

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

REGIONAL BENCH - COURT NO. 1

Central Excise Appeal No. 1165 of 2011

(Arising out of Order (Denovo) No. 5/2011 dated 11.02.2011 passed
by the Commissioner of Central Excise, Bangalore I Commissionerate,
Bangalore)

M/s. Raaja Magnetics Ltd. Unit I

No. 367, Bhattarahalli,
Old Madras Road,
Bangalore -560 049.

Appellant(s)

VERSUS

**Commissioner of Central
Excise,
Bangalore I
Commissionerate,**

P.B. No. 5400,
Central Revenue Building,
Queens Road,
Bangalore – 560 001.

Respondent(s)

WITH

- (i) Central Excise Appeal No. 1168 of 2011
(Mr. S. Rajamannar, CEO, M/s. Raaja Magnetics Ltd.)**
- (ii) Central Excise Appeal No. 1170 of 2011
(Mr. R.N. Ramesh, M/s. Raaja Magnetics Ltd.)**
- (iii) Central Excise Appeal No. 1166 of 2011
(M/s. Raaja Magnetics Ltd. Unit II)**
- (iv) Central Excise Appeal No. 1167 of 2011
(Mr. G.R. Govindarajan, MD, M/s. Raaja Magnetics Ltd.)**
- (v) Central Excise Appeal No. 1169 of 2011
(Mr. R. Rajendran, Manager-Accounts, M/s. Raaja
Magnetics Ltd.)**

(Arising out of Denovo Order No. 5/2011 dated 11.02.2011 passed by
the Commissioner of Central Excise, Bangalore I Commissionerate,
Bangalore)

APPEARANCE:

Shri B.N. Gururaj, Advocate, for the Appellant

Shri H. Jayathirtha, Superintendent (AR) for the Respondent

**CORAM: HON'BLE DR. D.M. MISRA, MEMBER (JUDICIAL)
HON'BLE MRS. R. BHAGYA DEVI, MEMBER
(TECHNICAL)**

Final Order No. 21172 - 21177 /2024

DATE OF HEARING: 31.05.2024

DATE OF DECISION: 29.11.2024

PER : D.M. MISRA

These appeals are filed against Order(Denovo) No.5/2011 dated 11.02.2011 passed by the Commissioner of Central Excise, Bangalore.

2. Briefly stated facts of the case are that the appellant are engaged in the manufacture of electrical stampings and parts of motors falling under Chapter 8312 / 8503 of the Central Excise Tariff Act, 1985. The appellant are having another unit termed as Unit-II at Coimbatore. On the basis of intelligence, their Unit-I at Bangalore was visited by the Preventive Officers of the Department to investigate the alleged fraudulent availment of cenvat credit on the strength of invoices issued by their Unit-II located at Coimbatore without actually receiving the goods. Also, it came to the knowledge of the Department that the appellant was indulging in clandestine removal of excisable goods without payment of duty and accordingly both the Units were simultaneously searched on 14.09.2005. Relevant records were retrieved from the premises and statements were recorded as a part of the investigation of the alleged activities of removal of goods without payment of duty and availment of cenvat credit fraudulently. On completion of investigation, a show-cause notice was issued to the appellant on 23.05.2006 proposing to recover total duty of Rs.51,66,976/- involved on the goods removed clandestinely and recovery of fraudulent availment of cenvat credit of Rs.5,70,619/- with interest and penalty. Also, the amount of Rs.57,40,000/- paid during the course of

investigation proposed to be appropriated. On adjudication, the demands of Rs.44,07,360/- on clandestine removal of goods and Rs.5,70,619/- on wrong availment of cenvat credit were confirmed by the learned Commissioner with interest and penalties imposed. Aggrieved by the said order, they filed appeal before the Tribunal and this Tribunal vide Final Order No.990-995/2010 dated 20.05.2010 remanded the matter to the adjudicating authority to consider all the documents submitted by the appellant and pass a reasoned order. In the *de novo* adjudication, the learned Commissioner after analysing the documents submitted by the appellant reduced the demand to Rs.27,46,833/- with interest and penalty involved on the goods cleared clandestinely and also reduced demand of Rs.5,70,619/- to Rs.2,72,388/- relating to wrong availment of cenvat credit with equal penalty and imposed penalty on other appellants under relevant rules of Central Excise Rules /Cenvat Credit Rules. Hence, the present appeals.

3.1. At the outset, the learned advocate for the appellants has fairly submitted that along with the present adjudication proceedings, the Department has lodged prosecution before the Special Court for Economic Offences at Bangalore vide CC No.159-2011. He has submitted that the said case has been finally decided by the Presiding Officer, Special Court for Economic Offences at Bangalore convicting all the accused punishable under Section 9 of the Central Excise Act, 1944.

3.2. He has further submitted that this is the second round of litigation before this Tribunal. In the first round, the Tribunal has set aside the order of the adjudicating authority and remanded the matter for fresh decision. He has submitted that the appellant company is engaged in the manufacture of core magnets of rotors for electric motors; Silicon steel sheet is the main raw material. Also, the appellant manufactured aluminium die cast rotors for which aluminium ingots is the raw material.

The rotor magnets were manufactured by process of shearing of sheets, punching them into varieties of blanks, stacking them and riveting them into core magnets. He has submitted that it is alleged that the appellant has removed finished goods without invoice to its second Unit and other customers without payment of duty; removed finished goods in excess of invoice quantities and also availed cenvat credit fraudulently on invoices without receipt of inputs in their factory. He has submitted that the learned Commissioner has not entered any finding on the allegation of clandestine manufacture and removal and relied on certain parts of the order which has been set aside; therefore, the order is *non est* in law. Further, he has submitted that the allegation of clandestine removal of goods requires evidence of clandestine manufacture of goods which has not been investigated at all. The Department has not conducted investigation about the excess consumption of inputs, sources of excess raw material, source of finance for purchase of excess raw materials, excess power consumption, extra capacity for manufacture of 720 MTs of clandestinely removed goods, receipt of money consideration etc. Further, he has submitted that no seizure of finished goods removed clandestinely nor unaccounted stocks found in the factory premises during the course of visit. The demand is based on assumptions and presumptions that goods were moved in the trucks are finished goods ignoring the fact that it might have been also goods meant for job work from Unit-I to Unit-II; that the weight specified in lorry receipts is correct and above reproach. The weight in lorry receipts are purely for billing of freights; sometime, where the consignor requires urgent delivery, partial load may also be charged to freight as FTL or full truck load. The quantity of die cast rotors also removed in numbers, later converted to weight based on conversion chart used for production planning purpose. The basis of quantification is purely theoretical. The statements of employees and transporters are not corroborated by any independent evidence. The entire case rests on 14 transactions

which could not be explained by the appellant-company's officers during the course of investigation. On this basis, demand has been raised on 1731 transactions. Out of these, 437 transactions are less than 10 kgs difference and 1007 transactions below 50 kgs difference which could be due to weighment difference or computation error while converting numbers to weight. 240 transactions are stock transfers to Unit-II at Coimbatore which are revenue neutral.

3.3. As regards the fraudulent availment of cenvat credit, the learned advocate has submitted that only in one instance, the appellant had delivered the goods directly to Unit-I at Bangalore. Since the goods were already available, only invoices were obtained, which has been misconstrued by the Department as non-receipt of inputs for fraudulent availment of credit.

3.4. Learned advocate has further submitted that the prosecution proceedings commenced against all the appellants has concluded with the imposition of penalty of Rs.10,000/- on the appellant-company and Rs.5000/- each on the other four appellants. The appellants paid the fines and closed the matter.

3.5. Further, he has submitted that it is a well settled law that criminal trial and adjudication are independent to each other; hence judgment in one proceeding cannot affect the outcome of the other. The trial court guided by Section 36B of the Central Excise Act, 1944 and the Indian Evidence Act, 1872 and has not examined other essential circumstantial evidences. Further, he has submitted that the trial court has not considered circumstantial evidences such as purchase of raw material, source of finance and payments to suppliers, factory's capacity to produce the additional quantity of final products, power consumption, details of purchasers of the clandestinely manufactured goods etc.; therefore, this Tribunal should take an

independent view on the subject. In support, he has referred to the following case laws:-

- i. **Kothari Pouches Ltd. Vs. CCE** [2001(135) ELT 531 (Tri. Del.)]
- ii. **Sarita Software & Industries Ltd. Vs. CCE** [2010(251) ELT 248 (Tri. Bang.)]
- iii. **AR Shanmugasundaram Vs. CESTAT, Chennai** [2002(380) ELT 151 (Mad.)]

4.1. *Per contra*, learned AR for the Revenue has reiterated the findings of the Commissioner. He has submitted that on investigation against the appellant-company, it revealed that the appellant had clandestinely removed goods without invoice involving duty of Rs.26,49,425/-; cleared without payment of duty in excess of quantity involving duty of Rs.25,17,551/- and fraudulently availed cenvat credit of Rs.5,70,619/- on the basis of invoices only without receipt of inputs. The learned AR for the Revenue has submitted that the criminal proceedings initiated against the appellant by filing complaint under Section 200 of Cr.P.C. for the offences committed by the appellants and punishable under Section 9 and 9AA of the Central Excise Act, 1944 has attained finality by passing order dated 25.06.2019 by the Presiding Officer of Special Court for Economic Offences at Bangalore. Since the order convicting the appellant has attained finality, the offences committed by the appellant proved by the Hon'ble Special Court for Economic Offences at Bangalore. He has submitted that the *de novo* adjudication commenced on the direction of the Tribunal to examine all the documents in eight box files and one flat file produced by the appellant during the course of adjudication. While adjudicating the case in *de novo* proceeding, the learned Commissioner has examined all the documents and as per the direction of the Tribunal, he has recorded a clearcut finding on the issues involving clandestine removal and fraudulent availment of the credit. Rebutting the argument of the appellant that the Department has failed to adduce collateral evidences like raw material purchase, supplier of raw materials, production capacity for manufacturing the

goods, removal of the same clandestinely and discrepancies found in 14 invoices were extrapolated over more than a thousand clearances without any basis etc., he has submitted that the investigation retrieved various documents viz. dispatch register, lorry receipts maintained by the transporters etc. and these documents were analysed and compared with each other. Dispatch registers and lorry receipts were taken as evidence for clearance based on the invoices issued to various parties and the lorry receipts, freight charges paid, it was noticed that appellant not only indulged in outright clandestine removal but also in removal of goods without payment of duty by loading excess quantity than the quantity mentioned in the respective invoices. Besides, it was also came to the notice of the Department that the appellant was not only facilitating their Unit at Coimbatore to avail cenvat credit by raising invoices without movement of goods but were also indulging in fraudulent availment of cenvat credit on the basis of invoices without receiving the inputs. These discrepancies were pointed out to the persons / employees concerned viz. Mr. G.R. Govindarajan, Managing Director, Mr. R. Rajendran, Manager-Accounts and Mr. R.N. Ramesh, In-charge of Dispatches. After seeing the relevant documents placed before them, they have, in clear terms, accepted about the existence of removal of goods without payment of duty and none of the statements have been retracted. Thus, the Department has not only been able to establish the fact of clandestine manufacture and removal with the help of documents like dispatch registers maintained by the appellant and transporters' records but also has supported by statements of concerned persons involved in the day-to-day activities of manufacture and clearance. The Special Court for Economic Offences at Bangalore recording the statements, examined the witnesses and viz-a-viz statements recorded and the documentary evidences placed before it, upheld the allegation made by the Department holding that the same are proved and ordered conviction of the appellant along with its

staff. The statements placed before the Hon'ble Court have been subjected to detailed examination in chief and cross-examination and based on the result of such examination and cross-examination, the Hon'ble Court had convicted all the accused. He has further submitted that the admitted facts need not be proved by the Department. In support, he has referred to the following case laws:-

- a. **International Cylinders Pvt. Ltd.** [2010(255) ELT 68 (HP)]
- b. **Systems and Components Pvt. Ltd.** [2004(165) ELT 136 (SC)]
- c. **National Boards** [2014(313) ELT 113 (Tri. Bang.)]

4.2. He has further submitted that the findings of the Hon'ble Court squarely applies to establish the facts through cogent evidences considered in criminal trial; hence, the argument of the appellant that it is not binding on the Tribunal is not acceptable. He has submitted that the proceeding in the criminal trial is more rigorous than departmental proceeding. The conviction is only when the case is proved beyond doubt.

5. Heard both sides and perused the records.

6. The issues involved in the present appeals for consideration are whether:

- i. there was clandestine manufacture and removal of goods without payment of duty amounting to Rs.27,46,833/-;
- ii. the appellant availed fraudulently cenvat credit of Rs.2,72,388/- without receipt of inputs; and
- iii. Penalty imposable on the appellants.

7. The appellant's factory was visited on 14.09.2005 on the basis of intelligence about indulgence in clandestine manufacture and clearance of electrical stampings and parts of motors and also fraudulent availment of cenvat credit on invoices without receiving the inputs. Voluminous records have been seized during the search operation and subsequently statements of

various persons including the employees of the appellant have been recorded. The evidences that have been brought on record revealed that the appellant has indulged in clandestine manufacture and clearance of the excisable goods without payment of duty; also in the truck load cleared excess quantity of goods than the quantity mentioned in the invoices for clearance. The said allegations of the Revenue have been supported by various private records which have been compared with the statutory record in drawing inference about the difference in the figures mentioned in the statutory records and relevant private records like stock register, clearance documents etc. Later the contents of these documents have been verified by recording statements of the persons who are conversant in the maintenance and using of these records in their day-to-day conduct of business. The argument of the appellant that only on the basis of these statements and without any corroborative evidence from the suppliers of raw materials, consumption of electricity, purchaser of the goods since not investigated and brought on record, the confirmation of the demands and recovery of cenvat credit alleging fraudulent availment cannot be sustained. Similar arguments have been raised by the appellant before the Special Court for Economic Offences at Bangalore which has been dealt at length and ultimately the Court analysing the evidences and statements of witnesses called for who were subjected to examination-in-chief and cross-examination, and also referring to various documentary evidences placed before the Court by the prosecution and taken on record, arrived at the conclusion that there had been manufacture and clandestine clearance of excisable goods and consequently convicted all the accused who are appellants before us. The appellant accepted the verdict of the Special Court for Economic Offences at Bangalore and paid penalty as imposed on them. Needless to mention, the trial under criminal proceeding is more rigorous where the principle of law is based on the theory of establishing a case beyond reasonable doubt

whereas in Departmental adjudication, it is preponderance of probability. In other words, the requirement of evidence to prove a case in a criminal case is more rigorous than in comparison to confirmation of demand by the adjudicating authority on the principle of preponderance of probability. In the present case, on a trial to criminal liability, the Court has arrived at the conclusion that there has been evidence of clandestine manufacture and clearance of the goods and fraudulent availment of cenvat credit which rests on the evidences and the witnesses who have admitted before the Court in addition to their admission before the authorities which have been recorded under Section 14 of the Central Excise Act, 1944. The argument of the learned advocate disputing the said evidences cannot be acceptable. Further, we find that the learned Commissioner analysing the records recorded a detailed finding which corroborates the statements furnished by the witnesses. Therefore, the contention of the appellant that allegation of clandestine clearance of goods cannot be sustained is also devoid of merit.

8.1. In view of the discussion above, the confirmation of demand of duty on goods manufactured and cleared clandestinely amounting to Rs.27,46,833/- confirmed in the impugned order with interest and equivalent penalty under Section 11AC of the Central Excise Act, 1944 is upheld. Also, wrong availment of cenvat credit of Rs.2,72,388/- only on the basis of invoices without receipt of inputs confirmed in the impugned order with interest and equivalent penalty under Rule 15(2) of Cenvat Credit Rules, 2004 read with Section 11AC of Central Excise Act, 1944 is upheld.

8.2. In the facts and circumstances, the penalty imposed on the other appellants viz. Mr. G.R. Govindarajan, Managing Director, Mr. S. Rajamannar, CEO, Mr. R. Rajendran, Manager-Accounts and Mr. R.N. Ramesh, In-charge of Despatches under Rule 26 of

the Central Excise Rules, 2002 is upheld but reduced to Rs.25,000/-(Rupees twenty five thousand only) each in respect of Mr. G.R. Govindarajan, Managing Director, Mr. S. Rajamannar, CEO; to Rs.5000/- (Rupees five thousand only) each in respect of Mr. R. Rajendran, Manager-Accounts and Mr. R.N. Ramesh, In-charge of Despatches. Similarly, the penalty imposed under Section 26 of Central Excise Rules, 2002 on M/s. Raaja Magnetics (RML-II), Coimbatore is reduced to Rs.25,000/- (Rupees twenty five thousand only) to meet the ends of justice. Penalty imposed under other provisions on all appellants are set aside.

9. In the result, the impugned order is modified to the above extent and the appeals filed by the appellants are disposed of.

(Order pronounced in Open Court on 29.11.2024)

(D.M. MISRA)
MEMBER (JUDICIAL)

(R. BHAGYA DEVI)
MEMBER (TECHNICAL)

Raja...