CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

WEST BLOCK NO.II, R.K. PURAM, NEW DELHI-110066.

BENCH-DB

COURT -IV

<u>Excise Appeal No.E/51601/2018 EX-DB]</u>

[Arising out of Order-in-Appeal No. BHO-EXCUS-001-APP- 589-17-18 DATED 17.01.2018 passed by the Commissioner (Appeals),CGST, Customs & Central Excise, Bhopal].

M/s. Kakda Steels Pvt. Ltd. ...Appellant

Vs.

CCE, Bhopal ... Respondent

<u>Excise Appeal No. E/51312/2018 EX-DB]</u>

[Arising out of Order-in-Appeal No. BHO-EXCUS-001-APP- 589-17-18 DATED 17.01.2018 passed by the Commissioner (Appeals),CGST, Customs & Central Excise, Bhopal].

CCE, Bhopal ...Appellant

Vs.

M/s. Kakda Steels Pvt. Ltd. ... Respondent

Present for the Assessee : Shri Prabhat Kumar, Advocate
Present for the Respondent: Shri.S.K.Bansal, D.R.

CORAM:HON'BLE MRS. ARCHANA WADHWA, MEMBER (JUDICIAL)
HON'BLE MR. BIJAY KUMAR, MEMBER (TECHNICAL)

Date of Hearing/Decision: 31.10.2018

FINAL ORDER NO. 53240-53241 /2018

PER: ARCHANA WADHWA

As the appellant as also the Revenue are in appeal against the same impugned order of Commissioner (Appeals), we proceed to decide both the appeals together.

2. After hearing both the sides duly represented by Shri Prabhat Kumar, ld. Advocate for the appellant and Shri H.C. Saini, ld. D.R. for the Revenue, we find that the appellants are engaged in the manufacture of MS Ingots and colour coated sheets and were availing the facility of cenvat credit of duty paid on the inputs as also on the capital goods and input service.

3. After initiation of proceeding and conclusion of adjudication, the lower authorities have confirmed the demand of duty of Rs.11,91,806/- on the allegation and findings of clandestine removal, which in turn are based upon comparison of figures as reflected by the appellant in their ER-I return and their sales register. The appellant's explanation is that the sales register also shows the clearances of inputs "as such" and all the entries in the sales register do not relates to clearance of their final product and draws our attention to various documentary evidences in support of their above plea. We find that such documentary evidences cannot be examined and verified at the Tribunal level and inasmuch as the same relates to factual position are required to be examined by the Original adjudicating authority, for which purpose we remand the matter to him.

4. A part of the demand to the tune of Rs.2,52,362/- is based upon the fact that a quantity of 62.600 M.T. of MS Ingots which stands recorded in RG-I Register has been removed by the appellant without issuance of any invoice. Ld.

Advocate explains that they have already issued an invoice in respect of 32.600 MT of MS Ingots and the balance quantity of 30 M.Ts. was issued for recycling, as the same was of poor quality. He submits that all the said facts were reflected in their RG – I Register and they have documentary evidences to prove recycling of the Ingots. Inasmuch as, the said fact also relates to examination and verification of the factual position, we remand the said issue also to the adjudicating authority.

5. As regards the denial of Rs.1,05,283/- availed as credit by the appellant on the DG Set, which was not found to be present in the assessees factory and hence believed to have been sold, it stands explained by the assessee that the said DG Set, during the visit of the Officers, were sent for repair purpose and on receipt back of the same, the said DG Set was cleared on payment of duty. Though the Lower Authorities have accepted the fact that the said DG Set has subsequently paid the duty but the issue relates to imposition of penalty inasmuch as it is the Revenues case that duty was paid on DG Set only after being pointed out by the Audit team. Inasmuch as, we have remanded the earlier two issues, the adjudicating authority would also deal with the said aspect.

6. Revenue is in appeal against that part of the impugned order of Commissioner (Appeals) vide which he has dropped the demand to the extent of Rs.39,58,017/- on the findings that there was no undervaluation of the goods inasmuch as the said goods were sent to the other unit for the purpose of re-

melting as the same were defective items. He has observed that there was no motive for the appellant to pay less duty inasmuch as whatever duty was paid by them was available as a credit to the recipient unit. However, ld. Advocate also submits that there are evidence to show that the goods sent to the other unit for re-melting were actually defected products.

7. As we have remanded the assessees matters to the original adjudicating authority, we deem it fit to remand Revenues appeal also with liberty to the appellant to satisfy the authorities by production of evidences that the goods in question were of lower and defective quality and as such attracted lesser value.

8. In view of the aforesaid facts and circumstances of the case, impugned order is set aside and both the appeals are allowed by way of remand. We make it clear that we have not gone to the merits of the case and have not expressed any opinion. The appellant is at liberty to contest all the issues before the adjudicating authority, for which purpose they would be afforded an opportunity to put-forth their case.

[Dictated & Pronounced in the open Court].

(BIJAY KUMAR)
MEMBER (TECHNICAL)

(ARCHANA WADHWA)
MEMBER (JUDICIAL)

Anita