

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE
TRIBUNAL
BANGALORE**

REGIONAL BENCH - COURT NO. 1

Excise Appeal No. 20375 of 2020

(Arising out of Order-in-Appeal No. BEL-EXCUS-000-APP-
MSC-166-2019-20 dt. 24.01.2020 passed by
Commissioner of Central Tax (Appeals), Belagavi)

**M/s. Encop Wires Private
Limited**

Plot No.85, II Phase,
Tarihal Industrial Area,
Hubli – 580 031.

Appellant(s)

VERSUS

**Commissioner of Central
Tax,**

No.71, Club Road, Belagavi.

Respondent(s)

APPEARANCE:

Shri Raghavendra B. Hanjeer, Advocate for the appellant.
Shri H. Jayathirtha, Superintendent (AR) for the respondent.

CORAM:

HON'BLE Dr. D.M. MISRA, MEMBER (JUDICIAL)

Final Order No. 20574 / 2023

Date of Hearing: 30/03/2023

Date of Decision: 16/06/2023

Per : DR. D.M.MISRA

This appeal has been filed against the Order-in-Appeal
No. BEL-EXCUS-000-APP-MS-166-2019-20 dt. 24.01.2020
passed by Commissioner of Central Tax (Appeals), Belagavi.

2.1. Briefly stated facts of the case are that the appellants are engaged in the manufacture of copper wire and super enamelled copper wire falling under Chapters 74 and 85 of the CETA, 1985. They avail CENVAT credit on the inputs, input services and capital goods under the relevant rules. During the course of audit of their records in 2014, it was noticed that they purchased goods and later sold the same without payment of duty. The appellant explained that the goods were purely traded without bringing into their factory for which permission has been sought from time to time to undertake trading activity from their factory, to which, no response was received from the Department. But the audit party was of the opinion the Copper wires were cleared from the factory in the guise of trading. The case was handed over to the Preventive department.

2.2. On completion of investigation by the Preventive Department, in its report dated 01/11/2016, it endorsed the view of the Audit party. It is alleged that during the period from March 2012 to March 2013, the appellant had though claimed to have purchased a total quantity of 10.094 MTs of copper wire from one M/s. Mech Industries Pvt. Ltd., Bangalore and 13.190 MTs of copper conductor bits from M/s. Vensar Constructions Company Ltd. for trading purpose, but in fact what they had cleared was copper wire mentioning its correct description in the invoices from the factory without payment of duty.

2.3. The sale of finished goods, which was alleged to be different from purchased goods, show-cause notice was issued to the Appellant demanding total duty of Rs.18,63,254/- being the clearances made from their factory without payment of duty from March 2012 to March 2013 along with interest and proposal for penalty. On adjudication, the demand was confirmed with interest and equivalent penalty. On appeal, the learned Commissioner (Appeals) upheld the order of the adjudicating authority and rejected their appeal. Hence, the present appeal.

3.1. Learned Advocate for the appellant has submitted that the demand has been confirmed against the appellant solely on the basis of assumptions and presumptions without any evidence of clandestine manufacture and removal. Further, he has submitted that the appellant in the present case procured copper wire from two suppliers and sold the same as it is without bringing the same to the factory and carrying out any manufacturing process on the same. From time to time, purchase of said goods with all details had been intimated to the Department and necessary application was also submitted to the Department seeking permission for trading. The application for Registration was neither rejected nor accepted by the Department. Thus, in the absence of any response to their application, it is deemed to have been accepted.

3.2. Further the learned advocate has submitted that there should be sufficient evidence to hold that there was clandestine

manufacture and clearances of goods, viz. procurement of inputs, sufficient manpower, machinery to undertake manufacturing activity, power consumption, use of transportation for procurement of raw material and final products etc.; no such evidence has been adduced by the Department nor in-depth investigation has been carried out to establish the said allegation.

3.3 The statements of the Director of the appellant and one transporter reveals that the goods were procured from M/s. Mech Industries Pvt. Ltd. and M/s. Vensar Constructions Company Ltd. which were stored at transporters' premises and never brought to the factory premises of the appellant. In rebuttal, the respondent could not adduce any contrary evidence to show that the appellant brought the goods into their factory, carried out activities amounting to manufacture and thereafter cleared it without payment of duty.

3.4. Learned advocate further submitted that the no investigation was carried out on the statutory records of the appellant relevant to manufacture and clearance from the factory except verifying the balance sheet, sales, purchase invoices etc., in which it has been clearly reflected that during the relevant period, the appellant were also engaged in trading of copper wire apart from undertaking manufacturing activity. Further, he has submitted that all the trading invoices issued by the appellant clearly show that the inputs are cleared as such i.e., copper wire;

hence it was the duty of the Department to investigate at the end of purchasers and transporters who transported their goods on the said claim of the appellant. The vendors were not examined. He also submitted that the learned Commissioner (Appeals) has proceeded in upholding the confirmation of the duty solely on the ground that the invoices received from the suppliers did not provide any specification of the goods procured, whereas the sales invoice contain the thickness of the copper wire.

3.5. He has further submitted that it is a settled principle of law that in the matter of clandestine removal of goods, heavy burden is placed on the Department to prove the said allegation with clinching evidences and not by mere assumptions and presumption basis. It is his contention that neither the Director of the appellant nor the transporter admitted in their respective statements that the purchased goods were received at their factory; on the contrary, the transporter has clearly stated that vehicles were arranged for the appellant for the period of dispute only and they are not their regular customers.

3.6. He has further submitted that mere mistake in indicating the chapter heading or detailed description of the goods in the clearance documents cannot be construed as clearance of goods clandestinely in absence of evidences to prove that goods were brought into the factory and manufacturing processes were

carried out on the same. In support, he placed reliance on the following judgements: -

- i. Continental Cement Company Vs. UOI [2014(309) ELT 411]
- ii. Punjab Fibres Ltd. Vs. CCE, Delhi [2002(141) ELT 819 (Tri. Del.)]
- iii. Aum Aluminum Pvt. Ltd. Vs. CCE, Vadodara [2014(311) ELT 354 (Tri. Ahmd.)]
- iv. CC,CE&ST, Ghaziabad Vs. Auto Gollon Industries P. Ltd. [2018 (360) ELT 29 (All.)]

3.7. Further, he has submitted that in the case the demand is held to be sustainable, the duty payable should be considered as cum-duty price as the appellant has neither charged nor collected duty on the said invoices. He has further submitted that they have not suppressed any facts from the knowledge of the Department as all clearances were under invoices and the permission for trading activity was sought from time to time; therefore, the demand is barred by limitation. He relied on the following judgments: -

- i. Hi Tech Abrasives Ltd. Vs. CCE&C, Raipur [2018(362) ELT 961 (Chhattisgarh)]
- ii. CCE, Mangalore Vs. Pals Microsystems Ltd. [2011(270) ELT 305 (SC)]

4. *Per contra*, learned AR for the Revenue reiterated the findings of the learned Commissioner (Appeals). He has submitted that the appellant had purchased copper wire and copper conductor bits against invoices from two vendors where no duty particulars were mentioned nor description of the copper wire with

thickness was reflected; therefore, their claim that the same goods were cleared as such without bringing into their factory is false and unacceptable. Further he has submitted that the transporter in his statement clearly informed that the goods are kept maximum for a period of one week in their premises, whereas from the date of the purchase of goods, the same were sold after more than three months. He has argued that even though there are no direct evidences, but on the basis of circumstantial evidences, it has been established by the Department that the goods were manufactured and cleared from the factory, in the guise of trading, without payment of duty. He reiterated the case laws referred to in the impugned orders and submitted that the appeal is liable for rejection.

5. Heard both sides and perused records.

6. The short question for determination in the present appeal is whether the appellant during the period March 2012 to March 2013 manufactured and cleared finished goods viz. copper wire without payment of duty of Rs.18,63,254/- from their factory which the Appellant claimed to have purchased from M/s. Mech Industries Pvt. Ltd. and M/s. Vensar Constructions Company Ltd. and traded the same without bringing to their factory.

7. I find that the during the course of audit, it was noticed that the appellant had cleared certain quantity of goods without payment of duty which they claimed to have been purchased from two vendors viz. M/s. Mech Industries Pvt. Ltd. and M/s. Vensar

Constructions Company Ltd. Since the audit team was not satisfied with the said explanation, the file was handed over to the Preventive wing for investigation and to ascertain whether the goods were traded or in the guise of trading manufactured goods were cleared from the factory of the appellant. On completion of investigation after two years since the audit objection, report dt.01/11/2016 of Superintendent, Preventive addressed to the Assistant Commissioner, Central excise, Hubli Division. The said report was at the centre of controversy since a copy of the same was not handed over to the appellant. On the direction of the Bench, a copy of the said report was handed over to the learned advocate for the appellant who accordingly addressed their response to the facts contained in the said letter.

8. The crux of the allegation of the Department is that the appellant though claimed to have purchased the copper wire from the aforesaid two vendors and without bringing the same into their factory, sold it as such to other customers including one of the vendors, but in fact manufactured the said quantity in their factory premises and cleared clandestinely without payment of duty. The basis of the allegation is that the descriptions of the goods given in the respective purchase invoices do not tally with the description of the goods mentioned in the sales invoices.

9. It is the finding of the authority below is that in the purchase invoices, it is mentioned as copper wire or copper conductor bit,

as the case may be, whereas in the sales invoices the description of the goods was shown as copper wire with the thickness of the same, which indicates that goods were brought to the factory, processed and converted into copper wire of required thickness and then sold. The Revenue also heavily relied upon the statements of the Director and also the transporters. On going through the said statements, it is noticed that neither the Director nor the transporters admitted to have receipt of the purchased goods in their factory. The contradiction brought out by the Revenue in the statements of the transporter to that of the records is that even though the said transporter has stated that the goods were normally kept in his premises for a period of one week, but in the present case, the purchased goods were sold after three months by the Appellants. Therefore, it was concluded that the goods were manufactured and cleared. Similarly, the statement of the Director that the goods that were purchased from these vendors later found to be not of good quality accordingly sold in the market as such without bringing the same into their factory is alleged to be unacceptable and the conclusion arrived was that the goods were manufactured and cleared.

10. The appellants on the other hand argued that through their letter dt. 09/11/2011 they sought permission to undertake trading activity from their factory of the copper wire. Since the said letter was not responded, they did not bring the purchased goods to their factory, but traded/sold the same from the premises of the

transporter itself. Further, he has referred to copies of intimation letters addressed to the Range Superintendent, enclosed with the Appeal paper book, indicating the details of purchase invoice, quantity and date when the consignments were received in the premises of the transporter. They have vehemently argued that the purchased goods were never brought to their factory, which was solely for trading purchase and since permission for trading was not given to them the same was sold from the premises of transporter. Such trading sales have been duly reflected in their balance sheet.

11. On going through the purchase and sales invoices, I find that though there are some apparent discrepancies/contradictions in the description of the goods; also contradictions in the statements of the Transporter and Director vis-à-vis invoices, however, in my opinion, such contradictions cannot itself establish that the appellant had received the purchased goods in their factory, processed and converted into finished goods cleared without payment of duty. At best it can raise a suspicion about the genuineness of the transaction and be ground for further investigation. The Department has not carried out thorough investigation of the matter even though the investigation took two years after the audit objection. Also, the intimation letters written by the appellant to the Range Superintendent from time to time informing the invoice no, vendor's name, quantity of material purchased and received in

transporter's premises viz. Kamal Roadways duly acknowledged by the Inspector of the Range Office, being not contradicted by the Revenue about its genuineness, weighs in favour of the appellant. No investigation was carried out after intimation letters were received in the Range office even though these were addressed from time to time, much before the audit objection, no verification was carried out. Therefore, it is difficult to accept the allegation of the department that the quantity of goods as shown in the purchase invoices were brought into the factory, processed, converted into finished goods and removed clandestinely without payment of duty. In the result, the impugned order is set aside and the appeal is allowed.

(Pronounced in open court on 16/06/2023)

(Dr. D.M. MISRA)
MEMBER (JUDICIAL)

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