Commissioner of Central Excise Vs. Raman Ispat (P) Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jul-27-2000

Reported in : (2000)(121)ELT46TriDel

Appellant : Commissioner of Central Excise

Respondent : Raman Ispat (P) Ltd.

Judgement :

1. The Revenue filed this appeal against the order-in-original dated 20-9-1996 passed by the Commissioner of Central Excise whereby the ld.Commissioner dropped the proceedings initiated under the show cause notice dated 6-12-1995.

2. Brief facts of the case are that the respondents are engaged in the manufacture of M.S. ingots classifiable under sub-heading 7206.90 of the Central Excise Tariff. On 3-12-1994, the officers of the Central Excise Department visited the factory of the respondents and five rough note books were recovered from the room adjoining to the security room.

The scrutiny of these rough note books reveals the manufacturing of M.S. ingots during the period from July, 1993 to September, 1994 and also shows the net consumption of inputs used in the manufacture of M.S. ingots. On comparison of the entries made in the rough note books with the statutory record, it was found that the respondents did not account for production of 3890.75 MTs. of M.S. ingots. It was, further, noticed during the scrutiny of note books that the total quantity of raw-material shown as consumed was more than the corresponding quantity of finished goods. Thus, the respondents had shown less production of M.S. ingots weighing 236.545 MTs. during July, 1991 to Nov., 94. The scrutiny of record also indicated that certain scrap was returned to the traders on account of poor quality of the scrap, which in fact, was used in the manufacture of final product and no such scrap was returned from the factory. On the basis of investigation, a show cause notice was issued and after adjudication, the ld. Commissioner dropped the proceedings on the ground that the Revenue failed to prove authenticity of five rough note books recovered from the factory and also on the ground that burning losses were not taken into consideration while calculating the quantity of final product. In f respect of the scrap shown to be returned, the ld. Commissioner held that no enquiry was conducted from the traders, to whom the scrap was shown to be returned.

3. Ld. D.R., appearing on behalf of the Revenue, submits that the rough note books were recovered from the premises of the respondents in the presence of Shri R.P. Khurana, an authorised signatory of the respondents. He submits that rough note books were prepared in detail by one Shri K.P. Singh. He, further, submits that in and out registers show the movement of Shri K.P. Singh. Shri K.P. Singh appears to be the store incharge of the respondents as evident from in and out registers where it is mentioned as such. Shri K.P. Singh maintained the rough note books recovered from the premises of the respondents and even datewise detailed entry regarding number of heats taken, quantity of ferro alloys consumed per heat, number of ingots manufactured and time of start and end of heat are recorded in these note books. He, therefore, submits that there is enough evidence in support of the allegations made in the show cause notice. He, therefore, submits that the appeal be allowed.

4. Ld. Consultant, appearing on behalf of the respondents, submits that Shri K.P. Singh is not an employee of the respondents. The Revenue had not made any effort to trace Shri K.P. Singh. Therefore, in the absence of any enquiry from Shri K.P. Singh, no reliance can be placed on the note books. He submits that the note books were recovered from the room adjoining the security room. But at the time of recovery, no investigation was made from the security man regarding the presence of the note books. He submits that these note books were planted by

somebody just to harm the respondents. In these note books, the consumption of aluminium in the manufacture of final product was shown whereas the respondents never used aluminium in the manufacture of final product.

5. In the rough note books, even the production was shown on the date when the factory was closed on account of industrial holidays or on account of power cuts.

He submits that Shri K.P. Singh was not their employee. He submits that same is in the case of one Shri Ram Gopal Sharma, who also made some entries in the rough note books. In respect of returned scrap, he submits that scrap was returned to the dealers, which was duly mentioned in the statutory record due to poor quality of the scrap. He submits that no investigation was conducted from the dealers to whom the scrap was returned. He, therefore prays that the appeal be dismissed.

6. In this case, the Revenue is relying upon the rough note books recovered from the premises of the respondents. The recovery of the rough note books was not denied by the respondents. The contention of the respondents is that these were not maintained by their employees.

These were planted just to harm the respondents. The rough note books were shown to be maintained by Shri K.P. Singh and Shri Ram Gopal Sharma. The revenue has not traced these persons. Therefore, no investigation was conducted from them in this respect. The statutory record maintained by the respondents in respect of their employees shows that both were not their employees. The Revenue has not produced any evidence to show that these persons were under the employment of the respondents nor any corroborative evidence was produced to show the clandestine removal of steel ingots as per the allegation in the show cause notice.

7. In the impugned order, the Commissioner also noticed the fact that the plant capacity of the respondents is 1800 MTS/annually per shift as per the certificate of District Industries Officer and if assuming 80 per cent utilisation in two shifts, the maximum that could be produced is 3100 MTs. whereas as per the rough note books, the production was shown to be 3890 MTs, which is in excess to their

installed capacity.

The Commissioner also noticed the fact that running of the factory into three shifts is not possible in view of the power cuts during the relevant period. This factual finding, arrived at by the Commissioner (Appeals), is not rebutted by the revenue.

8. In respect of return of raw material, the contention of the respondents is that raw material was returned to the traders due to poor quality of the scrap. No investigation was conducted form the traders, to whom the raw-material was shown to have been returned.

Therefore, in absence of such evidece, the revenue cannot say that no raw material was returned, but was used in the manufacture of the final product.

9. In view of the above discussion, we find no infirmity in the impugned order. The appeal, filed by the Revenue, is rejected.