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/51972/2017 [SM]

[Arising out of Order-in-Appeal No.BHO-EXCUS-002-APP-228-17-18 dated 26-09-2017 passed by the Commissioner (Appeals), Customs & Central Excise, Raipur].

M/s.Krishna Iron Strips & Tubes Pvt. Ltd. ...Appellant

Vs.

C.C.E., Raipur ... Respondent

Present for the Appellant : Mr.Kumar Vikram, Advocate
Present for the Respondent: Mr.Harish Saini, D.R.

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

Date of Hearing/Decision: 01/03/2018

FINAL ORDER NO. 50898 /2018

PER: S.K. MOHANTY

Brief facts of the case are that the appellant is engaged in the manufacture of MS strips, MS Flats, MS tubes, galvanized Pipe falling under Chapter 72-73 of the first Schedule to the Central Excise Tariff Act, 1985. For manufacture of the said final products, the appellant used sponge iron scrap, pig iron and steel ingots as raw-material. The appellant avails the benefit of Cenvat Credit in respect of the inputs procured on payment of Central Excise Duty. Acting on an intelligence that the appellant is indulged into clandestine manufacture of goods, the Central Excise Officers visited the factory premises of the appellant and drawn the Panchnama on 9/10.02.2016. During the course of scrutiny of records vis-à-vis the physical stock of finished goods and raw-materials available in the factory, the Department observed that there was excess stock of 48.870 M.T. of raw-material i.e. bloom/billet and 28.578 M.T. of finished products namely, MS Tubes. It was further detected that there was shortage of 30.450 MT in the stock of the finished product, HR Strips. On the basis of such investigation, the Department initiated show cause proceedings against the appellant, proposing confiscation of both the finished products and the raw-material. Further, the show cause notice also proposed to demand Central Excise duty on HR strips on the ground of clandestine removal. The show cause notice dated 05.07.2016 issued by the Department was adjudicated vide order dated 23.02.2017, wherein Central Excise Duty demand of Rs.98,201/- was confirmed on 30.450 M.T. of HR Strips removed from the factory, without payment of Central Excise Duty. Besides, equal amount of penalty was also imposed on the appellant. With regard to the raw-material i.e. MS Billets, the same was confiscated, with the option to the appellant to redeem the same on payment of redemption fine of Rs.50,000/-. On appeal against the adjudication order, the ld. Commissioner (Appeals) vide the impugned order dated 26.09.2017 has upheld the adjudged demands confirmed against the appellant. Feeling aggrieved with the impugned order, the appellant has filed this appeal before the Tribunal.

2. The ld. Advocate appearing for the appellant submits that the Panchnama was not properly drawn by the Department, inasmuch as, the method adopted for verifying the stock particular was not mentioned therein. He further submits that the physical verification report relied on by the Department has not been signed either by the appellant or by the Department. Thus, he submits that based on the unsigned statement, the duty demand cannot be sustained. It is his further submission that since the Department has not specifically produced any material evidence to show clandestine removal of goods from the factory, the charges levelled and the demand confirmed on the appellant cannot be sustained.

3. On the other hand, the ld. D.R. appearing for the Revenue submits that the explanation furnished by the appellant regarding the stock position was not supported with any documentary evidence and accordingly, the submissions made regarding no discrepancy in the stock cannot be considered and duty demand confirmed on the ground of clandestine removal of goods is sustainable. He further submits that since the physical verification made by the Department regarding shortage/ excess of raw-material and finished goods were accepted by the appellant, such acceptance cannot be altered at a subsequent date for proving the case otherwise. Further, he also submits that the statement recorded pursuant to summon was also not retracted by the appellant.

4. Heard both sides and perused the case records.

5. On perusal of the case records, I find that based on the statement of availability of raw-material and finished goods, the Department has prepared the Panchnama on 9/10.02.2016. However, on perusal of such statement, I find that it has neither been signed by the appellant nor by Officers conducting the search in the factory of the appellant. Therefore, the unsigned statement cannot be relied upon solely to arrive at the conclusion that the goods were clandestinely removed by the appellant. Further, I also find that the letter dated 11.02.2016 addressed to the Assistant Commissioner (Preventive) regarding discrepancy in the stock position reflected in the Panchnama has not been replied by the Department. Furthermore, I also find that Shri D.K. Sharma, the Director of the appellant Company in his statement dated 20.06.2016 recorded under summon, has specifically stated regarding the reason of difference in the finished goods and the raw-materials as physically available in the factory vis-à-vis recorded in the statutory records. However, on perusal of both the adjudication as well as the impugned order, I find that such submissions of the appellant had not been addressed at all by both the authorities below. In this case, the Department has not specifically brought out any evidence of fact of clandestine removal of goods, with the help of any tangible evidence. Thus, the onus lies on the Department to prove clandestine removal of goods having not been satisfied/

fulfilled in this case, the charges levelled against the appellant cannot be sustained in the eyes of law.

6. Therefore, I do not find any merits in the impugned order. Accordingly, after setting aside the same, I allow the appeal in favour of the appellant.

[Dictated and pronounced in the Open Court]

(S.K. MOHANTY)
MEMBER (JUDICIAL)

Anita