IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

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

BENCH-SM

COURT –IV

Excise Appeal No.E/970/2012 [SM]

[Arising out of Order-in-Appeal No.01/RPR-II/2011 dated 17.01.2012 passed by the Commissioner (Appeals-II), Customs & Central Excise, Raipur]

M/s.S.S.Ispat ...Appellant

Vs.

C.C.E & S.T., Raipur ... Respondent

Present for the Appellant : Ms.Hemant Bajaj, Advocate & Ms. Anurag Kapur, Advocate
Present for the Respondent: Mr. K. Poddar, D.R.

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

Date of Hearing/Decision: 18/09/2017

FINAL ORDER NO. 57091/2017

PER: S.K. MOHANTY

This appeal is directed against the impugned order dated 17.01.2012 passed by the Commissioner (Appeals-II), Customs and Central Excise, Raipur, wherein the appeal of Revenue was allowed holding that the goods in respect of 8 Nos. of challans were removed in a clandestine manner, without payment of Central Excise Duty.

2. Breif facts of the case are that the appellant is engaged in the manufacture of cast iron and ingot Mould, falling under Chapter 84 of the Central Excise Tariff Act, 1985. During the

period in dispute, the appellant's factory was visited by a team of preventive officers on 16.05.2008 for conducting preventive checks. During scrutiny of records, it was observed that appellant was preparing challans for removing the finished goods as well as other goods outside the factory premises for weighment purpose. It was further observed that while comparing with the issue challans vis-à-vis the Central Excise invoices, in case of 8 challans, there were no corresponding Central Excise Invoices issued by the appellant. On the basis of such alleged discrepancy in records, the Department initiated show cause proceedings against the appellant, seeking confirmation of duty demand in respect of the excisable goods mentioned in those 8 Nos. of challans. The show cause notice dated 06.01,2010 issued in this regard was adjudicated vide order dated 31.03.2011, wherein the adjudicating authority has dropped the proposals made therein, holding that there is no proper evidence produced by Department to prove that the goods were removed clandestinely, without payment of Central Excise Duty. The ld. Adjudicating Authority in arriving at such conclusion, had relied on various judicial pronouncements of different High Courts. Feeling aggrieved with the said adjudication order, the Revenue filed appeal before the Commissioner (Appeals), which was allowed on the ground that the respondent (appellant herein) could not produce the details of invoices pertaining to 8 Nos. of challans issued by it. While allowing the appeal of Revenue, the ld. Commissioner

(Appeals) has only relied on and referred to the date of issue of the challans and the Central Excise Invoices issued by the appellant. He has held that for preparing the excise invoice before the date of challan cannot be accepted as evidence and accordingly, he discarded the statement furnished by the appellant and confirmed the duty demand against it.

4. Heard both sides and perused the case records.

5. I find that the appellant in its reply to show cause notice had furnished a chart, reconciling the issue challans with the invoices issued by it. Further, I also find that the corresponding invoice issued by the appellant on payment of Central Excise Duty contained the reference of the vehicle Nos., quantity etc. mentioned in the issue challans. Since the appellant had demonstrated that the goods mentioned in the issue challans were issued from its factory on payment of appropriate Central Excise Duty, the burden entirely lies with the Revenue to prove that the goods were in fact, removed in clandestine manner without payment of Central Excise duty. However, on perusal of case records, I find that no iota of evidence was brought on by Revenue to substantiate such stand. Accordingly, I am of the view that the findings recorded by the adjudicating authority that the goods were not removed in clandestine manner, cannot be disturbed at this juncture.

6. Therefore, I do not find any merits in the impugned order. Accordingly, after setting aside the same, the appeal filed by the appellant is allowed.

[Dictated and pronounced in the Open Court]

(S.K. MOHANTY)
MEMBER (JUDICIAL)

Anita