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

Date of Hearing/Order: 23.2.2018

Appeal No. E/50210/2018-SM

(Arising out of Order-in-Appeal No. 205-207/CE/DLH/2017 dated 22.9.2017 passed by the Commissioner of Central Excise (Appeals), New Delhi)

M/s Chandra Rolling Mills Pvt. Ltd. — Appellant

Vs.

CCE & GST, Delhi — Respondent

Appearance

Shri B. Bhushan, Advocate - for the appellant

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

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

Final Order No. 50742/2018

Per Ms. Archana Wadhwa:

The appellants who were engaged in the manufacture of copper rods were visited by the Central Excise officers on 23.10.2015 and conducted various checks and verifications. As a result of stock taking of final product, 2631 kg. of copper wire rod was found in excess stock then the recorded balance in RG-1 register. The appellant vide their letter dated 16.8.2016 submitted that the goods in question were days production and were hot and could not be weighed. As such the same were not entered in RG-1 register. They also contended that no stock taking of raw material was undertaken which would have established that the finished goods stand manufactured out of the raw material duly entered in the record and as such there could be no occasion for them to clear their final product without payment of duty.

2. On the above basis, proceedings were initiated against the appellant resulting in confiscation of the excess found goods with an option to the appellant to redeem the same of payment of redemption fine of Rs. 1.20 lakhs. Further penalty of Rs.1,28,281/, equal to the duty involved was imposed upon him.

3. On going through the impugned order, I find that the authorities below have simplicitor observed that the appellant had an intention to clear the goods without payment of duty, thus making them liable to confiscation. However, there is no discussion about the appellant's stand that the goods were the production of the same very day and were yet hot and as such were not entered in RG-1. It is also a fact that stock of raw material was not undertaken, which could have established as to whether the finished goods in question were manufactured out of accounted- for raw material or otherwise. In the absence of any evidence to show that the goods were not entered in RG-1 register with an intention to clear the same without payment of duty, confiscation of the same cannot be upheld and penalty cannot be imposed. Reliance is made to the Tribunal's decision in the case of ***CCE Vs. Foton Ceramics*** – 2011 (272) ELT 39

(Tri.-Ahmd.) Accordingly, I set aside the impugned order and allow the appeal with consequential relief to the appellant.

(Dictated & pronounced in open Court)

(Archana Wadhwa)
Member (Judicial)

RM