IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, KOLKATA

REGIONAL BENCH – COURT NO.1

Excise Appeal No.252 of 2012
(On behalf of Appellant)

(Arising out of Order-in-Original No.03-09/Commr./2012 dated 31.01.2012 passed by Commissioner of Central Excise & Service Tax, Jamshedpur)

M/s Purvi Iron Limited
M-52, IVth Phase, Adityapur Industrial Area, Ghamaria, Jamshedpur

Appellant

VERSUS

Commissioner of Central Excise & Service Tax, Jamshedpur
143, New Bardwari, Sakchi, Jamshedpu-831001

Respondent

APPERANCE :

Shri N.K.Chowdhury,Advocate for the Appellant
Shri S.Mukhopadhyay, Authorized Representative for the Respondent

CORAM:
HON'BLE MR.ASHOK JINDAL, MEMBER (JUDICIAL)
HON'BLE MR.K.ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NO…76262/2023

DATE OF HEARING : 26 .07.2023
DATE OF DECISION : 26 .07.2023

Per Ashok Jindal :

The appellant is in appeal against the impugned order alleging the clandestine manufacture and removal of the excisable goods.

2. The facts of the case are that the appellant was engaged in the manufacture of ingots. The raw materials required for manufacture of ingots are sponge iron and waste and scrap of iron and steel. The appellant is paying duty on the excisable goods and availed cenvat credit on inputs. The appellant was asked for submitting electricity consumption bills for the period from March, 2006 to October, 2010. During investigation and examination of the details of the electricity, the Department compared the production on MS Ingots in the Books and

calculated the production on the basis of consumption of electricity and inferred that the differential quantity of finished goods was manufactured and cleared without payment of duty and hence raised the demand of Rs.3,86,47,247/- by issuance of show-cause notice on the basis that 1000 Units were required for production of 1 MT of steel ingots. Whereas as per the consumption of electricity, it is used for production of MS ingots approximately 1325 to 1525 Units per MT. Therefore, on the basis of excess electricity consumption, it was alleged that the appellant has clandestinely manufactured the goods and cleared thereof. Accordingly, duty was demanded.

2.1 The matter was adjudicated. The proposal of show-cause notice was confirmed.

2.2 Against the said order, the appellant is before us.

3. The ld.Counsel for the appellant, submits that the demand is barred by limitation as there was no suppression of facts with intent to evade payment of duty. The demand has been raised on the basis of assumption and presumption and there is no procurement of huge quantity of raw materials. No effort was made to find out the supplier of the raw materials to transport of goods and there was no identification of the buyers. This burden lies on the Department to prove the clandestine removal of goods with cogent and tangible evidence.

3.1 In this regard, the ld.Counsel relied on the decision of this Tribunal in the case of R.A.Castings Private Limited Vs. Commissioner of Central Excise, Meerut I reported in 2009 (237) ELT 674 (Tri.-Del.), which was affirmed by the Hon'ble Allahabad High Court as reported in 2011 (269) ELT 337 (All.) and the appeal of the Department was also dismissed by the Hon'ble Apex Court in the case of Commissioner of

Central Excise, Meerut I Vs. R.A. Castings Private Limited as reported in 2011 (269) ELT A108 (SC). He also relied upon in their own case for the subsequent period wherein the demand has been dropped against the appellant. He, therefore, prayed that the impugned order is to be set aside.

4. On the other hand, the ld.A.R. for the Revenue, submitted that the matter is required to be remanded as per the decision of the Hon'ble High of Jharkhand in the case of Sukh Sagar Metals Private Limited Vs. Union of India reported in 2020 (372) ELT 801 (Jhar.).

5. Heard both sides and considered the submissions.

6. We find that initially, the said issue came up before this Tribunal that whether the demand alleging suppression of production and clearance thereof on the basis of electricity consumption, is sustainable or not.

7. The said issue has been dealt with by this Tribunal in the case of R.A.Castings Private Limited (supra) and held that the same cannot be the basis to confirm the demand against the assesse. The said order was challenged by the Hon'ble High Court of Allahabad and the appeal against the said order has been dismissed and further the said order has been affirmed by the Hon'ble Apex Court wherein it has been held that the excess production of steel ingots as proof of clandestine removal, could not be estimated based only on higher electricity consumption. Further, we take note of the fact that the appellant's own case for the subsequent period, the ld.Adjudicating Authority has observed as under:

> *"3.12 In the end, I hold that the above referred case laws are applicable in the present case as there is no corroboration of clandestine clearance allegations. It is a case of assumption and*

presumption which is not allowed as ruled by the Hon'ble Supreme Court in the case of Oudh Sugar Mills Limited Vs. Union of India as reported in 1978 (2) ELT (J172((SC) and other similar cases. Accordingly, I hold that the impugned demand is not sustainable on merit. I further find that Commissioner of Central Excise & Service Tax, Ranchi has held the same view in Order-in-Original No.02/CEx./Commr./2015 dated 31.03.2015 and Order-in-Original No.07/CEx/Commr./2015 dated 14.05.2015 and has dropped the proceedings. Since on merit, impugned demand is not sustainable, the limitation issue has not been gone into. Also, the question of interest or any kind of penalties on the notice does not arise in view of above."

8. As in the appellant's own case, the ld.Adjudicating Authority has taken a view for the subsequent period that the demand cannot be sustainable on the basis of higher electricity consumption by the appellant. Therefore, we hold that in this case also, demand is not sustainable against the appellant and the case law cited by the ld.A.R. for the Revenue, is not applicable to the facts of this case as in this case for the subsequent period, the demand is dropped on the same allegation.

9. Accordingly, we set aside the impugned order and allow the appeal with consequential relief, if any.

(Operative part of the order was pronounced in the open court)

Sd/-
(Ashok Jindal)
Member (Judicial)

Sd/-
(K.Anpazhakan)
Member (Technical)

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