CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No.2, R. K. Puram, New Delhi, Court No. 1

Date of hearing/decision: 02.02.2017

Excise Appeal No. 961 of 2009
(Arising out of order-in-appeal No. 01(DK)CE/JPR-I/2009 dated 16.01.2009 passed by the Commissioner (Appeals) Central Excise, Jaipur).

M/s R.S. Industries (Rolling Mills) Limited Appellant

Vs.

CCE, Jaipur Respondent

Appearance:

Sh. Kumar Vikram, Advocate for the appellant
Sh. G. R.Singh, AR for the Revenue

Coram:

Hon'ble Mr. Justice (Dr.) Satish Chandra, President
Hon'ble Mr. Ashok K. Arya, Member (Technical)

Final Order No. 50673/ 2017

Per: **Justice (Dr.) Satish Chandra**:

The present appeal is filed by the appellant against order-in-appeal No. 01(DK)CE/JPR-I/2009 dated 16.01.2009 passed by the Commissioner (Appeals) Central Excise, Jaipur.

2. The period of dispute is from December, 2002 to October, 2003. The brief facts of the case are that the appellants are engaged in the manufacture of iron and steel bars, rods, angles, channel & flats falling under Chapter sub-heading 7214.90 & 7216.10 of the Central Excise Tariff Act, 1985. Apart from selling the goods manufactured by them at the factory gate, they were also transferring the goods to their depots from where the goods are to be

sold to the ultimate buyers. It is the case of the department that the appellant has not paid the duty on the differential duty of the goods i.e. at where the goods were cleared from the factory gate and those were ultimately sold from the depot. So, the differential duty was demanded. Being aggrieved, the appellant has filed the present appeal.

2. With this background, we heard Shri Kumar Vikram, ld. Counsel for the appellant and Sh. G.R. Singh, ld. AR for the Revenue and perused the written submission submitted by them.

3. The sole issue in the present appeal is that the appellant has not paid the duty on the value of the goods i.e. at which those are cleared from the factory gate but sold from the depot. In this regard, the Commissioner (Appeals) has observed as under:

> "Adjudicating authority has further observed that on examination of all the invoices issued by them from their depot it was noticed that they have written word 'paid' against the column of sales tax in the invoices issued from the depot and they have also claimed the abatement of sales tax & freight in their written reply but they not submitted any documentary evidence to the effect that they had actually paid the freight and sales tax to the concerned authorities. I find that the appellant has not disputed the fact of sale of goods in question at higher value as alleged in the show cause notice. They have also not disputed the payment of central excise duty of Rs.13,199/- on the differential value of the billets. Their dispute is on the point of disallowing of deduction from the assessable value on account of sales tax and freight shown to have been paid by them from the depot onward in as much as deduction of central excise duty has already been considered while demanding the differential duty. I find that the adjudicating authority has not denied the admissibility of the deductions on account of sales tax and freight paid depot to consignee's place but he has disallowed the deduction on the ground that the appellant could not submit any documentary evidence to the effect of payment of sales tax and freight against their claim. The same situation exists before me. I find that inspite of taking a long time since the personal hearing held on 22.07.08, the appellant could not submit the documentary evidence in respect of payment of sales tax and freight as claimed by them. They have simply submitted a

chart in their favour on 13.01.09 without support of any documentary evidence. **This indicates that they have no documentary evidence in their support that they had paid any sales tax and freight**. Accordingly, I hold that the deduction claimed by the appellant from the assessable value on account of sales tax and freight / loading charges is not allowable to them in absence of any documentary evidence which the appellant has failed to submit. Since the appellant has already paid central excise duty of Rs. 3,24,635/- (Rs. 2,33,738.00 + Rs. 77,698.00 + Rs. 13,199.00) they are required to pay the differential duty of Rs. 92,645/-".

4. From the above, it appears that the claim of the appellant was disallowed. During the course of argument, ld. Advocate submitted that the documentary evidence pertaining to the payment of sales tax and freight are available but could not be produced before the lower authority, due to inadvertent mistake on the part of the then Counsel.

5. In view of the above and in the interest of justice, we set-aside the impugned order and remand the matter to the Commissioner (Appeals), who shall decide the issue denovo after examining the genuineness of the documents in question. Additional evidence may be admitted, if necessary, as per law.

6. In the result, the appeal filed by the appellant is allowed by way of remand.

(Dictated and pronounced in the open Court).

(Ashok K. Arya)
Member (Technical)

(Justice (Dr.) Satish Chandra)
President

Pant