IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
NEW DELHI, PRINCIPAL BENCH NEW DELHI

Date of Hearing/Order:27.04.2018

Appeal No. E/50810/2018-SM

[Arising out of Order-in-Original No. RPR-EXCUS/000/COM/CEX/059/2017 dated 20.11.2017 passed by Commissioner, Customs & Service Tax, Raipur]

M/s Rajat Ispat Pvt. Ltd. Appellant

Vs.

C.C.E,- Raipur Respondent

Appearance:
Represented by None for the Appellant
Represented By Shri P. Juneja, D.R. for the respondent

Coram: Hon'ble Shri Archana Wadhwa, Judicial Member

FINAL ORDER NO. 52407/2018

Per: Ms. Archana Wadhwa:

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

2. As per facts on record, the appellant is engaged in the manufacture of steel ingots. Certain investigations were made in the premises of two dealers M/s Monu Steels and M/s Gopal Traders and based upon the entries made in their records, a view was entertained that the appellant was clearing their final products without payment of duty. The Director of the present appellant, in his statement recorded during the course of investigation, denied the charges of clandestine

removal and submitted that all the clearances made by them were under the cover of central excise invoices.

3. In the above background, proceedings were initiated against the present appellants resulting in the confirmation of demands and imposition of penalties, as detailed above. The order passed by the Original Adjudicating Authority was upheld by the Commissioner (Appeals) and hence, the present appeals.

4. The appellants' contention is that the entire case of the Revenue is based upon the result of the search conducted at the premises of M/s Monu Steels & M/s Gopal Traders and there was no investigation at the appellant's end except recording of the statement of the Director, which is exculpatory. Revenue instead of referring to the appellant's statement has chosen to rely upon the statement of dealer's representative without there being any corroborative evidence and has confirmed the demand only on the basis of the third party's records and evidences.

5. Learned Advocate has relied upon the Tribunal decision in the case of **Abha Power & Steel P. Ltd. vide Final Order No. 58580-58581/2017 dated 20.12.2017,** where 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 unaccounted 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.

6. In the present case, the entire endeavour of the Revenue is based upon the documents recovered from the premises of M/s Moun Steels & M/s Gopal Traders read with the statement of their Director and by ignoring the statement of the Director of the present appellant.

7. In such a scenario, the impugned order confirming the demands and imposing penalties are unsustainable. Accordingly, I set aside the same and allow the appeal with consequential relief to the appellants.

(Pronounced and dictated in the open court)

(ARCHANA WADHWA)
MEMBER (JUDICIAL)

(K. Gupta)