CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, CHENNAI

COURT HALL - I

Excise Appeal No.40432 of 2015

(Arising out of Order-in-Appeal 197/2014-CE dated 4.12.2014 passed by the Commissioner of Central Excise (Appeals), Salem)

M/s. Attur Steels Pvt. Ltd. **Appellant**
No. 1A, Therku Kadu
Narasingapuram Post
Attur – 636 108.

Vs.

Commissioner of GST & Central Excise **Respondent**
No. 1, Foulk's Compound
Anai Road, Salem – 636 001.

And

Excise Appeal No.40219 of 2015

(Arising out of Order-in-Appeal 196/2014-CE dated 12.11.2014 passed by the Commissioner of Central Excise (Appeals), Salem)

M/s. Raasi Traders **Appellant**
No. 5/1174, Dharmapuri Main Road
Opp. Police Station
Rappireddipati PO
Dharmapuri Dt. – 636 905.

Vs.

Commissioner of GST & Central Excise **Respondent**
No. 1, Foulk's Compound
Anai Road, Salem – 636 001.

APPEARANCE:

Shri S. Venkatachalam, Advocate for the Appellant
Shri Anoop Singh, Authorized Representative for the Respondent

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Hon'ble Shri P. Dinesha, Member (Judicial)

Final Order Nos.40990 & 40991/2024

Date of Hearing : 15.07.2024
Date of Decision: 30.07.2024

Per P. Dinesha,

It is the case of the Department that during search, upon gathering intelligence that the taxpayer was indulging in manufacture of CTD bars and TMT rods that were later on removed in clandestine manner, the employees of the Assessee firm who were found appears to be examined. The search team also found an amount of ₹7,47,450/- which was alleged to be not supported by invoices and accordingly, seized. Based on the statements of the employees present at that point of time and also after considering the entries allegedly found in the pocket notebook found during search, it was surmised that the said cash found was the sale proceeds of CTD bars and TMT rods by the taxpayer, which were clandestinely removed without payment of Central Excise duty. The investigation which appears to have proceeded further, however, did not find any incriminating documents other than the above, apparently found during search or the investigation thereafter.

2. It appears that as a follow-up of the investigation, search was conducted at the premises of the second appellant, wherein it is alleged that some incriminating documents were found. Thereafter statement of Sri Gunasekaran, partner of the second appellant was recorded who is alleged to have admitted the receipt of excess of TMT bars over and

above their invoice/s. However, the said statement is uncorroborated, as contended by the taxpayer, since the statement was obtained under duress/coercion; and apart from the said statement, no other corroborative evidence was found or seized during search.

3. With regard to the cash found in the premises of first appellant that was seized, it appears from the show cause notice that the proprietor of M/s. Nagaraja Agencies namely Sri Soundararajan is found to have claimed that he had given an amount of ₹7.5 lakhs to the employees of first appellant on 06.03.2012 as advance for the supply of steel rods, the supply having been effected by first appellant per invoice dated 29.3.2012 and the remaining quantity was supplied on 13.6.2012 for which the balance amount was also paid to first appellant on 04.7.2012.

4.1 Insofar as the second appellant is concerned, it is the case of the Department that the entries of receipt of goods made by Raasi Traders the second appellant, in their account notebook, it was claimed that they had received TMT bars / rods in excess of the Invoice raised/issued by ASL, which fact was also claimed to be supported by the statement of the partner Sri Gunasekaran.

4.2 It appears that *vide* letter dated 28.8.2012, the 2nd appellant – Raasi Traders appears to have clarified with regard to their earlier stand of receipt of goods in question in excess of the invoice raised. In fact, in its reply to Show Cause Notice, the 2nd appellant appears to have explained that the very book that was seized from their premises reflected the correct position, which was contrary to the stand of the department and that the officers had not recorded the actual state of affairs which was reflected in the book. The allegation of the department as to purchase of any material without bill appears to have been denied in *toto*; they also appear to have clarified that the invoice amount was paid by RTGS and the balance was paid by cheque and that no amount was paid by cash. They had further contended that the Mahazar [dated 14.03.2012] drawn did not even show that the TMT bars were actually, physically weighed, a look at the note book itself revealed that there was a serious mis-match as regards the closing stock as mentioned therein vis-à-vis Mahazar. They have also specifically mentioned about their denial of any materials being purchased, as alleged, without bill, in support of which their bank statements were also furnished.

5. It is the further case of the Department that from the account statement of 2nd appellant, they had made a payment in cheque of Rs. 4,50,028/- and Rs.15,925/- [totally Rs. 4,65,953/-] and hence, the

balance has been paid in cash for the alleged supply of excess quantity of TMT bars/rods without invoices.

6. Heard Sri S. Venkatachalam, ld. Advocate for the Appellants and Sri Anoop Singh, ld. Joint Commissioner, for the Revenue-Respondent. I have perused the Orders of both the lower authorities and I have also gone through the documents placed on record. I find that the facts are common in respect of these appeals and hence, the appeals could be disposed of by a common order. The only common issue that arises for my consideration is, "whether the Department has established the clandestine removal as alleged and upheld in the impugned order?"

6.1 I find that the cash found and seized from the 1st Appellant has been explained to be the advance received from M/s. Nagaraja Agencies, which is also supported by the statements of the employees as well as the proprietor of M/s. Nagaraja Agencies and hence, the said cash was not attributable to the alleged clandestine sale. In any case, the addition was made solely based on the statements of the employees which statements have been retracted on a later point of time. Thus, a reasonable belief that the said amount did not represent the sale proceeds of the clandestinely removed goods has to be drawn because no incriminating evidence was found during the search, and nor is there any supporting evidence to this effect.

7. With regard to the alleged discrepancy as regards the excess supply over and above the invoice to Raasi Traders, I find that the Department has not denied the contention of the 2nd appellant that in the book seized from Raasi Traders, name of the first appellant is not reflected, even in their letter dated 28.8.2012 they have clarified that they did not purchase any goods without invoice from the first appellant. The document seized from Raasi Traders does not contain or show the appellant's name as alleged by the Revenue and in any case, there is also no corroborative evidence to support the Revenue's case. The said letter is clearly a retraction to the earlier statement of the Partner and apart from this, there is absolutely no other evidence, much less any incriminating evidence placed on record, that was unearthed by the search team.

7.2 The cash seized is the accounted cash, the allegation that it was a part of sale proceeds of clandestine removal stands disproved. Hence, the addition made on the allegation of clandestine removal is without any basis. I find that the department has nowhere denied the facts as explained by the 2nd appellant that the document alleged to be seized from their premises did not show anywhere the name of the first appellant who is alleged to have supplied goods in excess. It also remains undisputed about the clarification offered by the 2nd appellant as regards the alleged excess stock found vis-à-vis the actuals found in their book and hence, the alleged excess stock was nothing to do with the 1st appellant.

8. In the light of the above, I am of the view that the department has not established clandestine removal or clandestine sale by the 1st appellant and nor has the department succeeded in corroborating the alleged excess supply to Raasi Traders to be of clandestinely sold goods. Hence, there was nothing on record to justify even the levy of penalties and interest and therefore, the interest charged on the appellants and the penalties imposed on them cannot sustain.

9. In the result, I set aside the impugned orders and allow the appeals with consequential benefits, if any, as per law.

Ordered accordingly.

(Order pronounced in open court on 30.07.2024)

(**P. DINESHA**)
Member (Judicial)

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