

**IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE
TRIBUNAL
REGIONAL BENCH : ALLAHABAD
COURT No. I**

APPEAL Nos.E/104,329 & 498/2010-EX[SM]

(Arising out of Order-in-Appeal No.133-138-CE/MRT-I/2009 dated 29/10/2009 passed by Commissioner of Central Excise & Customs (Appeals), Meerut-I)

Mr. Shalabh Gupta,

M/s Usha Filters Pvt. Ltd. (ufpl) &

Mr. Manjuri Gupta (M.D.)

Appellants

Vs.

Commissioner of Central Excise & S.T., Meerut-I

Respondent

Appearance:

Written submission (In Appeal No.E/104/2010) &

Ms Stuti Saggi, Proxy Counsel (In Appeal Nos.E/329&498/10)

for Appellants

Shri Pradeep Kumar Dubey, Supdt (AR),

for Respondent

CORAM:

Hon'ble Mr. Anil G. Shakkarwar, Member (Technical)

Date of Hearing : 01/01/2019

Date of Decision : 01/01/2019

FINAL ORDER NO-70003-70005/2019

Per: Anil G. Shakkarwar

After considering the written submission & hearing both the sides duly represented by learned Proxy Counsel Ms Stuti Saggi on behalf of appellants & learned A.R. Shri Pradeep Kumar Dubey, Superintendent on behalf of Revenue I note that all the three appeals are arising out of a common impugned Order-in-Appeal and they need to decide together.

2. The relevant portion of the impugned Order-in-Appeal is reproduced below:-

“Whereas it is observed that the investigations carried out by the department on the basis of various documentary evidences resumed from the factory premises coupled with the corroborative statements tendered by independent witnesses that a well set up and novel modus-operandi was in place for clandestine clearance of consignments of Auto-filters without payment of Central Excise duty, as discussed extensively by that adjudicating authority in the impugned order. The modus-operandi revealed that M/s UFCL had maintained parallel sets of marketing division’s challans, and used to issue first two copies of marketing division’s challans in the name of the area salesman at the time of removal of consignments of Auto-filters. The goods were handed over to the area sales man under cover of the first copy of such challans along with a handwritten paper having part number wise details & quantity of auto-filters. These sales men were selling the goods in their respective areas in the unit’s own vehicle. The second copy of challans was kept intact in challan books in the marketing division till salesman had returned. During the tour, area salesman also kept with him marketing division’s invoice book and a few set of loose challans of unit’s marketing division. The area sales men used to sell goods against bill as well as without bill as per the company’s directions. After return from the tour, manipulations were made in the account books in marketing division’s records, to adjust the quantum of Auto-filters sold by the salesman without issuing the bill i.e. un-billed sales of auto-filters was adjusted and third & fourth copies of challans were made accordingly after

destroying the first & second copies. The cash so collected against such sales were being deposited with the factory's management after return from tour. Consequently, excise duty was paid on a much lesser quantity of the auto filters, than what was actually cleared from the factory. It was also revealed that the quantity of Auto-filters shown on the forth copy of the marketing division's challans (resumed from the factory) was much less than that which was shown on the relevant first/second copy of the marketing division's challans though all the four copies of the challan were having the same serial number. The details available in the copies of challans in original/duplicate or photocopy provided by the informer along with detailed written information were compared with the information available in challans books resumed from the factory. The investigations also established the fact that the parallel sets of challans of the marketing division were used by M/s UFPL for clandestine clearance & transportation of the consignments of Auto-filters.

In view of the foregoing facts and circumstances, the contention of the appellants that the charge of clandestine removal and confirmation of demand of duty and penalty is based on presumptions and surmises, appears to have not much of a conviction and force. It is observed that the department has proved and established the charge of clandestine removal with support of direct physical evidences and also by sufficient corroborative evidences of statements of the concerned persons which exposed the modus operandi adopted for clandestine removal of goods over a substantial period of time with the clear intent to evade payment of duty.”

3. The allegations were that during the relevant period from 2001 to 2005-06 manufacturer-appellants evaded Central Excise duty to the tune of around Rs.6 lakhs. I find that learned Commissioner (Appeals) has held that Department has proved and established the charge of clandestine removal with support of direct physical evidences. On going through the records of the case I do not find any seizer being made of the allegedly clandestinely removed goods nor any purchaser has been identified who has alleged to have purchased the goods from the sales agent on payment of cash where goods were removed without payment of duty. I, therefore, do not find the findings by the learned Commissioner (Appeals) to be based on any physical evidence. I, therefore, hold that the impugned Order-in-Appeal is presumptive and not sustainable.

5. Therefore, impugned Order-in-Appeal is set aside and all the appeals are allowed.

(Dictated in Court)

(Anil G. Shakkarwar)
Member (Technical)