, the appeals are allowed.

(Dictated & pronounced in open Court)

(Ashok Jindal)
Member (Judicial)

RM