IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL,
REGIONAL BENCH : ALLAHABAD

E/899/2010-EX[DB]

(Arising out of Order-in-Original No.49/COMMISSIONER/GZB/2009 dated 14.12.2009 passed by Commissioner, Customs, Central Excise & Service Tax, Ghaziabad.)

Commissioner of Central Excise & Service Tax, Ghaziabad
…APPELLANT(S)

VERSUS

M/s.Bhushan Steel And Strips Ltd.

RESPONDENT (S)

APPEARANCE

Shri Mohd. Altaf (Asstt.Commr.) for the Revenue
Absent for the Respondent

CORAM:

MRS. ARCHANA WADHWA, HON'BLE MEMBER(JUDICIAL)
SHRI ANIL G. SHAKKARWAR, HON'BLE MEMBER(TECHNICAL)

DATE OF HEARING : 04.12.2018
DATE OF DECISION : 28.01.2019

FINAL ORDER NO.70142/2019

Per Mrs.Archana Wadhwa :

Being aggrieved with the order passed by Commissioner, Revenue has filed the present appeal.

2. We have heard Shri Mohd. Altaf (Asstt.Commr.) (A.R.) for the Revenue, as nobody appeared for the respondents and have gone through the impugned order.

3. Briefly stated facts of the case are that the respondent M/s.Bhushan Steel and Strips Ltd. (hereinafter referred to as M/s.BSSL), Sahibabad holding Central Excise Registration have been

engaged in the manufacture of Cold Rolled products in various forms like Coils/Shets/Strips and Plain/Corrugated Galvanized Sheets falling under ChapterSub-Heading Nos. 7210.11/7210.19/7209.20/7209.30/7211.41 of the first schedule to the Central Excise Tariff Act, 1985. The main raw materials for the manufacture of their finished products were Hot Rolled Coils and Zinc purchased from various manufacturer. The party was selling their finished goods directly from the factory as well as through depots/branches situated at different places in the country, among others, from their Chandigarh depot/Branch situated at 3, Industrial Area, Chandigarh, which was registered as a 'dealer' vide Central Excise Registration No.195/D/CH/72-73 & 84/R-I/CH-95 under the jurisdiction of Commissionerate of Central Excise, Chandigarh.

4. Acting on the intelligence that M/s.BSSL, Sahibabad had been evading Central Excise duty on the excisable products manufactured in their factory premises at Sahibabad by way of clandestine removal and under-valuation, the officers of Directorate General of Central Excise Intelligence (DGCEI), New Delhi searched amongst others, the factory premises on 21.09.2000 and resumed various documents as well as statutory records for further examination and investigation.

5. On the basis of scrutiny of the financial ledgers/stock ledgers/commercial invoices of M/s.BSSL, Chandigarh and M/s.BSSL's group companies, statements of various persons were recorded, and follow-up enquiries & investigations conducted by the officers of DGCEI, New Delhi. It was noticed that M/s.BSSL's Chandigarh depot purchased

raw material (HR Coils) from its group companies at Chandigarh which were transferred to their factory at Sahibabad clandestinely for converting into CR Coils/CR sheets/GP Sheets etc., and from there, the said CR Coiols/CRsheets/GP Sheets were removed clandestinely without payment of duty to their Chandigarh depot and the said goods were sold through its Chandigarh depot to group companies, independent buyers directly or through group companies or were stock transferred to their depots for further sale. Thus, it was noticed that M/s.BSSL, Sahibabad had (i) indulged in evasion of Central Excise duty by procuring raw material from their group companies through its depot at Chandigarh, and (ii) by selling their finished excisable goods which were cleared clandestinely without payment of Central Excise duty through its Chandigarh depot. It was also alleged that the excisable goods removed without payment of duty from M/s.BSSL, Sahibabad and shown under the head "Trading" in the Tax Audit Report and as a trading activity between M/s.BSSL, Chandigarh and group companies and within the group companies also, was a false presentation of the facts of these goods were sold to the independent buyers.

On the basis of the documents/records resumed during the course of searches at different places: statements of various persons were recorded, and follow-up enquiries & investigations were conducted, resulting in the show cause notice wherein as referred here-in-above alleging that M/s.BSSL, Sahibabad evaded Central Excise duty to the tune of Rs.14,57,96,702/- payable on production and clearance of finished excisable goods alleged to have been manufactured clandestinely and cleared without payment of duty in the guise of trading of goods during the period from 01.09.98 to 31.03.01 in contravention the provisions of erstwhile Central Excise Rules, 1944 & Central Excise Rules, 2002. It was further alleged that M/s.BSSL, Sahibabad willfully and deliberately suppressed the fact of actual production and removal of finished goods without payment of duty amounting to Rs.14,57,96,702/- during the period from Sep.'98 to March '01 in contravention of the various provisions of the said Act and the said Rules, ibid and therefore, the extended period of five years is invokable against M/s.BSSL, Sahibabad under proviso to Section 11A(1) of the Act, ibid. Penal provisions were also invoked against M/s.BSSL and against other notices for imposition of penalties in terms of aforesaid Central Excise Rules, as applicable during material time.

6. The party vide their defence reply written as well as oral, refuted the allegations of duty evasion made against them.

7. The adjudicating authority after carefully examining all the case records/evidences decided the above case and passed the Order-in-Original No.49/commr./GZB/09 dated 14.12.90 wehrein it had been, interalia, observed by him that:

> *"……………… the Department has not brought out any material evidence in the show cause notice, but doubted the correctness/genuineness of the contents of the invoices issued by the group companies in favourof M/s.BSSL's Chandigarh depot. I have carefully examined and considered the submissions made by the party on this vital issue and also perused the records. It is on record that as a part of 'trading' activity M/s.BSSL's Chandigarh depot during the disputed period purchased the material i.e. CR Coils/CR Sheets/GP Sheets as per*

description available in the sales invoices issued by the seven group companies in their favour and made payments to these companies. It is not disputed that goods were not purchased or payments were not made or were outstanding. It is also on record and not disputed that M/s.BSSL's Chandigarh depot made the payments for the price of CR Coils/CR Sheets/GP Sheets shown to be sold in the sales invoices of group companies and which was much higher in comparison to the HR Coils, the raw material of M/s.BSSL. But there is no evidence on record to show adjustment in payments in the books of accounts of M/s.BSSL, Chandigarh. The financial ledgers of M/s.BSSL's Chandigarh depot too do not reflect any contrary thing except that the purchases were booked under the head 'raw material'. There is also no denial or otherwise evidence from the seller's end ot th effect that the material sold was not CR Coils/CR Sheets/GP Sheets as mentioned in their invoices. I further find that the Department could not lay hand on any supportive material evidence with regard to allegation of purchase of raw material from the group companies. There is also no evidence on record with regard to physical movement of consignments of raw material allegedly purchased by the Chandigarh depot in the guise o Fcr Coils/CR Sheets/ GP Sheets from the Chandigarh depot to the factory of M/s.BSSL at Sahibabad. In this regard, I find myself in agreement with the argument of the defence that merely because they entered purchases of CR Coils/CR Sheets/GP Sheets etc., during respective periods in purchase account titled as 'raw material', it does not mean that they purchased raw material i.e. H R Coils from sellers. There is also no evidence with regard to alleged (i) transportation of said H R Coils from M/s.BSSL's Chandigarh depot to their factory at Sahibabad; (ii) manufacture of C R Coils/Sheets out of the said H R Coils, (iii) clandestine removal of such Cold rolled products from the factory to their Chandigarh depot. In absence of any supportive evidence whether oral or corroborative or otherwise, I do not find any case of clandestine removal of excisable goods by the party from their factory at Sahibabad as alleged in the present show cause notice."

The adjudicating authority after analyzing the facts of the case and considering the defence arguments, held in "In absence of any positive evidence brought on record in the present show cause notice as discussed above, the charge of clandestine manufacture and removal is not sustainable."

The adjudicating authority further held "In absence of any proved case of willful suppression of facts or contravention of the provisions of Central Excise Act, ibid and the Rules, ibid with an intent to evade payment of duty, the demand is hit by bar of limitation and as such, the same is not sustainable."

Accordingly the adjudicating authority, vide above order, dropped the above proceedings against the parry and other notices on merit as well as limitation. Hence, the present appeal by the Revenue.

8. We have heard learned A.R. Shri Mohammad Altaf appearing for the Revenue. Nobody appeared for the respondents. However, subsequently respondent have filed written submission supporting the impugned order.

9. On going through the impugned order, we note that the Revenue's entire case is based upon the factum of purchase of raw material at Chandigarh Depot and the allegation that the same was subsequently transfered to the respondent's Sahibabad factory who utilized the same for manufacture of their final product removed clandestinely back to their Chandigarh Depot from where the same was sold to various parties. Admittedly the raw material purchased at Chandigarh depot was reflected in their account book and as rightly held the same could not be sold in an unaccounted manner. Even

though the Revenue has contested that the transactions at Chandigarh were with the related parties of assessee but none of those related parties have been made a party to the proceedings. Apart from the bare allegations, there is not even an *iota* of evidence to show as to how such huge quantity of raw material was transported from Chandigarh to Sahibabad and as to how the final product allegedly manufactured at Sahibabad were transported to Chandigarh in a clandestine manner. The value of the goods alleged to be clandestinely removed from Sahibabad factory is around Rs.100 crores involving 40,000 MT of products. The transport of to and fro Chandigarh would be around 80,000 MT requiring around 8,000 trucks. Apart from the fact that the Revenue has not produced any evidence to show engagement of such a huge number of trucks by the assessee, we also note that at no point of time even a single truck was ever intercepted by the Revenue. Further, during the relevant period the entry of goods in the State of Uttar Pradesh was to be accompanied with Form 31 issued by the Sales Tax Department and the goods were physically checked at the entry points of State. There being no evidences to that effect the allegations of clandestine manufacture and removal cannot be upheld and have been rightly dropped by the Adjudicating Authority. There is no identification of buyers and evidences to show receipt of consideration of the clandestinely removed goods. As such in our view the Commissioner has rightly, by relying upon various precedent decisions, held that Revenue has failed to prove its case. We find no infirmity in the impugned order of Commissioner. Accordingly, Revenue’s appeal is rejected.

(Pronounced in the open Court on 28.01.2019.)

SD/	SD/
(ANIL G. SHAKKARWAR)	**(ARCHANA WADHWA)**
MEMBER(TECHNICAL)	**MEMBER (JUDICIAL)**

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