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

Date of Hearing: 13.9.2017
Date of Pronouncement: 9.10.2017

Appeal No. E/2744/2010-SM

(Arising out of Order-in-Appeal No. 22-24-CE/MRT-I/2010-11 dated 30.4.2010 passed by the Commissioner (Appeals), Central Excise, MeerutI)

M/s Shree Sidhbali Steels Ltd. Appellant

Vs.

CCE, Meerut-I Respondent

Appearance

Ms. Rinky Arora, Advocate - for the appellant

Shri K. Poddar, D.R. - for the respondent

CORAM: **Hon'ble Mr. S.K. Mohanty, Member (Judicial)**

Final Order No. 57048/2017

Per S.K. Mohanty:

This appeal is directed against the impugned order dated 30.4.2010 passed by Commissioner (Appeals), Central Excise, Meerut.

2. The brief facts of the case are that the appellant is engaged in the manufacture of CTD/TMT bars. For manufacture of such goods, MS ingots and other re-rollable materials are used as inputs. During the course of verification of stock position of the finished goods and

inputs reflected in the books of account vis-à-vis quantity physically available in the factory, the Central Excise officers detected that there is shortage in both the above type of goods. Thereafter, Panchnama was drawn and statement of Shri Sandeep Maheshwari, Manager Accounts was recorded. On the basis of investigation, the Department initiated Show Cause proceedings against the appellant and passed the adjudication order, wherein Central Excise duty demand of Rs. 6,47,073/- was confirmed and equal amount of penalty was imposed on the appellant company. Besides, penalty of Rs.1,48,905/- was imposed under Rule 15(2) read with Section 11AC of the Central Excise Act, 1944. On appeal, the ld. Commissioner (Appeals) vide the impugned order has upheld the adjudged demand.

3. The ld. Advocate appearing for the appellant submits that the stock verification was conducted on average basis and that the officers of Central Excise department had taken samples on each bundle and arrived at the stock position. Thus, she submits that actual stock position cannot be ascertained through the method adopted by the department. Further, she submits that Manager Account, in his statement recorded under summon, nowhere stated that the goods were removed clandestinely from the factory without payment of Central Excise duty. Accordingly, she prays for quashing the duty demand on the ground that charges of clandestine removal

has not been satisfactorily proved by the Department. In this context, the ld. Advocate has relied on the decision of this Tribunal in the case of ***Raika Ispat Udyog Pvt. Ltd. Vs. CCE, Raipur –*** 2016 (340) 598 (Tri.-Del.) and ***Chandpur Enterprises Ltd. Vs. CCE & ST, Meerut-I*** – 2014 (310) ELT 904 (Tri.-Del.) to state that adjudged demand cannot be confirmed, in absence of proper substantiation of clandestine removal of goods.

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

5. Heard both the sides and perused the case records.

6. On examination of the case records, I find that Shri Sandeep Maheshwari, authorised officer of the appellant has only stated that he is unable to explain the reasons of shortage. Such statement, without further corroboration, cannot be accepted as evidence of clandestine removal of goods, without payment of Central Excise duty. Further, from perusal of the Panchnama and the statement recorded by the department, it reveals that the stock verification was conducted on average basis, without consideration of the actual weighment of goods. Thus, it cannot be said that the stock position arrived at is correct and proper. Further, no iota of evidence was produced by the department to prove that the goods found short

during verification were removed clandestinely from the factory without payment of Central Excise duty. Therefore, I am of the view that the allegation of clandestine removal cannot be sustained without any corroborative evidence of clandestine manufacture, clearance, transportation or ascertainment of the buyers to whom the goods were sold. I find that in an identical situation, this Tribunal in the case of ***Raika Ispat Udyog Pvt. Ltd. (supra)*** and ***Chandpur Enterprises Ltd.*** (supra) has allowed the appeal, holding that demand cannot be sustained, without substantiation of the fact of clandestine removal of goods.

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

(Pronounced in Court on 9.10.2017)

(S.K. Mohanty)
Member (Judicial)

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