

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

Date of Hearing: 18/09/2018

Appeal No. E/2736/2010-(SM)

(Arising out of Order-in-Appeal No. 189-190/RPR-I/2010 dated 23/06/2010
passed by the Commissioner of Central Excise-RAIPUR)

MAHALAXMI STEEL INDUSTRIES

Appellant

Vs.

C.C.E. RAIPUR

Respondent

Appearance

Sh. Prem Ranjan, Adv.

for the appellant

Sh. K. Poddar, AR

for the respondent

CORAM: HON'BLE MRS. ARCHANA WADHWA, MEMBER (JUDICIAL)

Final Order No.53009/2018

Per: Mrs. Archana Wadhwa

1. The appellant is engaged in the manufacture of MS ingots and CTD bars + billets.
2. On the basis of the specific information, the Revenue undertook investigations to find out the clandestine activities of assessee and accordingly approached there transporters as also traders. On the basis of investigations, it was found that the three parallel invoices, which were recovered from the trader's premises, were not reflected in the appellant's records. As such a view was entertained that the appellant has not paid duty of excise in respect of said three parallel invoices.

3. Consequently the appellant's factory was visited by the officers and search was undertaken. The stock taking conducted by the visiting officer revealed shortages in respect of raw-materials as also finished goods. The statements of their authorized representatives as also proprietor were recorded admitting removal of the final products in respect of the three parallel invoices as also relatable to shortage of raw-material in respect of 15.16 MT of CTD bar, a final product, to the extent of Rs. 12,77,429/-.
4. On the basis of the above, proceedings were initiated against them proposing confirmation of demand of duty to the tune of Rs. 16,55,92/- as also for imposition of penalty. The said show Cause Notice culminated into an order passed by the Original Adjudicating Authority, confirming the demand along with the interest and imposition of penalty of identical amount.
5. The said order was challenged by the appellant before the Commissioner (Appeals), who observed as under;

"In the present case, the Appellant No. 1 does not dispute the quantification of duty in respect of 15.16 MT CTD Bar plus 3 nos of parallel invoices on which they have already paid Central Excise Duty of Rs. 12,77,429/- plus Ed, Cess of Rs. 25,549/-. Their challenge is limited to the excess duty confirmed in the Order impugned. It would therefore be necessary to re-quantify the duty demand by indentifying the documents on the basis of which the shortage of 184.720 MT of CTD Bar have been worked out and alleged in the show Cause Notice instead of 15.16 MT shortage of CTD Bar in the Panchnama dated 06.02.2006." I thus affirm the Central Excise duty

demanded amounting to Rs. 12,77,429/- plus Ed. Cess Rs. 25,549/- on the appellant.

6. As seen from above, the Commissioner (Appeals) confirmed the demand to the extent of Rs.12,77,429/- and Education Cess to the extent of Rs. 25,549/- and remanded the matter for the balance amount. The said order of Commissioner (Appeals) was challenged by the Revenue before Tribunal on the short ground that the Commissioner (Appeals) has no power to remand the matter. Tribunal, in turn remanded the matter to Commissioner (Appeals) for re-deciding the issue on the merits of the case, instead of remanding the matter to the original Adjudicating Authority.
7. The present impugned order stand passed by the Commissioner(Appeals) in remand proceedings vide which he upheld the confirmation to the extent of Rs. 12,77,429/- plus Education Cess 25,549/- along with the imposition of penalties of identical amount and set aside the balance confirmation. He also set aside the penalty imposed under Rule 25 of the Central Excise Rules.
8. The said order is challenged before Tribunal.
9. After hearing both the sides I find that the appellant accepted their liability in respect of 15.16 MT CTD bar plus three numbers of parallel invoices. As recorded by Commissioner (Appeals) in his first order-in-appeal, the contest was only to the balance amount of duty. It is also seen that in the first order the appellate authority had confirmed the demand and had remanded the matter to original Adjudicating Authority only for dealing with the balance amount. The said order of Commissioner (Appeals) being Order-in-Appeal No. 74/RPR-1/2008 dated 14/07/2008 was never put to

challenge by the appellant thus leading to the inevitable fact that appellant accepted the said order, which had attained finality.

When the matter was subsequently remanded to Commissioner(Appeals) by the Tribunal, while disposing of Revenue's Appeals the Commissioner(Appeals) passed the present impugned order and has set aside the rest of the demand along with the setting aside the penalty to that extent and confirmed the demand only to the extent to which it had attained finality vide the first order of Commissioner(Appeals). As such I am of view that the appellant can have no grievance against the present impugned order in as much as the disputed balance amount of duty already stands set aside by the Commissioner (Appeals) and the confirmation is only to the extent to which the demand was confirmed vide the earlier order of Commissioner(Appeals), which was not challenged and which had attained finality. I find no merits in the contention of Id. Adv. that by remanding matter to Commissioner (Appeals) on the Revenues appeal, the entire proceedings before Commissioner (Appeals) get reopened, in as much as the appellant never challenged the earlier order of Commissioner (Appeals) and the Revenue's appeals was only on the short ground of the powers of Commissioner(Appeals) to remand.

10. In view of the above I uphold the impugned order and reject the appeal.

(Dictated and pronounced in open court)

(Archana Wadhwa)
Member(Judicial)

