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

Date of Hearing : 05.10.2017

Date of Pronouncement: 01.11.2017

Appeal No. E/1293-1296/2011-SM with E/CO/26-29/2012

(Arising out of Order-in-Original No. COMMISSIONER/RPR/DE-NOVO/65/2010 dated 30.12.2010 passed by the Commissioner (Appeals), Central Excise & Customs, Raipur)

M/s Ashirwad Ispat (RYP) Pvt. Ltd. **Appellant**
Vijay Chand Bothra, Director
Jitendra Bothra, Director
Basant Shrivastava, Manager

Vs.

CCE, Raipur **Respondent**

Appearance

Shri A.K. Prasad, Advocate - for the appellant
Shri K. Poddar, A.R. - for the respondent

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

Final Order No. 57659-57662/2017

Per Ashok Jindal :

The appellants are in appeal against the impugned order wherein demand of duty has been confirmed on the basis of certain discrepancies found during the course of investigation along with interest and penalties were imposed on all the appellants.

2. The brief facts of the case are that the appellant is engaged in the manufacture of re-rolled products of iron and steel like shapes and

sections, MS squares, CTD bars, MS flats etc. On 29.8.1995, one truck carrying finished goods was intercepted which was not accompanying any documents. The truck was brought back to the factory premises of the appellant wherein documents related to the said goods were found. Thereafter, the factory premises of the appellants were examined and various discrepancies were found. On the basis of those discrepancies, it was concluded that the appellants are engaged in the activity of clandestine removal of goods and availing Cenvat credit without bringing inputs in their factory. Consequently, the duty was demanded along with interest and penalties on all the appellants were imposed. Aggrieved from the said order, the appellants are before me.

3. This is the second round of litigation. In the earlier round of litigation, the matter was remanded back to the adjudicating authority for de novo adjudication reported in 2010 (261) ELT 993 (Tri.-Del.).

4. Heard the parties.

5. As matter involves several issues, therefore, all issues are dealt separately:

(i) A demand on the quantity of 102.970 MTs of finished goods, the duty of Rs.1,74,534/- has been confirmed on the basis of documents seized from the transporter indicating that this quantity of CTD bars and MS angles has been cleared by the appellants without payment of duty.

I have gone through the documents seized from the transporter. In those documents the name of the consignor is mentioned AIU. The Revenue has presumed that AIU means Ashirwad Ispat Udyog whereas the appellant has produced the evidence i.e. certificate from M/s Anupam Ispat Udyogcertifying that the goods contained on the documents seized from the transporter, were of them. No investigation has been conducted at the end of M/s. Anupam Ispat Udyog to ascertain the truth. In that circumstances, merely mentioning AIU on the documents seized from the transporter, the demand of duty cannot be demanded from the appellant. Therefore, the said demand is set aside.

(ii) A demand of duty of Rs.1,90,641/- sought to be confirmed on the quantity of 114.830 MTs alleging that appellant has cleared the said goods against parallel parallel invoices.

I have gone through the invoices produced before me. On going through the invoices, I find that the only difference on the invoices is of the signature of the consignor, whereas copy of the appellant signature has been signed by somebody else and on the copy of the transporter signature is signed by someone else. Revenue has alleged that the appellant is clearing goods on the strength of parallel invoices. But no investigation was conducted at the end of the buyer or the transporter to ascertain the fact whether on the strength parallel invoices, any goods have been transported or not? Further, on examination of the invoices in question, I find that the parallel invoices are copy of each other. Therefore, it cannot be alleged that the appellant is clearing the goods on the strength of parallel invoices. Therefore, the demand of duty of Rs.1,90,641/- confirmed against the appellant is set aside.

(iii) The demand of Rs.2,78,617/- has been confirmed on the strength of debit notes.

I find that the said demand sought to be confirmed on the basis of the goods sold to M/s Malhotra Steel Product through the commission agent viz. M/s. Ashish Udyog who raised the debit notes for payment/commission to the appellant and in the debit notes instead of MS square the commission agent mentioned the commission for MS ingots. Therefore, it was alleged that as the appellant has cleared MS ingots for which they have paid commission to M/s Ashish Udyog therefore, on the quantity sold through Ashish Udyog is without payment of duty. In reply, the appellant has given explanation that they are not having any manufacturing facility for MS ingots and M/s Ashish Udyog inadvertently written as MS ingots instead of MS square and no investigation has been conducted at the end of M/s. Malhotra Steel Product to ascertain the fact, whether they have received MS ingots instead of MS square under the cover of invoices or not? In the absence of any positive evidence on record by the Revenue, the demand on the basis of this allegation is not sustainable. Therefore, the demand of duty of Rs. 2,78,617/- is set aside.

(iv) A demand of Rs.2,11,273/- has been confirmed on the basis of the records seized from transporter viz. M/s. Super Handling Company showing the goods has been cleared without duty paying documents.

I have gone through the documents seized from M/s Super Handling Company and those documents neither showing the date of goods sold nor the date has been mentioned to whom the goods has been sent and the appellant had not admitted those documents no enquiry has been conducted from M/s. Super Handling Company where these goods have been delivered or whether these goods have been loaded from the factory of the appellant without cover of invoice. In that circumstance, the emand of Rs. 2,11,273/- is not sustainable. Therefore, the same is set aside.

(v) A demand of Rs. 5,62,513/- sought to be confirmed on the basis of the production shown in private records but not recorded in RG-1 register.

I find that the demand sought to be confirmed on the basis of the private record of the labour contractor of the appellant who is maintaining such records for payment to the labour. The contention of the appellant is that they were having four labour contractors and the payment made to the four labour contractors is correlated and there is no discrepancies. Admittedly, no effort has been made by the Revenue for correlation of the payments made to the four labour contractors and merely on the basis of the 3rd party evidence, the demand against the appellant is not sustainable. Therefore, the demand of Rs. 5,62,513/- is set aside.

(vi) A demands of Rs. 54,920/- and Rs. 37,340/- sought to be confirmed on account of excess finished goods found and detected shortage of inputs at the time of stock taking respectively during the search.

I have gone through the Panchnama. There is no weighment detail has been produced by the Revenue how the weighment has been done. The weighment has been done on the basis of eye estimation and on eye estimation, the shortage or excess of goods cannot be determined. Therefore, the demand of Rs.54,920/- and Rs. 37,340/-, on this accounts are set aside.

(vii) A demand of Rs. 1,16,542/- has been confirmed on the basis of debit notes on which duty has not been paid.

I find that the appellant is selling goods to their buyers on cash basis but in some cases the buyers did not pay amount on due dates. Therefore, the debit notes have been issued for payment of interest. Revenue sought to innclude the payment of interest in the assessable value. The said issue has not been disputed by the ld. Counsel for the appellant being the issue of valuation.

Therefore, the said demand of Rs.1,16,542/- has been confirmed against the appellant.

(viii) A demand of Rs. 61,824/- sought to be confirmed on account of invoices issued to consignee for availing Modvat credit without supply of inputs.

I find that on this issue, the goods have been transferred from Bhilai Steel Plant to the appellant and during the transportation, in between, the goods have been unloaded from the truck and loaded in the another truck which reached to appellant’s factory and to that effect the appellant has produced documents for loading and unloading of the goods in question in another truck. No investigation has been conducted at the end of Bhilai Steel Plant to ascertain the fact whether they have sold the goods to the appellant through the truck in question or from the transporter whether they have changed the truck during the transportation. In that circumstances, the Cenvat credit cannot be denied to the appellant. Therefore, the demand of Rs. 61,824/- is set aside.

(ix) A demand of Rs. 28,321/- has been confirmed for removal of inputs without reversal of credit.

In support of the defence by the appellant, it has been mentioned that in the gross weight whereas actual weight works out to less than the demand which sought to be confirmed. I find that on going through the documents placed before me, it is not coming out whether G stands for gross weight or not. If G stands for particular truck as gross weight then for the other trucks, why it is not mentioned as G.

In that circumstances, <u>I confirm the demand of Rs. 28,321/- against the appellant</u>.

(x) A demand of Rs.1,629/- has been confirmed against the appellant for removal of MS flat cuttings without payment of duty for the said demand. As the appellant is not contesting. <u>Therefore, the said demand of Rs. 1,629/- is confirmed</u>.

(xi) Cenvat credit denied on the raw material to the appellant on the ground that during the visit, the raw material was not found in the factory premises of the appellant.

The contention of the appellant is that due to the rainy season, the raw material could not be stored in the open and the same was stored in the adjoining godown of their own and the same was found intact by the investigating team but the same has not been considered by the investigating team to ascertain the fact that the said input is the same input which was found short in the factory premises of the appellant. Moreover, the appellant has used the said raw material in manufacturing of their final goods. In that circumstances, the Cenvat credit cannot be denied to the appellant in the absence of any contrary evidence, therefore, Cenvat credit is allowed to the appellant.

On this account a penalty has been imposed on M/s. Ashirwad Ispat Udyog for storing the goods without cover of invoice is also not imposable on the appellant.

6. In view of above analyses following order is passed:

(a) the demand of Rs. 1,16,552 + Rs. 28,321/- and Rs. 1,629/- are confirmed along with interest and equivalent amount of penalty is also imposed on M/s. Ashirwad Ispat (RYP) Pvt. Limited.

(b) No penalties are imposable on the co-appellants in the facts and circumstances of the case. Therefore, the penalties imposed on Shri Vijay Chand Bothra, Shri Jitendra Bothra and Shri Basant Shrivastava are set-aside.

7. In these terms, appeals are disposed of. Cross- objections are also stand disposed of in the above terms.

(Pronounced in Court on.01.11.2017)

(**Ashok Jindal**)
Member (Judicial)

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