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

Date of Hearing/Order: 9.11.2017

Appeal No. E/57969/2013-SM
E/58003-58005/2013-SM

(Arising out of Order-in-Original No. 12/2013-CE-Commissioner dated 21.2.2013 passed by Commissioner of Central Excise, Jaipur)

Ramesh Kumar Agarwal — Appellant
M/s Mittal Pigments Pvt. Ltd.
Chandraprakash Rathore
M/s M.P. Rajasthan Road Lines

Vs.

CCE, Jaipur-I — Respondent

Appearance

Shri Vijai Kumar, Advocate - for the appellant

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

CORAM: **Hon'ble Mr. Justice (Dr.) Satish Chandra, President**

Final Order No. 57854-57857/2017

Per Justice Dr. Satish Chandra:

The present appeals have been filed against the Order-in-Original No. 12-13 dated 26.2.2013. The period of dispute is 18/19.1.2011.

2. The brief facts of the case are that the appellant is engaged in the manufacturing of zinc oxide and lead oxide. On 18.1.2011, the

departmental officer found a truck lying in the factory premises of the appellant, which was loaded with 14650 Kgs. lead ingots which valued to Rs.15,78,245/-. It is the submission of the appellant that the truck was taken for weighment under the cover of challan No. 1 dated 17.1.2011. But this is the presumption of the department that it was an attempt of the clandestine removal so the duty demand of Rs.1,62,559/- was made. Penalties were imposed on the Manager, owner, assessee and transporter. The goods were confiscated which were released on the redemption fine. Being aggrieved, the appellant have filed the present appeals.

3. With this background, heard Shri Vijai Kumar and Shri K. Poddar, ld. Counsels for the parties.

4. After Considering the rival submissions and on perusal of record, it appears that the goods were loaded in the truck with the challan dated 17.1.2011 as mentioned in para 44 of the impugned order. But fact remains, the truck was within the premises of the factory. It has not come out from the gate weighing machine is also lying in the area where the truck was parked. When the goods have not come out from the factory, no case of clandestine removal can be made out.

5. The second issue in the present appeal is relating to not maintaining the RG-1 in a proper manner. The officers in the factory premises found that there was some material which was not entered into the RG-1. The stock was found in excess. This is the submission of the ld. Counsel, that it was the intermediatory product, so no entry was made in the RG-1 register. From the record, it appears that nowhere it was mentioned that it was a finished goods. During the course of arguments, the ld. Counsel has proved that it was an intermediatory product, when it is so then we found no reason to sustain the impugned order in this regard for the reason that entries of the intermediatory goods has not been mentioned in RG-1. It may be mentioned that only finished goods are entered in RG 1. Other books have not been examined by the department, the short cut method was adopted for stating that there was the excess stock.

6. In view of above, the impugned order is set aside and all the appeals filed by the appellants are allowed. Penalties are cancelled.

(Dictated & pronounced in open Court)

(Justice Dr. Satish Chandra)
President

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