

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

Date of Hearing/Order : 18.12.2018

Appeal No. E/52703/2016-DB

(Arising out of Order-in-Original No. ALW-EXCUS-O-I-O-COM/21/16-17 dated 21.6.2017 passed by the Commissioner, Central Excise & Service Tax, Alwar (Rajasthan))

M/s H.R. Steels Pvt. Ltd.

Appellant

Vs.

CCE & ST, Alwar

Respondent

Appearance

Shri Bipin Garg, Advocate - for the appellant
Shri H. Bansal, Advocate

Shri R.K. Mishra, D.R. - for the respondent

**CORAM: Hon'ble Mr. Anil Choudhary, Member (Judicial)
Hon'ble Mr. Bijay Kumar, Member (Technical)**

Final Order No. 53466/2018

Per Bijay Kumar:

Vide the impugned order, the appellant is in appeal against the order in original No. ALW-EXCUS-O-I-O-COM/21/16-17 dated 21.6.2017 passed by Commissioner in pursuance of the show cause notice dated 30.4.2015.

2. The issue involved in this case is that based upon the AG Audit objection and the department has alleged the clandestine removal

considering the output as per the SAIL norm, which is public sector undertaking. No other evidence have been brought on record and considering the norm of yield by the SAIL it was presumed that the appellant has manufactured the finished product clandestinely and cleared them accordingly without payment of duty.

3. With this background, we have heard ld. Advocate and ld. DR for Revenue.

4. We find that in this case no investigation has been taken up by the department regarding the use of raw material, electricity, sale of the raw material, mode of transport etc. to sustain alleged clandestine removal and covered by the decision of **RA Castings Pvt. Ltd. Vs. CCE, Meerut-I** - 2009 (237) ELT 674 (Tri.-Del) and **Continental Cement Company Vs. Union of India** - 2014 (309) ELT 411 (All.). We also find that the show cause notice proposed to follow the output norm being obtained by the SAIL which is highly complex integrated plant having latest technology and infrastructure. It is not possible for the unit like appellant to have as same technology and infrastructure as available to the SAIL in this case and the production norm is treated to be identical. The department has not taken this much of the evidence into account by alleging the clandestine removal on the part of the appellant.

Accordingly, we find that there is no merit in the case and accordingly, we set aside the impugned order and allow appeal with consequential benefits, if any.

(Dictated & pronounced in open Court)

(Anil Choudhary)
Member (Judicial)

(Bijay Kumar)
Member (Technical)

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