

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE
TRIBUNAL,
EAST REGIONAL BENCH : KOLKATA**

Appeal No.E/591/2007

(Arising out of Order-in-Original No.18-19/Commr/Bol/2007 dated 30.07.2007 passed by the Commissioner, Central Excise, Bolpur)

M/s. SAIL, Durgapur Steel Plant

...APPELLANT(S)

VERSUS

Commissioner of Central Excise, Bolpur

...RESPONDENT (S)

APPEARANCE

Dr. Samir Chakraborty, Sr. Advocate and Shri A.Biswas, Advocate for the Appellants.

Shri S.Mukhopadhyay, Suptd.(AR) for the Revenue

CORAM:

HON'BLE SHRI P. K. CHOUDHARY, JUDICIAL MEMBER

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

Date of Hearing/Decision : 17.12.2018

ORDER NO.FO/77107/2018

Per Bench :

The present appeal is filed against the Order-in-Original No.18-19/Commr/Bol/2007 dated 30.07.2007.

2. The appellant has an integrated steel plant where it manufactures various types of iron and steel products falling under various Chapter Headings of the First Schedule to the Central Excise Tariff Act, 1985. The dispute revolves around the stock taking conducted by the Internal Stock Verification Department. The periods involved are 2004-2005 as well as 2005-2006. The Annual Stock Verification exercise conducted in-house brought out shortages of various products manufactured in the integrated

steel plant. The department was of the view that such shortages are liable to pay most of Central Excise duty, since they have not been accounted. On these lines two show cause notices were issued to the appellant dated 19.03.2007 as well as 27.03.2007 proposing to demand the duty due on such shortages of various products. These show cause notices were finalized by the adjudicating authority by issue of this common order. The adjudicating authority took note of the CBEC Circular No.52/79 CX.6 dated 26.10.1979 in which the CBEC prescribed various limits upto which, shortages noticed in iron and steel products during Annual Stock Taking, may be condoned. In particular, he has referred to the limit of 2% prescribed for Pig iron as well as 1% for other iron and steel items. Since the shortages noticed in respect of all products other than Pig iron were less than the condonable limit of 1%, he dropped the demand for Central Excise duty on such shortages. However, in respect of Pig iron, he observed that the shortages were much beyond the limit of 2%. Out of the shortage of 11.47% in Pig iron, he condoned the shortages upto 2% and demanded the Central Excise duty on the balance. Such demand was upheld for normal limit of limitation alongwith interest. Penalty under Section 11AC was also imposed. This order is under challenge in the present appeal.

3. On behalf of the appellant Id. Sr. Advocate submitted that the nature of the commodity was such that actual weighing was not practical; hence, the stock quantities were estimated by adopting the standard volumetric measure procedure. However, Pig iron is in the form of liquid at extremely high temperature which cannot be easily taken up for weighing. However, at the point of clearances of the final product the

quantities are determined on the basis of actual weighment as per Railway receipts. Hence, he submitted that the discrepancies between the quantities are likely and no inference can be drawn that such differences in quantities have been cleared clandestinely. He also submitted that similar dispute in respect of various Integral Steel Plant of SAIL have been considered by the various benches of the Tribunal and demands raised for shortages noticing stock taking have been set aside. In particular he relied on the following decision:

a) SAIL vs. Comm. Of C.Ex, Bolpur Final Order No.76142/2018 dt. 13.03.2018 passed in E/140/2007 by CESTAT, Kolkata.

b) SAIL vs. CCE [2006(200) ELT 229(T).

c) Rourkela Steel Plant vs. CCE [2001(137) ELT 566 (T.Kol.)

4. Ld. DR justified the impugned order. He specifically pointed out that a limit of 2% has been fixed by the CBEC in respect of stock taking for Pig iron. Since the shortages noticed in the stock taking for the two periods is beyond the 2% limit, the differential duty has been rightly demanded on the quantity over and above 2% limit.

5. We have carefully examined the submissions made by both sides in relation to the appeal records. The limited point for consideration is whether the shortages noticed in Pig iron during the annual stock verification are to be charged to Central Excise duty. It has been pointed out that the differences have arisen on account of different yardsticks adopted for accounting quantities. The criterion adopted for measuring the quantity of Pig iron at the stage of final product, is on the basis of actual weighment as appearing in Railway receipts. However, the stock verification quantities are estimated on volumetric basis. The total

quantity of such material produced during the disputed period is also extremely high and is of the order of 19,53,003 MT.

6. We find that identical issue has been considered by the Tribunal in various cases. In the recent case in respect of the same Integrated Steel Plant for the earlier period, the Tribunal vide Final Order No.76142/2018 dt.13.03.2018 set aside the demand made with the following observations:

"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."

7. By following the above decision we set aside the demand and allow the appeal.

(Ordered portion have already been pronounced in the open court.)

S/d.

(P. K. CHOUDHARY)
MEMBER (JUDICIAL)

S/d.

(V. Padmanabhan)
MEMBER (TECHNICAL)

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