(2021) 11 CESTAT CK 0072

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Excise Appeal No. 40679, 40680 Of 2020

M/s. Dindigul Steel Rolling Mills P. Ltd. And Anr. APPELLANT

Vs

Commissioner Of GST And Central Excise RESPONDENT

Date of Decision : 25-11-2021

Acts Referred:

Central Excise Act, 1944 — Section 9D, 11A(2), 11AC

Central Excise Rules, 1944 — Rule 173QCentral Excise Rules, 2002 — Rule 25, 26

Citation : (2021) 11 CESTAT CK 0072

Hon'ble Judges : Sulekha Beevi C.S., J

Bench : Single Bench

Final Decision : Allowed

Judgement

,,,

1. The appellant M/s. Dindigul Steel Rolling Mills Pvt. Ltd. (herein after referred to as M/s. DSRM) are the manufacturers of CTD bars and rods and,,,

is registered with the Central Excise Department for payment of excise duty. Officers of DGCEI visited the premises of the appellant on 29.7.2003,,,

and recovered certain documents. They also conducted simultaneous search at the residential premises of the Managing Director of the company, at",,,

the premises of the raw material supplier, premises of the dealers and seized incriminating documents. On examination of the physical stock of",,,

finished products, it was found to tally with the stock recorded in RG-I register. However, on verification of the physical stock of raw materials",,,

namely MS ingots, it was seen that though the accounts reflected the stock of 707.940 MTs of MS ingots, only 83.085 MTs of ingots were physically",,,

available. Thus, there was a shortage of inputs to the tune of 624.855 MTs. Search operations were conducted at M/s. New Hindustan Steels (NHS),",,, M/s. Anand Steel Mart (Anand), M/s. Madurai Steel Syndicate, Dindigul (MSSD), M/s. MMS Steels Dindigul (MMSD), Sri Sithi Vinayagar Steel",,,

Madurai (SSVS) etc., which revealed that M/s. DSRM had procured unaccounted raw materials and used such raw materials for unaccounted",,,

manufacture for CTD bars and clandestine clearances. Statements were also recorded. Based upon such evidences show-cause notice dated,,,

20.4.2005 was issued to the appellant. After due process of law, the adjudicating authority confirmed duty demand of Rs.56,34,585/-for the period",,,

2001-02 to 2003-04 along with interest and imposed equal penalty. Besides this, personal penalty of Rs.2 lakhs was imposed on the Managing Director",,,

of the appellant-company Shri Ramasamy, penalty of Rs.one lakh each on M/s. NHS, M/s. MMSD and Rs.2 lakhs on M/s. Anand. Aggrieved by",,,

such order, the appellant M/s. DSRM, M/s. NHS, M/s. MMS and Shri Ramasamy filed appeals before the Tribunal. The matter was heard by the",,,

Tribunal and vide Final Order No. 41903 to 41906/2017 dated 31.8.2017, the Tribunal set aside the demand of Rs.31,96,509/- in respect of 129.89 MTs",,,

of CTD bars alleged to be received by M/s. NHS. The duty demand of Rs.11,48,044/-in respect of 445.17 MTs of CTD bars received by M/s. Anand",,,

Steel Mart was sustained. The issue in regard to duty demand of Rs.12,90,032/- in respect of 615.28 MTs of CTD bars alleged to be received by M/s.",,,

MMSD was remanded to the adjudicating authority for denovo consideration. In regard to the penalty imposed by the adjudicating authority, it was",,,

held by the Tribunal that in view of the modification ordered in respect of various demands, the penalty under section 11AC imposed will have to be",,,

revised and to be determined in denovo proceedings. The penalty imposed on M/ s. NHS was set aside and the penalty imposed on Shri Ramaswamy,",,,

MD of M/s. DSRM was reduced from Rs.2 lakhs to Rs.30,000/-.",,,

2. Pursuant to the direction of remand in regard to the duty demand of Rs.12,90,032/- denovo adjudication was carried out by the Commissioner of",,,

Central Excise, Madurai, who passed the following order:-",,,

â??(i) I confirm the total demand of Rs.21,15,379/- (Rupees twenty one lakh fifteen thousand three hundred and seventy nine only) towards",,,

duty liability on the CTD bars removed by DSRM, illicitly during the period from 2001 â?" 02 to 2003 â?" 04 under the proviso to Sec.",,,

11A(2) of the Central Excise Act, 1944. This amount includes Rs.11,48,044/-

already confirmed by the Honâ??ble CESTAT in their remand",,,

order dated 31.8.2017.,,,

(ii) I confirm the demand of interest at the appropriates rates from DSRM under Section 11AB of Central Excise Act, 1944 on the above",,,

amount.,,,

(iii) I impose a penalty of Rs.21,15,379/- (Rupees twenty one lakh fifteen thousand three hundred and seventy nine only) on DSRM under",,,

Section 11AC of Central Excise Act, 1944 read with erstwhile Rule 173Q of Central Excise Rules, 1944 and Rule 25 of Central Excise Rules,",,,

2001 / 2002.,,,

(iv) I impose a penalty of Rs.1,00,000/- (Rupees one lakh only) on M/s. M.M. Steels, Dindigul under Rule 26 of Central Excise Rules, 2001 /",,,

2002.â??,,,

3. Aggrieved by the confirmation of demand, interest and penalty, the appellants are once again before the Tribunal.",,,

4. The learned counsel Shri M. Karthikeyan appeared and argued on behalf of the appellants. He submitted that while remanding the matter relating to,,,

the duty demand of Rs.12,90,032/- in respect of 615.28 MTs of CTD bars, allegedly received by MMSD, the Tribunal had actually dealt with all the",,,

allegations and evidences on this issue in para 8 of the final order and concluded that the department has not been able to sufficiently establish the,,,

basis of the duty demand. However, the Tribunal observed that since DSRM and MMSD are related units, it requires to further look into the matter",,,

and remanded the same.,,,

5. As per the findings of the Commissioner in the earlier proceedings, the demand was upheld in three aspects as Rs.31,96,509/-, Rs.11,48,044/- and",,,

Rs.12,09,032/-. Out of this only, the third issue was remanded. However, in the denovo proceedings against the duty demand of Rs.12,90,032/-",,,

remanded by Tribunal, the adjudicating authority has confirmed duty of Rs.9,67,335/-. The adjudicating authority has arrived at this amount after",,,

considering the shortage of inputs recorded at the time of search. He adverted to page 179 of the appeal paper book and submitted that after the,,,

search, the department had taken away as part of evidence the input register maintained by them. They were then asked to start a new input register",,, from the date of the search (29.7.2003). At the time of search and seizure, stock of inputs as per the input register was 707.940 MTs. The quantity",,,

physically available was noted as 83.085 MTs. The department alleged that there was a shortage of raw materials of 624.855. However, the opening",,,

balance in the new register started from 29.7.2003 would show the opening balance (carried forward from old register) as 707.940 MTs. This is,,,

endorsed by the officers of the DGCEI in Col. 13 and 14 of the said new register.,,,

6. He then adverted to the mahazar prepared during the search proceedings on 29.7.2003 and submitted that the appellant had requested for cross-,,,

examination of the mahazar witnesses by their letter dated 3.12.2005. This request was made for the reason that while the mahazar records a,,,

shortage of inputs, the Senior Intelligence Officer before whom the mahazar was drawn had certified in the new Form 4 register that the stock of the",,,

impugned goods as 707.940 MTs. The shortage recorded by the officers were disputed by the appellant. The physical stock was available as shown in,,,

the records and the appellant wanted to bring out this evidence by cross-examination of the mahazar witnesses. This request was denied by the,,,

adjudicating authority as per the order dated 21.11.2005. Even in the denovo proceedings, the said request was not considered by the adjudicating",,,

authority. Hence the allegation of shortage in raw materials is false.,,,

7. The other evidence relied by the department is the statement of Shri R. Manoharan, Director of MMSS who is said to have supported the",,,

unaccounted clearance of finished products. In para 24, the adjudicating authority has stated that the appellant did not request for cross-examination of",,,

Shri R. Manoharan and therefore his statement can be accepted in evidence. He pointed out that Shri R. Manoharan had retracted his statements,,,

given before the officers. Further, as per section 9D of Central Excise Act, 1944, without examining the said person, his statement cannot be accepted",,,

as evidence. He submitted that Shri R. Manoharan having already retracted his statement by sending a telegram dated 30.7.2003 to DGCEI, Chennai,",,,

the Commissioner could not have relied upon his statement to confirm the demand. In the earlier round of litigation, the Tribunal in para 8 of the Final",,,

Order had held that since the statement of Shri A. Jaimulabdeen and Shri M. Shajahan have been retracted, department has not been able to",,, sufficiently establish the basis of duty demand. Further, the Tribunal had relied upon the decision of the Hon'ble High Court in the case of Jindal Drugs",,,

â?" 2016 (340) ELT 67 (P&H) to hold that the statement cannot be relied in evidence unless the witnesses have been examined as required under,,,

S. No.,Name of the party,Period,Duty Demand

(1),(2),(3),(4)

1.,"1219.89 MTs of CTD bars received by M/s.

NHS on the basis of one notebook recovered

from NHS",2.4.2003 to 31.7.2003,"31,96,509/-

2.,"615.28 MTs of CTD bars received by M/s.

MMSD on the basis of deposition made by

various dealers",18.6.2001 to 3.10.2003,"12,90,032/-

3.,"445.17 MTs of CTD bars received by M/s.

Anand Steel Mart and other group companies

on the basis of chits recovered from the

residence of Shri M.C. nagarathinam",1.4.2003 to 11.7.2003,"11,48,044/-

,,Total,"56,34,585/-

to bring out the allegation that the appellant, M/s. DSRM, had clandestinely removed the finished products through M/s. MMSD has not been brought",,,

forth by any further evidence in the second round of adjudication.,,,

15. The Commissioner having analysed merely the shortage of raw materials, the argument of the learned counsel that they requested for cross-",,,

examination of mahazar witnesses and the adjudicating authority did not allow the same acquires relevance.,,,

16. As already stated, though in the Show Cause Notice it is alleged that 615.28 MTs of CTD bars were clandestinely removed through M/s. MMSD",,,

and duty demand of Rs.12,90,032/- was raised, in the present order, the adjudicating authority has held that the CTD bars unaccounted would be",,,

461.37 MTs only. Then it has to be explained through which of the traders, the same were shown to be purchased. The allegation on this issue is that",,,

the clearance was camouflaged through fake invoices of many traders. The evidences in this line are not discussed.,,,

17. From the foregoing, I am of the view that department has not been able to

establish with preponderance of probability the duty demand in respect",,,

of 615.28 MTs of CTD bars received by M/s. MMSD as alleged in the Show Cause Notice. I therefore hold that the demand of Rs.9,67,375/-",,,

confirmed in regard to the CTD bars received by M/s. MMSD requires to be set aside, which I hereby do.",,,

18. Since the remand was for reconsidering the penalty, the duty demand upheld by the Tribunal with respect to Rs.11,48,044/- having attained finality,",,,

I am of the view that the equal penalty confirmed in the earlier adjudication order would sustain.,,,

19. In the result, the impugned order is modified as under:-",,,

(a) The duty demand which has already been upheld by the Tribunal to the tune of Rs.11,48,044/- (which has been included in the demand of",,,

Rs.21,15,379/-) along with applicable interest and equal amount of penalty under section 11AC of Central Excise Act, 1944 r/w erstwhile Rule 173Q",,,

of Central Excise Rules, 1944 and Rule 25 of Central Excise Rules, 2001 / 2002 is upheld.",,,

(b) The demand of duty of Rs.9,67,335/- is set aside. Consequently, the penalty of Rs.one lakh imposed on M/s. MMSD under Rule 26 of Central",,,

Excise Rules, 2001 / 2002 is also set aside.",,,

(c) Appeal No. E/40679/2020 is partly allowed in above terms. Appeal No. E/40680/2020 is allowed with consequential reliefs, if any.",,,

(Pronounced in open court on 25.11.2021),,,

