

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE
TRIBUNAL
NEW DELHI**

PRINCIPAL BENCH – COURT NO. – III

Excise Appeal No. 50685 of 2019 [SM]

[Arising out of Order-in-Original No. RPR-EXCUS-000-COM-CEX-087-2018 dated 10.12.2018 passed by the Commissioner, Central Tax, Central Excise & Customs, Central GST Building, Raipur]

M/s.Shree Rolling Mill,
Light Industrial Area, Bhilai (C.G.)

...Appellant

VERSUS

Commissioner, Raipur
Central Tax, Central Excise & Customs,
Central GST Building, Raipur (C.G.)

...Respondent

APPEARANCE:

Shri Vinay K. Jain & Ms. Divya Soni for the Appellant
Shri P. Juneja, Authorised Representative for the Respondent

Coram: HON'BLE MRS. RACHNA GUPTA, MEMBER (JUDICIAL)

DATE OF HEARING : 1 March, 2021
DATE OF PRONOUNCEMENT: 16.03.2021

FINAL ORDER NO. 51141/2021

RACHNA GUPTA:

Present is an appeal against the Order-in-Original bearing No. RPR-EXCUS-000-COM-CEX-087-2018 dated 10.12.2018. The relevant factual matrix for the present appeal is as follows:-

2. Acting upon the information that M/s. Hariom Ingots & Power Private Limited is indulged in unaccounted procurement of raw-materials, suppression of production and clandestine removal of

excisable goods that the officers from Central Excise Headquarters at Raipur visited the factory premises as well as the residential premises of M/s. Hariom Ingots & Power Private Limited on 7th August 2012. After verifying the raw-materials, finished goods, namely, sponge iron, pig iron, MS scrap, MS Ingots/ Billets, TMT Bar, the shortage was noticed. Noticee No.2 - Shri Sandeep Agarwal, the Director of M/s. Hariom Ingots & Power Private Limited admitted the said shortage and the duty evasion of Rs.3,57,249/- which he paid vide challan No.50157 dated 08.08.2012.

2.1 Certain incriminating documents were recovered from the premises and even from the Car parked inside the factory premises. The Car was bearing Registration No. CG 04 H1321 and was found owned by Shri Om Prakash Sai, Accountant of M/s. M/s. Hariom Ingots & Power Private Limited. Some computer data as maintained in Tally Software for the period 2009-10 & 2011-12 alongwith sale and purchase data maintained in ERP System were also retrieved from the Computer in the premises of M/s. Hariom Ingots & Power Private Limited.

2.2 Based thereupon and after recording the statements even of the transporters that a Show Cause Notice bearing No.44/4123 dated 6 May, 2016 was served not only upon M/s. Hariom Ingots but all those whose names found reflected in the recovered documents and the recorded statements including the present appellant. A demand of Rs. 13,62,40,831/- under Section 11 A (4) of Excise Act, 1944 alongwith the interest and penalty under

Section 11AC of the said Act were proposed vide the said Show Cause Notice.

2.3 The proposal has been confirmed vide Order-in-Original No. RPR-EXCUS-000-COM-CEX-087-2018 dated 10.12.2018 as against all 30 Noticees except that the demand against Noticee No.8, 9, 14, 17 & 23 has been dropped. As far as the present appellant is concerned, the demand of duty for Rs.15,43,084/- has been confirmed. Being aggrieved thereof the appellant has filed the present appeal.

3. Heard Mr. Vinay K Jain & Ms. Divya Soni, Advocates for the appellant and Mr. P. Juneja, Authorised Representative for the respondent.

4. Learned Counsel for the appellant has mentioned that the Order-in-Appeal has adjudicated the Show Cause Notice dated 6 May, 2016. The said Show Cause Notice was served upon 30 different people where the main Noticee was M/s. Hariom Ingots & Power Private Limited with the Directors thereof. It is submitted that appeal against 17 of those Noticees has already been decided in their favour vide the Order of Division Bench of this Tribunal vide Final Order bearing No.51109-51125/2019 dated 22 August, 2019. It is submitted that once the demand against the main Noticee has been dropped the impugned demand is not at all sustainable and is liable to be set aside for want of any evidence of alleged clandestine removal and duty evasion against the appellant. Learned Counsel

has produced the copy of the said decision with the prayer for the impugned appeal to be allowed in terms of the said decision.

5. Learned Departmental Representative has acknowledged the aforesaid Final Order to have already been passed in favour of few of the Noticees of the impugned Show Cause Notice. However, it was brought to the notice subsequently that the Department has filed an appeal against the said order. It was also brought to the notice that appeals of remaining 12 Notices are still pending consideration before this Tribunal.

6. After hearing the learned Counsels and learned D.R. and after perusing the order dated 22.08.2019 as has been e-mailed to us , it is observed and held as follows:-

6.1 Vide the aforesaid order being passed by Division Bench, where undersigned being one of the Member thereof, it has already been held that the search and seizure proceedings in the factory of the Noticees were made beyond the normal working hours and in violation of the provisions of Section 100 of CRPC read with Section 18 of Excise Act, 1944. It has also been held that the entire documents as per the *Panchnama* dated 7 August, 2012 was the Computer data which got burnt into 2 writable CDs but no Certificate was obtained by the Department as is required under the Provisions of Section 36B of the Act. The *Panchnama* dated 19.02.2016 shows that the Computer data of said writable CDs was retrieved after a gap of 4 years, that too, without any requisite Certificate even at that point of time. While relying upon various case laws as **M/s.Anwar P.V. vs. P.K. Basheer – reported at**

2017 (352) ELT 416 (S.C.), Ambica Organics vs. C.C.Ex. Surat reported in 2016 (334) E.L.T. 97 (Tri.), Premier Instruments & Controls Ltd. vs. CCE, Coimbatore reported in 2005 (183) ELT 65 (Trib.) it was held that there is no cogent evidence but the violation of mandatory provisions on part of the Department. The benefit whereof was ordered to be extended in favour of the Noticees.

6.2 It has also been already held that shortage was detected only on the basis of eye estimation/average weight. There was otherwise no document recovered from the factory of the main Noticee (M/s.Hariom Ingots) and the residence of its Directors. No proof with respect to the loose documents recovered from the Car of the Accountant of M/s.Hariom Ingots was brought on record. While relying upon various case laws in the case of **CCE vs. Kuber Tobacco Products Ltd. reported in 2016 (339) ELT A-130, CCE vs. Vishnu & Co. Pvt. Ltd. reported in 2015 – TIOL – 2792 –HC –DEL – CX and M/s. G-Tech Industries Ltd. vs. Union of India reported in 2016 (339) ELT (P & H)**, it was held that lack of proper estimation and requisite documents, there remains no cogent evidence to prove the charges of clandestine removal. The noncompliance of Section 36B of the Excise Act by the Department has been made the reason to extend the benefit to the Noticees of the impugned Show Cause Notice.

7. In the present appeal, there is no additional document except the documents/evidences as have been discussed by the Division Bench of this Tribunal in the said order of 22.08.2019 with respect

to the same Show Cause Notice as has been adjudicated vide the impugned order under challenge. The present appeal is before Single Bench because quantum of demand against the impugned appellant falls within the jurisdiction of Single Bench.

8. The reliance of third party documents while conforming demand against present appellant is also observed to be unjustified and unreasonable. Since the sole challenge to the order is its reliance upon third party evidence, it is necessary to check the evidentiary value of the third party evidence. The relevant case law in the case of Bajrangbali Ingots & Steel Pvt. Ltd. & Suresh Agarwal vs. CCE, Raipur in Appeal No. E/52062 & 52066/2018 heard on 16.11.2018, which is held as follows:-

*9. The law i.e. as to whether the third party records can be adopted as an evidence for arriving at the findings of clandestine removal, in the absence of any corroborative evidence, is well established. Reference can be made to Hon'ble Allahabad High Court decision in the case of **Continental Cement Company Vs. Union of India - 2014 (309) ELT 411 (All.)** as also Tribunal's decision in the case of **Raipur Forging Pvt. Ltd. Vs. CCE, Raipur-I - 2016 (335) ELT 297 (Tri.-Del.)**, **CCE & ST, Raipur Vs. P.D. Industries Pvt. Ltd. - 2016 (340) ELT 249 (Tri.-Del.)** and **CCE & ST, Ludhiana Vs. Anand Founders & Engineers - 2016 (331) ELT 340 (P&H)**. It stand held in all these judgements that the findings of clandestine removal cannot be upheld based upon the third party documents, unless there is clinching evidence of clandestine manufacture and removal of the goods.*

9. In the given circumstances, I observe no reason to differ from the findings that have already been arrived at by a Division Bench on the same set of allegation and the same set of evidences. Being bound by the said findings, I hereby hold that Department has failed to prove the allegations against the present appellant. Being bound by the said findings, I hereby hold that Department has failed to prove the allegations against the present appellant.

9.1 The confirmation of duty demand of Rs.15,43,084/- alongwith interest and penalty against the present appellant is, therefore, held to have been confirmed without any cogent basis. Order under challenge is, accordingly, hereby set aside. As a consequent thereto, the appeal in hand stands allowed.

[Order pronounced on 16.03.2021]

(RACHNA GUPTA)
MEMBER (JUDICIAL)

Anita