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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

Date 08/09/2009

Appeal No. E/2194/2005,2288/2005,2417/2006-2433/2006 - EX[DB]

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

To :
M/S NATIONAL CONDUIT PIPES
BHAWANIGARH ROAD, SAMANA
M/S NATIONAL CONDUIT PIPES

Appellant
Vs
Respondent

C.C.E. CHANDIGARH

I am directed to transmit herewith a certified copy of **Final order No.** 639-640/2009- EX[DB] dated 04-9-09 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(Excise Appeal Branch)

Copy to :
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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
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18. HON'BLE PRESIDENT
19. SH. SHAM LAL, PARTNER
M/S NATIONAL CONDUIT PIPES
BHAWANIGAH ROAD, SAMANA DISTT.PATIALA (NCP)

Assistant Registrar
(Excise Appeal Branch)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

West Block No.2, R.K.Puram, New Delhi

COURT-I

Date of hearing:2.7.2009
Date of pronouncement: 4-7-**2009**

Central Excise Appeal No.2194 of 2005

Arising out of the order in original No.25-32/CE/2005 dated 9.6.2005 passed by the Commissioner of Central Excise, Chandigarh.

Central Excise Appeal No.2288 of 2005

Arising out of the order in original No.25-32/CE/2005 dated 9.6.2005 passed by the Commissioner of Central Excise, Chandigarh.

For Approval and Signature:

Hon'ble Shri Justice R.M.S. Khandeparkar, President
Hon'ble Shri M. Veeraiyan, Member (Technical)

1	Whether Press Reporter may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	~~No~~ Yes
2	Whether it should be released under Rule 27 of CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	Yes
3	Whether their Lordships wish to see the fair copy of the Order?	Seen
4	Whether Order is to be circulated to the Departmental authorities?	Yes

M/s National Conduit Pipes .... Appellants
Sh. Sham Lal , Partner

Vs.

C.C.E., Chandigarh .... Respondent

Appearance:

Shri Kamaljeet Singh, Advocate for the appellants
Shri Virender Singh Chaudhary, Authorised Departmental Representative (SDR) for the Revenue

FINAL ORAL ORDER NO. 639-640/09-EX

Per M. Veeraiyan:

1. Appeal No. E/2194/05 is filed by M/s. National Conduit Pipes and Appeal No. E/2288/05 is by Shri Sham Lal, partner of National Conduit Pipes. Both these appeals arise out of same impugned order and involve common issues and , therefore being dealt with by this common order.

2. Heard both sides and perused the records.

3. Relevant facts in brief are as follows:

a) M/s. National Conduit Pipes, the appellant firm, is a manufacturer of ERW pipes falling under Chapter heading 7306.90. The officers of DGCEI undertook search operations on the appellant firm and connected group of companies and firms which are controlled by Sham Lal and Shri Ramesh Kumar, (both are brothers). On completion of investigations, show cause notices were issued proposing clubbing of clearances by seven firms/companies controlled by the said brothers and also alleging clandestine removal by M/s. National Conduit Pipes. Commissioner vide her order while dropping the demand on the issue of clubbing of clearances by various units. However, she held the allegation of clandestine removal ERW pipes during the period from 31-8-2000 to 18-10-2000 as proved and confirmed demand of Rs. 17,79,094/- against M/s. National Conduit Pipes along with interest and imposed equal penalty under 11AC and also imposed penalty of Rs. One lakh on Shri Shayam Lal, the other appellant, who is one of the partners of the appellant firm .

4. Learned Advocate for the appellants submits the following:

i) Demand has been confirmed on the basis of 62 invoices found entered in the Information Collection Centre of Punjab Government. Only in the case of 36 invoices, the signatures of appellant's truck drivers on the ST XX IVA form are available; in respect of other invoices the signatures of truck drivers are not available; no clearances were effected on those invoices by the appellant firm; the drivers appear to have taken away some pre-authenticated blank invoices; their drivers were transporting goods of various other traders and manufactures without the knowledge of truck owners namely, Sham Lal and Ramesh Kumar. These facts have been stated by the drivers on oath in their affidavits and the said affidavits have been disregarded by the Commissioner.

(ii) On the date of visit of the officers, on physical verification of the stock of raw material and finished goods only very minor discrepancies in the stock was noticed.

(iii) Not all consignees as mentioned in 62 invoices have been contacted and statement recorded; even a few who have been contacted have clearly stated that they have not received the consignments mentioned in the said invoices.

(iv) The clarification given by Shri Bimal Kumar, accountant of appellant firm , during cross examination, regarding the 'blank bility' has been ignored. The blank bilties are not really blank. The clarification was to the effect that though the weight and value of the goods were not mentioned in the bilitiy, the name of the consignor and consignee were being filled in by the truck union.

(v) None of the consignments said to have been cleared during the period from 31.8.2000 to 31.10.2000, have been intercepted by the range staff, whose office is situated hardly at a distance of 34 KMs from their factory and also by the preventive staff of the commissinerate.

(vi) The opinion of Shri M.K.Jain, a forensic expert that the invoices, and GRs could not have been prepared by Shri Shri Harish Shri Vinod Sharma, Shri Sanjay Babbar and Shri Yogesh Kumar has been disregarded.

(vii) Only in 36 documents truck numbers were mentioned.

(viii) Photocopies of the invoices relied upon by the department are not authenticated documents and the same are not admissible as held by the Hon'ble SC in the case of Yashoda vs. K Subaram reported in [2007 (212) ELT 458 (SC)].

(ix) The documents recovered from the third parties cannot be relied upon unless they are corroborated by other evidence as held in the case of 2003 (161) ELT 598 2003 (162) ELT 1028 2005 189 ELT 285.

5. Learned SDR made the following submissions:

(a) The invoices relied upon for demand of duty has been furnished by public authorities of Government of Punjab and therefore, the said documents are admissible as evidence and the reliable. Further printout of the invoices of M/s NCP for the period after 30.9.2000, were taken out from the computer (which was seized from the premises of M/s NCP on 15.11.2000 in the presence of Sh.Sham Lal on 28.6.2001/23.7.2001. On cross checking with the invoices for the corresponding periods found in statutory records, it was noticed that the computer printout of invoice no.237 dtd. 27.10.2000 shows Central Excise duty element as Rs.62907/- , whereas the same is accounted for Rs.4000/- (with Central Excise duty element as Rs.560/-) as cash sale on 30.10.2000 in their statutory records of M/s NCP.

(b) Perusal of invoice no.190 dated 24.9.2000 for 14.530 MT of pipes recorded at ICC when compared with the invoice which has been recorded in their records, it is found to be the invoice for 0.100 MT of pipes valued at Rs.1,635/- but the date , the time of preparation and the time of removal shown on both of these invoices are same.

c) Scrutiny of ledgers of different manufacturing units of Sh.Sham Lal and Sh. Ramesh Kumar revealed that they had shown accounted sale of ERW pipes to their various buyers (like M/s Golas Steel Tubes, Hyderabad, M/s Chandigarh Industrial Corporation, Chandigarh, M/s Anil Khadi Gramodyog Samity, Karnal, M/s R.K. Steel Industries, Kaithal) and shown receipt of payments by way of pay orders issued by Oriental Bank of Commerce, Samana; that such pay orders had been issued by OBC, Samana against cash deposited in this bank for which purpose pay in slips had been filled up by Sh.Bimal Kumar, one of the accountants for these different manufacturing units, who had deposited the cash in the bank in the name of their various buyers mentioned above.

d) Invoices received from ICCs and that accounted for in the statutory records of NCP are having same format , same serial No. and even the time of preparation of both the invoices is same and defence plea taken by the party that invoices received/obtained from ICCs are not belonging to them and these might have been prepared or manipulated by some other person to avail benefit of their clandestine removal, cannot be accepted because other corroborative evidences. Invoices received from ICCs relate only in respect of clearances by NCP is evident from booking of transport from the truck union on the same date. Even the copies of GRs/bilties belonging to these clandestine removal have been prepared by their employees as admitted by them. Further the truck numbers mentioned on these computer generated invoices and transport bilties were mainly of the trucks belonging to Shri Sham Lal and Shri Ramesh Kumar and their family members. It can be reasonably concluded that the transactions made against the invoices which were found to have been recorded with the ICCs were belonging to the unit M/s NCP and clearances so affected were manipulated without accounting the same in their statutory records. Further, time of removal on the invoices obtained from ICCs is the same as shown on the corresponding parallel invoices accounted for in the statutory records of NCP.

e) The plea that they did not have capacity to produce that much quantity held to have been clandestinely removed is not acceptable because figures and statistics provided with the reply have been arrived at by taking one shift of 8 hours for calculating the production , it is a fact that the unit can be run for more than 8 hours.

f) Taking into consideration all the factors, such as computer generated parallel invoices found with ICCs, preparation of GR/Bilties, by the employees and admitted by them, mentioning trucks belonging to Shri Sham Lal and Shri Ramesh Kumar of their family members etc. quantity alleged to had been cleared clandestinely could have been achieved by working more than 8 hours. There is nothing on records that unit had been working for 8 hours only.

6.1 We have carefully considered the submissions from both sides. The Department relies on certain information and documents collected the Information Collection Centres maintained by the Punjab Government agencies in respect of movement of goods into and out of Punjab for concluding that the appellant firm has clandestinely removed goods from their factory. Specifically, it has been held that consignments cleared from the appellant firm covered by 62 invoices valued Rs 1,28,98,430/= which are reflected in the data maintained by information centres are not found entered in the statutory records as clearances. The said data contained the name of appellant as the consignor, and the details like the truck numbers. Further, copies of computer generated invoices and copies of transport "bilties" and the connected ST XX IVA forms(some of which contained the signature of the drivers in the employment of the appellants) were also procured from the Information Collection Centres .

6.2. On behalf of the appellants, it was initially sought to be contended that the invoices do not belong to them; that some other manufacturers of identical products might have misused their names. Later, they have changed the stand. Now the stand taken is that the said invoices indeed were generated in their computers; that they were also pre authenticated by Shri Sham Lal ; the said invoices were pilfered by their drivers; the said drivers transported goods belonging to other manufacturers for making some extra money with out the knowledge of their employers; the drivers might have used the blank bilties given by the transport unions. In support of these submissions, the Affidavits of their seven drivers have been produced.

6.3 It is appropriate to observe the peculiar features of these affidavits. Affidavits of all the seven drivers are identically worded. The deponents' full addresses have not been furnished. The affidavits have been prepared using special adhesive stamps which appears to have not been signed and crossed. All the affidavits have been signed before the same notary public on the same day. One of the affidavits is reproduce below:

" **Harmesh Kumar S/s Shri Baru Ram R/o Samana do solemnly states as under:**

1. **That I am a driver by profession, I drive truck No.HR 37 8373 which is owned by Sh. Vivek Garg s/o Shri Sham Lal, Samana.**
2. **That on the said truck, I used to transport ERW pipes of M/s National Conduit Pipes, National Industries, R. S. Steels, national Steels, R.N. Steels Pipes Ltd. as well as various other goods of other manufacturers as per the directions of the truck owner to various destinations.**
3. **That at times , there used to be extra space in the truck or the truck used to ply empty as for example on the return journey. At such times, I often used to transport goods of other people without the knowledge of my employees and in this manner I used to supplement my income..**
4. **That many times, I also carry passengers in my truck without the knowledge of my employers.**
5. **That this practice of transporting goods and carrying passengers is very common among the truck drivers.**
6. **That in order to avoid detection by my employers, I used to take some blank printed signed computer invoices of M/s National Conduit Pipes, National Steels get those filled free outside (i.e. Computer shops) and submit those at the information collection centres of the Punjab Govt.**
7. **That I did not realise that my action could harm my employers & others. I regret my action."**

6.4 The affidavits of other deponents are identical except for the name , father's name and the place of residence.

6.5. The affidavits of the drivers, as already noted, are identically worded. All of them uniformly admit to transport of goods without bills from other parties with a view to earn extra money without the knowledge of their employers; they also submit that they have used blank printed signed computer invoices of National Conduct Pipes and got those filled free outside. They have not indicated crucial details such as who were the suppliers of such goods which were transported using those invoices; they have also not identified any of the consignees. All these affidavits appear to be solicited affidavits and may not deserve to be given credence especially in the light of other evidences.

6.6. The submission that the drivers were offered for cross examination and the opportunity was not availed by the Department is devoid of merits. The appellants were relying on the drivers as their witnesses. It is not their case that they wanted to examine them as their witnesses and the same was declined.

7.1. Regarding the objection raised before the original authority on the admissibility of photocopies as evidence, we find that the relief has been granted in respect of demand purely based on photo copies of documents when was no corroboration thereof. It is to be noted that the invoices and other documents relied upon for demand of duty has been furnished by public authorities of Government of Punjab. In view of the latter stand taken by the appellants that the said invoices indeed were generated in their computers; that they were also pre authenticated by Shri Sham Lal ; the said invoices were pilfered by their drivers and misused by them, their objection looses its significance. Confirmation of demand, in the present case, has been done after appreciating that there is corroborative evidence of clandestine removal. Invoices received from ICCs and that accounted for in the statutory records of NCP are having same format , same serial No. and even the time of preparation of both the invoices is same Under these circumstances, raising objection at the appellate stage is not permissible.

7.2 Several decisions have been quoted to support the contention that documents recovered from third parties cannot be relied upon. Those decisions have been rendered after appreciating the facts that the said documents were not corroborated by independent evidence. However, in the present case, confirmation of demand has been done after appreciating the corroborative evidence as discussed earlier.

7.3. It has been submitted that Shri M.K.Jain, gave opinion that the invoices, and GRs were not prepared by Shri Bimal Kumar, Shri Harish Sharma, Shri Vinod Sharma, Shri Sanjay Babbar and Shri Yogesh Kumar and the said opinion has been disregarded. The submission that the expert was offered for cross examination and the opportunity was not availed by the department is devoid of merits. The appellants were relying on the expert as their witnesses. It is not their case that they wanted to examine the expert as their witnesses and the same was declined.

8. It is noticed that the invoices recovered from the ICC and the invoices generated in the computers belonging to the appellants are identical in several respects. Invoices received from ICCs and that accounted for in the statutory records of NCP are having same format, same serial No. and even the time of preparation of both the invoices is same. While attempt was initially made by them saying that said invoices do not belong to them, latter it was admitted and was sought to be explained as if all the drivers had access to the computer section in the appellant's premises and that they misused the same for private profit. This appears to be an after-thought.

9. It is noticed that the invoices with to be identical numbers have been issued for small quantities for sale by cash. Under these circumstances, the need for engaging a lorry for transport of such a small quantity cannot be appreciated. The submission that the 7 of their drivers might have taken the vehicle with out their knowledge and used them for transport of others' goods with out the knowledge of the

officers of the appellant lacks credibility. The submission by the Secretary of the transport union that they issued more than one bilty in respect each lorry booked by National group of industries is significant. It can not be case their employees in the computer section, the drivers, the other manufacturers and their buyers all acted in conspiracy to misuse the name of the appellants.

10. It was pleaded that they could not have produced the quantity alleged to have been cleared clandestinely as the capacity of their unit on one shift of 8 hours was not sufficient to produce so much quantity. It was not the case of the department that they were working only one shift or that they were not capable of working beyond 8 hours. The Commissioner has rightly rejected this as "not acceptable because figures and statistics provided with the reply have been arrived at by taking one shift of 8 hours for calculating the production , it is a fact that the unit can be run for more than 8 hours aspect has been gone into especially in the light of the documents".

11. The appellants have followed unusual, circuitous and suspicious procedure of receiving money as sale proceeds . Scrutiny of ledgers of different manufacturing units of Sh.Sham Lal and Sh. Ramesh Kumar revealed that they had shown accounted sale of ERW pipes to their various buyers and shown receipt of payments by way of pay orders issued by Oriental Bank of Commerce, Samana; that such pay orders had been issued by OBC, Samana against cash deposited in this bank for which purpose pay in slips had been filled up by Sh.Bimal Kumar, one of the accountants for these different manufacturing units, who had deposited the cash in the bank in the name of their various buyers mentioned above.

12. From the above, the following emerge:

a) The invoices recovered from the ICC and the invoices generated in the computers belonging to the appellants are identical in several respects. Invoices received from ICCs and that accounted for in the statutory records of NCP are having same format , same serial No. and even the time of preparation of both the invoices is same. The invoices with identical numbers, but accounted in statutory records, have been found to for small quantities for sale by cash.

b) The invoices were admittedly pre authenticated by Shri Sham Lal. On the dates of invoices, the trucks were found booked from the Transport Union; blank bilities were received from the Transport Union.

c) The claim that the said invoices were pilfered by their drivers who transported the goods belonging to other manufacturers for making some extra money with out their knowledge and that the drivers might have used the blank bilties given by the transport unions is not acceptable. All the affidavits of drivers appear to be solicited affidavits and may not deserve to be given credence especially in the light of other evidences.

d) The appellants have followed unusual, circuitous and suspicious procedure of receiving money as sale proceeds.

13. In view of the above, the findings of the Commissioner that the clearances covered by the 62 invoices relate to clandestine removal by the appellant firm satisfy the yardstick of preponderance of probability and can not faulted. The demand has been rightly made by invoking extended period of limitation. Penalty has been rightly imposed. The role of Shri Sham Lal in looking after the entire activities including pre authentication the invoices has been brought out and therefore the penalty imposed on him is also fully justified.

14. Therefore, both the appeals deserve to be rejected and, accordingly, they are rejected.

(Justice R.M.S. Khandeparkar)
President

(M. Veeraiyan)
Member(Technical)

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