CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH - COURT NO. II

Excise Appeal No. 50172 of 2016 (DB)

(Arising out of Order-in-Original No. 11/2015-16 dated 19-10-2015 passed by the Commissioner (Appeals), Central Excise, Delhi.)

M/s Yash Industries **Appellant**
C/O Proprietor Alok Aggarwal,
F-19/35, Sector-8, Rohini
New Delhi-110085

VERSUS

Commissioner, Central Excise **Respondent**
& Customs, CGST- Delhi-II
Central Revenue Building,
I.P. Estate,
New Delhi-110109.

APPEARANCE:

Ms. Surbhi Sinha, Advocate for the Appellant
Mr. O.P. Bisht, Authorised Representative for the Respondent

CORAM:

HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)
HON'BLE MR. RAJU, MEMBER (TECHNICAL)

FINAL ORDER NO. 50458 / 2022

Date of Hearing: 18.05.2022
Date of Decision: 18.05.2022

RAJU:

The impugned appeal has been filed against the order of Commissioner of Central Excise dated 19th October, 2015.

2. The facts relevant for the purpose are that the appellant M/s. Yash Industries, Shahdra, Delhi is the manufacturer of copper ingots and is a unit registered under Central Excise for the said purpose. It

was booked as follow up action to the 2 case against M/s. Hind Metal Industries, Mansarovar Park, Sahdra, Delhi, who were allegedly engaged in the evasion of Central Excise duty by way of clandestine manufacture and clearances of their finished products i.e. copper wire. In furtherance thereof the residential as well as the factory premises of Shri Alok Aggarwal, the Proprietor of appellant were got searched. Accordingly 55 copper ingots and wire alongwith certain records/ documents were seized. In addition some documents were recovered from the cabin of vehicle Tata 407 which was found packed/loaded, in the factory premises of the appellant. In furtherance thereof the impugned show cause Notice of February, 2015 was issued. Vide the order under challenge while adjudicating the said show cause notice, amount of Rs. 66,29,476/- was ordered as recoverable from the appellant alongwith the interest in view of Section 11A sub Section (4) of Central excise Act. In addition, a penalty of the equal amount was also imposed upon under Section 11AC of the Central Excise Act. However, an amount of Rs.30.00 Lakhs already deposited by the appellant was ordered to be appropriated.

3. Aggrieved of the said order, the appellant came before this Tribunal. The matter was disposed of at Tribunal upholding the Order-in-Original. The appellant again approached the Tribunal with a rectification of mistake application. Vide Miscellaneous Order No. 50944/2019 dated 11/12/2019, the order of Tribunal dated 26/2018 was recalled with observing as follows:

> “6. The impugned order has been challenged mainly on 3 grounds: (1) The statement of the proprietor of the appellant company being recorded under duress and

> coercion is not sufficient to prove the alleged clandestine removal unless and until there is sufficient corroboration. (2) The documents recovered from the cabin of the vehicle cannot be read against the appellant. (3) The demand is based on presumption/eye estimation for the weight of each ingot."

5. We have heard rival submissions, we find that the primary challenge made in the original proceedings as well as the proceedings under rectification of mistake is to the fact that statements of various witnesses have been relied without the said statement being tested for relevance under Section 9D of the Central Excise Act, 1944. In this case, it is seen that Shri Alok Agarwal in his statement recorded on 15/06/2012 has admitted the evasion. Other statements of Shri Alok Agarwal were recorded on 20/11/2012, 27/11/2012, 18/07/2013, 14/03/2013, 03/12/2013 and in all these statements he has admitted the evasion. He has also admitted the evasion *vide* his letter dated 04/04/2013. It is seen that while on the one hand, he was admitting in his various statements the liability, he submitted retractions dated 19/06/2012 against statement dated 15/06/2012, stating that the statement was recorded under duress as per dictates of the officers. It was argued that all these statements given by Shri Alok Agarwal are typed and he was not allowed to write in his own hand writing. It is also noticed that there are some documentary evidence recovered from the factory premises as well as from the residences.

6. In the above background, since there is some documentary evidence available on record and there are various statements which the appellant claims have been obtained under duress reliance on the

said statements cannot be placed in absence of the same being tested under Section 9D of the Central Excise Act, 1944.

7. In this background, we are left no option but to remand the matter to the original adjudicating authority to examine the relevance of the statements under Section 9D of the Central Excise Act and only thereafter, relied on the said statement. The impugned order is set aside and the matter is remanded to the original authority in above terms, keeping all issues open.

(operative portion already pronounced in open Court)

(Anil Choudhary)
Member(Judicial)

(Raju)
Member(Judicial)

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