

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/183 /2009 – SM[BR]

Date 20/09/2011

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

To :
M/S RADHIKA STEEL INDUSTRIES
G.T.ROAD, MANDIGOBINDGARH-147301
M/S RADHIKA STEEL INDUSTRIES

Appellant
Vs
Respondent

C.C.E. CHANDIGARH

dated 26.8.2011

I am directed to transmit herewith a certified copy of **Final order No. 618 /2011-SM[BR]**
passed by the Tribunal under **Section 35-C(1)of Central Excises Act, 1944**



Assistant Registrar
(SM Appeal Branch)

Copy to :

1. Respondent

C.C.E. CHANDIGARH
C.R. BUILDING, PLOT NO. 19,
SECTOR 17-C, CHANDIGARH
160017

2. Adv. / Consult

MR.SIDDHARTH JOSHI,
H.NO.11/47, NEHRU NAGAR, NEW DELHI-110065.

3. C.D.R

4. Bar association, CESTAT, New Delhi

5. Director Publications, Customs, Excise. I.P. Estate, New

6. M/s Centax Publications Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi -

7. Company Law Institute of India Pvt Ltd., No.2(Old No. 36), Vaithyaram Street, T. Nagar, Chennai -17

8. Taxmann Allied Service Pvt Ltd., 59/32, New Rohtak Road, New Delhi -

9. Easy Service Tax Online Dot Com Pvt.Ltd.407A, Iscon Mall, Above Star India Bazar, Satellite Road,
Ahmedabad-15

10. LAWCRUX Advisors Pvt Ltd, LAW House, 1-8, Sector - 10, Faridabad 121003 (Harvana)

11. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor, Vasant Arcade, Nelson Mandela Road,
Vasant Kunj, New Delhi - 110070

12. Office Copy

13. Guard file



Assistant Registrar
(SM Appeal Branch)

IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL,
WEST BLOCK NO.II, R.K. PURAM, NEW DELHI-110066.
BENCH-SM

Excise Appeal No.E/183/09-SM

[Arising out of Order-in-Appeal No.539-CE/CHD/2008 dated 07.11.2008 passed by the Commissioner (Appeals) Customs and Central Excise, Chandigarh].

M/s.Radhika Steel Industries

...Appellant

Vs.

CCE, Chandigarh

... Respondent

Present for the Appellant : Shri Nand Kishore, Advocate
Present for the Respondent: Shri.S.K. Panda, J.C.D.R.

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

Date of Hearing/Decision:26.08.2011

final

ORDER NO. 618/2011 SM **DATED:** 26/08/2011

PER: D.N.PANDA

Ld. Counsel submits that only basing on statement recorded from the appellant on 9.2.05 the case was built by Department holding that there was excess stock found and the excess stock was liable to confiscation subject to release on payment of redemption fine. They have also levied penalty of Rs.90,317/- under Rule 25 of Central Excise Rules, 2002. The statement recorded on 9.2.05 was retracted by the appellant

on 14.2.2005 when the retracted statement clearly shows that the appellant was co-operative to clarify the points in issue. Ld. Counsel also relies on that statement to point out that ^{Variation} in stock was attributable to misreporting by illiterate labourers to the Excise Officers. When there is retraction, the authorities should not have imposed redemption fine and penalty.

2. Ld. JCDR on the other hand states that the statement recorded on 9.2.2005 was under section 14 of Central Excise Act 1944 and that was recorded in accordance with law. When the statement was recorded in a fair manner in the presence of 3 officers, nothing can be doubted about the statement. Similarly the retraction statement could have brought out where the discrepancies were reported. Nothing was indicated. When the inventory was taken in the presence of public officers in absence of any cogent evidence to impeach their credibility, nothing can be doubted about the statement recorded. He relies on the decision of Surjeet Singh Chhabra vs. Union of India reported in 1997 (89) ELT 646(S.C.)

3. Heard both sides and perused records.

4. When the allegation of unfair recording of the statement is made in the retracted statement on 14.2.2005 the appellant should have brought ^{that} to the knowledge of the Officers

indicating name of the labourer who misreported the stock. Three public servants took inventory in the presence of proprietor. The proprietor himself was made to understand the implication of section 14 of Central Excise Act 1944. No statement was recorded under any threat or compulsion since that was not the truth coming out from retraction statement. When the appellant found it convenient that a retraction can be a piece of evidence in its defence, without looking to the veracity of the statement given on 9.2.2005, the retraction was made. The appellant has categorically being made aware that the statement recorded could be used against him. There is nothing to doubt that the statement recorded under section 14 of Central Excise Act 1944 ^{was} in the course of judicial proceeding.

5. The appellant when said about different types of stock the authorities should also agreed that there was no difference. But they disagreed with the excess stock of 31.331 MTs of the impugned goods. The appellant submitted that he had purchased input from gray market on payment of cash and that was not accounted for. This clearly establishes that the practice of purchase from gray market was within the conscious knowledge of appellant. It can be said that till detection is made by investigation, the truth never comes out since that is concealed in the mind of ^{author} of the statement.

This can be said following the decision of the Apex Court in the case of Collector of Customs, Madras and Others vs. D.Bhoormull reported in 1983 (13) ELT 1546 (S.C.). It was also stated by the appellant that the unaccounted purchase resulting in the finished goods were cleared without issuance of invoices. No reconciliation statement was given by the appellant for the stock discrepancy. Even on the date of retraction, the appellant did not invite the investigation to examine its record again. Had the illiterate labourer misrepresented the appellant, ^{the appellant} could have submitted them for examination under section 14 of Central Excise Act, 1944. The appellant merely made an allegation that the labourers ^{were} dictated by the officers for recording of the statement. The appellant would have gone to the higher forum to complain. No such complaint is on record. Nor also any FIR lodged. Therefore, the retraction is nothing but to ^{have} conception for defence only. When the appellant was aware that he had stated that purchases were made from gray market, he would have come forward with his books to show that the retracted statement is truthful because he has also stated in the retraction statement that there was no purchase of raw-material except that those recorded in the material register. He failed to demonstrate that the material purchased have undergone manufacture. When there was existence of the questionable goods in the premises of appellant, Revenue has

discharged its onus of proof transparently shifting the burden of proof to the assessee. This can be supported by the decision of Hon'ble High Court of Madras in Alagappa Cement Pvt. Ltd. vs. CEGAT, Chennai reported in 2010 (260) ELT 511 (Mad.).

6. When the retraction was the prime point to argue and that fails to stand, the appellant loses its appeal on merit.

7. The appellant's further argument was to reduce redemption fine. The appellant has failed to lead any evidence to show that it had not earned any higher amount of profit in respect of questionable goods. Further there was no evidence on record to show through income tax return about the gross profit earned on the similar type of goods, when value of goods was confiscated and that was ascertained to be Rs.7,37,845/-. Keeping in view that this was only detection during financial year and no other material shows about conduct of the appellant involved in clandestine removal in the same financial year i.e. 2004-2005, it would not be unjustified to reduce redemption fine to Rs.1,50,000/- which is nearly 20% of the value of the goods. It was also argued by the Id. Counsel that penalty of Rs.90,317/- would be harsh. The penalty was imposed under Rule 25 of Central Excise Rules 2002. The

quantification formula provided by that rule is Rs.10,000/- of the quantum not exceeding duty elements whichever is grater. It appears from the order that provisions of section 11AC is in existence. Therefore, levy of penalty is justified. But in so far as the quantum is concerned, the appellant having been imposed with redemtion fine and also impose of penalty being highest of the limitation prescribed and also looking to the solitary transaction on clandestine removal made during financial year, the penalty may be reduced to Rs.50,000/- from 90317/-. The reduction in redumtion fine and also penalty shall not be binding precedent in future since this relief ^{has} emanated on the peculiar facts and circumstances of the case.

8. In the result, appeal is partly allowed.

[Dictated & Pronounced in the open Court].

(D.N.PANDA)
JUDICIAL MEMBER

Anita