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

APPEAL Nos.E/3343-3345/2012-EX[DB]

(Arising out of Order-in-Appeal No. 126-128-CE/GZB/12 dated 29/06/2012 passed by Commissioner of Central Excise & Customs (Appeals), Ghaziabad)

M/s Sandeep Manufacturing Strips,

M/s Sandeep Metal Supply &

Shri Sandeep Gupta, Prop **Appellants**

Vs.

Commissioner of Central Excise & S.T., Ghaziabad **Respondent**

Appearance:

Shri Anurag Mishra & Ms Pragya Pandey, Advocates, for Appellants
Shri Rajeev Ranjan, Additional Commissioner (AR), for Respondent

CORAM:

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

Date of Hearing : 23/07/2018
Date of Decision : 23/07/2018

FINAL ORDER NOs-**71637-71639 / 2018**

Per: Anil G. Shakkarwar

The above stated three appeals are taken up together for decision since they are arising out of common impugned Order-in-Appeal No. 126-128-CE/GZB/12 dated 29/06/2012 passed by Commissioner of Central Excise & Customs (Appeals), Ghaziabad. The appellant M/s Sandeep Manufacturing Strips is manufacturer of Copper Wire and Strips. M/s Sandeep Metal Supply, Delhi was a trader and

Shri Sandeep Gupta was proprietor of M/s Sandeep Manufacturing Strips.

2. The brief facts of the case are that searches were conducted on 27.07.2010 in the appellants manufacturing premises as well as trading premises. The Officers of Revenue noticed some stock of finished goods, semi finished goods and raw materials in the manufacturer premises over and above the recorded balances. The officers found 43 Tons of Copper in the form of Copper Flats, Copper Rods, Copper Sheets etc. in the trading premises. The said stock was seized by the officers. All the appellants were issued with a show cause notice dated 25.01.2011. The manufacturing unit was asked to show cause as to why 53175.11 kgs of goods valued at Rs.1,91,43,040/- should not be confiscated and why 44.13 kgs of Copper Strips should not be confiscated. Further, the manufacturing unit was asked to show cause, as to why Central Excise duty of Rs.23,09,862/- should not be demanded from them and Mr. Sandeep Gupta was proposed to be imposed with personal penalty. The Central Excise duty amounting to Rs.19,71,733/- was demanded on the goods found in the trading premises and Central Excise duty amounting to Rs.3,38,129/- was demanded on the goods seized at the manufacturing premises. The case was adjudicated by the Additional Commissioner, who confirmed the demand of Central Excise duty, confiscated the goods and

imposed remission fine of Rs.30 lakhs. He imposed personal penalty of Rs.5 lakhs on Shri Sandeep Gupta. Aggrieved by the said order, appellants preferred appeal before Commissioner (Appeals). The learned Commissioner (Appeals) reduced the personal penalty on Shri Sandeep Gupta and did not interfere with remaining part of the order of Original Authority. Aggrieved by the said order, appellant preferred appeal before this Tribunal.

3. Heard the learned Counsel for appellant. He has submitted that the goods in the trading premises were purchased from various manufacturers and traders along with the invoices issued by them and that they were not manufactured by the manufacturer-appellant. Therefore, the goods found in the trading premises were not liable for confiscation and imposition of redemption fine. He further submitted that the invoices under which the said goods were purchased were seized by the visiting officers on 27.07.2010 and were not returned to the appellants. The appellants through their letter dated 02.01.2013 wrote to the departmental officers to return the relied and non-relied upon documents such as purchased file for the financial year 2008-09 for trading unit but the same were not returned to the appellants. He submitted that all the goods which were seized from the trading premises were duty paid goods and demand of Central Excise duty of Rs.19,71,733/- demanded from the

manufacturing unit was not sustainable in law. He further submitted that for raising the demand or for proposing confiscation of goods found in the trading premises which were procured by trader appellant on lawful invoices, the burden was on revenue to prove that they were cleared without payment of Central Excise duty and that such burden was not discharged by the revenue. Further, he has submitted that the finished goods, raw material & semi-finished goods in the manufacturing premises could not be seized and confiscated for the reason that the finished goods were found in excess of book balance and that the officers should have recorded the excess finished goods in RG-1 register so that on clearance such goods suffer duty and that such goods had not been removed from the factory of manufacturer and therefore, they did not become contravening goods and were not liable for confiscation. In so for as raw material and semi finished goods are concerned in the manufacturing premises the same have not crossed the stage of manufacture and therefore Central Excise duty did not become due on them and therefore, they were not contravening goods. Further, the duty demand of Rs.3,38,129/- was on the goods seized at the factory premises and that such demand was not sustainable because the goods were still within the factory and would have suffered duty on clearance.

4. Heard the learned A.R. for revenue, who has supported the impugned Order-in-Appeal.

5. Having considered the rival contentions and on perusal of records, we find that the goods found in the trading premises were beyond the jurisdiction of Central Excise Officers, we also find that the contentions raised by learned Counsel for appellant as recorded hereinabove are sustainable in law. We, therefore, accept the said contentions and hold that the impugned order is not sustainable.

6. We, therefore, set aside the impugned order and allow all the appeals filed by the appellants. The appellants shall be entitled for consequential relief, as per law.

(Dictated in Court)

(Ashok Jindal)
Member (Judicial)

(Anil G. Shakkarwar)
Member (Technical)

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