CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL NEW DELHI

PRINCIPAL BENCH,
COURT NO. III

Excise Appeal No. 51560 of 2018 (SM)

[Arising out of the Order-in-Appeal No. BHO-EXCUS-002-APP-420-17-18 dated 15/02/2018 passed by The Commissioner (Appeals), Central Excise, Customs and Service Tax, Raipur.]

M/s Rashmi Sponge Iron & Power Industries Ltd., **Appellant**
Plot No. 90, Siltara Industrial Area,
Phase – II, Siltara,
Raipur (Chhattisgarh).

VERSUS

Commissioner of Central Excise and Service Tax, **Respondent**
Central Excise Building,
Dhamtari Road, Tikrapara,
Raipur (Chhattisgarh) – 492 001.

WITH
Excise Appeal No. 51584 of 2018 (SM)

[Arising out of the Order-in-Appeal No. BHO-EXCUS-002-APP-421-17-18 dated 15/02/2018 passed by The Commissioner (Appeals), Central Excise, Customs and Service Tax, Raipur.]

Shri Manoj Agarwal, Director of M/s Rashmi Sponge Iron & Power Industries Ltd., **Appellant**
Plot No. 90, Siltara Industrial Area,
Phase – II, Siltara,
Raipur (Chhattisgarh).

VERSUS

Commissioner of Central Excise and Service Tax, **Respondent**
Central Excise Building,
Dhamtari Road, Tikrapara,
Raipur (Chhattisgarh) – 492 001.

<u>Appearance</u>

Shri Manish Saharan, Advocate – for the appellants.

Shri P. Juneja, Authorized Representative (DR) – for the Respondent.

CORAM :**HON'BLE SHRI ASHOK JINDAL, MEMBER (JUDICIAL)**

FINAL ORDER NO. 50099/2020

DATE OF HEARING : 10/01/2020.
DATE OF DECISION : 10/01/2020.

ASHOK JINDAL :-

The appellants are in appeal against the impugned order to demand duty alleging that appellants are engaged in the activity of clandestine removal of goods and to impose penalties.

2. The facts of the case are that an investigation was conducted at the end of one M/s Pankaj Ispat Ltd. (PIL), Raipur, wherein certain private records were taken. In those records, the ledger account shows certain receipt of goods from the appellant company and certain weighment slips were also found. On the basis of those documents and invoices issued by the appellant, it was alleged that sponge iroin of 452.450 M.T. and centre column of 0.900 M.T. has been cleared by the appellant to M/s PIL. The statement of Director of the appellant was also recorded wherein he has categorically stated we have not cleared any goods without invoice but on the basis of records of PIL, a show cause notice was issued to the appellant alleging that appellant is engaged in clandestine removal of goods without payment of duty, therefore, by way of show cause notice duty sought to be demanded alongwith interest and penalty on both the appellants was also proposed to be imposed. The matter was adjudicated, demand of duty was confirmed alongwith interest and penalty on both were imposed. Against the said order, the appellants are before me.

3. The learned Counsel for the appellant submits that case has been made out against the appellant on the basis of third party records and no investigation was carried out in the factory premises or records of the appellant to ascertain the fact that appellant are engaged in activity of clandestine removal of goods or not. Moreover, the records recovered from M/s PIL having the full details of transporter etc., but no investigation was conducted as to that extent to ascertain transportation of goods from the appellants to PIL. He also submitted that during the course of adjudication, it was prayed that the Director Shri Pankaj Agarwal of PIL to call for cross-examination, but Shri Pankaj Agarwal did not turned up, therefore, the statement made by Shri Pankaj Agarwal and the records recovered from his custody has no reliance as in terms of Section 9D of Central Excise Act, 1944 and as held by this Tribunal in the case of **Commissioner of Central Excise, Delhi – I versus Kuber Tobacco India Ltd.** reported in **2016 (338) E.L.T. 113 (Tri. – Del.)**. Therefore, the impugned order is to be set aside. He also prayed that the third party evidence cannot be relied upon. He also relied on the decision of this Tribunal in the case of **Sohna Woolen Mills Pvt. Ltd. versus Commissioner of Central Excise, Ludhiana** reported in **2016 (340) E.L.T. 613 (Tri. – Chan.)**.

4. On the other hand, learned Authorized Representative submitted that revenue's not relying on any third party evidence. In fact, there is a buyer – seller relationship between appellant and PIL and their documents has been relied upon. He also prayed that matter can be remanded for cross-examination of Shri Pankaj Agarwal.

5. Heard the parties and considered the submissions.

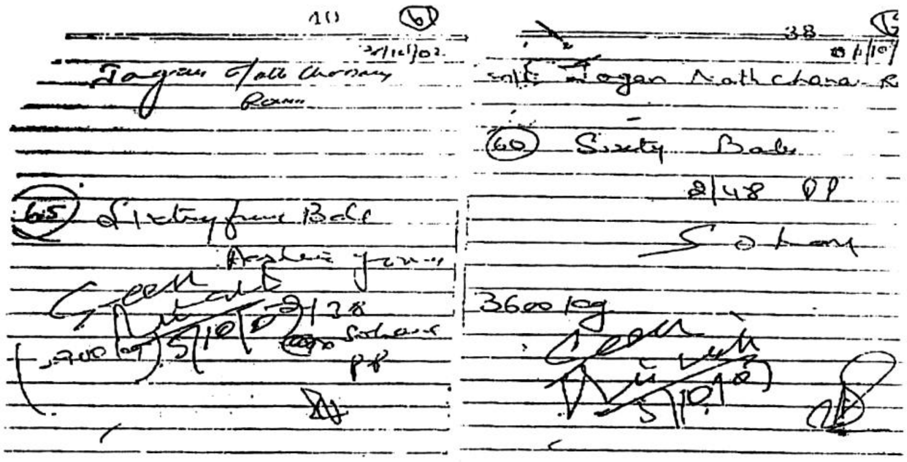
6. The contention of the learned Authorized Representative that there is no third party involved in this matter. The said

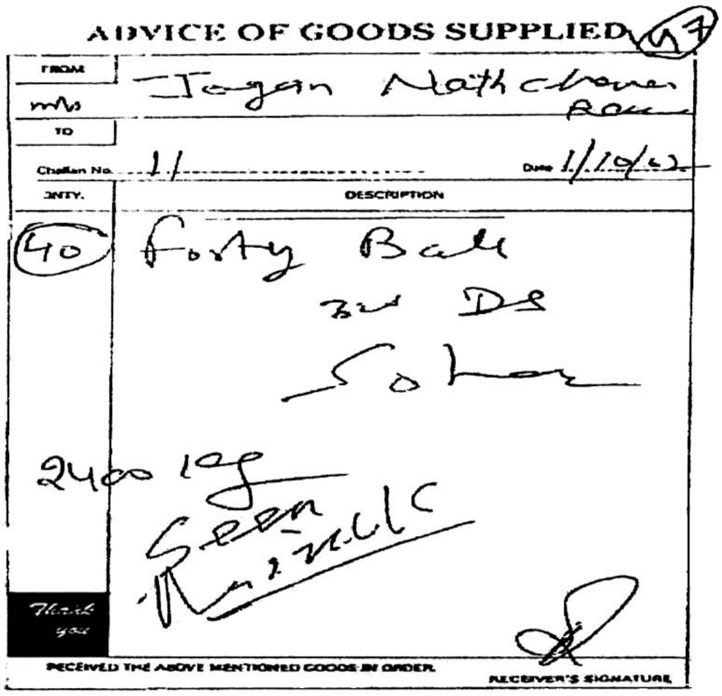
argument is not acceptable as Revenue itself is the litigant in this case who alleged that appellant is engaged in the activity of clandestine removal of goods. The said allegation is based on the record recovered from M/s PIL who is third party in this case. Strangely no show cause notice has been issued to PIL to impose penalty under Rule 26 of Central Excise Rules, 2002. Further, I find that Revenue's case is based on the records recovered from M/s PIL and the statement of Shri Pankaj Agarwal. In terms of Section 9D of Central Excise Act, 1944 the Revenue was required to produce Shri Pankaj Agarwal in their defence to testify the documents recovered and the statement made by Shri Pankaj Agarwal are true and correct and thereafter the appellant was required to be offered for cross-examination of Shri Pankaj Agarwal. As the said act has not been done by the Adjudicating Authority, therefore, in terms of Section 9D of the Act, the evidence relied upon by the Revenue have no value in the eyes of law.

7. In that circumstances the allegation of clandestine removal of goods is not sustainable against the appellant as held by this Tribunal in the case of **Kuber Tobacco India Ltd.** (supra).

8. Further, in the case of **Sohna Woolen Mills Pvt. Ltd.** (supra), this Tribunal observed as under :-

> "7. It is the case where the statement of one Shri Anil Kumar, proprietor of M/s. Jagan Nath Chanan Ram who stated that he is purchasing the goods against katcha slips/challans from the assessee. He has produced certain katcha slips/challans to the Revenue during the course of recording of the statement against summon. The said documents first time produced before me which has been seen by the learned Counsel of the assessee. Some of the samples of challans/katcha slips are extracted herein below :-




ADVICE OF GOODS SUPPLIED

FROM M/s Jagan Nath Chanan Ram

TO

Challan No. 11 Date 1/10/02

QNTY.	DESCRIPTION
40	Forty Bale
2400 kg	

RECEIVED THE ABOVE MENTIONED GOODS IN ORDER. RECEIVER'S SIGNATURE

8. On perusal of the katcha slips/challans, I find that these challans/katcha slips have been issued by M/s. Jagan Nath Chanan Ram and the name of receiver or to whom these have been issued has not been mentioned anywhere. In that circumstance, it cannot be said that the assessee has issued these katcha slips/challans unless and until the genuineness of these katcha slips/challans is verified. In the absence of corroborative evidence, these katcha slips/challan (which is a third party evidence) cannot be a good piece of evidence to allege against the assessee for clandestine removal of the goods. With regard to the statement of the assessee recorded during the course of investigation, I find that the statement has also been altered and the assessee in his statement repeatedly has said that he is selling the goods against the invoices on payment of duty. Merely making some deposit during the course of investigation on persuasion of the departmental officers does not corroborate that the assessee has cleared the goods clandestinely. In the absence of any corroborative evidence to allege clandestine removal of the goods against the assessee, the charge of

> clandestine removal of the goods is not sustainable. Moreover the Revenue has not implicated Shri Anil Kumar in the proceedings for his act of receiving the goods without payment of duty. It shows that the assessee has been dragged into the proceedings deliberately.
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> 9. As discussed above, the charge of clandestine removal is not sustainable against the assessee, therefore, the entire demand of duty along with interest and penalty are set aside. Further as the charge of clandestine removal has been set aside, therefore, no penalty is warranted on Shri Rajender Singh, the managing director of the assessee.

9. As Revenue has failed to produce any supporting evidence in their favour, therefore, the charge of clandestine removal is not sustainable. Accordingly, the impugned order deserves no merits. In result, the impugned order is set aside and appeals are allowed with consequential relief.

(Dictated and pronounced in open court)

(Ashok Jindal)
Member (Judicial)

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