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

APPEAL Nos.E/256-260/2010-EX[DB]

(Arising out of Order-in-Original No. 61/Commissioner/Lko/CX/2009 dated 30/09/2009 passed by Commissioner of Central Excise & Service Tax, Lucknow)

M/s Frontier Alloy Steels Ltd.,

Shri Chetan Bhatia, Director of,

Shri K.L. Bhatia, Director of,

Shri C.D. Bhatia, Director of &

Shri S.C. Bhatia, Director of, **Appellants**

Vs.

Commissioner of Central Excise, Lucknow **Respondents**

Appearance:

Shri Amit Mahajan & Shri Abhinav Prasad, Advocates for Appellants
Shri Mohammad Altaf, Assistant Commissioner (AR), for Respondent

CORAM:

Hon'ble Smt. Archana Wadhwa, Member (Judicial)
Hon'ble Mr. Anil G. Shakkarwar, Member (Technical)

Date of Hearing : 18/07/2018
Date of Decision : 18/07/2018

FINAL ORDER NOs-**71582-71586 / 2018**

Per: Archana Wadhwa

All the appeals are being disposed of by a single order, as they arises out of the same impugned order dated 30/09/2009 passed by Commissioner of Central Excise, Lucknow, vide which the demand of duty to the extent of Rs.50,86,570.00/- stands confirmed against M/s Frontier

Alloy Steels Ltd. (M/s FASL) along with confirmation of interest and imposition of penalty of identical amount in terms of Section 11AC of the Central Excise Act. In addition penalty of same amount stands imposed upon Shri K.L. Bhatia and Shri Chetan Bhatia, Directors of the appellant Company. Further, penalty of Rs.5 lakhs stands imposed on each Shri C.D. Bhatia and Shri S.C. Bhatia, the other Directors of the appellant Company.

2. After hearing both the sides duly represented by Shri Amit Mahajan & Shri Abhinav Prasad, Advocates for appellants and Shri Mohammad Altaf, Assistant Commissioner (AR) for revenue, we find that the appellants have their unit in Industrial Area, Malwan, Fatehpur. They also have their another unit at Rania, Kanpur. The appellant is engaged in the manufacture of M.S. Ingots and Billets, whereas their Kanpur unit is engaged in the manufacture of M.S. Rounds, M.S. Flasts, etc. The Kanpur unit is further supplying the goods manufactured by them to a third unit under the name and stile of M/s FAS-2, who are engaged in the manufacture of springs, which are being supplied by them to railways.

3. As per facts on record the factory at Kanpur was visited by the officers on 10.06.1999, who conducted various checks and verifications. As a result certain incriminating documents were recovered from the Kanpur

unit, including the raw material registers. Scrutiny of the said documents recovered from the premises at the Kanpur unit led the revenue to belief that they are receiving the raw materials from their factory located at Malwan, Fatehpur i.e. the present appellant. During the course of further investigation, statements of various persons were recorded and certain Quality Test Certificates were recovered indicating that though the raw material was sent by Fatehpur unit to Kanpur unit along with the quality test certificate, which was required for ultimate supply of the goods to the railways, but the raw material so received by the Kanpur unit were not entered in the raw material register. As such, a view was entertained by revenue that out of the clandestinely received raw material, Kanpur unit has manufactured goods, which does not stand reflected by them in the statutory records and stands further cleared in a clandestine manner without payment of duty.

4. It is seen that on the above basis proceedings were initiated against the Kanpur unit for confirmation of demand. The same were confirmed against the Kanpur unit along with imposition of penalties on the unit as well as on various Directors. The appeals filed by the Kanpur unit as also by the directors were disposed of by the Tribunal vide its Final Order No.02-06/2008-EX dated 10.01.2008. Vide the said order, the confirmation of demand against Kanpur

unit and also imposition of penalties on various appellants were set aside by observing that the certificates were prepared by M/s FASL Fatehpur for administration convenient and to get discharge memo issued from railways.

5. As a consequence of the developments at the Kanpur unit, revenue initiated proceedings against the present manufacturing unit located at Fatehpur by way of issuance of a show cause notice dated 21.01.2004 making allegation of clandestine removal of their product to their own unit located at Kanpur. It is seen that the basis for the proceedings in the present appellant's case were the alleged incriminating documents recovered from Kanpur unit result of the investigation and statements recorded in respect of their Kanpur unit.

6. During the course of adjudication, the appellant brought to the notice of adjudicating authority the Tribunal's decision dated 10.01.2008 passed in respect of their Kanpur unit vide which the allegation of clandestine removal, which was primarily based upon the receipt of raw material from the present appellant at Fatehpur unit, without payment of duty. While dealing with the said plea of the assessee that inasmuch as the Tribunal has already set aside the demand against their Kanpur unit, the

demand in respect of the present unit would also not survive, the adjudicating authority observed as under:-

> *"On careful consideration of the above order of the Hon'ble Tribunal, I feel that it has got no applicability in the present case for the following reasons:-*
>
> - *The Hon'ble Tribunal findings are solely based upon the observation that FSL-2, was receiving the input from other sources and took the credit. This observation obviously is irrelevant for deciding the present issue which pertains to the removal of unaccounted goods by FASL, Malwan to FASL, Rania.*
> - *The present demand arise out of totally different set of records. The Hon'ble Tribunal has not made any observations regarding these records or their genuineness.*
> - *Even if for the sake of argument it is assumed that charge of clandestine removal was not found established against FASL, Rania that per se, does not lead to the conclusion that there was no procurement of unaccounted raw material either it is a fact that S.S. rounds were only one of the final product off FASL, Rania. They were manufacturing other finished products also during the relevant period.*
> - *The removal of unaccounted goods by the Noticee and the procurement of the same by FASL, Rania in this case had been detailed in records as discussed above, which is further supported by the statements of Director and the transporter. The Hon'ble Tribunal has not ruled any thin against or made any observations against these statement which corroborates the incriminating records*

showing removal and receipt of illicit and not duty paid goods.

In view of the above factual scenario, I am of the opinion the ratio of the Hon'ble Tribunal's finding in FASL Rania's case are not applicable in the present case and as such no relief on the basis of said order of the Hon'ble Tribunal can be extended to the Noticee."

7. On going through the said differentiation made by the adjudicating authority, we do not find ourselves in agreement with the same. Grounds of allegations in the present case as also in their Kanpur unit is based upon the same set of records, which were recovered by the visiting officers from the Kanpur unit. Further, we find that while demanding duty from Kanpur unit, on the allegations of clandestine removal, it was revenue's own case that they have received the unaccounted raw material from their unit located at Fatehpur i.e. present appellant. In the present appeal also it is the revenue's case that the appellants have cleared their final products i.e. Ingots & Billets to their unit located at Kanpur, who has further utilized the same for clandestine manufacture and removal. As such it is seen that the allegations as also the evidences in both the cases are interconnected. As the Tribunal has set aside the demand against the Kanpur unit, this fact leads to the inevitable conclusion that the Tribunal has not agreed with the revenue's stand that the Kanpur unit was receiving raw

material from Fatehpur unit. This means that the raw material was never cleared from the Fatehpur unit, in which case the charges of clandestine removal from the Fatehpur unit to the Kanpur unit cannot be upheld. As such on this ground itself we hold that the duty demand against the manufacturing unit is not sustainable. Accordingly, we set aside the same along with setting aside the penalties on the manufacturing unit as also on all the Directors.

8. In view of the forgoing decision, all the appeals filed by the appellants are allowed with consequential relief to the appellants, if any.

(Dictated in Court)

(Anil G. Shakkarwar)
Member (Technical)

(Archana Wadhwa)
Member (Judicial)

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