IN THE CUSTOMS, EXISE AND SERVICE TAX APPELLATE TRIBUNAL,
NEW DELHI, PRINCIPAL BENCH NEW DELHI

Date of Hearing/Decision: 24.05.2018

Appeal No. E/50732 & 50777/2018-DB

[Arising out of OIA No.RPR-EXCUS-000-COM-081-2017 dated 14.12.2017 passed by Commissioner (Appeals), CCE&ST, Raipur]

M/s Mahamaya Ispat and Mukesh Agrawal …Appellant
Vs.
CCE&ST, Raipur …Respondent

Appearance:
Represented by Shri Rajnish K. Verma, Advocate for the appellant.
Represented by Shri R.K. Mishra, D.R. for the respondent.

Coram: Hon'ble Mr. V. Padmanabhan, Member (Technical)
Hon'ble Ms. Rachna Gupta, Member (Judicial)

Final Order No. 52165-52166/2018

Per V. Padmanabhan:

The present appeals challenge the Order-in-Original No. 81/2017 dated 14.12.2017.

2. The appellant is engaged in the manufacture of bloom / billets of iron and steel falling under Chapter 72 of the First Schedule of the Central Excise Tariff Act. For the manufacture of final products, the appellant made use of sponge iron as the main raw material. On the basis of the case booked and investigations carried out against M/s Devi Iron and Power, Raipur, the Department framed the allegation

that M/s Devi Iron and Power has clandestinely cleared sponge iron to various parties out of which a quantity of about 32,000/- metric tonnes of sponge iron was cleared to the Appellant. A case was booked against the Appellant on the basis of the investigations carried out against M/s Devi Iron and Power, based on the same set of documents and oral evidences. In this connection, the department recorded the statement of Shri V.P. Goswami, Senior Manager (Sales) of the Appellant, who admitted the receipt of the clandestinely cleared sponge iron from M/s Devi Iron and Power and stated that the same was used in the manufacture of finished products which was cleared unaccounted. As a fall-out of the case against Devi Iron and Power, the department issued a Show Cause Notice to the Appellant, proposing demand of Central Excise Duty amounting to Rs. 12,12,73,187/- along with interest. In the impugned order, the Show Cause Notice was decided by confirming the duty demand with interest and penalty equal to the duty amount. Penalty of Rs. 2,00,00,000/- also stands imposed on Shri Mukesh Agrawal, Director of the Appellant under Rule 26. Challenging the impugned order, these appeals have been filed.

3. In this connection, we heard Shri R.K. Verma, learned Advocate for the Appellant, as well as Shri R.K. Mishra, learned D.R. for the Revenue.

4. The learned Advocate submitted that the case against M/s Devi Iron and Power has reached the Tribunal in appeal and the same was

decided vide the Final Order No. 51694 & 51697/2018 dated 20.04.2018 in which the demand made against M/s Devi Iron and Power was set aside. He argued that in addition to the evidences obtained during the investigations against M/s Devi Industries and Steels, department has not carried out any investigation in the Appellant's premises. He submitted that since the case against Devi Iron and Power has been closed, the present appeal also merits to be allowed by setting aside the impugned order.

5. Learned D.R. supported the impugned order.

6. After hearing both sides and perusal of the records, we note that the entire proceedings against the appellant is as a consequence of the investigations and duty demand raised against M/s Devi Iron and Power. The allegation in the present case is that the sponge iron allegedly cleared clandestinely by M/s Devi Industries was received by the Appellant and used to manufacture, final products which also were allegedly cleared without payment of duty. We see that no detailed investigations have been carried out against the Appellant by the department other than a statement recorded against V.P. Goswami, Senior Manager, Sales. Since the entire proceedings against M/s Devi Industries stands already set aside, we are of the view that the case made against the Appellant cannot be sustained only on the basis of the confessional statement of Shri Goswami.

7. Clandestine removal is a very serious charge and is required to be supported by the department with tangible evidence. In the

present case, we find that no tangible evidence has been gathered by the department. It is a settled position of law that in the absence of detailed supporting evidence, the charge of clandestine removal cannot be upheld.

8. In the result, the impugned order is set aside and the appeals are allowed.

[Dictated in open court on 24.05.2018]

(Rachna Gupta)	(V. Padmanabhan)
Member (Judicial)	Member (Technical)

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