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HIGH COURT OF CHHATTISGARH, BILASPUR

TAXC No. 42 of 2018

1. Mahamaya Steel Industries Limited B-8/9, Sector 'C', Urla Industrial Complex, Sarora, Raipur, District Raipur, Chhattisgarh, Through Its Director.

---- Petitioner

Versus

1. The Commissioner Central Excise & Customs, New Central Revenue Building, Civil Lines, Raipur, District Raipur Chhattisgarh.
2. The Customs, Excise & Service Tax Appellate Tribunal, West Block No. 2, R.K. Puram, New Delhi.
3. The Commissioner, (Appeals) Customs & Central Excise, Central Excise Building Tikarapara, Raipur Chhattisgarh.

---- Respondent

For Petitioner	Shri Ashish Shrivastava, Advocate
For Respondents	Shri Manish Sharma, Advocate

Hon'ble Shri Justice Prashant Kumar Mishra

Hon'ble Smt. Justice Vimla Singh Kapoor

Order on Board

By

Prashant Kumar Mishra, J.

17/07/2018

1. Appellant would assail the order passed by the Customs, Excise & Service Tax Appellate Tribunal, New Delhi (henceforth 'the Tribunal') on 19-1-2018, which, in turn, was preferred to assail the order-in-original No.Commr/RPR/CEX/127/2013 dated 31-12-2013 (Annexure – A/4) passed by the Commissioner of Central Excise, Raipur. In the said order-in-original the adjudicating authority directed for confiscation of the

seized goods valued at Rs.4,66,69,108/- under Rule 25 of the Central Excise Rules, 2002 and allowed the same for redemption on payment of redemption fine of Rs.70,00,366/- and penalty of Rs.46,66,911/-. The Tribunal has partly allowed the appeal to reduce the redemption fine of Rs.20,00,000/- and the penalty is reduced to Rs.10,00,000/-.

2. We have heard learned counsel appearing for the parties at length.

3. During the course of verification of stock in the appellant's factory premises on 13-7-2012 certain excess stock of finished goods were found, which are reproduced in the following chart :

S.No.	Particulars of goods	Stock as per Book (MT)	Qty. found in stock verification (MT)	Qty. of surplus stock (MT)
1	Angle/Channel/Joist	7364.512	8358.592	(+) 994.08
2	Bloom/Billet (Rolling Mill)	3894.873	4053.910	(+) 159.037
3	Bloom/Billet (SMS)	944.481	1076.560	(+) 132.079

4. The appellant was issued show cause notice on 31-12-2012 on the ground that the goods were kept with intent to be cleared without payment of duty. The notice proposed for confiscation of seized goods and eventually, after providing opportunity of hearing to the appellant, the order-in-original was passed on 31-12-2003, as mentioned in the preceding paragraph.

5. Challenging the appellate order passed by the Tribunal Shri Ashish Shrivastava, learned counsel appearing for the appellant, would argue that once the Tribunal agreed with the submission that the quantity of billets/blooms having been found to have been satisfactorily explained, the same reason should have weighed with the authority for setting aside the entire order passed by the adjudicating authority. Shri Shrivastava would submit that the explanation offered by the appellant to explain the surplus stock of angles, channel and joist has not been properly appreciated by the appellate Tribunal in its true perspective, which has resulted in an error of jurisdiction.

6. On perusal of the document it would appear that out of total surplus stock of blooms/billets to the tune of 159.037 MT about 116 MT appears to have been manufactured on 12-7-2012, as claimed by the appellant, because the record would reveal that about 132 MT of bloom/billet is manufactured in one day, therefore, treating the same to have been manufactured with intent to evade duty has not been found illegal by the appellate Tribunal, however, the stock of angles, channel and joist found in excess to the tune of 994.080 MT was produced in the month of May, but the same remained in the factory premises without payment of duty till 12-7-2012 when inspection was carried out by the team of Central Excise Officers. The appellant was, thus, rightly found to be keeping the said quantity of angles, channel & joist without payment of duty which raises a *bona fide* ground that it was kept with intent to evade duty.

7. The appellate Tribunal has observed that there is nothing on record to support the appellant's argument that such goods were manufactured in trial run and did not meet the necessary specifications. Since the quantity of 994.080 MT was found to be considerable the appellate Tribunal concluded that it stands on a different footing then billet/bloom. Liability to make payment of central excise duty arose the moment excisable goods are manufactured, but the appellant did not make payment of the goods from May, 2012, therefore, in our considered opinion, the appellate Tribunal has rightly rejected the argument concerning angles, channel & joist.

8. Presence of 994.080 MT of angles, channel & joist having not been disputed, non-acceptance of appellant's explanation does not raise any substantial question of law and, as such, no substantial question of law would arise in this appeal for determination.

9. In the result, the appeal, *sans* merit, is liable to be and is hereby dismissed.

Sd/-

Judge
Prashant Kumar Mishra

Sd/-

Judge
Vimla Singh Kapoor

Gowri