FAX : 0532-2400149

REGISTERED / AD

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

Dated: 28/11/2017

To

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

Final Order No. A/71670-71671/2017-SM[BR] dated 27/11/2017

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/70483/2017	**Raghuveer Rolling Mills** Bithoor Road,chaubeypur KANPUR UP
2	E/70484/2017	**Dixit Iron Store** Village-malon,bithoor Road,chaubeypur KANPUR UP
		Name and Address of Respondent
3		C.C.E. & S.T.-Kanpur 117/7...SARVODYA NAGAR, KANPUR, UTTAR PRADESH-208005
4		C.C.E. & S.T.-Kanpur 117/7...SARVODYA NAGAR, KANPUR, UTTAR PRADESH-208005

Other Appellants and Respondents as per Annexure

Copy To

5Advocate(s) / Consultant(s):

Vaibhar Dixit (Adv.)
7/116A, H-1, 1ST FLOOR,
RADHEY APARTMENT,
SWAROOP NAGAR,
KANPUR- 208002

6 Bar Association, CESTAT, Allahabad

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

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

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

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

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

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

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

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

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

16 C.D.R. 17 Office Copy 18 Second Folder Copy 19 Guard File

Asstt. Registrar

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

Ex.Appeal Nos.70483,70484/17

Arising out of O/A Nos.116,117/CE/APPL/KNP/2017 dated 03.05.2017 passed by Commr. (Appeals) of Central Excise, Customs, S.Tax, Kanpur

M/s Raghuveer Rolling Mills
M/s Dixit Iron Store

...APPELLANT(S)

VERSUS

Commr. of Central Excise, Customs & S.Tax, Kanpur

RESPONDENT (S)

APPEARANCE

Shri Vaibhar Dixit, Adv. for the Appellant (s)
Shri Gyanendra Kr. Tripathi, Asstt. Commr. (A.R.) for the Revenue

CORAM:

MRS. ARCHANA WADHWA, HON'BLE JUDICIAL MEMBER

DATE OF HEARING : 15. 11. 2017
DATE OF PRONOUNCEMENT : 27\11\2017

Final ORDER NO. 71670 – 71671/2017

Per Mrs.Archana Wadhwa :

Both the appeals are being disposed of by a common order as they arise out of the same impugned order passed by the authorities below.

2. As per facts on record, M/s Raghuveer Rolling Mills is a manufacturer of Iron Flats and Tractor Leaves/Kamanies falling under Chapter 72 of the first schedule to the Central Excise Tariff Act, 1985. Factory/Officer premises of the said appellant were put to search by the Officer on 30.07.2014 and detained ~~of~~ the stock of input as also of finished goods, which was handed over to the appellant's

representative under Supardginama dated 30.07.2014. Further search was made in the premises of M/s Dixit Iron Stores, the appellant's dealer on 30.07.2014 only. As the said appellant could not produce the documents showing the lawful possession of the stock, the same were detained for further investigation. The said appellant's premises located at Kabadi, were also put to search on the said date and stock of the goods were seized.

3. During the course of further investigation, the statements of various persons were recorded wherein it was admitted that they were not updating their records on day to day basis, though such non-recording was being done with an intention to clear the manufactured goods without payment of duty ; that they had procured the raw materials clandestinely without bills. Similarly, the Representative of M/s Dixit Iron Stores, in his statement, admitted that the goods found at their premises, were manufactured in the factory of M/s Raghuveer Rolling Mills, were cleared by them without cover of invoices and without payment of Central Excise duty . To the similar fact, subsequently the statement of Shri Ramesh Kumar Dixit, Pripriteor of M/s Dixit Iron Stores, was recorded on 30.12.2014 deposing that the goods found in the premises were purchased clandestinely without bills from M/s Raghuveer Rolling Mills.

4. On the above basis, proceedings were initiated against the appellant for confirmation of demand of duty of Rs.2,00,357/- in respect of the goods seized from outside of the factory premises and cleared by the manufacturing unit without payment of duty along with

proposal to confiscation and to impose~~d~~ penalty. The said show-cause notice culminated into an order passed by the Additional Commissioner of Central Excise, Kanpur, who confirmed the demand of Rs.2,00,357/- in addition to imposition of penalty of Rs.5.00 lakhs under Rule 25 of the Central Excise Rules, 2002 as well as penalty of identical amount under Section 11AC of the Act read with Rule 25 of the Central Excise Rules, 2002. He also confiscated the various materials seized from various places with an option to redeem the same on payment of redemption fine so fixed by him.

Being aggrieved with the order, the appellant filed an appeal before the Commissioner (Appeals) on the ground that the entire excess quantity of goods were detected by eye estimation and there was no weighment of the product ; that in the absence of actual weighment of the goods, it cannot be said that the goods were found in excess than the recorded stock ; that the demand of duty on the basis of the goods found from the private premises of the trader, cannot be upheld ; that the entire case of the Revenue ~~has~~ is based upon the statement, without considering the bills placed on record by M/s Dixit Iron Stores showing purchase of the goods from the other manufacturer ; that the statement being contrary to the documentary evidence, cannot be made the basis, especially when the deponent of the statement has not been cross-examined. They also submitted that the allegations of the clandestine removal are a serious allegation and cannot be arrived at on the basis of frivolous evidences. In this regard, positive and tangible evidence are required to be produced by the Revenue. They also refer red to the various decisions.

5. However, the Commissioner (Appeals) did not find favour with the above ~~condition~~ contentions AR of the appellant and rejected the appeal. Hence the present appeal.

6. As regards the confirmation of demand of duty, I find that the same relates to 40.02 MT of Kamanies found from the premises of the M/s Dixit Iron Stores. Shri Shashank Dixit, Proprietor of the said Store, has deposed in his statement that the Kamanies were manufactured in the factory premises of the Raghuveer Rolling Mills and were cleared from there without any invoices. As such, the entire case of the Revenue is based upon the said statement of Shri Dixit, which is in the nature of third party's statement. The same required cross-examined as also examination in chief to establish the correctness of the same. It is well settled law that adverse findings cannot be arrived at against the assessee based upon the statement of co-accused without any corroborative evidence. There is admittedly no corroboration to the effect that such 40 MT of Kamanies were manufactured in the factory of Raghuveer Rolling Mills . As such, I find no justifiable reason to uphold the said demand of duty. The appellant's ~~has relied~~ reliance AR upon the decision of the Hon'ble Delhi High Court in the case of Flevel International Vs. CCEx. Reported in 2016 (332) ELT 416 (Del.) as also in the case of Vishwa Traders Pvt. Ltd. Vs. Commr. of Central Excise, Vodora reported in 2012 (278) ELT 362 as confirmed by the Hon'ble High Court of Gujarat in the case of CCEx.

Vs. Vishwa Traders Pvt. Ltd. reported in 2013 (287) elt 243 (GUJ.), is appropriate.

7. As regards confiscation of the excess found raw materials and finished goods with an option to redeem the same on payment of redemption fine, I find that the officers, during the course of their visit in the factory of M/s Raghuveer Rolling Mills, found the goods to be in excess than the recorded balance. Their proprietor admitted that the records were not being maintained upto the date and adjustments were being made in their production and clearance. Further during adjudication, they challenged the process of stock taking by submitting that there were no~~t~~ inventor~~y~~ies prepared by the Revenue Officer and an~~other~~ stock verification was done on the basis of eye estimation.

8. I find that apart from the above objection of the assessee, Revenue has not able to produce any evidence to show that such un-recording in their statutory records was with an intention to evade the payment of duty or to clear the goods without payment of duty. In any case, it is well settled that the raw materials cannot be confiscated on the ground of their non entry in the record. Revenue's entire case is based upon the statement of the proprietor of the appellant, which is to the effect that such non-entries were made with an intention to clear the goods without payment of duty. The said deponent has not been put to cross-examine or to examine-in-chief as held by the Hon'ble High Court of Punjab & Haryana in the case of Jindal Drugs Pvt. Ltd. Vs. Union of India reported 2016 (340) ELT 67 (P & H). Further, the Tribunal in the case of Nitin Ispat (P) Ltd. Vs. Commr. of

Central Excise, Lucknow reported in 2014 (306) ELT 483 (Tri.-Del.) as also in the case of National Steel Industries Ltd. Vs. Commissioner of Central Excise, Indore reported in 2003 (159) ELT 1172 (Tri.Del.) as also in the case of M/s Kashi Laminators Pvt. Ltd. vide Final Order Nos.70434-70438/2017 dated 12.04.2017, has held that un-accountal of goods while lying in the factory premises, cannot be confiscated on the ground that they were not intended to be removed as such.

9. As such, I find no justification for the confiscation of the goods.

10. Similarly, the confiscation of the goods found in the premises of M/s Dixit Iron Stores or imposition of penalty upon M/s Raghuveer Rolling Mills or M/s Dixit Iron Stores, lacks merit.

11. In a nutshell, the impugned order is set aside and both the appeals are allowed with consequential relief to the appellants.

Pronounced in the open Court on 27/11/17

Sd/-
(Archana Wadhawa)
Member(Judicial)

mm

प्रमाणित प्रति/Certified True Copy
06/12/17
सहायक पंजीकार/Asstt. Registrar
सीमाशुल्क, उत्पादशुल्क एवं सेवा कर
अपील अधिकरण(C.E.S.T.A.T.)
38, एम.जी.मार्ग, इलाहाबाद-211001
38, M. G. MARG, ALLAHABAD-211001