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

REGIONAL BENCH – COURT NO. 03

Excise Appeal No. 796 of 2007

[Arising out of OIO-14/COMMR/VDR-II/MP/2006 passed Commissioner of Central Excise, Customs and Service Tax-VADODARA-II]

M/s Star Tubes & Metals Pvt. Ltd **.....Appellant**
Plot No. 1006, Gidc, Waghodia,
Vadodara, Gujarat

VERSUS

C.C.E. & S.T.- Vadodara-ii **.....Respondent**
1st Floor, Room No.101,
New Central Excise Building,
Vadodara, Gujarat-390023

WITH

Excise Appeal No. 712 of 2007

[Arising out of OIO-14/COMMR/VDR-II/MP/2006 passed Commissioner of Central Excise, Customs and Service Tax-VADODARA-II]

M/s Rajasthan Goods Carrier **.....Appellant**
C/O Shri Inderjeet Singh Baweja,
H.No. 22c, Second Floor, Road No. 52, West Punjabi Bagh,
Delhi-110026

VERSUS

C.C.E. & S.T.- Vadodara-ii **.....Respondent**
1st Floor, Room No.101,
New Central Excise Building,
Vadodara, Gujarat-390023

APPEARANCE:

Sh. D.K. Trivedi & W. Christian, Advocate for the Appellant
Sh. L. Patra, AR for the Respondent

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

FINAL ORDER NO. A/ 11050-11051 /2019

DATE OF HEARING: 06.03.2019
DATE OF DECISION: 28.06.2019

RAMESH NAIR

The present appeals have been filed against Order dt. 07.03.2007 passed by the Commissioner of Central Excise, Vadodara – II. The Brief facts of the case are that the Appellant M/s Star Tubes are engaged in the manufacture of Copper Tubes and pipes falling under chapter 74 of the CETA, 1985. They were issued show cause notice dt. 13.07.2004 alleging that during search at factory, the stocks were not found to be tallying with the records. During search at M/s Rajasthan Goods Carrier pipes weighing 3788 valued at Rs. 4,73,500/- were found to have been booked on unnumbered challan. Statement of Shri Rakesh Pandey, Transport Clerk of M/s Rajasthan was recorded wherein he stated that the said goods belong to M/s Star and were consigned to Delhi. Searches at M/s Rakesh Metal, alleged to be sister concern of M/s Star resulted into seizure of 792 Kgs of Pipes. Statement of Shri Kamlesh Jain, Director of M/s Star Tubes was recorded wherein he agreed with the contents of seizure panchnama. Manager of M/s Rajasthan Goods Carrier, Shri Rajkumar Dubey agreed with the statement of Shri Rakesh Pandey and stated that the goods were transported to Delhi and for transportation of copper tubes and pipes and in some cases the name of consignee was mentioned in coded form. He was shown statement containing LR No., date, quantity and name of consignee in which certain names of consignees were mentioned in coded form prepared on the basis of loading challans found from his firm and allegedly booked by M/s Star to which he confirmed that the same were true.

2. He stated that name of persons mentioned in coded form and that the figures in numbers which followed after such coded Alphabet represented the number of bundles of copper tubes booked and transported to such parties. That in certain cases the remark "pm" before the coded alphabet represented the customer of M/s Star which was abbreviation of "private mark" which was used by them to distinguish the goods booked by M/s Star so that same could be easily identified and delivered from their office at Delhi. Further that in some cases "PM" was invariably followed by the code of the party denoting the first letter of the name of the party. That the goods were stored at their Delhi Godown and one Shri Hiralal, employee of M/s Star used to take delivery of goods. During investigation at Delhi Godown of M/s Rajasthan Goods Carrier the documents viz. delivery note and LR were seized which showed that the goods i.e. copper articles booked at Halol for the delivery were booked by the consignor as 'self'. Statement of Delivery Incharge of M/s Rajasthan Goods Carrier Shri Anand Kumar Sharma was recorded who stated that the goods belong to M/s Star as informed by Shri Rajkumar Dubey and Shri Hiralal took the delivery of goods who used to give him the consignee copy of LR. That he was also

giving delivery of goods to M/s Mardia Alloys on direction of Shri Hiralal. Statement of Shri Hiralal was recorded wherein he stated that he was looking after delivery of goods consigned by M/s Star to parties at Delhi. He also agreed with the statement of Shri Rajkumar Dubey and also identified the parties whose name was mentioned in coded from in transport documents. That he was delivering goods to parties as per instruction of Shri Kamlesh. Shri Kamlesh Jain in his statement dt. 26.09.2003 was shown the seized transport documents to which he stated that the clearances do not belong to M/s Star and that Shri Hiralal was entrusted only for collection of cheques, quality assurance etc on behalf of M/s Star. He also stated that they did not sell any goods to M/s Mardia on principal to principal basis. However he accepted collection of extra amount of Rs. 1,07,169/- on their behalf by M/s Mardia and also stated that no duty has been paid on said amount. Statement dt. 03.10.2003 of Shri Rajkumar Dubey, Manager of M/s Rajasthan was also recorded wherein he stated that the bills in respect of transportation were paid by Shri Kamlesh. Statements of two parties who had stamped at the back of LR acknowledging receipt of goods were recorded. Shri Satya Prakash Rustagi, proprietor of M/s Durga Agencies in his statement stated that they purchased goods from M/s Star and the payment was collected by Shri Hiralal. Another person Shri Manish Jain, authorised signatory of M/s Bharat Metals refused purchasing goods from M/s star. It was alleged that M/s Star has cleared goods clandestinely with support of M/s Rajasthan goods Carrier and thus evaded duty. The show cause notice proposed demand of duty of Rs. 1,15,95,381/- along with interest and also proposing penalty under section 11AC read with rule of CER, 2002. It was also proposed to impose penalty on Director Shri Kamlesh Jain and M/s Rajasthan Goods carriers in terms of Rule 25 of CER, 2002 for their involvement in alleged evasion by M/s Star. Vide impugned order dt.26.02.2007, the demands and penalties as proposed in show cause notices were confirmed. Hence the present appeal by the Appellants.

3. Shri. D.K. Trivedi & W. Christian appearing for appellant submits that the duty has been wrongly ordered against them as there is no evidence of any clandestine removal by them. That the statement of Shri Avinash Pandey, clerk of M/s Rajasthan Carrier which is starting point of investigation and making allegations against them is not correct

as other manufacturers of copper tubes were also getting their goods booked with M/s Rajasthan Goods Carrier. He relies upon the freight bills in name of M/s Kundan Tubes Ltd. and M/s Nanda Metals, Halol which shows that they are engaged in manufacturing of same goods as of Appellant. Shri Avinash Pandey in his statement had also stated that they were preparing fake bills which are sent with consignments to Delhi. Thus possibility cannot be ruled out that they have transported goods of other parties in name of M/s Star. They have always cleared their goods with invoices. The goods seized at M/s Rajasthan Goods Carrier were of M/s Rakesh Metals which was purchased from M/s Rupesh Metal, Mumbai. A show cause notice was issued to them for confiscation of said goods and in adjudication proceedings the adjudicating authority confiscated the said goods. However the order was set aside by the Commissioner (Appeals) holding that the goods belong to M/s Rakesh Metals. He submits that Shri Hiralal was only collecting payment for the consignments cleared to Delhi. In case of demand on alleged excess amount collected from M/s Maradia he submits that the demands are not sustainable as there is no evidence on record. As regard statement of alleged two buyers at New Delhi viz. M/s Durga Agencies and M/s Bharat Metals, he submits that the buyers might have purchased goods through their consignment agent M/s Mardia. The documents of M/s Rajasthan Goods Carrier are not reliable being third party documents. He submits that whereas total quantity of 488.36 Mts has been shown to be supplied, the freight as per relied upon document is only Rs. 1.5 lakhs which clearly shows that the clearances were made by some other party and not appellant. He also draws our attention to Annexure to the show cause notice showing details of clearances and submits that it is not known as to from which documents the clearances has been worked out.

4. He also submits that they were not given provided inspection of unnumbered challan and panchnama at Rajasthan Goods Carrier. He submits that to prove clandestine removal the same has to be adduced by positive, clear, cogent, reliable, independent and corroborative evidences like unaccounted procurement of raw material and production, receipt of consideration and investigation from the alleged buyers and none of the same is present in this case. Hence the demands are not sustainable. He relies upon judgments in case of /s Vishwa Traders

2013 (287) ELT 243 (Guj), Aum Aluminium Pvt. Ltd. 2014 (311) ELT 354 (TRI) and Mahavir Metal Industries 2014 (313) ELT 581 (TRI).

5. Shri L. Patra Ld. AR appearing for the revenue submits that M/s Star in connivance with M/s Rajasthan Goods Carrier clandestinely cleared the finished goods without payment of duty and the same is apparent from the statements of employee of transporter. That LRs had code name of parties to whom the goods were consigned and the number against code showed the quantity of goods. The LRs were made on self to self basis. Shri Rajkumar Dubey of M/s Rajasthan Goods Carrier has disclosed the name of consignee parties to which Shri Hiralal also agreed. During investigation the LR Books, loading challan Books, files containing freight bills, one diary named as debit book and one log book which contained payment details in which payment details were shown against various parties which can be called party ledger was found in transporter premises. The officers during search also seized delivery challan from transporter issued by M/s Star in favour of M/s Rakesh Metals for copper pipes weighing 3788 Kgs and quantity packed in gunny bags. The transporter did not produce any evidence of duty payment and stated that the goods were to be sent to Delhi instead of Mumbai and same modus operandi was followed in all cases. Shri Kamlesh Jain in his statement has agreed to the contents of statement of Shri Avinash Pandey and other employee of M/s Rajasthan Goods Carrier but did not accept the clandestine removal. He however did not contradict any of the statements given by employees of M/s Rajasthan Goods Carrier. He states that the statements of the employee of transport firm and records show that the goods were cleared clandestinely by M/s Star.

6. Heard both the sides and perused records. We find that the case against the Appellant unit is mainly booked on the basis of records of transporter M/s Rajasthan Goods Carrier and statements of its employee. Further the fact remains that the goods were also seized from the transporter premises. The Appellant is also aggrieved that they were not allowed inspection of documents. Further that unnumbered challan referred in show cause notice and panchnama drawn at Rajasthan Goods Carrier was not available. The Appellant has also submitted that the Annexure – 'A/1' of showing alleged clearances by Appellant is without any basis as no records evidencing the same is

available. We find that the Panchnama and other records of which inspection has been sought by the Appellant should have been provided to the Appellant. The documents relied upon in the show cause notice also should have been provided to the Appellant to prepare their case. In such case we consider it fit to remand the case back to the adjudicating authority to provide the copies of records as pleaded by the Appellant and to decide the case thereafter expeditiously after granting them opportunity of being heard. The impugned order is set aside and the case is remanded back in above terms. All the appeals are disposed off as above.

(Pronounced in the open court on 28.06.2019)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)

Seema