

2013 (1) ECS ( 52) (Tri-Del)

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL  
WEST BLOCK NO.II, R.K. PURAM, NEW DELHI-110066.

Excise Stay NO. 2008 in Appeal No. 1540 of 2012

**M/s Soni Ispat Ltd.**

**Vs.**

**CCE, Indore**

Date of Hearing: 29.10.2012

Date of Decision : 7.2.2013

**Excise Stay NO. 2008 in Appeal No. 1540 of 2012**

M/s Soni Ispat Ltd. ....Appellants

Vs.

CCE, Indore ....Repondent

**Excise Stay NO. 2011 in Appeal No. 1543 of 2012**

Shri. Manohar Singh ....Appellants

Vs.

CCE, Indore ....Repondent

**Excise Stay NO. 2383 in Appeal No. 1742 of 2012**

Shri Vijay Soni. ....Appellants

Vs.

CCE, Indore ....Repondent

Appearance:

Shri Mamish Arora, Advocate for the appellant.  
Mrs. Ranana Jha, Joint CDR for the respondent.

**CORAM:**

**Hon'ble Smt. Archana Wadhwa, Member (Judicial)**  
**Hon'ble Shri. Rakesh Kumar, Member (Technical)**

Stay Orders Nos. 56030 – 56032/2013 dt. 7.2.13

**“Since in terms of the provisions of Section 4 of the Central Excise Act, 1994 read with the Central Excise Valuation Rules, 2000, in case the goods are cleared to consignment agent’s premises from where the same are sold, it is the consignment agent’s premises which s to be treated as the “place of removal” and accordingly, the assessable value would the price of the goods from the consignment agent’s premises at the time of record which would include all the expenses incurred upto the consignment agent’s premises including the transportation expenses incurred upto that point. In this case, prima facie, the duty has not been paid on the price at the consignment agent premises and as such, the duty demand on this count appears to be on strong footing.” [Para 5.2]**

**“Since in respect of the clearance of the cenvated items as such an amount equal to the Cenvat credit actually availed was required to be paid, this demand is also on strong footing” [Para 5.3]**

Per Rakesh Kumar:

The facts leading to these appeals and stay applications are in brief as under:-

- 1.1 M/s Soni Ispat Ltd. 805 A, Sector-III, Industrial Area, Pithampur Distt. M.P. are manufacturers of Mild Steel and stainless steel Plates and Slabs chargeable to central excise duty. Shri Vijay Soni and Shri Manohar Singh Rana are the Excise Incharge and the Authorised Signatory respectively of the appellant company. The period of dispute in this case is from September 2005 to December, 2007. The officers of Directorate of General of Central Excise Intelligence, on receipt of information regarding duty evasion by the appellant company searched the factory as well as registered office premises of the

appellant company at Indore as well as in Mumbai on 8.12.2007. In course of search of a number of incriminating documents were recovered.

- 1.2 In course of search of the factory premises, Shri Vijay Hardiya, Excise Asstt. Of the appellant company, who was present at that time, on being asked stated that while the factory of the appellant company is an integrated steel plant manufacturing mild steel and stainless steel plates and slabs, they are also getting the Mild Steel and stainless steel slabs, converted into plates on job work basis from M/s Bhanu Iron and Steel Com. Ltd. The officers took stock of the finished products lying in the factory. The weight of the goods was determined as per the standard norms of length, width, thickness and density of the products i.e. by adopting the same criteria on the basis of which the quantity of the goods manufactured was being mentioned in the stock register. In course of stock taking while excess vis-à-vis balance in the RG-I register to the extent of 33.595 M.T. and 84.832 M.T. in respect of S.S. Slabs and plates respectively was found, in respect of M.S. Slabs as S. Plates, there was shortage to the tune of 15.425 and 91.997 M.T. respectively and the duty involved on the shortage of SS Slabs and S.S. Plates was Rs. 39,40,559/-. As regards the excess stock in respect of M.S. Slabs and M.S. Plats, since the officials of the appellant company present at that time could not give any satisfactory explanation for the same, the same was placed under seizure.
- 1.3 On scrutiny of the central excise records of the appellant company, it was found that while they had number of sales through the consignment agent's premises as the goods were first being cleared from the factory to the consignment agent's premises and from there the same were sold, in respect of such sales, while the duty was required to be paid on the price at which the goods were sold from consignment agent's premises which would include the element of freight from the factory gate to the consignment agent's premises, the duty was being paid on lower value and as such, the short duty paid on this account during the period September 2005 to 7.12.2007 was Rs. 95,48,586/-
- 1.4 The appellant during the period of dispute were also importing M.S. Slabs and H.R. Coils, in respect of which they were availing Cenvat credit of the additional customs duty paid. Certain quantity imported was cleared as such in respect of which while the appellant company were required to pay an amount equivalent the Cenvat credit availed or otherwise reverse the Cenvat credit originally taken, they were paying an amount equal to the duty on the transaction value, which was much lower than the Cenvat credit actually availed. The short payment on this account during the period September 05 to December, 2007 was Rs. 1,91,16,552/-
- 1.5 In course of Scrutiny of the central excise records, the investigating officers found that while credit of Rs. 50,90,247/- had been taken twice, credit of Rs. 2,17,31,793/- had been

taken availed in respect of goods imported under bill of entry no. 297 dated 1.3.2007 under DFIA in respect of which the appellant were not entitled for Cenvat credit but they had still availed the cenvat credit. The cenvat credit of Rs. 2,17,31,793/- and Rs. 50,90,241/- was immediately reversed by the appellant. Besides this, the officers also found that credit of Rs. 3,60,37,241/- had been availed by the appellant in respect of raw materials on the basis of bills of entry and invoices without accounting for the entire quantity of the goods, which appeared to be recoverable from the appellant. Thus, it appeared that the appellant company had taken wrong Cenvat credit amounting to Rs. 6,28,59,281/- out of which the Cenvat credit of Rs. 2,17,31,793/- and Rs.50,90,247/- was reversed during investigation.

- 1.6 On comparison of the quantity of the raw materials, M.S. Steel and Stainless Steel slabs sent to job workers and the quantity of finished goods which was received back, it appeared that substantial quantity has not been received back the same appeared to have been illicitly cleared. The total duty involved on this quantity of finished goods appeared to be Rs. 56,87,130/- (Rs. 75,02,642/- + Rs. 4,93,04,488/-).
- 1.7 In view of the above investigation, a show cause notice dated 7.5.2009 was issued to the appellant company, Shri Vijay Soni, Director of the appellant company and Shri Manohar Singh Rana, the Authorized Signatory of the appellant company for –
  - (a) Confirmation of total duty demand as well as cenvat credit demand of Rs. Rs. 15,22,72,338/ (Rs 39,40,559/ + Rs. 95,48,586/ + Rs. 1,91,16,562/- + Rs. 6,28,59,281/- + Rs. 75,02,642/- + Rs. 4,93,04,488/-) along with interest thereon against the appellant company under proviso to Section 11 A (1) of Central Excise Act, 1994 along with interest thereon under Section 11 A B;
  - (b) Imposition of penalty on the appellant company under Section 11 AC of the Central Excise Act,
  - (c) Imposition of penalty under Section 26 of the Central Excise Rules, 2002 on Shri Vijay Soni and Shri M. Singh Rana; and
  - (d) Confiscation of stock of the seized M.S. Slabs and plates valued at Rs. 38,75,359/-.

1.8 The above show cause notice was adjudicated by the Commissioner of Central Excise, Indore vide order-in-original dated 27.2.2012 by which –

- (a) The duty as well as Cenvat credit demands totaling Rs. 15,22,72,338/- was confirmed against the appellant company along with interest and penalty of equal amount was imposed on them under Section 11 AC of the Central Excise Act, 1994;
- (b) Penalty of Rs. 5 lakh each was imposed on Shri Vijay Soni and Shri M.S. Rana under Rule 26 of the Central Excise Rules; and
- (c) Seized goods – M.S. Slabs and M.S. Plates valued at Rs. 38,75,359/- were ordered to be confiscated under Rule 25 (1) of the Central Excise Rules, 2002 with option to be redeemed on payment of redemption fine of Rs. 9,70,000/-.

The Commissioner also imposed penalty of Rs. 10 lakh on the appellant company under Rule 25 (1) of the Central Excise Rules, 2002 for not accounting the finished goods in the RG-I Register.

1.9 Against the above order of the Commissioner, these appeals have been filed along with stay applications.

2. Heard both sides in respect of stay applications.

3. Shri Mahish Saharan, Advocate, Id. Counsel for the appellant, made oral submissions and thereafter submitted written submissions. In the oral as well as written submissions, it was pleaded on behalf of the appellant that the shortage in respect of S.S. Plates and S.S. Slabs was not actual shortage as the weight of the finished goods had been determined by estimation only, not by actual weightment, and hence, duty demand of Rs. 39,40,559/- on the alleged shortage is without any basis, that as regards the duty demand of Rs. 95,48,586/- in respect of the goods sold from consignment agent's premises and the duty demand of Rs. 1,91,16,562/- in respect of clearances of cenvated M.S. Slabs and H.R. Coils as such, the department has not supplied the relied upon documents and hence, the appellant are not in a position to make the effective submission on these points, that out of the alleged wrong Cenvat credit of Rs. 6,28,59,281/- the credit of Rs. 2,17,31,793/ in respect of the goods imported under DFIA and credit of Rs. 50,90,247/ which was taken twice by mistake, has already been reversed, that the allegation of taking wrong cenvat

credit of Rs. 3,60,37,241/- in respect of quantity which had not been received, the appellants are not in a position to make any defence submission, as the documents relied upon have not been submitted to them and as per the appellants, this credit has correctly been taken by them and as such there was no short receipt, that as regards the duty demand of Rs. 4,93,04,488/- and Rs. 75,02,642/ in respect of the goods alleged to have been cleared without payment of duty, this demand is in respect of the goods manufactured on job work basis, that the demand has been raised on the basis of difference between the quantity of M.S. Slabs sent for job work as per the job work register and the quantity of the resultant product received back after job work and entered in RG-I Register, that this is wrong, as the comparison should be between the quantity of the clearances as recorded in the RG-I Register and the quantity of the clearances as per record of the dispatches and the difference between quantity shown to have been cleared in RG-I Register and the quantity returned from job workers as per job work register could not be the basis for duty demand, that the appellants have strong prima facie case on merits, that since the appellants have already paid a total amount of Rs. 5,70,05,598/ which is about 37.44% of the total demand, the amount already paid is sufficient for the hearing of the appeals, more so when the appellants are facing financial difficulty and their factory has been taken over by the bank. He, therefore, pleaded that the requirement of pre-deposit of the duty / cenvat credit demand, interest and penalty by the appellant company and pre-deposit of penalty by the other two appellants may be waived for hearing of the appeals and recovery thereof may be stayed till the disposal of the appeals.

4. Ms. Ranjana Jha, Id. Department Representative , opposed the stay application by reiterating the findings of the Commissioner in the impugned order and emphasized that the appellants' plea regarding non-supply of the documents relied upon is without any basis, that all the documents relied upon have been handed over to the appellants and their authorized representative, that the department's case is on strong footing and that the amount already paid by the appellants is not sufficient to safeguard the interests of the revenue. She, therefore, pleaded that this is not the case for waiver and the appellants may be directed to pre-deposit the entire duty / Cenvat credit demand confirmed against them alongwith interest and penalty for hearing of their appeals.
5. We have considered the submissions from both sides and perused the records.
  - 5.1 The demand Rs. 39,40,559/- is in respect of shortage of Stainless Steel Slabs and Plates vis-à-vis the balance recorded in the RG-I register. From the records, it is seen that the stock taking had been done in the presence of the appellants' representatives and at that time, they had expressed their full satisfaction with the method adopted for determination of weight of the finished goods on the basis of the dimensions of the slabs / plates. The appellants were recording the weight of finished goods in the RG-I register on the same

basis. We, therefore, are of the prima facie view that sofa as this demand is concerned, the appellant's plea does not appear to be acceptable.

- 5.2 As regards the duty demand of Rs. 95,48,586/, this demand is in respect of the goods sold though consignment agent's premises. Since in terms of the provisions of Section 4 of the Central Excise Act, 1994 read with the Central Excise Valuation Rules, 2000, in case the goods are cleared to consignment agent's premises from where the same are sold, it is the consignment agent's premises which is to be treated as the "place of removal" and accordingly, the assessable value would be the price of the goods from the consignment agent's premises at the time of record which would include all the expenses incurred upto the consignment agent's premises including the transportation expenses incurred upto that point. In this case, prima facie, the duty has not been paid on the price at the consignment agent premises and as such, the duty demand on this count appears to be on strong footing.
- 5.3 As regards the duty demand of Rs. 1,91,16,562/-, this is the difference between the cenvat credit actually availed in respect of the imported Mild Steel Slabs and H.R. Coils, which had been cleared as such and the amount actually paid at the time of clearance which is the duty on the transaction value. Since in respect of the clearance of the cenvated items as such an amount equal to the Cenvat credit actually availed was required to be paid, this demand is also on strong footing.
- 5.4 As regards the allegation of wrong availment of Cenvat credit to the tune of Rs. 6,28,59,281/-, out of this amount, the appellant have themselves admitted wrong availment to the extent of Rs. 2,68,22,040/- (Rs. 2,17,31,793/- in respect of the inputs imported under DFIA and credit of Rs. 50,90,247/- taken twice) and this amount has already been paid by the appellant. The dispute is in respect of the balance amount of Cenvat credit of Rs. 3,60,70,241/- in respect of the inputs received under Bills of Entry and invoices. The department's allegation is that this credit is in respect of the inputs which have short received while the appellant's plea is that there is no such short receipt. Since in respect of these allegations, there are conflicting claims by the appellant and the department and the appellant's plea that all the relied upon documents in respect of this allegation have not been supplied to them, while the department's plea is that all the documents have been supplied to the appellant, this point can be examined in depth only at the time of final hearing. However, looking to the nature of the evidence on record in support of this allegation, some conditions have to be imposed for safeguarding the Revenue's interests in respect of this point.
- 5.5 As regards the duty demand of Rs. 5,68,07,130/- (Rs. 4,93,00,488/- + Rs. 75,02,642/-) the same is on the basis of difference between the raw materials dispatched by the

appellant company to job worker as per job work register and quantity of the finished goods returned from the job workers and recorded in the RG-I register. According to the department, a huge quantity of raw materials sent to the job worker is not accounted for. The appellant's contention is that just on this basis, the allegation of clandestine removal of the finished goods cannot be made. This point also requires in depth examination, after examining the records. However, looking to the evidence on record in support of this allegation, some conditions have to be imposed to safeguard the interest of revenue in respect of this demand.

6. Taking into account the overall facts and circumstances of the case, including their plea of financial hardships, we are of the view that amount of Rs. 5,70,05,598/- which covers only-

(i) cenvat credit demand of Rs. 2,17,31,393 and Rs. 50,90,247/- which stands admitted by the appellant themselves, (ii) the demand of Rs. 39,40,559/- in respect of shortage of the finished products, (iii) the demand of Rs. 95,48,586/- in respect of the goods sold through consignment agent and, (iv) the demand of Rs. 1,91,16,562/- in respect of reversal of the Cenvat credit in respect of cenvated inputs cleared as such, is not sufficient to safeguard the interests of revenue. The appellant company is, therefore, directed to deposit another amount of Rs. 2 Crores in addition to the amount Rs. 5,70,05,598/- already deposited by them within eight weeks. On deposit of this amount within the stipulated period, the requirement of pre-deposit of the balance amount of Cenvat credit / duty demand, interest thereon and penalty by the appellant company and the requirement of pre-deposit of penalty by the other appellants shall stand waived and recovery thereof stayed till the disposal of the appeal. Compliance is to be reported on 17.4.2013

[order pronounced on 7.2.2013]