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

Date of Hearing/Decision: 27.09.2017

Appeal No. E/50233/2017, E/50234/2017-SM

(Arising out of Order-in-Appeal No. BHO-EXCUS-002-APP-199/200-16-17, dated 28.10.2016 passed by the Commissioner (Appeals) Customs & Central Excise, Raipur. (C.G.))

Brij Naryan Singh,
Jagsidh Ispat Pvt. Ltd — Appellant

Vs.

CCE Raipur — Respondent

Appearance

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

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

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

Final Order No.56915-56916/2017

Per Ashok Jindal:

The appellants are in appeal against the impugned order wherein the demand has been confirmed on the allegation that they have received excess raw material in cash and which has been used to manufacture final goods and the same has been cleared clandestinely.

2. The brief facts of the case are that on 07/07/2011 a search was conducted at the factory premises of one M/s Shilphy Steel Pvt. Ltd, Raipur and residence premises of Shri Nitin Agarwal, Director of the said company. Certain documents were recovered by way of pen drive maintained by Shri Nitin Agarwal and after retrieval of data from said pendrive it was alleged that the appellant were having certain transactions with M/s Shilphy Steel Pvt. Ltd. in cheque as well as in cash. The cash transaction was shown in the name of Shri Raj ji

thereafter investigation was conducted at the factory premises of the appellant also and the statement of Shri Brij Narayan Singh, appellant was recorded. On the basis of the data retrieved from the pen drive and various statements recorded during the course of investigation, a case has been made out against the appellant that the appellants have received excess raw material i.e. Sponge Iron form M/s Shilphy Steel (P) Ltd. which has been used in manufacturing of finished goods cleared clandestinely. In these set of facts, the duty was demanded from the appellants along with interest and penalties on both the appellants were imposed. Aggrieved from the said order, the appellants are before me.

3. The Ld. Counsel for the appellant submits that there is no incrementing document received from the factory premises of the appellant. Moreover, Shri Brij Narayan Singh have not made any inculpating statement and have not admitted any transaction with Shilphy Steel (P) Ltd. in cash, therefore, the demands on the basis of the third party document is not sustainable.

4. On the other hand Ld. AR reiterated the findings of the impugned order.

5. Heard both sides considered submissions.

6. In this case the demand sought to be confirmed on the basis of pen drive retrieved from Shri Nitin Agarwal , Director of Shilphy Steel (P) Ltd. and statement of Shri Nitin Agarwal as well as Shri Brij Narayan Singh. As no search has been conducted at the factory premises of the appellant and no incremating document have been received from the possession of the appellant to prove that the appellant was engaged in any activity of clandestine manufacture and removal of goods. Moreover, I have gone through the statement of

Shri Brij Narayan Singh and nowhere Shri Brij Narayan Singh has admitted that he had any cash transaction with Shilphy Steel Pvt. Ltd. Merely on the basis of the third party evidence (without any evidence against the appellant) the demands are not sustainable.

7. In that circumstance, I set aside the impugned order and allow the appeals with consequential relief, if any, to the appellants.

(Dictated & pronounced in open Court)

(Ashok Jindal)
Member (Judicial)

Rekha