

**IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.**

**Date of Hearing: 21.2.2018
Date of Pronouncement: 23.2.2018**

Appeal No. E/2522-2523/2012-SM

(Arising out of Order-in-Appeal No. 87, 88 & 89/RPR/2012 dated 18.5.2012 passed by the Commissioner (Appeals), Customs, Central Excise & Service Tax, Raipur)

M/s S.R. Ingots Pvt. Ltd.
Shri Sunil Singhal, Director

Appellant

Vs.

CCE & ST, Raipur

Respondent

Appearance

Shri Pulkit Tare, Advocate

-

for the appellant

Shri K. Poddar, D.R.

-

for the respondent

CORAM: Hon'ble Mrs. Archana Wadhwa, Member (Judicial)

Final Order No. 50750-50751/2018

Per Ms. Archana Wadhwa:

Both the appeals are being disposed of by a common order as they arise out of the same impugned order passed by the lower authorities.

2. As per facts, the appellant M/s S.R. Ingots Pvt. Ltd. is engaged in the manufacture of MS ingots. The factory was visited by the officers on 25.3.2009, who conducted various checks and verifications. The officers also recovered some consignment receipt notes, weighment slips etc. and compared the same with the entries made in the statutory records and found that the appellant had indulged in clandestine clearances during the period Feb. 2009 to March, 2009 to the extent of 878.285 MT of MS ingots involving duty of Rs. 18,47,284/-. Further, as per the stock verification shortages were found in the stock of the raw material i.e. sponge iron as also in respect of the finished goods i.e. M.S. ingots involving duties of Rs. 2,09,722/- and Rs. 15,978/-.

3. On the above basis, proceedings were initiated against the appellant by way of issuance of show cause notice dated 22.2.2010 proposing confirmation of demand and imposition of penalties. The notice culminated into an order passed by the original adjudicating authority upholding the proposals in the notice. The order of the original adjudicating authority was upheld by Commissioner (Appeals).

4. After hearing both the sides, I find that the Revenue's entire case for clandestine removal is based upon the recovery of certain weighment slips from the appellant's factory during the course of the search. The appellants have taken a categorical stand that they were having the weighing bridge in their own premises also and sometimes the trucks were being sent outside inasmuch as they are also owning three trucks which are used for transportation of the goods of various other parties on rental basis. In the absence of any other evidence on record to show that the clandestine activity has been undertaken by the appellant, confirmation of demand of duty is not justified. I fully agree with the appellant's contention that apart from the weighment slips, there is no further evidence on record to show that the appellant had procured the huge raw material in a clandestine manner and has manufactured their final product which stands cleared by them in a clandestine manner. Even though the names of the customers were available in the such weighment slips, the Revenue has not bothered to examine them and has not carried out the further investigations. Mere statements of the Director which is inculpatory in nature cannot be adopted as a ground for upholding the activities of clandestine removal, for which the onus is heavily placed on the Revenue.

5. Similarly, as regards the duty confirmation in respect of short found goods, without any corroborative evidence, it has to be held that the same is not justified. The Hon'ble Allahabad High Court in the case of *CCE Vs. Meenakshi Castings* - 2011 (274) ELT 180 (All.) has held that the shortages detected at the time of visit of the officers do not lead to the inevitable conclusion of the clandestine removals

unless there is another corroborative evidence in the shape of independent cogent and positive evidence.

6. In view of the above, I set aside the impugned order and allow both the appeals with consequential relief to the appellant.

(Pronounced in Court on 23.2.2018S)

(Archana Wadhwa)
Member (Judicial)

RM