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CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
38,MG Marg Civil Lines,Old Red Building,Allahabad-211001
Regional Branch, Allahabad

Dated: 27/11/2017

To

Appellant as per address in table below
Respondent as per address in table below

Final Order No. A/71620/2017-SM[BR] dated 29/09/2017

I am directed to transmit herewith a certified copy of order passed by the Tribunal under section 35-C(1) of the Central Excise and Salt Act, 1944.

Asstt. Registrar

Application	Appeal	Name and Address of Appellant
1	E/3156/2006	SH ONKAR NATH GOEL PROP M/S Goyal Iron & Steel Works(india)Nagla Kishan Lal,Hathras Road,Agra.
		Name and Address of Respondent
2		-C.C.E.KANPUR 117/7,Sarvodaya Nagar,Kanpur.

Copy To
3Advocate(s) / Consultant(s):

K. K. Anand, Advocate
A-103, DEFENCE COLONY,
NEW DELHI,
DELHI
110024

4 Bar Association, CESTAT, Allahabad

5 Director Publications, Customs, Excise. I.P. Estate, Delhi

6 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, Opp ICICI Bank of Defence Colony New Delhi-3

7 Company Law Institute of India Pvt. Ltd., No.2 (old no.36), Vaithyaram Street, T. Nagar, Chennai-17

8 Taxmann Allied Service Pvt. Ltd., 59/32, New Rohtak Road, New Delhi-110005

9 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)

10 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi - 110070

11 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad – 38

12 The ICFAI society, 52, Nagarjuna Hill,Punjagutta,Hyderabad.-500082

13 M/S Knowledge Processing Pvt. ltd.(taxmanagementindia.com),FF-19,1st Floor,Cross River Mall,CBD Ground,Near Karkardooma Court,Delhi-110032

14 C.D.R. 15 Office Copy 16 Second Folder Copy 17 Guard File

Asstt. Registrar

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

APPEAL No.E/3156/2006-EX[SM]

(Arising out of Order-in-Original No. 12/Commissioner/MP/2006 dated 31/05/2006passed by Commissioner of Central Excise, Kanpur)

Shri ONkar Nath Goel Prop., **Appellant**

Vs.

Commissioner of Central Excise, Kanpur **Respondent**

Appearance:

Shri Anuj Agrawal, Proxy Counsel for Appellant
Shri Sandeep Kumar Singh, Deputy Commissioner (AR), for Respondent

CORAM:

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

Date of Hearing : 29/09/2017
Date of Decision : 29/09/2017

FINAL ORDER NO.-71620/2017.........

Per: Anil Choudhary

This appeal is preferred against Order-in-Original dated 31.05.2006 passed by the learned Commissioner, adjudicated show cause notice dated 28.10.2005 being SCN No. DZU/INV/87/03/2597 issued to M/s Venus Costing Pvt. Ltd., Venus Loha Ltd., Venus Enterprises, Kanpur and 5 others including the present appellant. Among others, the present appellant, it is alleged, had contravened the provisions of Central Excise Act, and Rule 209A of Central Excise Rules, 1944 read with Rule 26 of Central Excise Rules, 2002 and they were instrumental in selling of pig iron at Agra, which was consigned to M/s Venus Casting Pvt. Ltd./Venus Loha Udyog Ltd. and returned this amount to M/s Venus Casting Pvt. Ltd./Venus Loha Udyog Ltd. on account of bogus purchase of M.S. Ingots, manufactured by M/s Venus Casting Pvt. Ltd./Venus Loha Udyog Ltd. to his firm.

3. The brief facts of the case are that appellant is a trading firm involved in the trading of Iron & Steel Scrap and Pig Iron and not registered with the Central Excise Department. Further, the officers of DGCEI indicated that certain persons namely M/s Venus Casting Pvt. Ltd, M/s Venus Loha Udyog Ltd. and M/s Venus Enterprises were engaged in evasion of Central Excise duty by manufacturing and clandestinely/removal of MS Ingots, without payment of duty. Acting on this intelligence, the officers of DGCEI searched the premises of abovementioned persons and of transporters and certain records were seized. Further, during the scrutiny of the records recovered it has been observed that the above-mentioned persons had shown receipt of large quantity of pig iron in their factory premises. Ongoing through the cenvatable invoices of Pig Iron, it was observed that the abovementioned persons showing receipt of Pig Iron in their factory at Sumerpur from Agra. Further, subsequent investigations were made at the end of traders/manufacturers

of Pig Iron and of transporters. From the investigation the Department is of the view that pig iron in loose form transported from M/s Apparent Iron & Steel, Goa through containers/trucks were unloaded at Delhi or at a place which is between Mathura and Agra, and not at Agra as mentioned on the invoices issued by Apparent and lorry receipt issued by Different transporter. Further, statement of Shri R.M. Mishra was recorded on 28.01.2005, he stated that they had arranged trucks from M/s Agra Koshi Hariana Road Carriers, Delhi and M/s Agra Gwalier Road Lines, Delhi for transporting pig Iron of M/s Venus Loha Udyog Ltd. from Delhi to Agra/Sashni, that pig iron was unloaded at above places on the directions of Shri Onkar Nath Goyal of Agra; that they had neither transported pig iron to Sumerpur/Hamirpur nor received any freight from Venus Casting Pvt. Ltd. and Venus Loha Udyog Ltd.; that freight was received in cash. Further, the appellant (Shri Onkar Nath Goyal) in his statement dated 09.03.2005 stated that he was the Prop of M/s Goyal Iron & Steel Works (India), Agra. That from 2003, his firm was engaged in the manufacture of CI Casting; that they were also doing trading of Iron & Steel scrap and pig Iron; that he was not registered with Central Excise Department, either as manufacturer or as a trader. He was working as a commission Agent for "M/s Apparent Iron & Steel Pvt. Ltd. Goa" for sale of their pig Iron. He further stated that he was getting Rs.100/- per MT as commission from M/s

Apparent Iron, Goa; that all pig iron dispatched from M/s Apparent to 'Venus Casting Pvt. Ltd./Venus Loha Udyog Ltd.' was unloaded by transporter at different places at Agra, as directed by Shri Manish Tayal of M/s Venus Co., that freight was fixed from Goa to Agra/Sashni only, as such all pig iron was unloaded at Agra. When Shri Onkar Nath Goyal was specifically asked as to whether pig iron which was sold to Venus Loha Udyog Ltd. through him, was sold by him in Agra and amount received from sale of pig iron at Agra was given back to M/s Venus Loha Udyog Ltd. in the form of payment for bogus purchase of MS Ingots, Shri Goel showed his inability to explain the same. Further, from the above Department is of the view that Rs.48,36,242/- shown as paid by M/s Goyal Iron & Steel Works (India), Agra for bogus purchase of 458.655 MT of MS Ingots was the sale proceed of pig Iron which was consigned to M/s Venus Loha Udyog Ltd. through the appellant. Further, the Department invoked "extended period of Limitation" under proviso to Section 11A (1) of Central Excise Act, 1944.

4. The appellant contested the show cause notice by filing the reply, as follows:-

"4.1. The show cause notice did not cite any evidence that M/s Apparent Iron and Steel, Goa had consigned pig iron to M/s Venus Loha Udyog, through the Appellant.

4.2. The appellant had received number of consignments of MS Ingots under proper central excise invoices showing

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payment of duty from M/s Venus Loha Udyog, Hamirpur. Payments for these consignments had been made through Bank cheques.

4.3 The invoices, where under MS Ingots had been received by appellant have not been found to be fake/fabricated/manipulated, it is unlawful to allege that we had not received MS Ingots from M/s Venus Loha Udyog Ltd. The invoices are the statutory documents showing payment of duty and cannot be rejected for any reason.

4.4 The allegation that the appellant had sold pig iron of M/s Venus Loha Udyog Ltd. at Agra was purely hypothetical, imaginary and presumptive. The investigating officer had not cited a single instance i.e. name of the party etc. to whom pig iron was sold by Shri Goyal. It was obligatory on the part of the investigation officer to locate at least one person to whom Shri. Goyal had sold pig iron. It was pointed out that the investigating officer had only presumed that M/s Apparent Iron and Steel, Goa had consigned pig iron to M/s Venus Loha Udyog Ltd., Hamirpur through Shri Goyal.

4.5 Unless the invoices issued in favour of appellant by M/s Loha Udyog Ltd., were found to be not legal document, no penalty could be imposed under Rule 209A or Rule 26 of the Central Excise Rules. Unless the invoices were proved to be fake, the purchase of MS Ingots could not be termed as bogus.

4.6 The Revenue had not been able to locate even one person who may admit that he had purchased pig iron of M/s Venus Loha Udyog Ltd. through the appellant. It was hardly logical to allege that amount of Rs.48,36,242/- was the sale proceeds of pig iron which had been remitted by Shri Goyal, in the guise of the value of alleged purchased of Ingots.

4.7 The appellant also cited various judgments, which have held that confessional statements unless corroborated by other evidence, in material particulars, could not be relied upon. It was submitted that confession must be looked upon with greater concern, unless the reasons for having made it, in the first instance, in the face of it is false. It was submitted that the Court was required to examine whether the statement was obtained by threat, duress or promise. In view of the above, the appellant states that no penalty was imposable upon him under Rule 209A or 26 of the Central Excise Rules.

4.8 The consultant of the appellant attended the personal hearing and submitted that appellant was only a trader and he did not have anything to do with manufacture of steel ingots. The Consultant stated that at the behest of the DGCEI officials Shri Goyal had given a statement that he had never received any ingots from M/s Venus Loha Udyog. The Consultant further submitted that appellant had never accepted that the money remitted by him was the sale proceeds of pig iron and there was no corroboration by the department that the amount remitted by Shri Goel was the sale proceeds of pig iron. The consultant further submitted that the confessional statement unless corroborated by other evidence, in material particulars, could not be relied upon and requested that in view of the above the show cause notice against the appellants may be dropped.

4.9 However, the learned Commissioner did not agree with the various submissions and case laws cited by the appellants and is of the view that the appellant was the proprietor of M/s Goyal Iron and Steel Works India, Agra and he was instrumental in selling of pig iron at Agra which was consigned to M/s Venus Casting Pvt. Ltd./M/s Venus Loha Udyog Ltd. and the amount received from the sale of pig iron was returned to the above mentioned firms by him by showing bogus purchases of MS ingots, purportedly manufactured by above mentioned persons and sold to his firm and the appellant in his defence stated that he received a number of consignment of MS Ingots under proper central excise invoices from M/s Venus Loha Udyog Ltd., Hamirpur and payments for these consignments were also made through Bank Cheques. Regarding the contention of the appellant that unless the invoices issued in favour of the appellant by M/s Venus Loha Udyog ltd. were found to be illegal document, no penalty could be imposed on him under Rule 209A/26 of Central Excise Rules, and his purchase of MS Ingots

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could not be termed as bogus, the learned Commissioner has held that the contention putforth by the appellant does not carry any force as the appellant himself in his statement dated 09.05.2005 clearly confessed that although he had a business deal with M/s Venus Loha Udyog Ltd. for purchase of MS Ingots but he had neither purchased nor received any ingots from M/s Venus Loha Udyog Ltd. even though payment for these bogus consignments was made by him. The learned Commissioner held that the appellants could not deny now that he was making bogus purchases of ingots and was making payment to Venus Loha Udyog Ltd. on record only for MS ingots but such payment was actually for returning them the sale proceed of their pig iron which was consigned to M/s Venus. In view of the above the learned Commissioner held the appellant is liable for penal action under erstwhile Rule 209A of Central Excise Rules, 1944 and Rule 26 in dealing with the goods which were liable to confiscation. Moreover, the retraction of his confessional statement which was done at a very belated stage, cannot be accepted being an afterthought only, and imposed a penalty of Rs.50,000/- on the appellant."

5. Being aggrieved, the appellant is in appeal on the following grounds:-

"(A) That, the impugned order is patently against law, contrary to the facts on record, unjust, erroneous and passed with complete non application of mind. The same merits to be quashed on this ground alone.

(B) That the learned Commissioner has committed a grave error in imposing penalty upon the appellant when there was absolutely no evidence on record to show that the appellant had dealt in any manner with any excisable goods which are liable for confiscation.

© That the learned Commissioner has committed a grave error by invoking extended period of limitation in the case of the appellant as the Department failed to produce any evidence on record to show that there was any intention on the part of the appellant to evade payment of duty.

(D) That the learned Commissioner failed to appreciate the settled principle of Law that "Apparent state of affairs is real unless the contrary is proved." In the case of the appellant the Department is unable to produce on record any evidence to prove that the appellant had not received the MS Ingots or the appellant dealt with the Pig Iron in any manner. Entire case of the Department is based upon the statement of the appellant, which was recorded under pressure, coercion.

(E) That the learned Commissioner has committed a grave error by simply relying upon the retracted statement of the appellant for the purpose of imposing penalty. It is a settled principle of Law that the person cannot be held liable merely on the basis of confessional statement unless corroborated by other evidence in material particulars.

(F) That the learned Commissioner failed to appreciate that there is no material evidence on record to show that M/s Apparent Iron & Steel, Goa had consigned Pig Iron to M/s Venus Loha Udyog, through the appellant.

(G) That the learned Commissioner failed to appreciate the material on record that the appellant had received a number of consignments of MS Ingots under proper Central Excise Invoices showing payment of duty from M/s Venus Loha Udyog Ltd., Hamirpur and payments of these consignments were made through proper banking channels and the MS Ingots which the appellant received from M/s Venus Loha Udyog Ltd. were sold in the market by the appellant. The learned Commissioner committed a mistake by not properly evaluating the chart showing details of the Invoices under which MS Ingots had been received from M/s Venus Loha Udyog Ltd. alongwith copies of Invoices and details of the sales of the MS Ingots so received alongwith the bills.

(H) That the learned Commissioner failed to appreciate that the entire case of the Revenue is based upon presumptions and assumptions and the department is unable to cite even a single instance i.e. Name of the party to whom the Pig Iron was sold by the appellant."

6. The learned Counsel also relies on the ruling of Hon'ble High Court in the case of M/s Continental Cement Company Vs Union of India reported at 2014 (309) E.L.T. 411 (All.) wherein the Hon'ble High Court have held that unless there is clinching evidence of the nature of purchase of raw materials, use of extra electricity, sale of final products, clandestine removals, transportation, payment, the mode and flow back of funds, demands cannot be confirmed based on the basis of presumptions and assumptions. The allegation to clandestine removal is a serious charge against the manufacturer, required to be discharged by the Revenue with sufficient and tangible evidence. The statement of buyers, based on the memories and without supporting of any documentary evidence is not reliable. Reliance is also placed by the ruling of Hon'ble Gujarat High Court in the case of Commissioner of Central Excise Vs Sakeen Alloys Pvt. Ltd. reported at 2014

(308) ELT 655 (Guj.) wherein the duty was demanded on the charge of clandestine removal along with penalty. On challenge, this Tribunal has set aside holding that in case of clandestine removal of excisable goods, there needs to be positive evidence for establishing the evasion, and on facts, there was no material reflecting the purchase of excessive raw material, shortage of finished goods, excess consumption of resources, etc. and the confessional statements had been retracted soon after being recorded. The Hon'ble High Court upheld the order of this Tribunal, observing that considering the factual matrix wherein there was no cogent evidence to sustain the allegation of clandestine removal. It was further held that confessional statements cannot form the foundation for levying Excise duty, much less retracted statements. The order of the Hon'ble High Court in the case of M/s Saakeen Alloys Pvt. Ltd. was upheld by the Hon'ble Supreme Court, dismissing the petition for special leave to appeal filed by the Department reported at Commissioner Vs Saakeen Alloys Pvt. Ltd.-2015 (319) ELT A117 (SC).

7. Heard the learned A.R. for Revenue.

8. Having considered the rival contentions, I find that the appellant has challenged the imposition of penalty of Rs.50,000/- on him. Further, the appellant had given particulars of the transactions which were genuine and it was incumbent upon the Revenue Officers to have made their

investigation into the nature of those transactions. So far the allegation of clandestine sale of pig iron is concerned, I find that the allegation appears to be presumptive, as the investigating officers have not stated a single instance, the name of the party etc. to whom Pig Iron was sold by the appellant, M/s Goyal. The allegation of sending of consignment of pig iron by M/s Apparent Iron & Steel Pvt. Ltd. Goa, is also presumptive. Further, Mr. Onkar Nath Goyal had retracted his statement recorded on 09th March, 2005 and the same cannot be weighted for imposition of penalty. In reply to the SCN M/s Goyal has alleged that Revenue officers misguided him. Further, I find that Hon'ble High Court of Gujarat have held that confession cannot form of levy of Excise duty, much less retracted statements.

9. Thus, under these facts and circumstances, the appeal is allowed and the impugned order is set aside to the extent penalty is levied on the present appellant.

(Operative part of the order was pronounced in Court, on conclusion of hearing)

-Sd/-
(ANIL CHOUDHARY)
Member(JUDICIAL)

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28/12/17
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