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

APPEAL Nos.E/2422/2010 &1900/2009-EX[SM]

(Arising out of Order-in-Appeal No. 57-CE/GZB/2010 dated 23/04/2010 86-CE/GZB/2008 dated 30/03/2009 both passed by Commissioner of Central Excise & Customs (Appeals), Ghaziabad)

Commissioner of Central Excise, Ghaziabad **Appellant**

Vs.

M/s Tirupati Structurals Ltd., Sahibabad **Respondent**

Appearance:

Shri Gyanendra Kumar Tripathi, Asstt. Commr. (AR) for Appellant
Shri Rajesh Chhibber, Advocate, for Respondent

CORAM:

Hon'ble Mr. Anil Choudhary, Member (Judicial)

Date of Hearing : 18/07/2017
Date of Decision : 18/07/2017

FINAL ORDER NOs-**70899-70900 / 2018**

Per: Anil Choudhary

These two appeals are filed by the Revenue against Orders-in-Appeal No. 57-CE/GZB/2010 dated 23/04/2010 & 86-CE/GZB/2008 dated 30/03/2009 both passed by Commissioner of Central Excise & Customs (Appeals), Ghaziabad.

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2. This is the second round of litigation before this Tribunal. In earlier round against Order-in-Appeal No.86/2008 dated 30th March, 2009 this Tribunal vide

Final Order dated 01.02.2010 set aside the impugned order and remanded the matter to the Commissioner (Appeals) to consider the matter afresh, in accordance with the provisions of law, taking into consideration all the documentary evidence on record. Thereafter, in terms of the order of remand by this Tribunal, the learned Commissioner (Appeals) vide impugned Order-in-Appeal No.57–CE/GZB/2010 dated 24/04/2010 have been pleased to decide in favour of the assessee, upholding the dropping of proposed demand vide Order-in-Original dated 17th July, 2008. Being aggrieved, the revenue is in appeal before this Tribunal.

3. The brief facts of the case are that the respondent assessee is located at A–6/5, Site-IV Industrial Area, Sahibabad, Ghaziabad, are registered with the Department and engaged in manufacture of PVC Pipes Fitting, PPR Pipes and water tank. Upon information to the revenue that respondent is indulging in clandestine removal, there was an inspection by the Anti-evasion Branch of the Commissioner, at plot No.46/4, Site-IV, Sahibabad, on 18/09/2006. At this location, they found, one Shri Jeevan Nath, who introduced himself as the Chowkidar of the premises. The officers along with the Chowkidar entered in the said premises and found that

there was a shed under construction upon the said plot and there was stock of PVC Pipes of different specification lying at the said plot. On being asked about the document(s) relating to the stock of pipes, the chowkidar testified under Section 14 of the Act, that PVC Pipes are often sent by M/s Tirupati Structures Ltd. (TSL for short), A–6/5, Site-IV, Industrial Area, Sahibabad to this plot, for its subsequent clearance to different customers. Further, in the statements of Shri K.P. Chauhan, Manager-Excise and of M/s Advance Steel Tubes Ltd. Plot No.45/3, Site-IV Industry Area, Sahibabad, it is stated that the ownership of the Plot No.46/4, Site-IV Industrial Area, Sahibabad rests with M/s Advance Steel Tubes Ltd. The Panchnama was drawn on 18.09.2006 at Plot No.46/4, Site-IV Industrial Area, Sahibabad. On asking for relevant document, M/s TSL showed the job of challan(s) by TSL, in favour of Advance Steel Tubes Ltd. Plot No.45/3, Site-IV, Industrial Area, Sahibabad, in support of the goods that were found at Plot No.46/4, Site-IV Industrial Area, Sahibabad. As the goods were found by the officers at a different address, that is Plot No.46/4 Site-IV Industrial Area, Sahibabad, other than what was mentioned upon the job work challan, the officers on reasonable belief that the goods kept at the said Plot when actually removed in a clandestine manner from the factory premises of M/s TSL, and were stocked at the said plot for its subsequent sale without any payment of duty, seized the goods, as stated in Annexure-1 to the Panchnama. Further, SCN proposed to confiscate the goods under Rule 25 of Central Excise Rules and further duty was demanded Rs.10,60,526/- in respect of shortage of finished goods that is PVC Pipe under Section 11 A of the Act and further penalty was also proposed under Rule 25 read with Section 11 AC of the Act.

4. Vide the impugned Order-in-Appeal the learned Commissioner (Appeals) framed the issue for decision– whether the shortage found in the stock of the subject goods in the factory of the appellant, was due to clandestine removal or the same pertained to the clearances made by them to M/s AST for getting the job work done on the goods. The learned Commissioner (Appeals) have recorded the following findings:–

"I find that with regard to the alleged shortage in stock of 1,36,285 Kgs of PVC Pipes, the department, vide SI. No. (2) of 'grounds of appeal'(appeal of the department dated 24/10/2008) has contended that as per relevant Panchnama/Verification report dated 19/09/2006, the appellants (Shri S.S. Bhatnagar, Manager Commercial) in whose presence the proceedings were conducted, did not challenge this verification report or the manner of stock taking. But I find that the appellants have been contesting that 1,46,618 Kgs. of PVC Pipes (relating to the alleged short found goods) were sent by them to M/s AST for job work (for carrying out slotting) from the stock balance of RG 1 Register. The statement dated 19/09/2006 of Shri S.S. Bhatnagar, Manager (Commercial), clearly mentions that the said quantity of PVC Pipes as shown in R.G.-1 Register was sent for job work to M/s AST. It is also on record that stock of the alleged short found 1,36,285 Kgs. of PVC Pipes was on record the same stock, which was found at Plot No. 46/4 of M/s AST. Further, in the said panchnama, it has been mentioned/admitted that "Shri S.S.Bhatnagar produced the job work challan issued by M/s Tirupati Structurals Ltd. in favour of M/s Advance Steel Tubes, Plot No. 45/3, Site-IV, IndI. Area, Sahibabad in support of the goods which were found at the said plot."In this regard, I have perused the relevant documents as placed on record/as produced by the appellants and these documents are (i) Annexure to Panchnama showing challan wise details of the goods i.e. 1,46,610Kgs. of PVC Pipes reportedly sent by the appellants to the job worker (M/s AST) (ii) copies of invoice-cum-challans issued by M/s AST in favour of the appellants & challan wise details showing return of the goods after the job work (return of 1,44,240 Kgs of PVC Pipes & remaining quantity of 2,370 Kgs shown as wastage in the said processing); the said copies of invoices-cum-challans issued by M/s AST also refer/indicate the corresponding job work challans's number & date (iii) copies of invoices of the appellants, vide which they reportedly cleared the subject goods (goods received after job work) on payment of duty. In face of these facts, I find merit in the findings of the adjudicating authority that "In this case the PVC Pipes of 1,46,610Kg found at a unit of Advance Steel Tubes Ltd. 46/4, Site, IV, Sahibabad and shortage of PVC pipes of 1,36,285Kg at TSL factory are inter connected happenings and one thing cannot be seen in isolation."

In this context, the difference of 10,325 Kg of PVC Pipes (1,46,610 Kgs – 1,36,285 Kgs) was contended to be on account of taking of weight by estimation only instead of actual physical verification of the stock. This contention of the appellants find support from Annexure-I to Panchnama dated 18/09/2006, which shows computation of the said quantity of 1,46,610 Kgs of PVC pipes by multiplying total number of pieces/pipes with average weight of one pipe in Kg (size wise) and it is also apparent that these figures are based on the relevant job work challans. Similarly on the issue of the alleged shortage in stock of 293 Kgs of PPR Pipes, it is on record that from the beginning the appellants have been contesting that such difference/shortage in stock was on account of weighment of goods taken on theoretical basis and not on actual basis and in this regard reliance is placed on statement dated 19/09/2006 of Shri S.S. Bhatnagar, Manager (Commercial) of the appellant's firm. In this regard, the department has taken the ground that shortage in stock had been accepted by the appellants, but the adjudicating authority while giving relief to the appellants in the subject matter, erred in ignoring such fact. I find that it is well settled estimated weighment, cannot be a ground for raising demand of duty & imposition of penalty to this effect unless there is cogent evidence of clandestine removal such as receipt of unaccounted/excess raw materials, electricity consumption and statements of buyers etc. But, in the present case there is no such evidence of clandestine removal. In the face of these facts, I am inclined to extend the benefit of doubt to the appellants and hold that no demand on account of the alleged shortage in stock is sustainable and thus in the face of the above facts and evidence on record, the grounds as taken by the department as per Para SI. No. (3) & (4) of the 'grounds of appeal' are devoid of merit.

As per SI. No. (1) of the 'grounds of appeal'of the said appeal, the department has taken the ground that the subject goods having been accounted for in the RG. 1 Register were supposed to have been cleared on payment of duty (as final products) and the same could not be considered to have been cleared for job-work under cover of job-work challans. In this regard, it may be mentioned that as per facts placed on record viz. panchnama and statement of Shri S.S. Bhatnagar, Manager Commercial, the subject goods were reportedly cleared by the appellants for job work and therefore, the same could be treated as semi finished goods and not finished goods/final products. Further, RG 1 Register provides column for entry of goods even at semi-finished stage. Therefore, even if the subject goods were entered in RG-1 Register of the appellants as semi-finished goods, before sending of the same for job work, no adverse inference to this effect could be drawn and no duty was required on such clearances of semi-finished goods cleared for job work. These view find support from the Hon'ble Tribunal's judgements in the case of (i) Mumal Marbles Ltd. V/s CCE, Jaipur – 1996(85) ELT 289(Tri) (ii) Shikhar Marbles (P) Ltd. V/s CCE Jaipur – 2004 (177) ELT 543 (Tri.-Del.) (iii) Banswara Syntax Ltd. V/s CCE, Jaipur – 2001 (128) ELT 426 (Tri.-Del.). In the light of these facts, I find no merit in the above ground of the department.

In view of the above facts and documentary evidence, I find no reason to disagree with the findings of the adjudicating authority that the goods under dispute found short in the appellants factory (which were found at Plot No. 46/4 of M/s AST) were cleared for job work purposes under the cover of job work challans and the goods later on were cleared on payment of duty to the customers.

In view of the above discussions and findings, I uphold the Order-in-Original dated 17/07/2008 of the adjudicating authority, vide which the proposed demand of duty and the proceedings initiated as per the relevant show cause notice were dropped."

5. The learned A.R. for revenue have reiterated the grounds of appeal and urging that the findings of the learned Commissioner (Appeals) are not based on tangible evidence and simply resembles one of the possibilities. The goods were claimed to have sent to on job of challan to M/s Advance Steel Tubes Ltd. Plot No.45/3, Site-IV, Industrial Area Sahibabad, whereas on

inspection, the goods were found lying at Plot No.46/4, which also belongs to M/s Advance Steel Tubes Ltd. Further, Shri K.P. Chauhan, Manager, (Excise) of M/s Advance Steel Tube Ltd. in his statement dated 19.09.2006 admitted that there had no facility for carrying out slotting at Plot No.46/4. He also accepted the fact that they have not undertaken any slotting activity. The conclusion of the Commissioner (Appeals) is that the goods reportedly sent for job work had been entered in RG-1 register, as Semi-finished goods and no adverse inference could be drawn. It is also not supported by the facts on record, as on perusal of RG-1 register maintained for the relevant period clearly reveals that column No.10 of the said register, showing closing balance, had not been further divided into two Sub columns as loose/semi finished goods and finished goods.

6. Learned Counsel Shri Rajesh Chhibber, appearing for the respondents, relying on the findings of the learned Commissioner (Appeals), he further urges that, save and except the goods were sent on job work challan to M/s Advance Steel Tubes Ltd., situated at the said Plot No.45/3 and admittedly the goods are found stored at the other plot of M/s Advance Steel Tubes Ltd., being Plot

No.46/4. Further, there is no mismatch found in the quantity sent on job work, and that found at Plot No.46/4. In this view of the matter the learned Commissioner rightly held that there was no clandestine removal. The learned Counsel further states that the apparent shortage of 293 KG of PVC Pipes + PPR Pipes found, is due to error in verification and the same is less than 1% of the alleged shortage of pipes being 01,36,25KG.

7. Having considered the rival contentions and on perusal of record, I find that the goods as sent out on job work, were found lying in another plot of the job worker, namely M/s Advance Steel Tubes Ltd. It is also admitted fact that the goods sent on job work are properly accounted for, in the records of the respondent-assessee. The goods were lying in another plot of the same job worker only for the sake of convenience. I hold that the allegation of clandestine removal does not stand and must fail.

8. Accordingly, I dismiss this appeal and uphold the findings of the learned Commissioner (Appeals). The respondent-assessee shall be entitled for consequential benefits, if any.

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9. It is seen that this appeal also arrives from the same Order-in-Original No.16/ADC/GZB/2008 dated 17.07.2008, as in the Departmental Appeal No.E/2422/2010. Accordingly, this appeal is disposed of as in-fructuous.

(Dictated in Court)

(Anil Choudhary)
Member (Judicial)

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