# CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
## EAST REGIONAL BENCH : KOLKATA

Excise Appeal No: 140 /2007

(Arising out of the Order-in-Original No.31/COMMR/Bol/06 Dated-20.11.2006 passed by the Commissioner of Central Excise, Bolpur)

M/s. SAIL

...APPELLANT(S)

VERSUS

Commr. of Central Excise,
Bolpur

...RESPONDENT(S)

APPEARANCE

Dr. Samir Chakraborty, Sr. Advocate &
Sri Abhijit Biswas, Advocate

FOR APPELLANT(S)

Sri A. Roy, Supdt. (A.R.)

FOR THE RESPONDENT(S)

CORAM:

SHRI P.K. CHOUDHARY, HON'BLE JUDICIAL MEMBER
SHRI C.J. MATHEW, HON'BLE TECHNICAL MEMBER

**DATE OF HEARING: 13/03/2018** **Date of Pronouncement:13/03/2018**

FINAL ORDER NO. : FO/76142/2018

Per CORAM

Briefly stated the facts of the case are that the appellant is engaged in the manufacture of Iron and Steel products classifiable under Chapter 72 of the first schedule to the Central Excise Tariff Act, 1985.

2. Show Cause Notices dated 30.01.91 and 31.03.92 were issued by the Superintendent of Central Excise, DSP Range-I proposing demand of duty as per Rule 223A of the erstwhile Central Excise Rules, 1944 on the shortage of goods.

3. By the impugned Order, the Learned Commissioner of Central Excise, Bolpur Commissionerate confirmed the demand of duty of Rs. 1,61,10,218.00 under Rule 223A of the erstwhile Rules, 1994 and imposed penalty of Rs. 2,000.00 under the said Rules. Hence, the appellant filed this appeal.

4. We find that the demand of duty was confirmed on shortages found in respect of various items during the Annual Stock Taking conducted as on 31.03.89 and 31.03.90. The appellant contended that the shortage/excess in the Annual Shortage and Surplus Report is not actual but notional but as the production is recorded on estimation, whereas dispatch is on actual RR weight. It is further submitted that the shortage or excess quantity were adjusted in their account which never reflected in the Central Excise records.

5. The Learned Senior Counsel on behalf of the appellant submitted that on the identical issue, the Tribunal by Order No. 1745/2005 dated 04.10.05 (M/s. SAIL Evadravalthi -577301 Vs. Commissioner of Central Excise, Mysore (Bangalore Bench) in their own case allowed the appeal of the appellant. The relevant portion of the said Order is reproduced below :

" ...5. *We have gone through the records of the case carefully.The demand has been issued under Rule 223A covering a period of 13 years from 31.3.1998 to 31.3.2001. The Revenue has issued the show cause notice on the belief that Section 11A is not applicable for demands made under Rule 223A. The Department's view is not correct in terms of the judicial pronouncements cited by the appellants. There is no allegation that the appellants have removed goods in clandestine manner. Moreover, the stock taking was done by the appellants themselves. The departmental officers only associated with the same. Hence, the stock taking cannot be said to have been conducted in terms of 223A of the Central Excise Rules. In any case the shortage arrived at is based on estimates. The estimate cannot be said to be very accurate as it has got its own limitations. It should also be appreciated that there are practical problems in steel plants in the matter of accounting of their production. The CBEC Circular No.52/79 Cx.6 dated 26.10.1979 has also laid down certain guidelines with regard to condonation of losses observed during annual stock taking. The appellants' submission that the excess/shortage noticed was only marginal should have been given in due consideration. The Tribunal in the case of M/s. Micro Forge Pvt. Ltd. Vs. CCE Rajkot reported in [2004 (169) ELT 251 (Tri.) has held that when the stock position is arrived at on the basis of estimation, the allegation of shortage of stock and consequent that removal of the goods cannot be sustained. A plethora of case law held that provisions of section 11A would apply in making demands of duty on balance found during stock taking. The appellants based many reasons for discrepancies between the RG-I and the physical stock. For example, the RG-I is only based on estimated production and not based on actual weighment Physical stock is also based on estimation of weight on the basis of volumetric estimate and conversion to theoretic weight based on sectional weight. A comparison between two estimation is inherently inaccurate Lesses like cutting, grinding and milling, scale loss after heat treatment and straightening, reprocessing after inspection at various stage of manufacture are not recorded in RG-I. Rejections are not recorded while accounting for quantity produced or issued in the term of sections and ingots. Shortage is inflated due to errors in taking crening balance as on 1.4.1998and physical stock on 31.03.2001. Considering the practical difficulties, in estimating the actual stock and in view of the submissions made by the appellants, we find that the demand of duty made by the adjudicating authority cannot be sustained. Therefore, we allow the appeals with consequential relief".*

The Tribunal in the case of Rourkela Steel Plant (SAIL) Vs. Commissioner of Central Excise, Bhubaneswar, 2001 (137) ELT 566 (Tri-Kol) allowed the appeal on the same issue.

> *"..9. We agree with the submissions made by the Ld. Advocate that based upon the difference shown in the annual financial accounts and RG-1 register, the findings of the clandestine manufacture and removal cannot be sustained against the appellants. It is well settled law that onus to prove clandestine manufacture and clearance is upon the Revenue and required to be proved by production of sufficient evidence. There is nothing on record to show that the appellants have been indulging into excess clearances without payment of duty. The appellants have satisfactorily explained the difference between the figures as reflected in annual financial account and those entered in RG-I for each and every item. As such we hold that confirmation of demand of duty against the appellants is not justified. We also find favour with the appellants' submissions that the demand is barred by limitation in as much as the show cause notice was issued on 5/12/1990 whereas the annual financial accounts are put to circulation within a period of two months from the close of the financial year. In these circumstances, it cannot be said that there was any suppression on the part of the appellants so as to invoke the longer period of limitation. In view of the foregoing the appellant succeeds on merits as also on the point of limitation. Appeal is thus allowed with consequential relief to the appellants."*

The Learned Senior Counsel also disputed the demand of duty raised by the Superintendent of Central Excise.

6. We find that the issue is already covered by the decision of the Tribunal in the appellant's own case as above. Therefore, the impugned Order cannot be sustained and accordingly it is set aside. The appeal filed by the appellant is allowed.

(Operative part of the order already pronounced in the Court on 13/03/2018 )

(C.J. MATHEW)
TECHNICAL MEMBER

P Choudhary
(P.K. CHOUDHARY)
JUDICIAL MEMBER

k.b./-