IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI
PRINCIPAL BENCH, COURT NO. II

Excise Appeal No. 51354 of 2017

[Arising out of Order-in-Appeal No BHO-EXCUS-002-APP-039-17-18 dated 03-05-2017 passed by the Commissioner of Customs & Central Excise (Appeals), Raipur]

M/s. Zeon Steel Pvt. Ltd. **Appellants**

Vs.

Commissioner of Central Excise **Respondent**
Raipur (CG).

Appearance:
Ms Shohini Bhattacharya and Ms Shreya Dahiya, Advocates for the Appellants
Shri K Poddar, AR for the Respondent

<u>CORAM</u>:
Hon'ble Shri Anil Choudhary, Member (Judicial)

Date of Hearing /decision: 28.11.2017

FINAL ORDER NO. 58797/2017 SM

<u>Per Anil Choudhary:</u>

The issue in this appeal is whether the demand of Rs.10,16,037/- have been rightly demanded along with equal penalty on the alleged clandestine removal.

2. Brief facts are that Zeon Steel Pvt. Ltd., the appellant herein are engaged in the manufacture of MS ingots. Search was conducted at the premises of raw material supplier, namely, M/s Shri Ambika Ispat P Ltd. (AIPL in short) on 15.12.2010 wherein a shortage of

sponge iron was detected. On Show Cause Notice being issued to the said AIPL, they settled the dispute before Settlement Commission vide Final Order dated 13.11.2013. Thereafter, the DGCEI office took further investigation and inquiries were made from few transporters whose name appear in the material gate passes and weighbridge record of Ambika Ispat. It is note worthy to mention that these incriminating documents were seized from the room of Shri Bidur Gupta, peon of AIPL, located outside the factory premises. The transporters confirmed the transport of the goods from AIPL to other furnace units located in Raigarh. DGCEI officer ascertained the quantity of 365.670 MT of sponge iron, to have been cleared clandestinely and transported from AIPL to the appellants factory, on the basis of details available in material gate passes seized from Shri Bidur Gupta, Peon of AIPL. There are about 17 such material gate passes wherein different truck numbers, description of the goods, net quantity are mentioned under the column of transporters name like, Sunny, Alam, Guddu etc. are mentioned. On further investigations of raw material sponge iron cleared from AIPL, was compared with the purchase register of the appellant, and it was found that there is no such entry as regards the receipt of alleged quantity of sponge iron. Accordingly, it appeared to Revenue that appellant surreptitiously procured the aforementioned quantity of sponge iron from AIPL without cover of valid Central Excise invoices and used the same for unaccounted production of ingots and thereafter removed the same clandestinely during the period September, 2010 to December 2010.

3. Further statement of Ghasi Ram Agarwal, authorized signatory of the appellant was recorded under section 14 16.9.2014 wherein he admitted that appellant was regularly purchasing sponge iron from M/s. AIPL, without payment of duty. He was not able to explain or justify the evidence in respect of supply of sponge iron cleared by AIPL, without payment of duty. Upon perusal of the documents seized from AIPL and its employee, the said Ghansi Ram Agarwal replied that appellant did not receive the impugned sponge iron from AIPL. He further declined to comment on deposition of transporter. Mr. Ghansi Ram Agarwal, has further stated that they procured material sponge iron, scrap pig iron which are further used in the manufacture of ingot, which are removed upon payment of appropriate excise duty. It appeared to Revenue that the authorized signatory- Mr. Ghansi Ram Agarwal is trying to misguide the investigation and accordingly SCN was issued dated 26.8.2015 proposing to demand duty of Rs.10,16,037/- invoking extended period of limitation alleging clandestine removal of 398.640 MT of ingots valued at Rs.98,64,435/-, allegedly manufactured out of allegedly received sponge iron from AIPL, with proposed to impose penalty along with interest at appropriate rate. They further proposed penalty on Shri Ghansi Ram Agarwal under Rule 26.

4. In reply, the appellants categorically denied the allegation in the show cause notice. However, the proposed demand was confirmed with interest and further equal amount of penalty was imposed under section 11AC (1) (C). Further penalty under Rule 25 was dropped. Further penalty of Rs.1,50,000/- was imposed on Shri Ghansi Ram Agarwal under Rule 26 of the Central Excise Rules.

5. Being aggrieved the appellant preferred the appeal before learned Commissioner Appeals) who was pleased to dismiss the appeal upholding the adjudication order.

6. Being aggrieved, the appellant is before this Tribunal.

7. Learned Counsel informed that appeal of authorized signatory Shri Ghansi Ram Agarwal is still pending before the Commissioner (Appeals). Learned Counsel further submits that whole case of the Revenue is based on assumption and presumptions. In investigation / inquiry done at the premises of the appellant, nothing incrementing was found. The allegation is solely based on statement of Director of AIPL and some records recovered from the residence of peon of AIPL. There is no where name of the appellant mentioned in any of the documents. Learned Advocate stated that such third parties records and statements for alleging clandestine removal is vague in absence of proper evidence and fit to be set aside.

8. The allegation of clandestine manufacture of MS ingots and removal of the same by appellant is not established in the facts and circumstances of clandestine clearance of sponge iron from AIPL. Revenue has not brought any evidence on record as regards the procurement of raw material, consumption of higher material, receipt of money upon sale, name of any buyer to whom clearance were made, etc.

9. Shri Ghansi Ram Agarwal further stated that investigations were done in the premises of Ambika Ispat during the period 2010 and show cause notice was issued in September, 2012 on M/s AIPL. Accordingly, the show cause notice on appellant (dated 26.08.2015) was issued, by invoking the extended period of limitation, after more than 12 months since September, 2012. Accordingly, he pleads for allowing the appeal with consequential relief.

10. Learned AR appearing for the Revenue supports the impugned order relying on the allegations and findings therein. He relied on the decision of the Tribunal in the case of ***Arvind Enterprises vs. CCE, Delhi [2015 (327) ELT 353 (Tri-Del)]*** wherein Arvind Enterprises was a dealer who had procured cenvatable invoices from one M/s. Haryana Steel and Alloys Ltd. (HSAL for short), GT Road, PO Engineering College, Sonepat, indulged in clandestine removal of goods to certain manufacturers located elsewhere and engaged in fraudulent issuance of cenvatable invoices without dispatching any

goods to M/s. Advance Engineers, Faridabad. In investigation, these facts came to the notice of the Revenue and the proprietor of M/s. Advance Engineers in his statement dated 22.9.2009, after going through the records, admitted that invoices received from dealer were not accompanied by the same goods that were described therein and manufactured by HSAL. He accepted the irregularities about fraudulent cenvat credit taken and received from the dealer-Arvind Enterprises.

11. Under such facts and circumstances, in the appeal of the *Arvind **Enterprises*** this Tribunal has held that " the material facts, outcome of investigation, gravity of allegation and strength of evidence on record clearly show that Revenue's interest have been prejudiced by the appellants causing loss to it. Further, fraud nullifies everything. Passing of fraudulent cenvat credit taken through fake invoices has been clearly admitted and credit was also deposited back." In such circumstances, the penalty imposed on Arvind Enterprises was confirmed.

12. Having considered the submissions, I find that allegations are based on statement of Director of AIPL, statement of transporters, whole case is made out against the appellant. There is no documents recovered from AIPL wherein it is stated that goods were cleared to the appellants. Further in the course of inquiry at the end of appellant, no such corroboration of receipt of alleged sponge iron

was found. Further, authorised signatory cum Director of the appellant have categorically denied having received the sponge iron clandestinely from AIPL. I further find that neither the Director of AIPL nor the transporters were examined in the adjudication proceedings, relating to the present case. As such, in the facts of the case, demand is hit by the provision of section 9D of the Act. Thus, I hold that there is no evidence worthwhile against the appellant except assumption and presumptions by the Revenue. Accordingly, I hold that Show cause notice is not maintainable. Accordingly, the appeal is allowed and impugned order is set aside. The appellant is entitled to consequential benefit.

(operative part of the order pronounced in the open court)

(Anil Choudhary)
Member(Judicial)

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