IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, KOLKATA
EASTERN ZONAL BENCH: KOLKATA
Appeal No. E/87,88 & 89/2010

(Arising out of Order-in-Original No. 107/Commr./Bol/09 dated 11.11.2019 passed by the Commissioner of Central Excise, Bolpur)

M/s. Calstar Sponge Ltd.
Shri Vikash Agarwal
Shri Sasti Charan Banerjee

….Appellant (s)

Vs.
Commissioner of Central Excise, Bolpur

….Respondent (s)

Appearance:
Shri B. N. Chattopadhyay, Consultant for the Appellant (s)
Shri H.S. Abedin, AC(AR) for the Respondent(s)

CORAM:
HON'BLE SHRI P.K.CHOUDHARY, MEMBER(JUDICIAL)
HON'BLE SHRI BIJOY KUMAR, MEMBER(TECHNICAL)

Date of Hearing :- 17.09.2018
Date of Pronouncement : 17.03.2019

ORDER NO. …………………………………..

PER BENCH

Briefly stated the facts of the case are that the appellants are engaged in the manufacture of M.S. Ingot. The factory premises of the appellant company was searched on 28.06.2007 and some records and documents both private and statutory were seized. Statements were recorded from the employees and the Show Case Notice was issued. The Adjudicating Authority confirmed the demand along with interest and imposed penalty of equal amount under Rule 25 of the Central Excise Rules, 2002 read with Section 11AC of the Central Excise Act, 1944. Penalties were also imposed upon the Director and Employees of the appellant company. Hence, the present appeals before the Tribunal.

2. The Learned Consultant appearing on behalf of the appellants submits that the order passed by the Ld. Commissioner has not dealt with all the issues as raised by the appellants in the reply to the Show Cause Notice. He referred to one private Register which has been recovered and seized by the Department and alleged to be belonging to the appellant which contains certain entries. The Ld. Consultant further submits that the appellants have got only one furnace in their factory. In case Revenue takes the said register to be of the appellants, since the production has been shown in such detail, there is no scope of any other production has been shown in such detail, there is no scope of any other production. In that case, the production for the period from 27.4.2007 to 27.6.2007 comes to 2683.950 M.T. (source Annexure C2 of Show Cause Notice 19802 x 75 Kgs. + 11988 x 100 Kgs.). The total clearance calculated by the department from the said register for the period from 27.4.2007 to 27.6.2007 comes to 2731.67 MT (as per annexure C6 of Show Cause Notice). The clearance as per the statutory records i.e. The Central Excise invoices and DSA comes to 1074.250 M.T. The total clearance thus comes to 3805.92 MT (2731.67 M.T. + 1074.250 M.T.) This is absolutely absurd as the dispatch is much more than the production. It was mentioned in the reply to the show cause notice that the entries in the said register were improper and incorrect inasmuch as it gives rise to absurd figures. This has not been considered by the Ld. Commissioner in the impugned order.

3. The Learned D.R. justify the Impugned Order.

4. Heard both side and perused the appeal records.

5. We observe that the Order-in-Original is passed upon mere presumption and possibilities and nothing have been proved at all by the Department as specially unaccounted for manufacturing of M.S. Ingot and clandestine removal thereof. The inference of CRC on the basis of loose sheets and private records is perverse as the entries made in the loose sheet and private record, without proper verification do not construed the legal admissible evidence.

6. Unless there is clinging evidence of the nature of purchase of raw materials, use of electricity, sale of final products and mode of flow back of funds etc. Demands cannot be confirmed solely on the basis of presumption and assumption. Clandestine removal is the serious charge against the manufacturer which is required to be discharged by the Revenue by production of sufficient and tangible evidence. In the instant case, the consumption of the electricity was examined by the Department who adopted the shortcut method by raising the demand and levied the penalties. The statement of buyers and transporters are based on memory alone and their statements were not supported by any documentary evidence or any proof.

7. It is our considered view that when there was no extra consumption of electricity, purchase of raw materials etc. then manufacturing of extra goods is not possible. No purchase of raw materials outside the paper books have proved. We find that the Tribunal have taken consistent view on the aspect that private record and documents cannot be made basis to draw inference and clandestine removal unless the statement of the author of the documents is recorded and he is also examined by the Adjudicating

Authority as required under Section 9D of the Central Excise Rules, 1944.

8. In view of the above discussions and considering the facts and circumstances of the case no record showing any extra payment to the labourers stand place on record. If the goods have been manufactured and cleared clandestinely by the appellant without payment of duty, some required procurement of raw materials extra working hours of the factory, electricity consumption, payment of labour charges, payment of transport bills etc. We further note that it does not require the support of any judicial pronouncement to observe that the charges of clandestine removal quasi-criminal are required to be proved sufficiently and such findings cannot be arrived at the assessee in the relm of consumptions and surmises. Under the circumstances, we are of the view that there is no sufficient materials of records to establish clandestine manufacture and clearance. We, accordingly, set aside the confirmation of demand and imposition of penalty under Rule 25 of the Central Excise Rules, 2002 as also Section 11AC of the Central Excise Act. Penalty is imposed upon the Director and employees of the appellant company are also set aside.

In view of the above discussions all the appeals are allowed with consequential reliefs to the appeals.

(Dictated and pronounced in the open court on 14.03.2019)

(Bijoy Kumar)
Member(Technical)

(P.K. Choudhari)
Member(Judicial)

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