IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
SOUTH ZONAL BENCH, CHENNAI

E/00182/2009

[arising out of Order-in-Appeal No.97/08 (M-III), dated 28.11.2008 passed by the Commissioner of Central Excise (Appeals), Chennai]

COMMISSIONER OF CENTRAL EXCISE, CHENNAI-III APPELLANT

Versus

M/s. EKTA INDUSTRIES RESPONDENT

Appearance:

For the Appellant Shri S. Govindarajan, AC (AR),
For the Respondent Shri S.A. Sayeed Shuhaibb, Adv.

CORAM:

Hon'be Smt. Sulekha Beevi C.S, Judicial Member
Hon'ble Shri Madhu Mohan Damodhar, Technical Member

Date of hearing/decision **14-08-2017**

FINAL ORDER NO. 41717/2017

Per Bench:

Brief facts of the case are that the appellants are manufacturers of "Mild Steel Rounds and Flats." Director-General of Anti-Evasion, Chennai initiated investigation on the allegation that the appellants were engaged in illicit manufacturing and removal of excisable goods clandestinely under the cover of some other Bill Traders' invoices without payment of Central Excise Duty. During investigation, the appellants made payments of Rs.2,50,000/- under protest. On the culmination of the investigation, a show-cause notice No.30/98, dated 09.07.1998 was issued on the appellant, demanding Central Excise duty of Rs.16,89,785/-, along with applicable interest

Customs, Excise & Service Tax Appellate Tribunal besides proposing penalties and confiscation of land, building, plant and machinery.

2. After adjudication, original authority confirmed the demand, interest and imposed penalties, besides imposing redemption fine *in lieu* of confiscation of goods. The appellant had approached Hon'ble High Court on the intimating of recovery proceedings and thereafter, filed appeal before the Tribunal. The Tribunal vide Order, dated 14.08.2006 remanded the matter to Commissioner (Appeals), who remanded the matter to adjudicating authority. Though, notices were issued, for personal hearing to appellant and 16 co-noticees, these were returned with the postal remarks "undelivered" and only appellant appeared. *De novo* adjudicating order was passed on 18.01.2008 confirming demand of Rs.16,89,785/- along with interest, imposing penalties and also redemption fine, besides personal penalties on co-noticees. In appeal, the Commissioner (Appeals) set aside the demand. Hence, this appeal by department.

3. On behalf of the department, the learned Authorised Representative Shri S. Govindaraj reiterated the grounds of appeal. He submitted that the case was registered against the respondent for clandestine manufacture and clearance of MS Rounds under the cover of Bill Traders' invoices without payment of duty. The case has been registered on the evidences gathered from the Bill Traders'. The demand was quantified on such evidences. Such Bill Traders' had facilitated the respondent in clearing the goods and realizing the sale proceeds. The buyer's of steel products in Kerala had admitted in their statements that they had received MS Rounds from manufacturers in Chennai and from respondents. Since the raid on respondent was

conducted after a gap of 40 to 50 days from the search operations conducted on Bill Traders', the respondent got sufficient time to set his records correct. That only for this reason, the officers could not find discrepancy is stock position of finished goods and raw materials. The partners have given voluntary statements admitting the activity of clandestine manufacture and clearance. Further, the power consumption has gone up or remained the same during 1994-95 and 1995-96, but the production has gone down drastically which proves clandestine clearance of goods. In addition, that respondent has taken an approach of non-cooperation with the adjudicating authority in order to delay the process and repeatedly insisting on copies of documents. All this would establish the demand raised to be proper.

4. None appeared on behalf of respondent, though notice was issued. The appeal is taken up for disposal after hearing the learned Authorised Representative and perusal of records.

5. On perusal of the *de novo* adjudication Order No.03/2008, dated 18.01.2008 which confirmed the demand, we are able to see that 16 co-noticees were served several notices and these were returned with the postal remarks as "undelivered." The co-noticees are mainly the Bill Traders. In para 2.3 of such order, the original authority discussed that there is ample evidences to prove the procurement of unaccounted raw materials, but later the main evidence in this regard is the statements of scrap dealers, who allegedly supplied scrap to respondent. The other ~~most important~~ evidence is the consumption pattern of electricity. One of the allegation is that respondent cleared finished goods unaccounted to Kerala. This is countered by respondents, by contending that the

department has not verified from the registers maintained at the border check posts. But such counter is brushed aside by the adjudicating authority stating that such verification is not necessary since respondent was adopting a uniform pattern for clandestine clearance. Apart from some statements and third party documents alleged to be seized from Bill Traders, we do not find any cogent evidence put forward by department to establish clandestine clearance of goods.

6. Admittedly, there is no discrepancy found in the records maintained by the respondent. In several judgments, it has been held that consumption pattern of electricity alone cannot be the basis for allegation of clandestine clearance. The Commissioner (Appeals) has summed up the evidence available in case in para 5.14, which is worth reproducing as under:-

(i) The stock of finished goods was not found in excess;

(ii) No discrepancy in the stock of raw material was detected at the time of the visit of the Officers of DGAE;

(iii) On the sole basis of the spurt in electricity consumption during 1994-95 and 1995-96 in the absence of any other tangible evidences relating to raw material purchase, production, clearance etc., the appellant cannot be held to have indulged in clandestine manufacture and clearances as held by the Courts in innumerable case laws;

(iv) The case pertains to the period Aug.'94 to Aug.'96. More than a decade had already lapsed and it had already traversed up and down twice;

(v) Not even one co-noticees has responded to any of the Personal Hearing Notices; and

(vi) It has been held that not affording an opportunity to cross-examine vitiates the proceedings.

7. On going through the impugned order as well as the Order-in-Original and the submissions made by learned Authorised Representative, we find no grounds to interfere with the impugned order. The appeal filed by department is dismissed.

(Dictated and pronounced in open court)

(MADHU MOHAN DAMODHAR)
TECHNICAL MEMBER

Sulekha Beevi

(SULEKHA BEEVI C.S)
JUDICIAL MEMBER

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चेन्नै / Chennai

ksr
16-08-2016

Customs, Excise & Service Tax Appellate Tribunal