Customs, Excise & Service Tax Appellate Tribunal
SCO-147-148 Sector 17C, Chandigarh, Regional Bench

SINGLE MEMBER BENCH

Appeal No.E/1953/2008-EX (SM)

(Arising out of Order in Original No. 18/Commissioner/SU/08/CE dt. 05.06.2008 passed by the CCE, Rohtak)

Date of Hearing:22.05.2018

Date of Decision:18.09.2018

M/s Himani Alloys Limited Appellant (s)

Vs

Commissioner of Central Excise, Rohtak Respondent (s)

Represented by:
For Appellant (s) : Shri R.P.Jindal, Advocate
For Respondent (s): Shri A.K.Saini, AR

CORAM :
Dr. Devender Singh, Hon'ble Member (Technical)

FINAL ORDER No.63154/2018

Per : Dr. Devender Singh

Brief facts of the case are that the appellant is a registered dealer of Central Excise in Faridabad and trades in Ferro-alloys and issues modvatable as well as non-modvatable invoices. An investigation was conducted by Directorate General of Anti-Evasion against M/s Haryana Steel & Alloys Ltd, Murthal, Sonepat (M/s HSAL) on intelligence that M/s HSAL was indulging in evasion of central excise duty on SS Billets/Flats by way of clandestine removal and were procuring unaccounted raw material from various sources, one of which was M/s Himani Alloys Limited (M/s HAL). The allegation was that M/s HAL was supplying Ferro-alloys to M/s HSAL without any invoices. During the investigation, among other premises, the business and godown of M/s HAL and residential premises of Shri

Babu Khandelwal Director of M/s HAL were also searched. On completion of detailed investigations, a show cause notice was issued which was adjudicated by the Commissioner of Central Excise, Rohtak. Ld. Commissioner after appreciating plethora of corroborative evidence in the form of documents relating to purchase of unaccounted raw materials by M/s.HSAL, examination of invoice books used for clearance of Farro-alloys bearing parallel invoice numbers recovered from the godown of M/s HAL, statement of Shri Shalendra Singh, evidence from the documents recovered in various files, documented in Panchnama, evidence of financial transactions on hand computerised slips and statement of Shri Hawa Singh, who submitted 92 parallel invoices and opinion of Deputy Director FSL, Madhuban came to the following conclusion in Para 73 of impugned order.

> *"73. In view of above, I find that M/s. HSAL received a stock of 590.477 of Ferro Chrome, 276.395 MT of Ferro Manganese and 349.420 MT of Ferro Silicon without the cover of legal document. Further, a quantity of 16.885 MT of Nickel and 21.875 MT of Silico Manganese had also been received in the factory without the cover of any bill/invoices etc. This clearly indicates that 448-579 MT of unaccounted stock of FE Cr, Fe Mn and Fe Si have been used for the manufacture of SS Billets/SS Flates. Further, the ferrous content in the unaccounted stock also comes to 128.200 MT. Therefore, it is clear that a total quantity of 576.779 MT of Ferro Alloys has been used surreptitiously to manufacture SS Billet flats."*

2. In the adjudication order, following was ordered by the adjudicating authority:-

"In view of the above discussions and findings, I pass the following orders:

> *"(i) I confirm the demand of Excise duty amounting to Rs. 65,32,659 (Rupees sixty-five lacs thirty two thousand six hundred and fifty nine only) and order its recovery from M/s Haryana Steel and Alloys Ltd, 48th K.M.G.T. Road, Murthal, Sonepat (Haryana) under Section 11 (A) (1) of the Central Excise Act, 1944.*
>
> *(i) I impose a penalty of Rs. 65,32,659 (Rupees sixty-five lacs thirty two thousand six hundred and fifty nine only) and order its*

recovery from M/s Haryana Steel and Alloys Ltd, 48th K.M.G.T. Road, Murthal, Sonepat (Haryana) under Section 11 (A) (1) of the Central Excise Act, 1944 for contravention of the various provisions of the Central Excise Act, 1944 and the Rules made there under, a discussed hereinabove.

(ii) I order recovery of interest at the appropriate rate form M/s Haryana Steel and Alloys Ltd, 48th K.M.G.T. Road, Murthal, Sonepat (Haryana) under Section 11AB of the Central Excise Act, 1944.

(iii) I impose a penalty of Rs. 10,00,000 (Rupees Ten Lakhs only) M/s Haryana Steel and Alloys Ltd, 48th K.M.G.T. Road, Murthal, Sonepat (Haryana) under the provisions of Rule 173Q of the Central Excise Rules, 1944.

(iv) I impose a penalty of Rs. 10,00,000 (Rupees Ten Lakhs only) on M/s Himani Alloys Limited (HAL) having Head Office situated at 306, B.D.Chamber, 10/54, Desh Bandhu Gupta Road, Karol Bagh, Delhi and godown at D-92, DLF Industrial Area, Phase-I, Faridabad under Rule 209-A of the Central Excise Rules, 1944.

(v) I impose a penalty of Rs. 3,00,000 (Rupees Three Lakhs only) M/s Om Prakash Rakesh Kumar, 302, Time House-5, Commercial Comples, Wazirpur Industrial Area, Delhi under Rule 209-A of the Central Excise Rules, 1944.

(vi) I impose a penalty of Rs. 15,00,000 (Rupees Fifteen Lakhs only) on Naresh Rawat, Director, M/s Haryana Steel and Alloys Ltd, 48th K.M.G.T. Road, Murthal, Sonepat (Haryana) under Rule 209-A of the Central Excise Rules, 1944."

The appellants M/s HAL are contesting the imposition of penalty against them.

3. Ld. Advocate for the appellants has not contested the facts or the conclusions in the aforesaid order of the adjudicating authority. The main submission is that they had only supplied raw material and, being supplier of Ferro-alloys did not deal with the excisable goods liable to confiscation. Further submission is that M/s HAL is a limited company and in the Rule 209-A of Central Excise Rules, 1944, penalty cannot be imposed on the company. In this regard, he relied upon the Larger Bench judgement of this Tribunal in the case of *Steel Tubes of India Limited vs. Commissioner of Central Excise, Indore 2007 (217) ELT 506 (Tri.-LB)*. The contention is that the expression "which he knows" in the said Rule makes it clear that only natural persons are covered under Rule 209-A and not the legal persons. He also argued

that since no goods were held to be liable for confiscation in the final order, the penalty under Rule 209-A was not imposable. In the alternate submission, the Ld. Advocate pleaded for reduction of penalty, as penalty imposed had already been paid.

4. Ld. AR for the Revenue submitted that the examination of the invoice book used for clearance of Ferro alloys bearing parallel invoice nos. recovered from the Faridabad godown of M/s HAL revealed that the 'daily report' contained each and every activity being done at said godown, which confirms that various types of Ferro alloys had been dispatched to M/s HSAL by M/s HAL without cover of the invoices or billing was done but no material was dispatched or the goods were dispatched to M/s HSAL, but the invoice was issued in the name of some other party. The report was also faxed to their Head Office. He has further submitted that on most of the occasions, the material dispatched to M/s HSAL was shown as SiMn on the invoice while in fact, HCFeCr had been dispatched. He contended that M/s HAL had manipulated the records and invited attention to various pages in file number A-115. He also referred to the admission statement of Hawa Singh and other evidences which have been taken into account by the adjudicating authority. He further submitted that the goods were held liable for confiscation and penalty was correctly imposed on M/s HAL under Rule 209-A vide Para no. 77 of OIO No. 18/Commissioner/SU/08/CE dated 05.06.2008. Contention is that the implication of Rule 209-A was very much clear from the words "in any other manner" and there was no requirement of dealing with goods directly.

5. Heard both sides and perused the records.

6. The appellant have not challenged the facts or evidences in this case nor have they contested their involvement in abetting evasion of duty. The main plea of the appellant is that they were supplier of the raw material and did not deal with the excisable goods, which were liable to confiscation and they had no knowledge that the goods were liable to confiscation. In this regard, I find that undisputed fact is that the appellants were supplying Ferro Alloys to M/s HSAL. Invoice book was recovered from their godown, which had parallel invoice nos. and invoices from that invoice book had been used in clearance of the Ferro Alloys. The daily report were also found, which contained each and every activity taking place in godown, which confirms that various types of Ferro Alloys were dispatched to M/s HSAL without the cover of the invoices, or the billing was done but no material was dispatched, or the goods were dispatched to M/s HSAL, but the invoices were issued to some other parties. I also find that the appellant have not rebutted any of the submissions of the ld. AR including that that on almost all the occasions, the material dispatched to M/s HSAL was shown as SiMn on the invoices while in fact, HCFecr had been dispatched. It is also not disputed that the daily reports contained the signature of godown keepers Shri. Shalinder Singh and Shri. Ram Kishan. Besides, the fact that M/s HAL had manipulated the records has been corroborated from examination of various files, documented in the Panchnama, and these have not been disputed by the appellant. In order to appreciate the deep involvement of appellant, it will be pertinent to refer to following paragraphs in the impugned order bringing out the role of appellant in the entire evasion of duty:-

> *"64. Examination of the invoice book used for clearance of Ferro alloys bearing parallel invoice nos. recovered at the time of search at the godown premises of HAL at 92-D, DLF*

Industrial Area, Phase-I, Faridabad, and statement of Shalendra Singh, S/o S.P.Singh recorded under Section 14 of the Central Excise Act, 1944 revealed that the 'daily report' contains each and every activity being done at the impugned godown. The report has been prepared in duplicate and a pink copy of which is available in the book while the original white copy has been sent to head office. Fax copy found attached with the daily report confirmed that the same has been to the head office. The details of various Ferro alloys received as reflected in these reports matches with the purchase invoices. The daily report also contains the signature of the godown keeper, Shailender Singh and Ram Kishan. From the above, it is confirmed that

(i) Various types of Ferro alloys had been dispatched 'without bill' to HSAL. In these cases, the godown keeper has mentioned the name of the Ferro alloys, the quantity, truck no. and the name of the HSAL to whom the material had been dispatched.

(ii) At number of other occasions, only billing have been done and no material has been despatched. In these cases, the type of Ferro alloys, net wt. And the name of purchaser to whom the invoice has been billed, clearly mentioned in the daily report.

(iii) On few occasions, the goods had been despatched to HSAL while the invoice had been issued in the name of some other party.

(iv) On most of the occasions, the material despatched to HSAL had been shown as SiMn on the invoice while in fact, HC FeCr had been despatched.

65. It is evident from above that m/s. HAL had cleared HCFeCr (281.170 MT), FeMn HCFeMn (184.485 MT), FeSi (68.180 MT) and FeTitanium (2.345 MT) to M/s. HSAL, Murthal and M/s. HAL had manipulated their records and the quantity of a particular material has been adjusted by issuing just invoices but in other material had been despatched in the garb of the material mentioned on the invoices. The above facts are further corroborated from the examination of File No.A-107 recovered from the office premises of M/s. HAL. The authenticity of the above entries in daily report book and sale voucher is further supported by the hand-written pages of Babu Khandelwal recovered from the office premises of HAL and found placed in File No.A-115.

66. A perusal of page 56, 61, and 65 of File No.A-115 reflected at Sr.115 to Panchnama not only confirmed the material despatched by HAL to HSAL but also shows the money transaction involved in the sale. The entries mentioned in the daily report book by Shailendra Singh and Ram Kishan is a true account of sale of material and not the sale invoices which had been issued to cover up the illegal transaction. It is also observed that invoices issued by HAL and listed at Sr.No.2,3 shows the material despatched as SiMn but in fact FeMn had been despatched. Similarly, HC FeCr had been despatched instead of FeSi (Sr.No.6), SiMn (Sr.No.7), FeMn (Sr.8), SiMn (Sr.No.9 to 28), FeSi (S.No.29). Silicon Powder had been despatched instead of FeSi shown at S.No.30. HCFeMn had *been despatched instead of SiMn shown on the invoices listed at Sr.No.36,37,38,39 of the chart. Apart from the above, page no.54 of File No.A-115 shows the details of 7 cheques for total amount of Rs.31.00 lacs received from HSAL. Similarly page no.55 shows the details of 3 cheques total amounting Rs.15.90 lacs received from HSAL. Page no.56 shows that 157.850 MT of HC Fe Cr and 37,750 MT HCFeMn had been despatched for which rate of Rs.26,250/- PMT and 21,800/- PMT had been charged which is quite contrary to rate of Rs.3000/- PMT shown on the invoices issued for the similar consignment. Page no.57 of file A-115 also reveals that FeCr was sold for Rs.41,43,562/- and LCfeMn for Rs.8,22,950/- total amounting to Rs.49,66,512/- out of which cheques of Rs.27 lacs had been received. An amount of Rs.31,041/- was outstanding against HSAL on 01.09.99.*

67. The details of FeCr an FeMn sold by HAL to HSAL during the month of May and June'99 mentioned at Page No.62 and 63 of File No.A-115. A-115 when checked with the invoices issued by HAL finds no corresponding entry in the statutory records clearly prove that these consignments had also been cleared to HSAL without making any entry in the statutory records. On the basis of entries at page 62 and 63, I perused the chart prepared showing the material despatched by HAL to HSAL during the month of May and June and found that the material have been despatched without raising any invoices and thus without any accounting in the statutory records. Truck no. has been given which clearly shows that the goods had been despatched to HSAL. The basis of despatch to HSAL can be attributed to the fact that page no.65 shows the detail of bill no.385/26.08.99, 395/31.08.99 and 398/01.09.99 which all had been consigned to HSAL. Similarly, the details of despatch shown at page no.61 matches with the sale made to HSAL. Page no.61 also shows the money value as follows:

(a) Rs.8,83,327+3,49,388+2,82,450+8,53,750= Rs.23,68,915.
(b) The said amount has been carried forward to page 65 which also shows total cost of HCFeCr (94585 MT) @ 26,250= Rs.24,82,856.
(c) Thus total comes to (a+b) Rs.48,51,771
(d) Total B/f from page 62 Rs.59,94,486
(e) Total B/f form page 63 (c+d+e) Rs.11,22,027
TOTAL Rs.1,19,73,284

Thus, the amount written in the handwriting of Babu Khandelwal of M/s. HAL matches with the goods despatched. On this basis, it is clear that that HSAL had received 284.607 MT of Ferro Chrome and 20.145 MT of Ferro Manganese which had not been accounted for in any of the records of M/s.HSAL.

68. Further, it has been observed that an amount of Rs.80,00,000/- has been received by HAL by cheques and a balance of Rs.31,36,041 as payable on 01.09.99, which had been carried forward to page 55. This page no.55 also contains the details of despatch of FeCr 157/850 MT (valued Rs.41,43,652/-) and FeMn 37.750 MT (valued Rs.8,22,950).

HAL has also received a payment of Rs.31 lacs the details, which finds mention on page no.54. The balance amount of Rs.50,02,533 on 30.07.99 has been shown as outstanding on page 69 against the name of Naresh Rawat. It will not be out of place to mention here that Naresh Rawat is also a director of HSAL as well as owns the trading firm M/s.OPRK. In view of the above investigation, it is evidently clear that page no.54 to 67 contains a comprehensive account of Ferro Alloys sold by HAL to HSAL without bills and its financial transaction confirm the entries shown in the daily report. "

7. All these facts and evidences clearly show that various employees and the Director of the appellant were clearly in the knowledge that the supplies were being made for goods, which were liable to confiscation. In fact, any excisable goods cleared by appellant without cover of invoices are also liable to confiscation. Ld. Commissioner has rightly held so in para 77 of his order. Besides, the appellant was enabling evasion of duty by M/s.HSAL in a planned and systematic manner. In the case of Aries Telcom (P) Ltd. vs. CC, Chennai-2007 (220) ELT 874 (Tri.-Chennai), this Tribunal took the view that the knowledge of managing director regarding offending nature of goods would partake the character of knowledge of the company as well. In the present case, not only Director Babu Khandewal but godown keeper as well were in the know of offending nature of goods. As pointed out by Ld. AR, the "daily report" of fraudulent activities at their Faridabad godown had been faxed to the Head Office. The active involvement of the appellant in the entire *modus operandi* is thus established in relation to fraudulent supply of raw material without payment of duty to M/s HSAL in a well organized manner thereby abetting evasion of duty by M/s.HSAL.

8. The appellants have placed reliance on the judgment of Steel Tubes of India Limited Vs. Commissioner of Central Excise, Indore (supra). I find that the Rule 209-A of Central Excise Rules, 1944 is in pari materia with Rule 26 (1) of the Central Excise Rules, 2004. While analysing the imposition of penalty under Rule 26 (1) ibid on a dealer, who had issued invoices without supplying goods, the Hon'ble High Court of Punjab and Haryana in the case of Vee Kay Enterprises vs.CCE-2011 (266) ELT 436 (P&H) held that the penalty was liable under Rule 26(1).

9. The relevant paragraph 10 of the said judgement is extracted below:-

> ***"10.*** *Inspite of non-applicability of Rule 26(2), penalty could be levied as the appellant was concerned in selling or dealing with the goods which were liable to confiscation inasmuch as the appellant claimed to have sold the goods in respect of which the cenvat credit was taken. In such a case, Rule 25(1)(d) and 26(1) are also applicable. The person who purports to sell goods cannot say that he was not a person concerned with the selling of goods and merely issued invoice or that he did not contravene a provision relating to evasion of duty. The appellant issued invoices without delivery of goods with intent to enable evasion of duty to which effect a finding has been recorded and which finding has not been challenged. We are, thus, unable to hold that appellant was not liable to pay any penalty."*

10. In the instant case, Ferro Alloys were dispatched to M/s HSAL without the cover of the invoices, or the billing was done but no material was dispatched, or the goods were dispatched to M/s HSAL, but the invoices were issued to some other parties. Clearly, the appellant were not merely sending raw material without issuing invoices but were also engaged in other modus operandi. All these were done with sole intent to enable evasion of duty. Therefore, by following the judgment of Hon'ble High Court of Punjab & Haryana in the case of Vee Kay Enterprises (supra), I hold that the penalty has rightly been imposed on the appellants for their collaborative role in

the conspiracy of clandestine removal of goods by M/s HSAL and enabling evasion of duty. However, taking into account the totality of circumstances, I am of the opinion that the quantum of penalty is on the higher side and, in the interest of justice, the same is reduced to Rs. 7,50,000/-.

11. The appeal is partly allowed to that extent indicated above.

(Order pronounced in the open court on 18.09.2018)

(Devender Singh)
Member (Technical)

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