

imposition of penalty of identical amount. In addition penalty of Rs.50,000/- stands imposed on Shri M.P. Roy Director and of Rs.10,000/- on Shri Yogendra Kumar Singh, accountant and authorized signatory.

2. As per facts on record appellant M/s Urjex Boilers Pvt. Ltd. are engaged in the manufacture of Boiler and its parts falling under Chapter 84 of the Central Excise Tariff Act. Their factory was visited by the officers on 05.01.1999, who conducted various checks and verifications and resumed certain records/documents. The scrutiny of the records led the Revenue to belief that the appellant was indulging in clandestine activity for the period from 26.08.1998 to 04.01.1999, inasmuch as the entries made in the private records when compared with the statutory records were found to be missing from the statutory records.

3. On further investigation, statement of their Director Shri M.P. Roy was recorded as also the statement of some of the buyers which were inculpatory in nature. Based upon the same, Revenue initiated proceedings for confirmation of demand of duty to the extent of Rs.2,70,279/- on the allegation of clandestine removal. Further the notice also proposed to confirm the demand of Rs.77,549/- on the basis of undervaluation of their

product for the period 96-97, 97-98 and 98-99. The said proceedings culminated into an impugned order passed by the Authorities below.

4. After hearing both the sides, we find that the allegations of clandestine removal of the appellant's final product are primarily based upon the private records recovered by the Revenue from the appellant's factory, which were not matching with the statutory records. The appellants have taken a specific plea that apart from manufacturing the boilers they were also repairing the same. Further they were also engaged in the manufacture of agro based boilers which are exempted from payment of duty vide Notification No.205/88 dated 25.05.1988. The Revenue has simplicitorly held that the appellants have cleared oil fired boiler in the kind of agro based boilers, without their being any evidence to that effect.

Further, the reliance stand placed on the statement of the Director to whom various gate passes recovered from the assessee's factory were shown and he deposed that the goods were cleared without payment of duty. Further, out of 125 customers, the Revenue has approached 5 customers and have recorded their statements. During cross-examination of the said

customers either they did not appear or retracted from their statements.

5. We note that the entire case of the Revenue is based upon these records, without there being any further corroboration as regards the receipt of the raw material or the actual manufacturer of the boilers or the actual identification of the transporters and the buyers and evidences showing receipt of the same in cash from their customers. The allegation of clandestine removal are required to be established by producing sufficient evidences or at least evidences to the extent which inspires confidence in the Revenue's allegations of clandestine removal. In the present case there being none, we are of the view that the impugned order is not sustainable.

6. Similarly as regards undervaluation, the appellants have contended that some of the parts of the boilers were bought out items/spare parts supplied by their customers and as such demand in respect of the same is not sustainable. The Lower Authorities have observed that the appellants have not established the above defence by production of any evidences. We find that the onus to prove is on the Revenue, who is alleging to the contrary. The said allegations were upheld on the basis of

mere assumption and presumption. Further the appellants have also claimed the benefit of small scale exemption notification which the Commissioner (Appeals) has observed that though the clearances are well within the prescribed limit but the appellant have failed to give progressive value of clearances on various dates when different effective rates have to be applied for working out the duty liabilities. Accordingly, he rejected the assessee's claim to Small Scale Exemption. However, having held that there is no evidence of either clandestine removal or under valuation, we find no merits in the impugned orders. The same are accordingly set aside and all the three appeals are allowed with consequential relief to the appellants.

(Pronounced in Court on 12.12.2018)

Sd/-
(Anil G. Shakkarwar)
Member (Technical)

Sd/-
(Archana Wadhwa)
Member (Judicial)

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