CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No.2, R. K. Puram, New Delhi, Court No. II

Date of hearing/decision: 13.09.2018

Excise Appeal Nos. 51582-51583 & 51591/2018-SM
(Arising out of Order-in-Original No. RPR/EXCUS/000/COM/CEX/040, 043/2018 dated 19.03.2018 & 23.03.2018 passed by the Commissioner, Customs, Central Excise & Service Tax, Raipur).

M/s Alankar Steel Pvt. Limited Appellant
Purshottam Agarwal, Director
M/s Ramesh Steel Industries

Vs.

CCE&ST, Raipur Respondent

Appearance:

Sh. Manish Saharan, Advocate for the appellant
Sh. K. Poddar, AR for the Respondent

Coram:

Hon'ble Sh. V. Padmanabhan, Member (Technical)

Final Order Nos. 52987 – 52989/2018

Per: **V. Padmanabhan**:

The present appeals Excise Appeal Nos. 51582-51583/2018 are filed against the Order-in-Original No. 40/2018 dated 19.03.2018. Vide the impugned order, the adjudicating authority confirmed the demand of Central Excise duty amounting to Rs. 4,13,226/- on the appellant and imposed penalty of Rs. 25,000/- on Sh. Purshottamlal Agarwal, Director. However, he dropped the Central Excise duty demand of about Rs. 13.29 crore.

Appeal No. E/51591/2018 is against the Order-in-Original No. 43/2018 dated 23.03.2018. Vide the impugned order, the adjudicating authority confirmed the demand of Central Excise duty amounting to Rs.73,318/- on the appellant and imposed penalty of equal amount. However, he dropped the Central Excise duty demand of Rs. 16,40,67,139/-.

2. The demand for Central Excise duty against both the assessees culminated as a result of common investigation undertaken by the Central Excise officers. The demand raised is based on the entries found in a diary recovered from one Sh. S. K. Pansari, Prop. of M/s Monu Steel a consignment agent. The statement of Sh. S. K. Pansari has also been relied upon. Further, during the course of investigation, Revenue also recorded the statement of Sh. Purshottamlal Agarwal, Director of M/s Alankar Steel Pvt. Limited as well as Director of M/s Ramesh Steel. It is pertinent to record that neither Director admitted to the clandestine clearance of the quantum of M.S. Ingots found mentioned in the diary of Sh. S. K. Pansari. Further, Sh. S. K. Pansari did not appear for cross examination before the adjudicating authority during the course of adjudication proceedings. However, in both the impugned orders, the adjudicating authority has proceeded to confirm the demands for Central Excise duty with the observation that the Directors of the appellant have acknowledged the clearance of M.S. Ingots, found recorded in the diary of Sh. S. K. Pansari and such statements have not been retracted.

3. With the above background, heard Sh. Manish Saharan, ld. Advocte for the appellant as well as Sh. K. Poddar, ld. AR for the Revenue.

4. Ld. Advocate submitted that the case built by Revenue is exclusively on the basis of the third party documents as well as statement. Revenue has failed to bring any corroborative evidence on record. No evidence has been brought on record by Revenue which supports the charge of clandestine clearance on the part of the assessees.

4.1 Ld. Advocate further submitted that several cases were made by Revenue against various other manufacturers of M.S. Ingots also commonly on the basis of diary entries of Sh. S. K. Pansari. At the stage of the appeals before the Tribunal, all such appeals stand allowed on the ground that demand of Central Excise duty cannot be upheld only on the basis of third party evidence. In this connection, he relied on the following decisions amongst others.

i) Maa Banjari Ispat Pvt. Ltd & Ors (F.O. No. 52757-58/2018) decided on 10.08.2018.

ii) Pryash Steel & others (F.O. No. 51656-58/2018) decided on 26.04.2018).

5. Ld. AR justified the impugned orders.

6. The charge of clandestine clearance has been raised by Revenue against both the assessees on the basis of the evidence in the form of diaries

maintained by Sh. S. K. Pansari, Commission Agent (who is prop. of M/s Monu Steels). The statement recorded from Sh. S. K. Pansari further implicates the appellants. During the course of investigation, the Directors of the appellant have been interrogated and their statements recorded. But, it is seen that neither of the Directors have admitted to the correctness of the details found in Sh. S. K. Pansari's diary. Nor have they admitted the charge of clandestine clearance.

7. 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.-Del.) 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 only the third party documents, unless there is clinching evidence of clandestine manufacture and removal of the goods.

8. I have also perused the decisions of the Tribunal cited by the appellant in identical facts and circumstances. It is seen that the demands stand set aside and penalties also.

9. By following the above discussions, the impugned orders are set aside and appeals allowed.

(Dictated and pronounced in the open Court).

(V. Padmanabhan)
Member (Technical)

Pant