CUSTOMS,EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST ZONAL BENCH : AHMEDABAD

REGIONAL BENCH : COURT NO - 1

EXCISE Appeal No. 201 of 2011-DB

(Arising out of OIA no. SKSS/260-261/VAPI/2010 dated 10/11/2010 passed by Commissioner of Central Excise, Customs and Service Tax-VAPI)

Shalu Synthetics Appellant

3/3, Mohanlal Mansion, Bhadarkar Road, Matunga Central,
Mumbai
Maharashtra-400019

-VERSUS-

C.C.E. & S.T. Vapi Respondent

4th Floor...Adharsh Dham Building,
Opp. Town Police Station, Vapi-Daman Road, Vapi
Vapi, Gujarat
396191

With
EXCISE Appeal No. 202 of 2011-DB

(Arising out of OIA no. SKSS/260-261/VAPI/2010 dated 10/11/2010 passed by Commissioner of Central Excise, Customs and Service Tax-VAPI)

Sanjay Mahajan Appellant

3/3, Mohanlal Mansion, Bhadarkar Road, Matunga Central,
Mumbai
Maharashtra-400019

-VERSUS-

C.C.E. & S.T. Vapi Respondent

4th Floor...Adharsh Dham Building,
Opp. Town Police Station, Vapi-Daman Road, Vapi
Vapi, Gujarat
396191

Present For the Appellant : Shri S. R. Dixit, Adv.

Present For the Respondent : Shri T.K. Sikdar, Asst. Commr. (AR)

CORAM:
HON'BLE MEMBER (JUDICIAL), MR. RAMESH NAIR
HON'BLE MEMBER (TECHNICAL), MR. RAJU

FINAL ORDER NO. A/ 11009-11010/2019

Date of Hearing: 26/04/2019

Date of Decision:20/06/2019

RAJU

This appeal has been filed by M/s Shalu Synthetics against demand of Central Excise duty, interest and penalty. Appeal has also been filed by Shri Sanjay Mahajan, Director of M/s. Shalu Synthetics against imposition of penalty.

2. Ld. Counsel for the appellant pointed out that the appellants are manufacturer of polyester yarn and were inter alia supplying the same to M/s Dimpu Impex, a 100% EOU located at Warthi, Bhandara. He pointed out that the Revenue conducted investigation against the said EOU and came to the conclusion that the said EOU was a defunct EOU with no electricity connection and no manufacturing activity was done in the said EOU. He pointed out that they had cleared 41.24 MTs of polyester yarn under several CT-3 during the period 03.05.2004- 19.05.52004 through the transporter namely, M/s Trade Transport Company, Vapi. He pointed out that the Revenue interrogated the transporter and transporter deposed that while the goods were loaded from the premises of M/s Shalu Synthetics, the deliveries were not made to Bhandara but to Surat. He pointed out that the proprietor of the M/s Dimpu Impex, the 100% EOU, Shri Anil Jawaharlal Agarwal also deposed that the transaction took place only on papers on the strength of CT-3 but no goods was received in their premises. He admitted misuse of CT-3 to evade payment of Central Excise Duty on the strength of above evidence, the demand of Central Excise Duty of Rs. 12,33,800/- was confirmed against the appellant along with the interest and equal penalty was also imposed. A penalty of Rs. 10 lakhs was also imposed on Shri Sanjay Mahajan, Director of M/s Shalu Synthetics.

2.1. Ld. Counsel for the appellant pointed out that they had made clearances against CT-3 certificates and they have received the re-warehousing certificates from the Excise offices having jurisdiction over M/s Dimpu Impex. He pointed out that in these circumstances, it cannot be their responsibility as the procedure prescribed does not require actually physically deliver the goods to the premises of the buyer. He pointed out that the entire case has been based on the statements of Shri Anil Agarwal, Shri Ashraf Rajwani & Shri Shri Rafiq Ahmed Faizal Ahmed. He pointed out that apart from these statements, there is no evidence. He pointed out that no cross-examination of the transporter was conducted. He also pointed out that no buyers at Surat were identified and no questions were asked to the trasporter about delivery of the goods. He also pointed out that the AR-3A and the CT-3 were validly issued by the concerned officers and that has not been challenged by the Revenue at any stage. He argued that the proof of receipt of goods by the EOU in the shape of AR-3A has been rejected on the ground that no physical verification was done by the jurisdictional officers. He pointed out that the circular no. 851/9/2007-Cx dated 03.05.2007, requires physical verification as it is apparent from the para 3 (e) & (f) of the said circular. He pointed out that the reliance was placed in the impugned order on circular 88/98 dated 02/12/1998 and 504/70/99- CX dated 30.12.1999 to state that the re-warehousing certificates issued by range officers on the basis of records maintained and not and without physical verification is misplaced.

2.2 He further argued that the entire payment has been received by cheque from account of M/s Dimpu Impex. He further argued that transporter was not engaged by the appellant. He further pointed out that it has not been enquired by the transporter as to who has made the payment for the transport. The names of consignees have also not been identified.

3. Ld. AR relies on the impugned order. He argued that the period of clearance is 2004 and at the material time, the relevant circular was Circular No. 88/98 dated 02/12/1998. He also argued that in these circumstances, the circular no. 851/09/2007-CX dated 03.05.2007 relied by the appellant is not relevant.

4. We have carefully gone through rival submissions. We find that the appellants are manufacturer of polyester yarn and they were clearing the said yarn under valid CT-3 certificates to a 100% EOU located in Maharashtra. The appellants were also receiving AR-3s duly verified by Jurisdictional Superintendent. It is also noticed that CT-3 and AR-3 has not been challenged by Revenue as being false or fabricated. From the above set of facts, it is apparent that so far as appellants are concerned, they have discharged their responsibility cast upon them by the law. The case of the Revenue is based on the fact that the EOU to which the appellants were supplying the goods were not having manufacturing capacity and electricity connnection and was not in a position to use the goods supplied by the appellant. The Revenue has relied on the statements of transporter to hold that the goods have been diverted to Surat. Revenue has also relied on the statements of the representative of the EOU to assert that no goods were received in the premises of the EOU. In this entire course of events, there is hardly any evidence to link the appellants with any activity after the goods were cleared. The law requires the appellant to clear the goods against the valid CT-3 and obtain the duly verified re-warehousing certificate. The appellant have done both and the same has not been challenged. In these circumstances unless specific involvement or knowledge of the appellant is established, no liability can be fixed on the appellants.

4.1 The impugned order seeks to rely on circular no. 88/98 dated 02.12.1998 to hold that no physical verification of the goods were done at the recipient’s end and therefore, AR-3 certificates evidencing re-wareshousing of the goods can be discarded. It is not the responsibility of the appellant to get the physical verification conducted. Even if no physical verification was done, it cannot be alleged that appellants were wrong in their belief that their goods were re-warehoused at the EOU at Maharashtra. Whether to check physically or otherwise is entirely a prerogative of Revenue. The failure to check physical receipt of goods cannot be used against the appellant who has received duly signed re-warehousing certificates. In the above facts and circumstances, we do not find that any case has been made Revenue. Consequently, the demand and penalty are set aside. The penalty against the Director is also set aside. Consequently, the appeals are allowed.

(pronounced in the open court on 20.06.2019)

(Ramesh Nair)
Member (Judicial)

(Raju)
Member (Technical)

Diksha