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CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066

SINGLE MEMBER APPEAL BRANCH

Appeal No. E/3403 3404 / 2006 & E / 1439 – 1440 / 2008 –SM[BR] Date 04/11/2009

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

To :
C.C.E.CHANDIGARH
PLOT NO 19,SECTOR 17-C,CHANDIGARH.

C.C.E.CHANDIGARH Appellant

Vs

M/S PATRAN PIPES(P) LTD. Respondent

I am directed to transmit herewith a certified copy of **Final order** No.1378 – 1381 / 2009 –SM[BR] dated 27.10.2009 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(SM Appeal Branch)

Copy to :

1. Respondent
   M/S PATRAN PIPES(P) LTD.
   PATRON.

   [2] M/S PARADISE STEEL ROLLING MILLS
   G.T. ROAD MUGHAL MAJRA MANDI GOBINDGARH.

   [3] SHRI MANOJ KUMA, MOTIA KHAN MANDI GOBINDGARH

   [4] SHRI ASHWANI KUMAR MOTIA KHAN MANDI GOBINDGARH.
2. Adv. / Consult SHRI K.K. ANAND ADV.
   A-5, BASMENT LAJPAT NAGAR-III,
   NEW DELHI-24.

3 S.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
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Assistant Registrar
(SM Appeal Branch)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

COURT NO. II

Excise Appeal No. 3403-3404 of 2006-SM & 1439-1440 of 2008-SM

(Arising out of common Order-in-Appeal No. 618/CE/CHD/06 dated 28.9.2006 passed by the Commissioner (Appeals), Central Excise, Chandigarh)

CCE, Chandigarh — Appellant

Vs.

M/s Patran Pipes (P) Ltd.
M/s Paradise Steel Rolling Mills
Shri Manoj Kumar
Shri Ashwani Kumar — Respondent

Appearance:

Appeared for Appellant : Shri Sunil Kumar, DR
Appeared for Respondent: Shri Hemant Bajaj, Advocate

Date of Hearing: 20.10.2009

CORAM: HON'BLE MR. D.N. PANDA, JUDICIAL MEMBER

Final Order No. 1378-1381/2009 SM (BR) dated............

Per D.N. Panda :

Revenue is in second round of litigation. Tribunal by order dated 2.2.2009 had sent the matter back to the ld. Appellate Authority to consider the issue involved afresh. While remanding the matter in para-3 of the order, the Tribunal observed that statement of Shri Ashwani Kumar and Shri Manoj Kumar were material which required a combined reading with the statement of Shri Ashwani Kumar and Shri Manoj Kumar. Only upon evaluation of the evidence recorded from them, ld. Appellate Authority was directed to dispose the Appeal upon remand. Ld. Appellate

Authority following the direction of the Tribunal by order dated 12.7.06 examined the issue and found that cross-examination of Shri Manohar Lal resulted in discarding of the earlier statement recorded from him. Ld. Commissioner (Appeals) found that cross-examination of Shri Manohar Lal on 14.5.03 did not support the evidence recorded from him on 4.1.02. He also noticed that statement of Shri Naresh Joshi having been retracted there was nothing against the assessee. Accordingly, he held that Appeals of the assessee were to be allowed.

2. Ld. DR Shri Sunil Kumar submits that there was a categorical admission of realisation of Rs.1,45,000/- by Shri Manohar Lal which was found from the premises of Shri Ashwani Kumar of M/s Ashwani and Manoj Kumar on 29.11.01. This money was collected by Shri Manohar Lal on behalf of Shri Ashwani Kumar from M/s Patran Pipes Pvt. Ltd. It was also the case of the Revenue that M/s Patran Pipes was supplied goods by M/s Paradise Steel Rolling Mills. Therefore Shri Sunil Kumar, ld. DR submits that statement of Shri Manohar Lal which was preliminarily recorded on 29.11.01 and available at page-77 of appeal folder read with the statement recorded from him on 4.1.02 available at page 67 of the said folder established that he was a vital link in between M/s Paradise Steel, M/s Ashwani and Manoj Kumar and M/s Patran Pipes.

3. Ld. Authority below found that Shri Manohar Lal was the Accountant of M/s Paradise Steel and he was quite aware of the deals in between M/s Paradise Steel and M/s Ashwani Manoj Kumar and M/s Patran Pipes. Even he had admitted the contents of the diary that was found in the course of investigation and question No. 3 was put as exhibited by statement dated 4.1.2002 from him he has also agreed about his involvement in the deal and also he has agreed to be an employee of M/s Paradise Steel. Therefore principal grievance of Revenue is that Rs.1,45,000/- collected by Shri Manohar Lal on behalf of Shri Ashwani Kumar and Shri Manohar Lal on account of sale made to M/s Patran Pipes by M/s Paradise Steel brings all the Appellant to the fold of law. Accordingly, cross-examination shall not provide any support to the Appellant to escape from the clutches of the law. When the statement recorded from Shri Naresh Joshi, one of the partners of M/s Paradise Steel established the vital link of Shri Manohar Lal with the firm and subsequently Shri Manohar Lal being found to have been engaged in the deal, Ld. Commissioner has not rightly decided the issue for which Revenue has been aggrieved.

4. Shri Sunil Kumar, ld. DR further submits that when there is retraction of Shri Naresh Joshi after a long lapse of time without retraction that shall not be valid following the decision of the Tribunal in the case of **CCE Vs. Alex Industries** reported in 2008 (230) ELT 73.

5. Ld. Counsel Shri Hemant Bajaj submits that there was no statement recorded from M/s Patran Pipes and when Shri Ashwani Kumar and Manohar Lal have explained source of Rs.1,45,000/- in reply to the show cause notice appearing at page 38 of the appeal folder, that was not demolished. Therefore no clandestine removal was proved by Revenue. Also there was no statement recorded from Shri Manoj Kumar.

6. Heard both sides and perused the records extensively.

7. There is no doubt that questionable conduct of M/s Paradise Steel has been brought to record. But, when Shri Naresh Joshi, partner of M/s Paradise Steel was examined on 7.1.02, there was no question put to him as to whether any sum was due to M/s Paradise Steel Rolling Mills from M/s Patran Pipes and whether any sum was recoverable through Shri Ashwani Kumar and Manoj Kumar. Similarly there was no question on the sum of Rs.1,45,000/- seized from the premises of Shri Ashwani Kumar and Shri Manoj Kumar. There is no statement at all recorded from Shri Manoj Kumar nor from M/s Patran Pipes to bring a live link about the deal of goods whether flowing from M/s Paradise Steel. Record does not reveal whether this amount of Rs.1,45,000/- was due from M/s Patran Pipes prior to date of the seizure of the cash i.e., 29.11.01. There is no contrary evidence of Revenue against sources of Rs.1,45,000/- explained by M/s Ashwani and Manoj Kumar brought out in Adjudication. Invoices if any issued by M/s

Paradise Steel in favour of M/s Patran Pipes showing sale of goods, if any, made by the former to the later are not in record. Of course, sale without invoices have been brought to record while controversy is on the recovery of cash of Rs.1,45,000/- from a third party. Cogent evidence showing that goods manufactured were not recorded in the books of M/s Paradise Steel have escaped payment of duty by clandestine removal has not come to record except mere suspicious and assumptions. Seizure of Rs.1,45,000/- being the only cause for the proceeding, in absence of evidence showing the seized money has direct nexus with clandestine removal there cannot be any assumption, presumption, surmise or suspicion to hold against the Appellants since suspicion is not substitute of proof. When Shri Naresh Joshi was never put to question as to the deal between M/s Patran Pipes and M/s Paradise Steel, nor also as to seizure of Rs.1,45,000/- nothing can be said that such sum was due to M/s Paradise Steel from M/s M/s Ashwani and Manoj Kumar. There cannot be any presumption or suspicion for an arbitrarily taxation without any cogent evidence being brought to record. Finding and decision of the ld. Commissioner (Appeals) can only be impeachable if the same is perverse or contrary to law. But no cogent evidence has been brought out by Revenue to reverse his decision. Accordingly, Revenue's Appeal has no legs to stand. While holding so, the reasoning given by the ld. Commissioner (Appeals) is not approved. He has baldly stated that cross examination did not establish the case of Revenue. It may be stated that cross-examination has demolished the case of Revenue but preponderance of probability was in favour of the Revenue. However, no cogent evidence having been brought to record to suggest deal of all the three parties with intimate connection or nexus of each other. This proves that the proceeding has been ill founded. Therefore the adjudication is unsustainable in the eyes of law for which Revenue's appeals are dismissed.

(Dictated & pronounced in open Court)

(D.N. PANDA)
JUDICIAL MEMBER

RM