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

Date of Hearing/Order: 27.4.2018

Appeal No. E/50920-50921/2017-SM

(Arising out of Order-in-Appeal No. BHO-EXCUS-002-APP-337-338-16-17 dated 9.1.2017 passed by the Commissioner (Appeals), Central Excise, Customs & Service Tax, Raipur)

M/s Maa Banjari Ispat Pvt. Ltd. Appellant
Shri Dilip Agrawal

Vs.

CCE, Raipur Respondent

Appearance

None - for the appellant

Shri H.C. Saini, D.R. - for the respondent

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

Final Order No. 51818-51819/2018

Per Ms. Archana Wadhwa:

After rejecting the request for adjournment, I proceed to decide the appeals itself and accordingly heard the ld. AR.

2. The appellant is engaged in the manufacture of MS ingots and was procuring sponge iron from one M/s Shri Ambika Ispat (India) Ltd. A search was conducted from the premises of M/s Shri Ambika Ispat (India) Ltd. resulting in recovery of documents and records like

"Sauda Register". The scrutiny of the same revealed that during the period October 2010 to Nov. 2010, they have removed 164.410 MT of sponge iron to the present appellant without the cover of Central Excise invoices. The said fact was admieed by Shri Avinash Chandra, Director of M/s Shri Ambika Ispat.

3. From the above, Revenue entertained a view that the raw materials so received by the appellant was manufactured by them into 160.161 MT ingots, which were cleared by the appellant without payment of duty. Accordingly, proceedings were initiated against them for confirmation of demand of duty of Rs.4,04,897/- as also for imposition of penalty on both the appellants. The said show cause notice culminated into an order passed by the original adjudicating authority and upheld by the Commissioner (Appeals). Hence, the present appeal.

4. I find that the Tribunal's decision in the case of **Abha Power & Steel P. Ltd. vide Final Order No.58580-58581/2017 dated 20.12.2017,** wherein under the identical circumstances, the demand of duty made on the basis of the third party's records were set aside by following the Tribunal's earlier order in the case of **Rudra Ventures Pvt. Ltd. – 2016 (344) ELT 472 (Tribunal-Chan.)**. It was held in the said order that in the absence of any investigations conducted at the assessee's unit and in absence of any corroborative evidence of procurement of raw materials,

transportation of the goods, flow back of money, etc., allegations of clandestine removal based on mere assumptions and presumptions are not sustainable. To the same effect is the Tribunal's decision in the case of **Raipur Forging Pvt. Ltd. – 2016 (335) ELT 297 (Tribunal-Delhi)**, wherein it was held that recovery of private records from the offices of the assessee, as admitted by the Director and confirmed by the buyer, who used them for manufacture of un-accounted final products, cannot be held to be sufficient evidences in the absence of any further inquiry/verification done regarding transportation, actual manufacture of M.S. ingots, etc. for upholding the charges of clandestine removal. Even the statement of the Director admitting such removal was held to be insufficient in the absence of any other corroborative evidences indicating clandestine activities. Further, the Tribunal in the case of **CCE & ST, Raipur Vs. P.D. Industries Pvt. Ltd. – 2016 (340) ELT 249 (Tribunal-Delhi)** held that the allegations based on inquiries made in the third party's documents of Commission Agent and transporters cannot lead to the fact of clandestine activities. In fact, the list is un-ending and it is almost a settled law that the allegations of clandestine removal cannot be upheld based upon the third party's records without there being any evidence reflecting upon such clandestine activities.

5. In the present case, the entire endeavor of the Revenue is based upon the documents recovered from the premises of M/s.

Pankaj Ispat Ltd. read with the statement of their Director and by ignoring the statement of the Director of the present appellant.

6. In such a scenario, the impugned orders confirming the demands and imposing penalties are unsustainable. Accordingly, I set aside the same and allow both the appeals with consequential relief to the appellants.

(Dictated & pronounced in open Court)

(Archana Wadhwa)
Member (Judicial)

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