CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
CHANDIGARH
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REGIONAL BENCH – COURT NO. 1

Excise Appeal No. 60822 Of 2019

[Arising out of OIA-LUD-EXCUS-001-APP-2416-2418-19 dated 10/05/2019 passed by the Commissioner (Appeals) of Central Excise and Service Tax-LUDHIANA]

M/s Karsh Enterprises **: Appellant (s)**
Ludhiana Road, Nakodar
Jalandhar, Punjab

Vs

CCE & ST- Jalandhar **: Respondent (s)**
GST BHAWAN, F-BLOCK,
RISHI NAGAR, LUDHIANA
PUNJAB, 141001

With

Excise Appeal No. 60821, 60787 Of 2019

[Arising out of OIA-LUD-EXCUS-001-APP-2416-2418-19 dated 10/05/2019 passed by the Commissioner (Appeals) of Central Excise and Service Tax-LUDHIANA]

Jaswinder Singh Proprietor **: Appellant (s)**
M/s Karsh Enterprises, Ludhiana Road,
Nakodar Jalandhar Punjab

Ajay Adwani
Prop Of Ms Shraddha Traders Narmada Para
Station Road, RAIPUR, CHHATTISGARH
492001

Vs

CCE & ST- Jalandhar **: Respondent (s)**
GST BHAWAN, F-BLOCK,
RISHI NAGAR, LUDHIANA
PUNJAB, 141001

APPEARANCE:
Shri Sudhir Malhotra, Advocate for the Appellant
Shri Bhasha Ram, Authorised Representative for the Respondent

CORAM : HON'BLE MR. ASHOK JINDAL, MEMBER (JUDICIAL)

FINAL ORDER No. A/60886-60888 / 2021

Date of Hearing:17.08.2021
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Date of Decision:27.08.2021

Per : Mr. Ashok Jindal

The appellants filed appeals against the impugned order wherein demanding duty and imposing penalty thereof on account of clandestine removal of cigarettes.

2. M/s Karsh Enterprises, is a manufacture of cigarettes and Shri Ajay Adwani, Proprietor of M/s Sharda Traders, Raipur purchased of the cigarettes from M/s Karsh Enterprises. Shrii Jaswinder Singh is the proprietor of M/s Karsh Enterprises.

3. The facts of the case are that on 16.01.2013 a search was conducted at the premises of the M/s Karsh Enterprises. During the course of search 210 Kgs. Cut-tobacco and other raw-materials were seized alongwith cigarettes paper, BOPP and the factory was found running and production of "Eleven 10" brand filter tipped with cigarettes of 69mm length was going on. Shri Baldish Singh, Accountant stated that they are manufacturing Hitler Black Brand filtered cigarettes of 69mm length. The 10 bobbins of M/s Karsh Enterprises, 5 bobbins of BOPP and 210 kg. of tobacco was found excess in stock but he failed to produce any document to show lawful purchase and possession of such excess raw-material. On the same day, a search was conducted at the premises of M/s Sharda Traders. During the course of search, 4,08,000 cigarettes packets of 'Hitler Brand' of 69mm were found and Indian currency of Rs. 19 lakhs was also recorded. Shri Ajay Adwani stated that the Hitler Black Brand 69mm filter cigarettes are manufactured by 'M/s Karsh Enterprises' and sold in cash without invoice and without payment of duty. He

also stated that the recovery of cash of Rs. 19 lakhs is the sale proceed of cigarettes purchased and sold by them without any invoice and details of which were not recorded in their books of account. On the basis of various statements and the search conducted, a show cause notice was issued to the appellants to demand duty from M/s Karsh Enterprises for clearing the goods without payment of duty and also imposed redemption fine and penalties on M/s Karsh Enterprises and Shri Jaswinder Singh and Shri Ajay Adwani proprietor of M/s Shardha Traders, Raipur. The said order was challenged before the Ld. Commissioner (Appeals) who dismiss their appeals filed by the appellants, therefore, the appellants are before me.

4. Ld. Counsel for the appellants submits that no corroborative evidence has been produced by the Revenue to allege that clandestine removal of goods, no document with regard to transportation of goods have been brought on record to establish that the goods have been cleared clandestinely without payment of duty. He also submits that the statements have been taken under coercion, therefore, the statements cannot be relied upon. In these circumstances, the impugned order is to be set-aside.

5. On the other hand, the Ld. AR relied on the statements and also stated that physical stock found during the course of investigation and submitted that the statement recorded during the course of investigation were never retracted by the appellants, in that circumstances, it is a case of clandestine removal of goods. Therefore, the duty is rightly demanded and penalties were rightly imposed.

6. Heard the parties and considered the submissions.

7. On careful consideration of submission made by both sides and documents placed before me, the facts of the case which are in dispute are that during the course of investigation, excess tobacco of 210 kg alongwith other material for manufacturers 'Hitler Black' Brand Cigarettes were found at the premises of M/s Karsh Enterprises and production was going on. Further, 4,08,000 cigarettes packets of Hitler Brand of 69mm and unaccounted cash was found at the premises of M/s Shardha Traders, Raipur proprietor of Shri Ajay Adwani. These facts were never disputed by the appellants.

8. Moreover, they have made a inculpatory statements. On the basis of that the statements they have been implicated in the matter by alleging the appellants are involved in clandestine removal manufacture and removal of goods. At no point of time, the appellants have retracted their statements. Further they have not brought any document on record to say that the goods found during the course of investigation procured in licit manner. As the statements have not been retracted and the excess was stock during the course of investigation is the corroborative evidence to allege the clandestine removal of goods.

9. Further, the Hon'ble Apex Court in the case of CCE vs. Systems & Components Pvt. Ltd. – 2004 (165) ELT 646 (S.C.) has held that what is admitted need not to be proved.

10. In this case, the appellant has admitted the excess stock found during the course of investigation has been procured through illicit manner, in that circumstances, revenue need not to prove that the raw material and finished goods recovered during the course of investigation were procured through licit manner. As the appellants

have been failed to brought on record any documents in their favour, therefore, I am inclined to accept the impugned order. Accordingly, I do not find any infirmity in the impugned order, the same is upheld.

11. In result, the appeals filed by the appellants are dismissed.

(Order pronounced on 27.08.2021)

(Ashok Jindal)
MEMBER (JUDICIAL)

G.Y.