

**IN THE CUSTOMS, EXCISE AND SERVICE TAX
APPELLATE TRIBUNAL, NEW DELHI
PRINCIPAL BENCH, COURT NO. IV**

Excise Appeal No. 1131 /2007

[Arising out of Order-In-Appeal No. 31/Commr (Adj)/ RPR/2006 dated 08.3.2006, passed by Commissioner of Customs & Central Excise (Adjn) Raipur (CG)]

**Commissioner of Central Excise
Raipur**

Appellants

Vs.

**M/s. Durga Engineering &
Foundary Works**

Respondent

Appearance:

Shri G R Singh, DR for the Appellants
None for the Respondent

CORAM:

**Hon'ble Ms Archana Wadhwa, Member (Judicial)
Hon'ble Mr. B Ravichandran, Member (Technical)**

Date of Hearing/ Decision: 14.02.2017

FINAL ORDER NO . 51845 /2017

Per Archana Wadhwa :

Being aggrieved with the order passed by Commissioner, Revenue has filed the present appeal. We have heard Shri G R Singh, learned DR appearing for the Revenue. Nobody appeared for the respondent.

2. After going through the impugned order, we find that the respondents are engaged in the manufacture of various hot rolled of iron and steel falling under Chapter 72 of the Central Excise Tariff Act, 1985. Their factory was visited by the officers on 21.9.2001 to conduct various checks and verifications. The stock of the inputs as also of the final products was undertaken and some shortages and excesses were found. In the present case, we are not concerned with the same.

3. Statement of various persons were also recorded during the course of search.

4. In addition, the dharm kanta located nearby the factory was also put to search and as per the weighment slips maintained the by the said dharm kanta, officers entertained a view that the appellant had been indulging in clandestine clearance of their final product. On the above basis, the proceedings were initiated against the appellants for confirmation of demand on the finding of clandestine removal as also for imposition of penalties.

5. The Commissioner while adjudicating the case confirmed the demand of Rs. 1,98,921.00 on the ground that as per the loose chits /papers recovered from the appellants factory premises read with weighment slips, the clandestine manufacture and clearances of their final product is proved, inasmuch as the loose chits contained all the details of description of the goods, quantity removed, date of removal,

vehicle number and name of consignee etc. However, he dropped the demand of Rs. 58,14,587.00 on the ground that the same is based solely on the entries made in the weighment register of dharm kanta, which entries even do not establish that the trucks weighted in the said dharm kanta were loaded with iron and steel articles. As such, by referring to and relying upon various decisions of the Tribunal, he set aside the proposal to confirm the demand. He also dropped the demand of Rs.5,51,460.00 by observing that there is virtually no evidence on record to show that the truck which cleared the goods manufactured by the appellant were loaded with the excess loads then what was reflected in the invoices. For better appreciation, the relevant paragraph from the impugned order is reproduced herein as under:

4.7 The show cause notice has proposed recovery of duty amounting to Rs.58,14,587.00 alleging clandestine removal of 3,202,650 MT of finished goods without payment of duty during the year 2000-2001 and 2001-2002 through trucks no. MP24C1534 and MP24C0851 which belonged to the party no. 1. The party have stated that the said trucks were given to the driver on contract basis for which they received a payment of Rs. 13,000.00 to Rs.20,000.00 per month. They have also contended that the weighment register of M/s. Rukhmani Dharam Kanta does not show the description of the goods and name of the persons who got the same weighed and claimed that the demand made in the show cause notice is not sustainable only on the basis of entries of truck nos. in the

weighment register. They also contended that for manufacture and clearance of such a large quantity of goods (3,202.650 MTS) there was an additional requirement of at least 4,000 MT of raw material and additional supply of electricity whereas no such facts have been brought out by the department as evidence. They further contended that they had no additional capability to manufacture so much quantity of goods besides the production already recorded in their accounts and returns. It is observed that the aforesaid demand has been made solely on the basis of entries of weighment of aforesaid trucks in the weighment register of Rukmani Dharam Kanta. The said weighment register does not contain description of the goods and the persons who got the same weighed. Therefore, it is not established that the said entries pertain to iron and steel products. The investigation has not brought any evidence to prove that the said trucks transported steel material from the factory of party no. 1. Further, the investigators has not made any effort to locate the consignees of the alleged goods and payments received by the party in respect of the said goods. Therefore the allegation is solely based on insufficient entries of weighment register. They have also failed to bring on record any evidence relating to the clandestine receipt of the raw material for the manufacture of the said goods and also the source of the supply of additional electricity required for the manufacture of aforesaid goods. It is further observed from the DIC registration No. 325/DIC/DRG/SSI/83/97 dated 26.09.83 issued to the party no. 1 that they had annual manufacturing capacity of 1,450 MTs of steel material. They have already recorded production of 1,948.389 MTs and 1,877.208 MTs of finished goods during 2000-2001 and 2001-2202. There is no evidence on record to

show that the party had expanded their manufacturing capacity by 1600 MTs a year. The allegation of suppression of production is therefore not supported by the capacity of production of the party as well. In absence of any such corroborative evidence, entries of the trucks available in the weighment register of Rukhmani Dharam Kanta cannot be a conclusive evidence to establish suppression of production and clandestine removal of the excisable goods. The entries made in the weighment register may create doubt but it cannot take place of evidence. It is observed that the allegation of suppression of production and clandestine removal is a serious allegation and it has to be established by the investigation by affirmative and cogent evidence. CESTAT in the case of Sober Plastic Pvt. Ltd. vs. CCE [2002 (139) ELT 562(T)] has held that demand based on weighment slips, slips recovered from Dharamkanta etc. relied upon for raising demand not verified with reference to transactions is not sustainable. Further, it is settled position of law that proof and evidence of purchase of raw materials and sell of final product clandestinely is necessary in to establish the allegation of suppression of production and clandestine removal of goods and that the allegation are to be proved with affirmative evidences. CEGAT in case of Emmtex Synthetics Ltd. vs. CCE [2003 (151) ELT 170 (Tri)] has held that the charge of clandestine removal has to be established by the revenue by adducing tangible, convincing and cogent evidences, CESTAT in the case of Esvee Polymers (P) Ltd. vs. CCE [2004 (165) ELT 291 (Tri)] dealt with a case of alleged clandestine production and clandestine removal. The case was based on some private slips. The CESTAT observed that the mere slips or statement are not sufficient for confirmation of demand and allegation of

clandestine removal. Evidence in the form of receipt of raw material, shortages thereof excess use of electricity excess / shortage of inputs in stock, flow back of funds, purchase of final products by parties alleging receipt and removal of goods etc. is necessary. CESTAT in the case of CCE vs. Supreme Fire Works factory [2004 (163) ELT 510 (Tri)] dealt with the allegation of clandestine manufacture and removal and observed that mere suspicion can not take place of proof. Proof and evidences of purchase of raw materials, sale of final goods clandestinely is necessary. The allegations are not sustainable in absence of evidences. CESTAT in case of CCE vs. Shree Narottam Udyog (P) Ltd. [2004 (158) ELT 40 (Tri)] has dealt with the allegation of clandestine manufacture and removal of goods and held that settled law is that the charge of clandestine removal being a serious charge required to be proved beyond doubt on the basis of affirmative evidences. CESTAT in case of Jagatpal Premchand Ltd. vs. CCE [2004 (178) ELT 792 (Tri)] held that it is settled law whenever charge of clandestine removal made revenue has to prove assessee procured all raw materials necessary for manufacture of final product. The allegations are not sustainable if no investigation conducted by the revenue in respect of raw material essential for production of final goods and no evidence regarding removal of such final product brought on record by revenue. Similar view has been taken by the CEGAT in several other cases such as Jangra Engg. Works vs. CCE [2004 (177) ELT 364 (Tri)], Premium Moulding & pressing Pvt. Ltd. vs. CCE [2004 (177) ELT 904 (Tri)], Vakharia Traders vs. CCE [2004 (173) ELT 287 (Tri)] Nutech Polymers Ltd. vs. CCE Jaipur [2004 (173) ELT 385 (Tri)], CCE vs. Sumangla Steels [2004 (175) ELT 634 (Tri)], CCE vs. Sangamitra Cotton Mills [2004

(163) ELT 472 (Tri)], CCE vs. Velavan Spinning Mills [2004 (167) ELT 91 (Tri)]. The ratio of these decisions is applicable in the instant case. Since the investigation has failed to adduce evidences to establish suppression of production and clandestine removal of the goods as discussed above and failed to discharge the onus to prove the allegations, the allegations are not sustainable. In view of the above discussions, the allegation of clandestine removal of 3202.650 MTs of finished goods is not established. Hence, the proposed demand of Rs.58,14,587.00 is liable to be dropped for lack of evidences.

4.8 Recovery of Central Excise duty amounting to Rs.5,51,460.00 has been proposed on 294.233 MT of finished goods said to have been removed clandestinely by showing a lesser quantity in the invoice than the actual quantity of removal. The said allegation has been contested by the party on the grounds that many times, the buyers have been using the same truck for loading their goods from more than one factory, therefore, the weight of the goods mentioned in the weighment register against the same truck cannot be considered to have been removed from the factory premises of the party no. 1. I find that demand has been raised on the grounds that a single vehicle has been weighed more than once on the weigh bridge. In this context, I have examined the contentions of the party that some times as per requirement of the customers, different description of the goods are loaded in a single truck from different factories and accordingly, the weighment of the vehicle is also done. Practically, I agree with the party because in case a customer desires more than one variety of the goods, then it is not possible for a manufacturer to supply all varieties if not manufactured by him. In that case, the customer will definitely search for another manufacturer who is engaged in

the manufacture of goods desired by him and accordingly, the vehicle will move to the second manufacturer for loading of the other description of the goods and so on. Therefore, merely for the repeated weighment of the same vehicle it cannot be concluded that the party No. 1 has issued invoices for a lesser quantity of the goods. Further, the investigations have also not adduced any substantive evidence like receipt of excess quantity of goods by the consignee as the details of consignee was available in the invoice, receipt of payment for more quantity of the goods by the party from the buyers. In the absence of any such evidence, the allegation of removal of more goods by showing lesser quantity in invoice in respect of demand of Rs.5,51,460.00 is not established with affirmative and cogent evidences as mentioned above and the same is liable to be dropped.”

6. Revenue’s only grievance against the said order is based upon some weighment slips of the Dharma kanta. The adjudicating authority has confirmed the demand of Rs. 1,98,921/- whereas the same weighment slips has not been found to be sufficient evidence by him for the purpose of other demands. As such, the contention of the learned DR is that the order is self contradictory.

7. We have gone through the said order. We find that the demand confirmed by the adjudicating authority is not solely based upon weighment slips or weighment register of the dharma kanta. All the weighment slips have been taken as a corroborative evidence by the adjudicating authority, the loose chits/ papers which stand recovered from the appellants premises and wherein all the details have been

given. As such, he has not confirmed the demand exclusively based on weighment slips.

8. On the other hand, weighment slips have been found to be not sufficient evidence to confirm the balance demand inasmuch as there is no corroboration to the same. Infact he has observed that there is nothing on record to show that the trucks were loaded with the iron and steel items, which is the appellants final product. In such a scenario, we find no infirmity in the impugned order passed by Commissioner requiring any interference in the same. No merits are found in the Revenue's stand. Accordingly, Revenue's appeal is rejected.

(Dictated and pronounced in the open court)

(Archana Wadhwa)
Member(Judicial)

(B Ravichandran)
Member(Technical)

ss