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CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066
EXCISE APPEAL BRANCH

Appeal No. E/859 /2006-861 /2006 - EX[DB]   Date 01/01/2010

Assistant Registrar
C.E.S.T.A.T, New Delhi

To :
M/S NEHRU STEELS
233,ARYAAPURI, MUZAFFARNAGAR.

M/S NEHRU STEELS   Appellant

Vs

C.C.E. MEERUT I   Respondent

I am directed to transmit herewith a certified copy of **Final order No. 1404-1406/ 2009 EX[DB]** dated 29-12-09 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(Excise Appeal Branch)

Copy to :
1. Respondent
   C.C.E. MEERUT I
   EXCISE CHOWK, UNIVERSITY ROAD, MANGAL PANDEY NAGAR, MEERUT - 250005.
2. Adv. / Consult
   MR.C.HARISHANKAR
   46, BANK ENCLAVE,DELHI-110092
3. C.D.R
4. ~~J.C.D.R.~~
5. Bar association, CESTAT, New Delhi
6. Director Publications, Customs, Excise. I.P. Estate, New Delhi
7. M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi - 3
8. Commercial Laws of India Pvt Ltd. Post Bag No. 1033, No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
9. Raghuraman's 44-B, Regal Flat,Shipra Suncity, Indirapuram - 201010,Ghaziabad, DT, U.P.
10. M/s Manupatra Information Solutions Pvt Ltd. Excise & Customs Cases B-37, Sector - 1, Noida - 201301, Gautam Budh Nagar, (UP)
11. M/s. Deeparchie Publications, M-93, Marg, 46, Saket, New Delhi 110017
12. Taxindiaonline.com Pvt.Ltd, B-XI/8183,Vasant Kunj, New Delhi - 110070
13. Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh, New Delhi - 110026
14. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road,Ahmedabad-15
15. LAWCRUX Advisors Pvt Ltd, LAW House,1-8,Sector - 10, Faridabad 121003 (Haryana)
16. Office Copy
17. Guard file

Assistant Registrar
(Excise Appeal Branch)

18.SHRI ANUJ SWAROOP.
233,ARYAPURI, MUZAFFARNAGAR.

19.SHRI VAIBHAV BANSAL.
233,ARYAPURI, MUZAFFARNAGAR.

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
COURT NO.II

E/Appeal No.859 to 861/2006-Ex

(Arising out of order in appeal No.248-250/CE/MRT.I/2005 dated 6.12.2005 passed by the Commissioner of Central Excise (Appeals), Meerut)

1. M/s Nehru Steels
2. Shri Vibhav Bansal
3. Shri Anuj Swaroop

Appellant

Vs

CCE, Meerut

Respondent

Appeared for the Appellant : Shri S. Sunil Advocate
Appeared for the Respondent : Shri Mahesh Rastogi, SDR

Coram: **Hon'ble Mr. M. Veeraiyan, Technical Member**
Hon'ble Mr. D.N. Panda, Judicial Member

Date of Hearing: 8.12.09

Final Order No. 1404-1406 – /2009 – Ex

Per D.N. Panda:

The appellants being aggrieved by the order passed by the learned Commissioner (Appeals) on 6.12.2005, has come in appeal challenging the decision confirming the order of adjudication. Learned Commissioner (Appeals) found that there was no evidence before him as to the plea of inventory taken by the Investigating Authority to be irregular in the course of investigation. Accordingly, he did not disturb the adjudication on such count. Also on the aspect of Valuation of runner and risers claimed by assessee to be Rs.6,000/- per MT was found by him to be improper for which he held that to be Rs.9600/- per MT agreeing with learned Adjudicating Authority. Invoking of Rule 11 of Central Excise (Determination of Price of Excisable Goods) Rules, 2002 read with Section 4(1) of Central Excise Act, 1944 was not found to be faulted. Pleading of the appellant on both accounts was rejected by the learned Appellate Authority for no cogent evidence produced before him.

2. In the course of investigation, on the basis of outcome of the material gathered and examination of oral and documentary evidence gathered, the authority came to the conclusion that there was shortage of stock of runner and risers, SGCI and pig iron and that had resulted in evasion of duty. It was further opined by that authority that the appellant had cleared runner and risers without being documented. The charges made in the show cause notice gave rise to the following issues before the learned Adjudicating Authority for his decision:-

a) Whether Central Excise duty amounting to Rs.13,06,586/- on the shortage of 850.642 MT of Runners and Risers, Central Excise duty amounting to Rs.20,892/- on shortage of 212 number of SGCI inserts and Central Excise duty amounting to Rs.4,21,763/- on shortage of 268.215 MT of pig iron is demandable/recoverable from the party under Section 11-A(1) of the Central Excise Act, 1944;

b) Whether penalty under Rule 25 of the Central Excise Rules, 2002 read with Section 11-AC of the Central Excise Act, 1944 is imposable upon the party;

c) Whether penalty under Rule 13 of Cenvat Credit Rules, 2002 read with Section 11AC of the Central Excise Act, 1944 is imposable upon the party;

d) Whether penalty under Rule 26 of the Central Excise Rules, 2002 is imposable upon Shri Anuj Swaroop. Authorised signatory and Shri Vaibhav Bansal, partner of the party.

3. Learned Adjudicating Authority did not find any irregularity in stock taking by Investigating Agency since that was never challenged forth with either before that Authority or any other higher authority. Plea and evidence relating to shortage of SGCI was examined in para 4.2 of adjudication order and it was found that shortage of such existed. Shortage of runners and risers was examined by him in para 4.3 of the adjudication order. Such shortage was also established. While dealing with the shortage of such goods, the adjudicating authority looked the valuation aspect thereof. Comparable value of goods of M/s Garg Casting (India) Pvt Ltd and M/s Chaudhary Ingots Pvt Ltd were collected and that was exposed to the appellant for defence. The authority found that the case of the appellant was a fit case for comparison and appropriate rule was invoked for the purpose of valuation. Shortage of pig iron was dealt with in para 4.4 of the adjudication order. In respect of all the three items, the Adjudicating Authority noticed that the case was of a deliberate pilfer of goods causing evasion of duty. He therefore, held duty was realizable and penalty under Section 11AC of Central Excise Act, 1944 was also leviable.

4. So far the penalty on Shri Anuj Swaroop and Shri Vaibhav Bansal is concerned, learned Adjudicating Authority was also of the view that they were instrumental for the purpose of causing evasion.

5. When the fate of adjudication ended with levy of duty of Rs.17,49,241/- with equal amount of penalty under Section 11AC of Central Excise Act, 1944, followed by penalties of Rs.50,000/- each on Shri Anuj Swaroop and Shri Vaibhav Bansal, the appellant went in appeal before the learned first appellate authority. But that authority upon consideration of reasons stated in adjudication order and pleadings before him, as observed in para 4 of the appellate order, did not find any cogent reason or evidence to interfere with that order.

6. Learned Counsel Shri S. Sunil appearing on behalf of the appellants argues that the inventory taken is assailable for no proper stock taking made on the date of investigation. The date of investigation was 25.9.2003. Discrepancy in the stock taking was brought to notice of learned Adjudicating Authority in reply to show cause notice on 21.10.2004. He basically challenged that when the runners and risers were not there, the Department cannot adjudicate without proper figures being brought to record. So far as the valuation of runners and risers is concerned, his pleading is that the valuation of goods was according to the method of manufacture done by the appellants. So for as pig iron shortage is concerned, his submission is also that the department has not taken proper inventory for which the appellant has suffered. So also similar plea for SGCI. So far as penalty is concerned, his pleading is that there was no intentional evasion made nor shortage of goods caused deliberately. However, he pleads that raw material and finished goods being intimately connected with

each other the appellant cannot be harshly dealt with on the allegation of undervaluation.

7. Shri Mahesh Rastogi, learned SDR supports the order of the authorities below.

8. We have heard both sides carefully and made a thorough enquiry beginning from the show cause notice stage. The show cause notice clearly shows the manner how investigation was conducted beginning from the stage of stock taking. Inventory taken by investigation appear to be in proper order when the appellant has not come out bringing any cogent evidence to contradict the same from 26.9.03 i.e. the date following the date of investigation. One year thereafter, when reply to show cause notice was made on 21.10.04, the appellant for the first time, objected to stock taking. The appellant also failed to adduce any cogent evidence to show reconciliation of stock discrepancy pleaded. In absence of any evidence contrary to the concurrent finding of both authorities below, nothing can be interfered at this stage to hold in favour of appellant nor the order appealed is liable to be disturbed.

9. We have gone through the statement recorded by the investigating agency. That was considered as one of the basis of allegation in show cause notice. The authorities have brought out clearly that the authorized signatory in his statement admitted that they were selling the goods without bills. This fact is recorded in para 4 of the appellate order. Statement so recorded remains unrebutted till the matter ended in first appeal.

10. In the course of hearing, learned Counsel took us to the grounds of appeal appearing at page 72 of the appeal folder. The ground related to runners and risers which was before the learned first appellate authority. After carefully examining the ground, we are unable to appreciate the case of the appellant in absence of any evidence to establish that ground of appeal. Nothing has been pleaded with clean hands to show that the goods were not comparable goods for valuation. When the assessee has failed to establish its case, the quantity in respect of Runners and risers adopted by Authority below shall remain unchallenged for valuation. Even today, in the course of hearing, there is no evidence brought to our notice to appreciate that the manner of stock taking was wrong. Therefore, the inventory figure does not require to be disturbed. So far as the valuation criteria adopted for runners and risers, we do not find any material to intervene to the finding of learned Appellate Authority. Adoption of comparable value from the records of comparable case of M/s Gaur Casting (India) Pvt Ltd and M/s Chaudhary Ingots Pvt Ltd is nothing found to be baseless in absence of any evidence to hold otherwise. Finding of the learned adjudicating authority remained unrebutted in respect of valuation without leading evidence before the learned appellate authority. Therefore, valuation of risers and runners does not call for any interference.

11. Shortage of pig iron is established in absence of any cogent evidence to alter the finding of learned first appellate authority. So far as the SGCI is concerned, the authority below came to proper conclusion that such goods were sold without issuing invoices.

12. We are able to appreciate that the appellant has not come out with clean hands to prove its stand. Accordingly findings on stock taking as well as valuation made by authority below remain untouched by us. Duty demand is accordingly confirmed in respect of all the three items.

13. Since we confirmed the action of authority below as aforesaid, we have carefully examined penalty aspect. No evidence comes out to show that the stock discrepancy was not attributable to any malafide. In absence of any cogent evidence to prove innocence, we are unable to grant any concession in penalty. Tnerefore, penalty levied in adjudication is also confirmed.

14. So far as penalty on Shri Anuj Swaroop and Shri Vaibhav Bansal is concerned, learned appellate authority below did not grant any concession to them. However, when we go through the adjudication observations in respect of Shri Anuj Swaroop, the authorized signatory, we find no reason to agree with the learned Authority below for levy of high dose of penalty on him on the facts and circumstances of the case. Therefore, it would be proper that he should get reduction in penalty and that shall be reduced to Rs.20,000/-. So far as penalty on Shri Vaibhav Bansal is concerned, having confirmed penalty on the firm, as aforesaid, we do not consider it proper to penalize this partner separately and cumulatively. Therefore, he gets total concession on penalty imposed on him.

15. In view of our finding and observations made aforesaid, appeal of M/s Nehru Steels is dismissed and duty demanded as well as penalty and interest levied on that concern is confirmed.

But appeal in respect of Shri Vaibhav Bansal is allowed and appeal in respect of Shri Anuj Swaroop is partly allowed.

(Order dictated and pronounced in the open Court).

(M. Veeraiyan)
Technical Member

(D.N. Panda)
Judicial Member

MPS*