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

REGIONAL BENCH – COURT NO.2

Excise Appeal No. 75338 of 2016

(Arising out of Order-in-Original No. 09/Commr./2015 dated 23.01.2015 passed by Commissioner of CGST & Central Excise, Jamshedpur.)

M/s Shree Om Metals Limited,
(Manikui, P.O.- Chandil, Dist.- Saraikela Kharswan,
Jharkhand-832401.)

...Appellant

VERSUS

Commissioner of CGST & Central Excise, Jamshedpur,
(143, New Bardwari, Sakchi, Jamshedpur-831001.)

.. ...**Respondent**

APPERANCE :
Shri N. K. Chowdhary, Advocate for the Appellant
Shri S. K. Jha, Authorized Representative for the Respondent

CORAM:
HON'BLE MR. R. MURALIDHAR MEMBER (JUDICIAL)
HON'BLE MR. RAJEEV TANDON MEMBER (TECHNICAL)

Final Order No...75294/2025

DATE OF HEARING : 24.01.2025

DATE OF PROUNCEMENT : 11.02.2025

PER R. Muralidhar:

The appellant is manufacturer of MS Ingot classifiable under Central Excise Tariff Act, 7206-1090. Based on the details of electricity consumed, a Show Cause Notice was issued alleging that the appellant has suppressed manufacture of MS Ingot during the period 2012-13 to 2012-13-14 (up to September 2013). After due process, the adjudicating authority confirmed the demand. Being aggrieved the appellant filed their appeal before the Tribunal.

2. The Learned Advocate submits that the entire case has been built on the premise that the appellant has consumed electricity in excess than the production what has been accounted for by them in their records. The Show Cause Notice and the Order-in-Original totally relies on the report of Dr. Batra's based on which the conclusion has been drawn that the appellant has suppressed the total manufactured quantity. He submits that no other

corroborative evidence in the form of cash purchase, cash sales, vehicle movement statement of the purported buyers etc., has been brought in by the Revenue to fortify their argument that the appellant has cleared the goods in a clandestine manner.

3. The Learned Advocate submits that in the case of the same appellant, eight periodical notices were issued which were adjudicated by the adjudicating authority by confirming the demand. Being aggrieved, the appellant had approached the Hon'ble Tribunal with their appeals. This Bench vide order No. 78162 to 78200/2017 dated 28.11.2017, remanded the matter for denovo decision by the adjudicating authority. The adjudicating authority, while deciding the denovo issue before him, has relied on the case law of **R. A. Castings Pvt. Ltd. v. C. C. E. Meerut-I-2009-237-ELT-674-(Tri-Delhi)** and other case laws and has given the finding that the reliance on the technical report prepared by Prof. N. K. Batra of IIT Kanpur as a faculty member and not by IIT Kanpur, as alleged in the SCNs, in misplaced to fasten the allegation of excess production. Relying on the case law of R. A. Castings, the adjudicating authority has dropped the proceedings in respect of all the earlier Show Cause Notices initiated by the Revenue. Accordingly, he has passed OIO No. 22-29/Denovo/COMMR /2024 dated 26.03.2024. The Learned Advocate submits that the Revenue has not preferred any further appeal against dropping of all the demands under this OIO. Therefore he submits the issue has already reached finality. In view of these submissions, he prays that the present appeal may be allowed.

4. The Learned A. R. appearing on behalf of the Revenue reiterates the findings of the lower authority

5. Heard both sides, perused the appeal papers and the written submissions submitted by the appellant.

6. We find that the issue is no more *res integra*. The present case pertains to the demand raised by the Revenue for the period December 2012 to September 2013.

7. The Department has been issuing periodical notices on the appellant based on the same allegation that the electrical consumption shows that the appellant should have manufactured more ingots. All the proceedings are on the basis of Dr. Batra's Report on output ratio based on electrical consumption. The earlier eight Show Cause Notices are for the period 2002-03 to 2010. All the Show Cause Notices were initially decided by the adjudicating authority against the party and the demands were confirmed. The appellants had filed their appeal before the Tribunal.

8. The Tribunal had remanded the matter to the adjudicating authority to go through all the documentary evidence placed before him and to pass a considered decision. The adjudicating authority in the Denovo OIO No. 22-29/Denovo/COMMR /2024 dated 26.03.2024 has held that the allegations of the Department do not stand legal scrutiny since they have relied only on the report of Dr. Batra, which has been held as non-reliable in the case of **R.A. Casting Pvt. Ltd., Vs. CCE, Meerut.** Accordingly, he has dropped all the proceedings. The Department has not preferred any further appeal against this OIO. Therefore it gets clarified that the department has accepted the findings

of this OIO. In the present case, the proceedings have been initiated for the subsequent period on the same grounds.

9. We find that the adjudicating authority in the denovo Order-in-Original has given a very detailed and considered decision. We do not find any reason to interfere with the same. Therefore we set aside the present impugned order and allow the appeal filed by the appellant.

13. The appellant would be eligible for consequential relief, if any, as per law.

(Pronounced in the open court on…11th February, 2025..)

Sd/-
(R. Muralidhar)
Member (Judicial)

Sd/-
(Rajeev Tandon)
Member (Technical)

Tushar Kr.