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

Date of Hearing/Order: 21.2.2018

Appeal No. E/50528/2017-SM

(Arising out of Order-in-Appeal No. BHO-EXCUS-002-299-16-17 dated 21.12.2016 passed by the Commissioner (Appeals), Customs & Central Excise, Raipur)

Sunil Steels Appellant

Vs.

CCE, Raipur Respondent

Appearance

Shri Kumar Vikram, Advocate - for the appellant

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

CORAM: Hon'ble Mrs. Archana Wadhwa, Member (Judicial)

Final Order No. 50746/2018

Per Ms. Archana Wadhwa:

As per facts on record, the appellant is engaged in the manufacture of MS angles, round, bars, plates and square falling under Chapter 72 of the Central Excise Tariff Act, 1985. The preventive officers intercepted one truck at Raipur, Bilaspur road, which was found loaded with MS square. As the said consignment was not carrying any invoice issued under Central Excise and inasmuch as, as per the driver, the goods were loaded from the factory of the appellant, the truck was brought back to the factory and the goods loaded therein were seized. Further, the stock verification in the appellant's factory was conducted by the officers which resulted in shortages of various final products.

2. On the above basis, Revenue entertained a view that the shortages detected by the officers were cleared clandestinely by the appellant. Accordingly, a show cause notice dated 13.5.2013 was issued proposing confirmation of demand of duty of Rs.10,31,592/- as also for imposition of penalties. The notice also proposed confiscation of the goods which were found loaded in the truck and cleared without payment of duty.

3. During the course of adjudication, the appellant submitted that the goods cleared by them were not covered by the invoice inasmuch as the same were cleared in the night, when no staff was available. As regards the proposed confirmation of duty demand, they submitted that such stock verification was not done properly and in the absence of other evidence to corroborate the allegations of clandestine removal, the confirmation of demand of duty is not justified.

4. The original adjudicating authority, however, confiscated the goods found loaded in the truck with an option to the appellant to redeem the same on payment of fine of Rs. 10,000/-. He also confirmed the demand of duty of Rs.10,31,592/- along with

confirmation of interest and imposition of penalty of identical amount. Hence, the present appeal.

5. As regards the confiscation of 1.515 MTs of MS square found loaded in the intercepted truck and cleared without payment of duty from the appellant premises, I fully agree with the lower authorities that the said clearance was with an intention to evade payment of duty, inasmuch as the excisable goods can be cleared from the manufacturer's factory only on payment of duty. As such, I uphold the confiscation of the same and fine of Rs.10,000/- for redemption of the said goods.

6. As regard duty of Rs. 10,31,592/-, I find that the same stands confirmed on the findings of clandestine removal. The said findings of the lower authorities are based solely upon the shortages detected by the visiting officers. Even though, the appellant has not admitted such shortages and has pleaded that the same were on eye estimation, I find that apart from the shortages there is no evidence on record to establish the factum of clandestine removal. As regards short verification also, the Revenue has not been able to produce any inventory to show that the stock verification was done in a proper manner.

7. It is well settled that shortages by itself do not lead to the inevitable conclusion of clandestine removals. The Hon'ble

Allahabad High Court in the case of ***CCE Vs. Meenakshi Castings -*** 2011 (274) ELT 180 (All.) has held that in the absence of any evidence of clandestine removal, adverse inferences of clandestine removal cannot be upheld on the basis of apparent shortage of stock. The said decision stands followed in a number of judgements of the Tribunal. Reference can be made to the Tribunal's decisions in the cases of ***Kumar Enterprises Vs. CCE Lucknow*** – 2016 (340) ELT 549 (Tri.-All.), ***Jalan Concast Ltd. Vs. CCE, Allahabad –*** 2016 (335) ELT 316 (Tri.-All.) and ***CCE, Kolkata-IV Vs. Hanuman Udyog*** – 2008 (222) ELT 395 (Tri.-Kolkata).

8. Inasmuch as the Revenue's case is solely based upon the shortages detected by the visiting officers, without there being any tangible evidence of clandestine removal, I find no reasons to uphold the said confirmation of demand or for imposition of penalty. Accordingly, except for confirmation of redemption fine, the impugned order is set aside and appeal is allowed with consequential relief.

(Dictated & pronounced in open Court)

(Archana Wadhwa)
Member (Judicial)

RM