

**IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
KOLKATA
REGIONAL BENCH – COURT NO.2**

Excise Appeal Nos. 75037-75038, 75240-75241 of 2018

(Arising out of Order-in-Appeal No. 64/Kol-V/2017 dated 17.07.2017 passed by Commissioner of CGST & Central Excise (Appeal-I), Kolkata.

M/s. Reema Gases Pvt. Ltd.

(Mouza Uttar Simulberia, Kolatalahat, Near FEPZ, Halta,
Dist.-24 Parganas (south), Pin-743504).

...Appellant

VERSUS

Commissioner of CGST & Central Excise, Kolkata-VII,
(Bamboo Villa, (4th Floor)169, A.J.C. Bose Road, Kolkata-700014)

...Respondent

**..
APPEARANCE :**

Shri N. K. Chowdhury, Advocate for the Appellant
Shri D. Sue, Authorized Representative for the Respondent

CORAM:

**HON'BLE MR. R. MURALIDHAR MEMBER (JUDICIAL)
HON'BLE MR. K ANPZHAKAN MEMBER (TECHNICAL)**

Final Order No...77782-77785/2025

DATE OF HEARING : 07.11.2025

DATE OF PRONOUNCEMENT: 19.11.2025

PER R. Muralidhar:

The issues involved in those appeals are as to whether solely on the basis of consumption of electricity the demand can be raised and is maintainable in law.

2. The facts of those cases in brief are that the appellants are engaged in the manufacture of Non-alloy Steel Ingots and were clearing the same on payment of duty. Periodical demand notices are being issued since 2007-08, on the basis of the statements of their factory manager recorded on 01.09.2006 and the supplier of induction furnace, the production capacity of which defence upon the different variables such as product mixed, quality of scrap and quality of power/electricity

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efficiency etc. The appellants were directed to electricity bills for the relevant period and which was considered for the consumption of electricity and production of goods. After this, it was inferred that the appellants had suppressed some quantity of production taking into consideration of assumed units for production per 1 MT of ingot.

3. The appellants were issued with a Show Cause Notice raising demand only on the basis of consumption of electricity.

4. The appellants submitted the reply to the said Show Cause notice denying and disputing the allegations contained therein stating that the demand is wholly on the basis of assumption and presumption and there is no evidence of removal of any additional quantity beyond the quantity mentioned in their statutory records. Consumption of electricity and calculation of demand by arithmetical calculation on the basis of such assumption and presumption cannot be maintainable in law. Being aggrieved by the confirmation of the demand, the appellant is before us.

5. The Learned Advocate submits that the authorities below fully ignored that there was no provision in the Central Excise law to demand Excise duty on the basis of the consumption of electricity. The appellants relied upon the decision in the case of R.A. Casting holding the field, but the authorities below did not consider the same.

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6. The appellants submit that the law is no more res-integra and that no demand can be maintainable on the basis of the consumption of electricity. The department miserably failed to undertake independent investigation of the unit of the appellants as was required for determining the capacity of production was not done by the department. The calculation of production on the basis of consumption of electricity and theoretical calculation of raising demand on the basis of such consumption of electricity cannot be maintainable in law. Law is well settled in this regard and the appellants' own case for the earlier period, this Tribunal set-aside the order confirming the demand on the basis of consumption of electricity.

7. Heard both sides and perused the documents and considered the submissions.

8. It is seen that the Show Cause Notice has been issued solely based on the electricity consumption of the induction furnace used by the Appellant. In order to allege any clandestine manufacture and clearances, the onus is on the Department to bring in several corroborative evidence in the form of purchase of inputs, manufacture of furnished goods, dispatch of finished goods, details of purported vendors and buyers, details of movement of inward and outward goods, details of cash transactions found for such sales etc. While the Department is not required to precisely bring the entire details on account of these issues, they are expected to bring in at least proper corroborative evidence to support the allegation that the clandestine manufacture has taken place. Mere reliance on the electricity consumption without any corroborative evidence towards excess

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purchase of raw materials so as to convert the raw materials into finished goods, will not help the Revenue to prove the case.

9. After going through these factual details it emerges that the only basis on which the demand has been confirmed, is on account of the electricity consumption without any corroborative evidence whatsoever in any form.

10. In the case of **Union Enterprises Vs Union of India cited supra**, the Hon'ble Kolkata High Court has considered the Allahabad High Court's decision in the case of **R. A. Casting** on similar issue and has noted as under:-

14. *The order of the Tribunal rendered in R.A. Casting was assailed before the Allahabad High Court while dismissing the proceeding it is held :*

"3. Being aggrieved by the impugned orders, the respondents filed appeals before the Customs, Excise & Service Tax Appellate Tribunal, New Delhi. The Tribunal observed that it is settled principle of law that the electricity consumption cannot be the only factor or basis for determining the duty liability, that too on imaginary basis, especially when Rules 173E mandatorily requires the Commissioner to prescribe/fix norm for electricity consumption first and notify the same to the manufacturers and thereafter ascertain the reasons for deviations, if any, taking also into account the consumption of various inputs, requirements of labour, material, power supply and the conditions for running the plant together with the attendant facts and circumstances. The Tribunal further observed that no experiment have been conducted in the factories of the appellants for devising the consumption norms of electricity for producing on MT of steel ingots. Tribunal also observed that the electricity consumption varies from one heat to another and from one date to another

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and even from one heat to another within the same date. Therefore, no universal and uniformly acceptable standard of electricity consumption can be adopted for determining the excise duty liability that too on the basis of imaginary production assumed by the Revenue with no other supporting record, evidence or document to justify its allegations. The Tribunal has also considered the report of Dr. Batra, which has been relied upon for making the allegations that there was higher electricity consumption. It appears that Dr. Batra in his report has observed that for the production of 1 MT of steel ingots, 1046 units electricity required.” [Emphasis supplied]

15. *The Apex Court declined to interfere with the said order as the special writ petition challenging the order of the Allahabad High Court was dismissed [2011 (269) E.L.T. A108 (S.C.)]. Therefore, mere excess consumption of electricity without any corroborative evidence relating to the purchase of the raw material, conversion of the raw material into a final products and clearance from the manufacturing unit to the respective buyers are produced does not raise presumption of evading the duty. This has been a consistent view of the Tribunal based upon the said R.A. Casting (supra) in dispensing the pre-deposit condition unless the_CESTAT at Delhi in M/s. Amrit Versha Ispat v. CCE, Meerut-I took a different view. The said order was assailed before the Delhi High Court in W.P (C) No. 8141 of 2008 by order dated 19th November, 2008. The Division Bench of the Delhi High Court set aside the order of the Tribunal and directed reconsideration in the light of the ratio laid down in R.A. Castings Pvt. Ltd. (supra). [Emphasis supplied]*

11. In the case of **Sukh Sagar Metals (P) Ltd Vs Union of India**, the Hon’ble Jharkhand High Court has held as under:-

5.*Having heard Counsels for both the sides and looking to the facts and circumstances of the case, we, hereby, quash and set aside the Order-in-Original, dated 27-2-2015/13-3-2015 (Annexure-3 to the*

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memo of this writ petition) mainly for the following facts and reasons
:

(i) Show cause notice was given by the respondents on 7-2-2014 for the period running from January, 2009 to September, 2013 mainly on the ground that there is unrealistic electricity consumption, high cost of production vis-à-vis income from sale, unrealistically low amount of expenditure towards salary of employees and though manufacturing activity incurs losses, still the petitioner unit continues and profit is shown in the books of account from non-core activities by manipulating books of account. On this ground, the show cause notice has been given by the Commissioner, Central Excise and Service Tax, Jamshedpur.

(iii) Counsel appearing for the petitioner has relied upon several decisions, as stated hereinabove. It ought to be kept in mind by the respondents that the electricity consumption pattern can be a corroborative ground and not a substantive ground at all. Thousands of possibilities cannot be equated with one truth. The grounds, which are referred in the Order-in-Original, are in fact leading the respondents towards the highest probabilities and nothing beyond that to suspect that there is clandestine removal of the finished product by the noticee. Nonetheless, for exact proof of unaccounted manufacturing of finished products and for clandestine removal thereof, more labour was required to be done by the respondents. It has become fashion with the respondents-department to rely upon a document, since 2003 onwards, which is known as report given by Dr. N.K. Batra, so-called Professor of IIT, Kanpur. Petitioner is in possession of an e-mail communicated by IIT as to whether such report has ever been given by IIT, Kanpur, the answer given by IIT, Kanpur in negative (Annexure-4, 4/1 to the memo of this petition).

(v) Several decisions have been given by the Tribunals which have been confirmed by the High Courts that electricity consumption alone if adopted as a basis of the demand, the same is not tenable. The respondents can take the electricity consumption pattern as a corroborative piece of evidence, but, in absence of substantive proofs like – [Emphasis supplied]

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12. As per the factual matrix discussed above, since the Department has relied only on the Electricity consumption alone without any corroborative evidence whatsoever, the decision of the Hon'ble High courts are squarely applicable.

13. Accordingly, we set aside the impugned order and allow the Appeal with consequential relief, as per law, if any.

(Pronounced in the open court on...19.11.2025..)

Sd/-

(R. Muralidhar)
Member (Judicial)

Sd/-

(K. Anpazhakan)
Member (Technical)

Tushar Kr.