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

REGIONAL BENCH – COURT NO.2

Excise Appeal No. 75326 of 2019

(Arising out of Order-in-Appeal No. 281-282/HWH/CE/2018-19 dated 11.09.2018 passed by Commissioner of CGST & Central Excise (Appeals), Kolkata-II,

Commissioner of CGST & Central Excise, Howrah,
(15/1, Strand Road, M. S. Building, Kolkata-700001

..Appellant

VERSUS

M/s Shri Sanjay Kumar Agarwal,
(Director of M/s Mankasia Steel Pvt. Ltd.,.)
Jalan Industrial Park, NH-6, Dhuloghari,
Sankrail, Howrah-711302.

.. ...**Respondent**

APPERANCE :
Shri S. K. Jha, Authorized Representative for the Respondent
None, for the Appellant

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

FINAL ORDER No…75533/2025

DATE OF HEARING : 11.02.2025
DATE OF DECISION : 11.02.2025

PER R. Muralidhar:

Mansakia Steels Pvt. Ltd are manufacturers of MS Round Flat and other steel items. After an investigation into their affairs, a Show Cause Notice was issued seeking to know as to why 35,98,637/- should not be recovered on the grounds that such materials were cleared without proper accountability on a clandestine clearance basis. The Show Cause Notice was also issued to the Director of the company seeking to impose penalty on him.

2. After due process, the adjudicating authority confirmed the demand of Rs.35,98,637/- and appropriated the amount already paid by the appellant. He also imposed the penalty of Rs.35,98,637/- in

terms of Section 11 AC. He imposed a penalty of Rs.9 lakhs on the director Shri Sanjay Kumar Agarwal, who was the noticee to in this case in terms of Rule 26 of Central Excise Rules, 2002.

3. Being aggrieved, the appellant has filed their appeal before the Commissioner (Appeals). The Commissioner (Appeals) vide the impugned Order in Appeal No. 281-282/HWH/CE/2018-19 dated 11.09.2018 went through all the factual details and the submissions made by the appellant.

4. Finally, he has dropped the penalties imposed on the company as well as on the Director. Being aggrieved, the revenue is in appeal before the Tribunal.

5. No one has appeared on behalf of the appellant in spite of notice. In the interest of justice, the appeal itself was taken up for disposal with the active help of the Learned AR.

6. The Learned AR submits that the adjudicating authority has gone into the factual details and the appellant has not opposed the allegations that the goods were cleared clandestinely and they allowed the amount of Rs.40 lakhs to be appropriated against the demand of Rs 35,98,637/- Therefore, he submits that the appellants have themselves admitted the liability on account of clandestine removal. He submits that the Commissioner (Appeals) has erred in removing the penalties

imposed on them. Accordingly, he prays that the penalties may be imposed both on the company as well as on the Director.

7. On going through the impugned OIA, I find that at Para 4, there is a mention that one S. Kumar Mukherjee consultant had appeared on behalf of the appellant during the personal hearing and has explained the case. He has argued that there is no evidence against the appellant to prove clandestine removal and also argued that the demand was time-barred. He has referred to various case laws in favour of the appellant to plead that the entire confirmed demand and penalties may be dropped.

8. The Commissioner Appeals at Para 13 of the OIA states in the findings that "I find that the lower authority had not brought on record any evidence of clandestine manufacture of their finished goods, unaccounted purchase, receipts and consumption of raw materials required for manufacturing, alleged quantity of final products and clandestine removal from their factory, unauthorised payment for procuring unaccounted raw materials, disproportionate power consumption, amount of unaccounted sales proceeds accrued to them etc." He has also stated that "I find that without deducing any of the above corroborative direct cogent evidence, the lower authority had inferred the incidence of clandestine removal only on the basis of computer entries of the impugned documents and statements of two directors of the company". He further notes, "no doubt the seized

records indicate to a high probability of existence of clandestine clearance and raise the suspicion of departmental officials. The suspicion, however strong, cannot take place of evidence. After this he has cited several decisions of the Tribunal and finally has dropped the penalties imposed on the appellant company as well as on the appellant director".

9. From the findings given by the Commissioner (Appeals), I find that this was a fit case for him to drop the demand itself. However, for the reasons best known to him, he has gone ahead and given the relief only in respect of the penalties. In the present appeal filed by the Revenue, they have not brought in any evidence to the effect that they have brought in any proper corroborative evidence towards a clandestine removal. Therefore whatever findings have been given as finding by the Commissioner (Appeals) has not been properly countered by the Revenue at the appeal stage before the tribunal. Hence, I do not find any merits in the appeal filed by the revenue.

10. It is also observed that the appeals have been filed by the Revenue litigating the penalties of Rs.35,98,637/- and Rs.9,00,000/-. On perusal of records, I find that the amount involved in the present case is below the monetary limit of Rs.50.00 Lakhs which has been notified vide Board's Instruction being F.No.390/Misc./116/2017-JC dated 22^{nd} August, 2019. Accordingly, the Appeal is dismissed under National Litigation Policy.

11. In view of the above, I dismiss the appeal filed by the Revenue.

(Dictated and pronounced in the open court)

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

Tushar Kr.