CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
SCO 147-148, SECTOR 17-C, CHANDIGARH-160017

SINGLE MEMBER BENCH
Court-II
Appeal No.E/60374/2018-EX

(Arising out of OIA No.PCH-EXCUS-OOO-APP-262-264-2017-18 dt.10.1.2018 passed by the CCE(Appeals), Panchkula)

Date of hearing/Decision:27.06.2018

M/s. Real Paints India **Appellant**

Vs.
CCE, Panchkula **Respondent**

Present for the Appellant: Shri R.k.Philips, Advocate
Present for the Respondent: Shri Bhasha Ram, AR

Coram: Hon'ble Mr.Devender Singh, Member (Technical)

FINAL ORDER NO.62484/2018

PER: DEVENDER SINGH

Briefly, the facts of the case are that acting on an intelligence that M/s Real Pain India, Sonepat having manufacturing and trading activities at various premises were engaged in manufacture and clandestine clearance of paints and varnishes with an intent to evade payment of duty, the following premises were searched on 13.09.2011 by the officers of Central Excise.

(i) M/s Real Industries Coating, A-14, Gali No.6, Libaspur, Delhi

(ii) M/s Real Paint India, 291-292, HSIDC, Ind.Area, Rai, Sonepat

(iii) M/s HR Paints, 1618, Street No.14, Swaroop Nagar, Delhi

(iv) Premises at A 789-790, Shastri Nagar, Delhi

(v) Premises at A-791/1, Shastri Nagar, Delhi

(vi) Residence premises at 6/2, Roop Nagar, Delhi

(vii) M/s Matta Paint House, C-134, Gokulpur, Delhi

2. Brief summary of the proceedings conducted at above mentioned places is detailed below:

M/s Real Industries Coating, A-14, Gali No.6, Libaspur, Delhi

2.1 Raw Material valued at Rs. 7,90,702/- and finished goods viz. Industrial paint/rubber seal valued at Rs. 4,76,096/-, total valued at Rs.12,66,798/- found lying there were seized as Sh. Ram Lalit Shah, Production Supervisor at the said premises could not produce the proper documents towards manufacture and accountal of the said raw material/finished goods. CPU of the computer installed and the documents relevant to the investigations were also resumed for further investigations. Sh. Ram Lalit Shah in his statement stated that the company was manufacturing REAL, MARS, CHARMINAR, IKKA, NICE brand paints and rubber seal of REAL brand, that the procurement of raw material and clearance of finished goods was looked after by the owner of the company Sh. Gulshan Matta.

M/s Real Paint India, 291-292, HSIDC, Ind.Area, Rai, Sonepat

2.2 At the time of visit, Sh. Rajeev Juneja, Supervisor was present in the premises where he informed that the firm was engaged in manufacturing of paints and resin, that they were not registered with Central Excise. Upon physical stock taking, raw material valued at Rs.21,65,598/-, packing material valued at Rs.84,090/- and finished goods valued at Rs.8,02,434/- were found lying there for which Sh. Juneja could not produce any documents relating to legal possession of the goods lying in the premises and hence all the goods total valued at Rs.30,50,122/- were seized under Section 110 of Custom Act, 1962 made applicable to the like matters of Central Excise. The seized goods were handed over to Sh. Rajeev Juneja under proper superdaginama for safe custody.

M/s HR Paints, 1618, Street No.14, Main Burari Road, Swaroop Nagar, Delhi

2.3 Sh. Harish Kumar, Prop. of M/s HR Paints was available at the premises where he informed that they were engaged in trading of Synthetic Enamel Paints, Automotive Paints, Wood Care Paints, Industrial Finish Paints etc of various brands such as REAL, NICE, MARS, IKKA, GALAXI, MARIGOLD, ASPA etc and his main purpose was of REAL and NICE brand paint from M/s Real Industrial Coating, Libaspur, Delhi and MARS and IKKA brand from M/s Real Paint India, Rai, Sonepat. Sh. Harish Kumar produced some sale and purchase documents for goods lying in the premises but the same could not be matched with the goods. No stock Register was being maintained in the premises. Finished goods valued at Rs.59,20,984/- were seized by the officers on a reasonable belief that the same were kept there unaccounted and had been cleared without payment of duty and hence appreaed to be liable to confiscation. The seized goods were handed over to Sh. Harish Kumar for safe custody.

Premises at A-789-790, Shastri Nagar, Delhi

2.4 Finished goods valued at Rs. 1,01,21,609/- lying there were also seized as Sh. Gulshan Kumar could not produce any documentary evidence of their lawful possession. The seized goods were also handed over to Sh. Gulshan Kumar for safe custody. An amount of Rs.12,53,500/- in cash in Indian currency was also found lying there. Sh. Gulshan Kumar could not give any plausible explanation about this cash and hence the said amount was resumed and deposited in Syndicate Bank vide VCC bearing Sl.No. 433703 for a period of 12 months. Besides explaining their business model of procurement of branded goods from their family owned manufacturing units, Sh. Gulshan Kumar in his statement dt.13.09.2011 stated that the cash recovered from their premises was the sale proceed of the goods manufactured in his factory which was made in Kacchi Parchies (loose slips). He admitted that the goods manufactured in his factory at Sonepat and at Libaspur, Delhi were cleared 60% on bills and 40% on Kacchi Parchies (loose slips); that the amount of the goods cleared on Kacchi Parchies (loose slips) was received in cash. He submitted 4 cheques of Rs. 7,50,500/- each total Rs. 30,00,000/- on his and his father's behalf and stated that the cheques may be used against their duty liability and also the amount of Rs. 12,50,500/- recovered from his trading firm may also be utilised towards duty liability. He also undertook to take registration for M/s Real Paints India, Sonepat and M/s Real Industrial Coatings, Delhi.

Premises at A-791/1, Shastri Nagar, Delhi

2.5 Shri Rambaksh, Landlord of the said premises was present at the time of visit of the Central Excise of officers. Certain documents, relevant to the investigations were taken into possession by the visiting officers. Finished goods valued at Rs.4,17,204/- lying in the said premises were seized by the visiting officers on the reasonable belief that the said goods were being possessed without any proper central excise documents and without proper accountal thereof.

6/2, Roop Nagar, New Delhi

2.6 Search at the residential premises was conducted where Shri Yash Matta in his statement informed that he was residing in that house along with his mother and father Shri Ram Chand on the ground floor;

that the first floor was occupied by Shri Gulshan Kumar, the elder brother of his father with his family and the second floor was occupied by Shri Harish Kumar along with his family, who was the younger brother of his father. Some Kacchi parchies (loose slips) were found in the premises, which were resumed by the officers for further investigating.

M/s. Matta Paint House, C-134, Gokulpur, Delhi

2.7 At the time of visit of the said premises on 13.09.2011, no responsible person was available to witness and join the proceedings and hence in the absence of any responsible person, the premises were sealed with the telephonic directions to Shri Chandra Matta, owner of the premises not to open the seal without the permission of the competent authority. The premises were re-visited by the officers on 15.09.2011 in the present of Shri Ram Chand, owner of the premises. The finished goods valued at Rs.3,82,910/- were seized under Rule 24 of the Central Excise Rules, 2002 on a reasonable that the said goods were procured without any proper purchase invoice and the seized goods were handed over to Shri Ram Chand for safe custody.

3. During the course of investigation, statement of various persons, related to the affairs of the appellants' activities were recorded and consequently it appeared that the main appellant firm M/s. Real Pain India, Rai under the control of Shri Gulshan Matta, proprietor had been indulging in unaccounted manufacture of excisable goods and clandestine clearance of the same through their sale counters, owned by his family members without the cover of invoices and without payment of Central Excise duty leviable thereon. It also appeared that they in

general had adopted a dubious method of organizing their manufacture and clearance thereof clandestinely where they did not maintain proper account for raw material in order to achieve their objective of suppressing their actual production and for facilitating clandestine removal of goods. In order to circumvent their liability, they have not brought on record of procurement of raw material, manufacturing and clearance of the finished goods in violation of the provisions of Central Excise Act, 1944 and the rules made thereunder and thus appeared to had contravened the provisions of Rule 4,6,8,9, 10 & 11 of the Central Excise Rules by their acts of omission and commission. Accordingly, the main appellant M/ss. Real Paint India, Rai, Sonepat were issued Show Cause Notice C. No.CE-20/Tech/SCN/Real Paint/16/K/12 dated 07.03.2012 proposing confiscation of raw material valued at Rs.21,65,598/-, packing materials valued at Rs.84,090/-- and finished goods valued at Rs.8,02,434/-, collectively valued at Rs.30,52,122/-. Penal action was also proposed against them under Rule 25 of the Central Excise Rules,2002.

4. During search on 13.09.2011 and 15.09.2011, the following goods were seized at various premises as details given below:

Details of the premises	**Description of the goods Detained/seized**	**Value of the detained/seized goods**	**Remarks**
M/s. Real Industrial Coating, A-14, Gali No.6, Libaspur, Delhi Residence premises at 6/2, Roop Nagar, New Delhi	Finished goods valued at Rs.4,76,096/- and raw material valued at Rs.7,90,702/-	12,66,798/-	Seized
M/s. H.R.Paints, 1618,Street No.14, Main Burari Road, Swaroop Nagar, Delhi	Paints boxes of different brands of assorted size	Rs.59,20,984/- (MRP)	Seized

M/s. Matta Pain House, Premises at A-789-790, Shastri Nagar, Delhi	Paints, Distemper, Strainer Boxes of different brands of assorted size	1,01,21,609/-	Seized
M/s. Matta Pain and Hardware Store, A-791/1, Shastri Nagar, Delhi	Paints, Distemper, Strainer Boxes of different brands of assorted size	4.17.204/-	Seized
M/s. Raj Industrial Coating, 18/16, 25, 19/210/1, 21/1, Gram Akbarpur Majra, Main Palla Road, Delhi	Finished goods	59,300/-	Detained, converted in seizure on 05.03.2012.
Total	**Rs.1,77,85,895/-**		

5. From the scrutiny of the kaccha parchies (loose slips), various documents and details retrieved from computer and from the statements tendered by various persons including Shri Harish Kumar Matta, Proprietor M/s. H.R.Paints, Shri Rambaksh Matta, Proprietor M/s. Real Industrial Coating, Delhi, Shri Gulshan Matta, Proprietor M/s. Real Pain India, Rai, Sonepat the value of clearance by the appellants' firm at Rai was computed as under:

Year	**Clearance as per VAT return**	**Clearance as per Kaccha Record**	**Value of seized goods from different premises on 13.09.2011**	**Value of seized goods from C-134, Gokulpur on 15.09.2011**	**Total value**
1	2	3	4	5	6 (3+4+5)
2010-11	13268276	2893833	0	0	2893833
2011-12	13557383	3856022	5275322	194470	9325814
Total					**12,58,624/-**

The Central Excise duty on the above value of clearance was calculated at Rs.2,98,065/- for the year 2010-11 and Rs.9,60,559/- for the year 2011-12 and accordingly, the appellants were issued another Show Cause Notice IV/CE-20/Tech./SCN/Real Paint/16/K/12 dated 09.07.2015 proposing demand and recovery of Central Excise duty amounting to Rs.12,58,624/- besides proposing penal action. Penal provisions were invoked against Shri Harish Kumar Matta, Proprietor M/s.H.R.Paints and Shri Ram Chand Matta, Proprietor M/s. Matta Paint House, Delhi. The adjudicating authority confirmed the demand of Central Excise duty of Rs. 10,87,153/- along with interest and imposed equivalent penalty on the appellant. The seized goods valued at Rs. 30,52,122/- were confiscated under Rule 25 of Central Excise Rules, 2002 and were allowed to be redeemed on payment of fine of Rs. 3,25,000/-. Penalties were imposed on the other parties under Rule 26 of the Central Excise Rules. Penalty was also imposed on the appellant under Rule 25 of the Rules.

6. The appellant went in appeal before the Commissioner (Appeals). In his order dated 10.1.2018, the Commissioner (Appeals) reduced the demand to Rs. 3,89,650/- by allowing benefit of SSI exemption on cumulative value of the total clearances, deduction of value of raw material cleared on which no Cenvat credit was availed and VAT/ST was paid, and reduced penalty under Section 11AC equal to reduced central excise liability. Penalty under Rule 25 on the appellant was set aside. Penalties on the other parties were upheld. Confiscation of raw material, packing material and finished goods collectively valued at Rs.30,52,122/- was also upheld along with redemption fine of Rs.3,25,000/- in lieu of confiscation imposed by the adjudicating authority. Aggrieved from the order of the Commissioner (Appeals), the appellant have filed this appeal.

7. Ld. Advocate for the appellant submits that their only challenge is to the confiscation of raw material, packing material and finished goods collectively valued at Rs.30,52,122/- and imposition of redemption fine of Rs.3,25,000/-. He submitted that they are not contesting the rest of the impugned order. He contended that the raw material and packing

material found in the premises were wrongly seized by the Department. The contention is that they had not taken any Cenvat credit on the said raw material and packing material. The Contention is that Rule 25 of Central Excise Rules under which these goods have been confiscated is meant only for finished goods. In this regard, he relied on the judgment of the Hon'ble Punjab & Haryana High Court in the case *Annapurna Impex Pvt.Ltd.-2009 (2444) ELT 35 (P&H)*. As for the finished goods, he argued that the goods were yet to be cleared and hence there was no question of evasion of duty before removal of the goods.

8. Ld. AR reiterated the findings in the impugned order in relation to raw material and packing material. In relation to finished goods, he drew attention to the para 1, 2.4. and 2.9 of the show cause notice to underline that the case was made on the basis of an intelligence and there was systematic clandestine removal by way of 60% of bills and 40% of kachcha parchies as admitted by the statement of Shri Rajeev Juneja, Supervisor of M/s. Real Paints India and Shri Gulshan Kumar, proprietor of the company. These kachcha parchies were acknowledged by the appellant before the first appellate authority while seeking relief. The contention is that as they had crossed SSI turnover limit, malafide intent to clear the goods was clear. He also relied on the finding of the adjudicating authority in para 43 of the adjudication order.

9. Heard both sides and perused the record.

10. In this appeal, the appellants are only contesting the confiscation of raw material, packing material and finished goods, and the redemption fined imposed on them. As the appellants are not contesting

the remaining parts of the impugned order, the same are upheld. I find that the investigation was initiated by the Department against 7 firms which have been indulging in unaccounted manufacture of excisable goods and clandestine clearance of the same to their sale counters without cover of proper invoices and without payment of central excise duty. Firms were owned by the family members and firms were not maintaining any record of production and clearance of the goods. During investigation, kachcha parchis were found and the statements of various persons were recorded. It emerged that there was a ratio of 60% to 40% between accounted clearances and unaccounted clearances. The findings of the Commissioner (Appeals) in relation to appellant that they had crossed SSI turnover limit, existence of kachcha parchis and penalties imposed on the appellant and other persons are not being challenged by the appellant. The appellant are only contesting confiscation of raw material, packing material and finished goods and imposition redemption fine. It clearly shows that the appellant have accepted that there was clandestine removal of the goods and there was malafide intent to evade payment of duty.

11. On the issue of confiscation of raw material and packing material, it is admitted fact that no Cenvat credit has been taken by the appellant. In that situation, there is force in the contention of the appellant that there is no provision in the Central Excise Act for confiscation of such raw material and packing material. Ld. AR could not show such a provision. In this context, it was held by the Hon'ble Punjab & Haryana High Court in the case Annapurna Impex Pvt.Ltd. (supra) as follows:

> *"1.This appeal filed under Section 35G of the Central Excise Act, 1944 is directed against order dated 17-7-2008 passed by the Customs Excise and Service Tax Appellate Tribunal, New Delhi (for brevity 'the Tribunal'). The Tribunal has endorsed the view taken by the Commissioner (Appeals) by holding that the Adjudicating Authority was not within its power to confiscate the goods worth Rs. 3,12,198/-. The value of other goods in respect of work in progress was Rs. 7,800/-. The Commissioner (Appeals) as well as the Tribunal held that there was no provision for confiscation of the raw material and the goods concerning work in progress. The final goods and the scrap were found lying in the factory. The Tribunal further found that it was not a case of clandestine removal of goods nor it was proved by any corroborating evidence. The Tribunal has also found that no cenvat credit was availed on the raw material and that the dealer-respondent was not a producer nor registered producer and was merely a user of raw material. Accordingly, it was concluded that the goods could not be regarded as excisable goods in terms of Rule 2(d) of the Central Excise Rules, 1944. Accordingly, the appeal filed by the revenue was dismissed and feeling aggrieved the revenue has approached this Court.*
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> ***2.*** *We have heard learned counsel at a considerable length and find that no question of law warranting admission of the appeal would arise.*
>
> ***3.*** *On our repeated asking the learned counsel for the revenue has not been able to show any provision dealing with confiscation of raw material which has not been accounted. Moreover, it is admitted case of the parties that no cenvat credit was availed on the raw material and goods were held to be non-excisable items. Once no duty is paid then there is no question of availing any cenvat credit on such raw material. Therefore, the appeal is without any merit and is liable to be dismissed."*

12. I also find that the first appellate authority in para 10 of the impugned order has failed to give any cogent basis for confiscation of raw material and packing material.

13. In view of above, confiscation of the raw material and packing material is without authority of law and is accordingly set aside.

14. On the issue of finished goods, which were found in the premises, it is not disputed that the appellant were maintaining kachcha parchis for clandestine removal of the goods. The appellant had already crossed turnover limit of SSI exemption. They did not get themselves

registered with the Central Excise Department even after crossing turnover value of Rs.150 lakh. The appellant have also not produced any documentary evidence in support of their contention that the said goods were duly accounted in their books of accounts. From the statement of Shri Rajeev Juneja, Supervisor and Shri Gulshan Kumar, Proprietor of M/s. Real Paints India, it is clear that the appellant had been systematically clearing the goods without payment of duty in clandestine manner. In these circumstances, reasonable conclusion is that the appellant wanted to remove finished goods in clandestine manner in active connivance with his close relatives as they had already crossed SSI exemption limit. Hence, I do not find any infirmity in the order of the Commissioner (Appeals) upholding confiscation of the finished goods and imposing redemption fine. Since the value of the finished goods is Rs.8,02,434/-, redemption fine is accordingly reduced to Rs.80,000/-.

15. In the result,

(i) confiscation of raw material and packing material is set aside,

(ii) confiscation of finished goods is upheld,

(iii) redemption fine is reduced to Rs.80,000/-.

The order of the Commissioner (Appeals) is modified to the above extent only. The remaining part of the order of Commissioner (Appeals) is upheld as not being contested by the appellants.

16. The appeal is disposed of as indicated above.

(Operative part of order pronounced in the court)

(DEVENDER SINGH)
MEMBER (TECHNICAL)

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