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

Date of Hearing/Order: 26.4.2018

Appeal No. E/50782-50783/2018-SM

(Arising out of Order-in-Appeal No. BHO-EXCUS-002-APP-370 & 369-17-18 dated 1.11.2017 passed by the Commissioner (Appeals), Customs & Central Excise, Raipur)

Suresh Agrawal — Appellant
Bajrangbali Ingots & Steel Pvt. Ltd.

Vs.

CCE, Raipur — Respondent

Appearance

Ms. Rinky Arora, Advocate - for the appellant

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

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

Final Order No. 51815-51816/2018

Per Ms. Archana Wadhwa:

Both the appeals are being disposed of by a common order as they arise out of same impugned order vide which demand of duty of Rs. 4,37,908/- stands confirmed against the manufacturing unit along with confirmation of interest and imposition of penalty of identical amount. In addition, penalty of Rs.4,37,908/- - stand imposed upon the Director of the company.

2. As per facts on record M/s Bajrangbali Ingots & Steel Pvt. Ltd. are engaged in the manufacture of ingots as also TMT bars. Factory of one M/s Pankaj Ispat Ltd., Raipur was put to search by the officers and various incriminating documents were recovered. As per the statement of representative of M/s Pankaj Ispat Ltd., they had sent ingots to the present manufacturing unit and received TMT bars from there, without payment of duty. They also deposed that they have also received ingots from the said unit, in a clandestine manner. Director of the appellant company, however, in his statement, denied having received or sent any material to M/s Pankaj Ispat Ltd.

3. Proceedings were initiated against the appellant proposing confirmation of demand on both the counts i.e. the ingots having been received by the appellant and used in the manufacture of TMT bar, which stands cleared without payment of duty as also on the ground that they have clandestinely cleared ingots to M/s Pankaj Ispat Ltd. The said demands were confirmed by the original adjudicating authority.

4. However, on appeal, the Commissioner (Appeals) observed that the allegation of sending of ingots to the appellant by M/s Pankaj Ispat Ltd. and conversion of the same into TMT bars and clearance of bars in a clandestine manner, are based upon the third party records and statements. As such, he dropped the major part of the demand. However, in respect of the allegation of clandestine

clearance of ingots, without payment of duty, he upheld the same. Hence, the present appeals.

5. The appellant's contention is that the evidence proposed in both the allegations are the same i.e. third party records and statements. The appellate authority having held the said evidence to be insufficient, in respect of demand on TMT bars should not have adopted the same for confirming the present demands in respect of clearance of ingots. Otherwise also, the entire demand of Revenue is based upon the scrutiny of the documents recovered from the premises of M/s Pankaj Ispat and the statement given by his representative. Inasmuch as there is no corroborative evidence, the confirmation is not sustainable. Ld. Advocate accordingly, prays for setting aside the impugned orders.

6. The ld. DR appearing for the Revenue reiterates the findings of the lower authority and submits that M/s Pankaj Ispat having admitted receipt of the ingot, without payment of duty, from the present appellant, the demand is required to be confirmed.

7. After carefully considering the submissions made by both the sides, I agree with the ld. Advocate that the evidence in respect of both the types of allegation was identical. The appellate authority having held the third party evidence as insufficient for confirming the demand on TMT bars, should have held the same evidence to be insufficient for confirming the demand in respect of ingots.

Otherwise, also I note that the issue i.e whether third party records can be held to be sufficient for clandestine removal is the subject matter of various decisions of the Tribunal and it has been repeatedly held that the third party records cannot be considered sufficient for upholding the charges of clandestine removal. One such reference can be made to latest decision in the case of ***Shree Consultants Pvt. Ltd. & others CCE & ST, Raipur*** Vs. Final Order No. 51225-51226/2018 dated 4.4.2018.

Inasmuch as the Revenue's entire case is based upon the documents recovered from the premises of M/s Pankaj Ispat, without there being any corroborative evidence, I find that the impugned orders are not sustainable. The same are accordingly, set aside and both the appeals are allowed with consequential relief.

(Dictated & pronounced in open Court)

(Archana Wadhwa)
Member (Judicial)

RM