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

Excise Appeal No. 50670,51074-51075 of 2018 SM

[Arising out of Order-In-Appeal No. RPR-EXCUS-000-COM- 065 -67/2017 dated 28.11.2017 passed by Principal Commissioner, Central Excise & Customs, Raipur (CG)]

M/s. Kailash Traders **Appellant**
Ashok Kumar Chowdhary
Maruti Ferrous P Ltd.

Vs.

Commissioner of Central Excise **Respondent**
& ST, Raipur

Appearance:

Ms. Rinki Arora, Advocate for the Appellants
Shri A K Singh, AR for the Respondent

CORAM:

Hon'ble Ms. Archana Wadhwa, Member (Judicial)

Date of Hearing /Decision: 31.05.2018

FINAL ORDER NO . 52117- 52119 /2018-(SM)

Per Ms. Archana Wadhwa :

All the three appeals are being disposed of by a common Order as they arise out of the same impugned order passed by the Commissioner vide which duty of Central Excise to the tune of

Rs.36,15,236/- stands confirmed against M/s Maruti Ferrous Private Ltd. who are engaged in the manufacture of MS ingots along with imposition of penalty of identical amount. In addition, penalty stands imposed upon one M/s Kailash Trader as also on Shri Ashok Kumar Chowdhary, Director of Maruti Ferrous Pvt. Ltd.

2. After hearing both the sides, I find that initially demand to the extent of Rs. 27.3 crores was issued against the appellant on the allegations of clandestine removal, which were primarily based upon consumption of electricity. However, Commissioner, while adjudicating the matter dropped the major part of the demand by relying upon the Hon'ble Supreme Court's decision in the case of R.A. Castings (P) Ltd. but upheld the demand of Rs.36,15,236/-.

3. The said demand is based upon the entries made in the records of one M/s Monu Steels & M/s. Kailash Traders who are consignment agents.

4. I find that the entire case of the Revenue is based upon the records recovered from M/s Monu Steels and M/s. Kailash Traders and based upon the statement of the representative of M/s Monu Steels and M/s. Kailash Traders, Revenue entertained a view that the appellant is indulging the clandestine clearances. When the Director of the appellant was contacted by Revenue, he very clearly, in his statement recorded by the officers, deposed that he does not even know M/s Monu Steels. Further, the Revenue has not made any

enquiries from the buyer of the final products or the transporters etc. so as to corroborate and substantiate their allegations.

5. The names of the appellant is mentioned in their records indicating supply of raw material to the said two manufacturers. Based upon the same, the revenue maintained the view that the said raw material supplied by the two consignment agents have been used by the manufacturer for manufacture of their final product, which stands cleared by them in the Clandestine manner.

6. The law i.e. as to whether the third party records can be adopted as an evidence for arriving at the findings of clandestine removal, in the absence of any corroborative evidence, is well established. Reference can be made to Hon'ble Allahabad High Court decision in the case of ***Continental Cement Company Vs. Union of India – 2014 (309) ELT 411 (All.)*** as also Tribunal's decision in the case of ***Raipur Forging Pvt. Ltd. Vs. CCE, Raipur-I – 2016 (335) ELT 297 (Tri.-Del.), CCE & ST, Raipur Vs. P.D. Industries Pvt. Ltd. – 2016 (340) ELT 249 (Tri.-De***l.) and ***CCE & ST, Ludhiana Vs. Anand Founders & Engineers – 2016 (331) ELT 340 (P&*****H).** It stand held in all these judgements that the findings of clandestine removal cannot be upheld based upon the third party documents, unless there is clinching evidence of clandestine manufacture and removal of the goods.

7. There is also a penalty of Rs. 50,000/- upon M/s Kailash Traders in terms of Rule 26 of Central Excise Rules, 2002 on the

allegations and findings that he has supplied the unaccounted raw material to the appellant, which has been further used by them for manufacture of their final product cleared clandestinely. M/s Kailash Trader is a registered dealer, dealing in sponge iron, which is raw material for the appellant M/s Pryash Steel. The allegation was based upon the entries made in his record, without there being any corroborative evidence. I also note that there is virtually no evidence to show that such entries relate to the actual transportation and supply of the raw material to the present appellant. Accordingly, I find no justification to impose penalty upon him, the same is accordingly set aside.

8. In view of above, all the three appeals are allowed with consequential relief to the appellant.

(dictated and pronounced in the open court)

(Archana Wadhwa)
Member(Judicial)

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