CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
WEST BLOCK NO.2, R.K.PURAM, NEW DELHI-110066

DIVISION BENCH
COURT NO.1

Appeal No. E/58362-58363/2013-Ex(DB)

[Arising out of the OIO No26/2013 dt.22.03.13 read with Addendum dated 7.6.2013 passed by the CCE, Jaipur-I)

Date of Hearing: 30.11.2016

Date of Decision:08.02.2017

M/s.Rathi TMT Saria Pvt.Ltd. **Appellant**
Shri Shrivats Rathi, Director

Vs.

CCE, Jaipur **Respondent**

Appearance

Shri Krishna Kant, Advocate for the appellant
Shri, G.R.Singh, AR for the respondent

CORAM:**Hon'ble Mr.Ashok Jindal, Member (Judicial)**
Hon'ble Mr.Ashok Arya, Member (Technical)

FINAL ORDER NO. 50784- 50785/2017

PER: ASHOK JINDAL

The appellants are in appeal against the impugned order demanding duty from the main appellant alongwith interest and imposing penalty on all the appellants.

2. The facts of the case are that on intelligence, the main appellant is indulging huge evasion of excise duty by way of suppression of production and clearance of the goods through various means. Shri Mahendra Kumar Kabra one of the director of the main appellant appeared before the Superintendent (Preventive)

on 8.12.2008 and tendered his statement that he is dummy director and ShriK.N.Tirpatahi looks after the whole of the work of the unit and He was forced to pre-authenticate the invoice books having pre-printed serial numbers and parallel invoice books were handed over to the despatch clerk and at the time of clearance of goods, dispatch the clerk put serial number on the invoice by franking machine after that the goods were cleared on these parallel invoices and a person on Motor Cycle used to accompany the vehicle till the goods reached Dharuhera. Thereafter, these invoices were brought back to the factory and were destroyed as per the direction of Shri K.N.Tirpathi. On the basis of the statement of Shri Mahendra Kumar Kabra on 11.12.2008, the physical stock verification of finished goods and raw material conducted in the factory premises of the appellant No.1 and panchnama was drawn. Thereafter the statements of various persons have been recorded and it was found that the appellant has shown excessive burning loss in production of M.S.bars manufactured by that way the appellant has cleared the goods clandestinely by evading the payment of duty on the said goods. It was also found that there was shortage of M.S.Bars as against RG-1 records, therefore, the appellant has cleared the goods without payment of duty. It was also alleged that the appellant has not received raw materials, therefore, the cenvat credit was not entitled to the appellant. Consequently, the same was not available to the appellant. It was also found that the appellants have undervalued the TMT bars under 160 invoices by showing old rejects and pitted steel but the goods of good quality by undervaluing the goods the appellant has evaded the payment of duty. In these sets of facts, a show cause notice was issued to the appellants to demand duty alongwith interest and to impose penalties on all the appellants. The matter was adjudicated, the demand of duty was confirmed alongwith interest and penalties on all the appellants were imposed. Aggrieved with the said order, the appellants are before us.

3. Heard the parties and considered the submissions.

4. In this case, the demand has been raised on the basis of the stock verification and various statements recorded during the course of investigation and thereafter on various grounds. All the grounds are dealt separately:

(a) A demand of Rs.4,24,70,378/- has been confirmed alleging that the appellant has shown the excess burning loss thereby they have evaded the duty on assumed excess production 10,249.730 MT of M.S.Bars.

3. We find that the appellant has contended that during the period July, 2006 to March, 2009, the appellants were filing their monthly returns alongwith the copies of RG 23A part-I and Part-II register showing the consumption and manufacture of M.S.Ingots from such raw material and the said monthly returns were accepted by the department. The demand is based on assumed excessive burning loss. We find that the appellant has produced various chartered engineer reports showing that the appellant was vigilant during the period with regard to the burning loss occurring during the period and chartered engineer report certifying that there was

burning loss on higher side. We also find that the adjudicating authority relied on the with regard to the burning loss of other units which were showing burning loss within the range of 2% to 2.5% whereas the appellant was showing the burning loss was 10% to 12%. The appellant has sought cross examination of the person of the company who was showing the lower burning loss but the same was not granted to the appellant. Further, chartered engineer reports produced by the appellant have not been considered by the adjudicating authority in positive prospective. In that circumstance, we find that the said demand cannot be confirmed against the appellants without affording the cross examination to the appellant and to give personal hearing with positive evidence. In that circumstance, the said demand is not sustainable without giving fair opportunity to the appellant to present their case. Therefore, the matter needs re-examination by the adjudicating authority on this issue.

(b) A demand of Rs.83,57,897/- has been confirmed on account of shortage of M.s.Bars weighing 1932.05 MT found short as against RG-1 register showing 2928.725 MT of M.S.Bars as against actual stock only 9936 MT.

4. The contention of the appellant is that with regard to this allegation is that the proceedings were started at 3 pm and closed at 11 pm. During such short span of time huge quantity of stock cannot be weighed physically. The weighment has been done only on eye estimation basis and the cross examination of panch witnesses were not granted.

5 We find that to allege shortage of goods it is to be ascertained on the basis of physical verification of the stock and whether the goods have been physically weighed or verified or not, the cross examination of the panch witnesses is required which has not been granted to the appellant. Accordingly, the impugned demand is not sustainable as the cross examination of panch witnesses is required, therefore, the matter needs consideration at the end of the adjudicating authority.

(c) Denial of credit of Rs.24,74,672/- on the allegation of shortage of 714.48 MT of MS ingots.

6. For this allegation, the appellant has contended that such huge quantity of MS ingots cannot be weighed during short span of time. To find out the veracity of the allegation, the cross examination of panch witnesses is required, in that circumstance, it would be in the interest of justice to grant cross examination of the panch witnesses to the appellant. The matter needs examination at the end of the adjudicating authority.

(d) The demand of Rs.35,72,980/- on the allegation of undervaluation by showing that the goods were the old rejects and pitted steel.

7. It is the contention of the appellant that due to closure of the factory, the appellant has lost their reputation. Due to competition and the goods remained lying in open stock yard get rusted and become inferior due to closure of the factory, therefore, the goods were of deteriorated quality which were cleared at lower price.

8. We find that to ascertain the fact whether the buyers have purchased the goods of inferior quality/deteriorated quality, the cross examination of the buyers is required to prove the allegation of undervaluation which was not granted by the adjudicating authority. Therefore, this also needs examination at the end of the adjudicating authority.

(e) A demand of Rs.5,92,419/- has sought to be confirmed on the basis of parallel invoices.

9. We find that the said demand has not been contested by the appellant and the same has been supported by the statement of the director of the company. As the appellant has also not contested the said demand with corroborative evidence, in that circumstance, the demand of Rs.5,92,419/- is confirmed alongwith interest and corresponding penalties on both appellants are confirmed.

10. As discussed above, the following order is passed:

(a) a demand of Rs.5,92,419/- is confirmed alongwith interest and equivalent penalty is also imposed against M/s.Rathi TMT Saria Pvt.ltd. and a penalty on Shri Shrivats Rathi is also confirmed under Rule 26 of the Central Excise Rules, 2002.

11 The adjudicating authority shall determine the quantum of penalty in remand proceeding on Shri Shrivats Rathi for the demand confirmed in para (a) above.

12. For rest of the demands, the impugned order is set aside and the matter is remanded back to the adjudicating authority to re-adjudicate the matter after affording the cross examination of the

witnesses sought by the appellants. All the other issues are kept open.

13. The appeals are disposed of by way of remand.

(Pronounced in the open court on 08.02.2017)

(Ashok Arya)
Member (Technical)

(Ashok Jindal)
Member (Judicial)

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