CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

West Block No.2, R.K.Puram, New Delhi

COURT-IV

Date of hearing: 27.2.2017
Date of pronouncement:06.03.2017

Central Excise Appeal No.421, 422 of 2012

Arising out of the Order-in-original No.08/D-I/2011 dated 30.11.2011 passed by the Commissioner, Central Excise, Delhi I.

M/s P.I. Square Cables Pvt. Ltd. … Appellants
R.K. Sachdeva,Director

Vs.

C.C.E., Delhi I .. Respondent

Appearance:

Present Ms. Seema Jain, Advocate for the appellant
Present Shri R.K. Manjhi, A.R. for the Respondent/Revenue

Coram: Hon'ble Mr. M.V. Ravindran, Member (Judicial)
Hon'ble Mr. V. Padmanabhan, Member (Technical)

Final Order No. 52121-52122/2017

Per M.V. Ravindran:

These two appeals are directed against the Order-in-Original No. 08/D-I/2011 dated 30.11.2011 passed by the Commissioner, Central Excise, Delhi I.

2. The relevant facts that arise for consideration are that the factory premises of M/s P.I. Square Cables Pvt. Ltd. (herein after referred to as the main appellant) was visited by the Central Excise Officers on 16.12.2010 and some loose sheets of balance sheets for the years 2007-08 and 2008-09 were recovered as also private records of the clandestinely removed goods were found. After recording statements of various persons, a show cause notice was issued to the main appellant as well as the individual directing them to show cause as to why the demand of duty be not calculated based upon the loose sheets of private records as found for the period 2006-07 to

16.12.2010 be not demanded and also duty demand for the period 2006-07 to 2008-09 based on the loose balance sheets be not demanded. The entire show cause notice proceeded on the basis of goods were clandestinely removed as recorded in the private note book, and the difference between the sales turnover indicated in the loose balance sheet papers and the actual balance sheet filed by the main appellant to the authorities.The show cause notice also directed the main appellant and another to show cause as to why the penalty be not imposed on them. The main appellant as well as the individual defended the allegations in the show cause notice stating that loose sheets of the balance sheet were not part of the balance sheet, which were submitted to the authorities and they were made for the purpose of securing more loans and also to show that their industry was healthy. As regards confiscation of the goods lying in the factory premises in the finished goods, they were still to be tested and were specifically manufactured for supply to government agenices and the orders of the private parties were oral. It was also their defence that the finished goods were entered into statutory records only after undergoing testing and found OK. The adjudicating authority after following due process of law did not agree with the contention raised by the appellant before him and confirmed the demand along with interest and also imposed penalties.

3. Ld. Counsel appearing for the appellants draws our attention to show cause notice and Order-in-Original. She also draws our attention to the specimen sheets of the note book called as private records seized by the authorities and also to the three pages of balance sheet which were recovered during visit. She would submit that the appellant has accepted the fact that private sales register is indicting sales of clandestinely removed finished goods and to that extent she accepted the duty liability and interest thereof. As regards the demand based upon the balance sheet figure, she draws our attention to said balance sheet and submit that balance sheet though indicating higher sales for the year 2007-08 and 2008-09 they were

for the purpose of getting better loans and to show to the creditor of the company they were in good financial position. She also draws our attention to the statement of the Director, one of the appellant before us wherein he was specifically asked as to explain sales figure has to be considered from the balance sheet which were in favour of loose sheets, Shri R.K. Sachdeva specifically stated that these loose sheets are only for securing favourable orders from the customers to show health of the industry to the creditor. It is her submission that there is no evidence to show that there was clandestine removal based upon the balance sheet figure.

4. Ld. A.R. for the Revenue on the other hand draws our attention to the finding recorded by the adjudicating authority. It is his submission that there is no justification to claim that the copies of the balance sheet were prepared for the purpose of availing more benefits from the bank and also to show that their industry is doing well and to impress their customers. It is his submission that no person leave alone as business person would prepare the balance sheet which are different in showing different figures for the purpose of impressing their customers. He would submit that in the absence of any acceptable explanation, the confirmation of the demand on the differential sales turnover between the actual balance sheet submitted to the authorities and to the loose sheets recovered from the appellant factory is liable to be confirmed. As regards the confiscation of the goods, it is his submission that the appellant is habituated in clearing the goods clandestinely and hence any finished goods found unaccounted needs to be confiscated and redemption fine has been correctly imposed .As regards the demand of the duty on clandestinely removed goods based upon the entries made in the private note book, it has been confirmed by the adjudicating authority based upon the statement of the Managing Director.

5. We have considered the submissions made by both sides and perused the record.

6. The first issue that needs to be addressed in these appeals is regarding confirmation of the demand of the duty, interest thereof and equivalent amount of penalty on the appellant for the goods clandestinely removed goods by recording the same in the private note book which was maintained by the responsible officer of the main appellant. It is undisputed that the said note book was recovered from the appellant's premises and the Director was confronted with the said note book and it was admitted as being maintained for clandestinely removed goods. We have no hesitation to uphold the demand of duty on the goods clandestinely removal as recorded in the private note book as the appellant has no explanation for such clandestinely removed goods nor are they able to show that the duty liability has been discharged. Accordingly, the appeal to this extent is rejected and the impugned order is upheld for the demand of duty, interest thereof and equivalent amount of penalty.

7. As regards the second issue that needs to be addressed is regarding confiscation of the finished goods which were found during visit of the officers remained unaccounted in statutory book. It is undisputed that said goods were not accounted in the statutory records and only explanation which has been put forth by the appellant and the Counsel, as a finished goods is that they were still being tested and hence could not have recorded as it is the practice of the appellant to record finished goods in the statutory records only at the time of clearance, which is done after it is tested and okayed by the Quality Control Department. We are unable to accept this explanation on the face of the fact that the appellant has been clearing the goods clandestinely without recording the same in the statutory books as indicated by us herein above while upholding the demand of duty on clandestine gods. In our view, the adjudicating authority was correct in confiscating the finished goods which were found unrecorded and redemption fine imposed in lieu of confiscation is also appropriate. We find

no reason to interfere with such reasonable order passed by the adjudicating authority on the confiscation of the unaccounted goods.

8. As regards the demand of duty confirmed , due to difference in balance sheet figure, we find that the appellant had filed balance sheet certified by the Chartered Accountant with the various Government authorities. The said audited balance sheet indicated sale figure which is less than the sales figure which was shown in the photocopies of the Trading and Profit and Loss Account for the year ending as on 31.3.2008 and 31.3.2009 which resumed during the visit of the officers. The adjudicating authority has held that the figure as indicated in the photocopies of the Trading and Profit and Loss Account show a very high amount as income due to sales while corresponding entries in the balance sheet which as audited and filed showed very less amount. We reproduce the said figures:

Year	Audited Balance Sheet figure in Rs.	Figures as per loose sheet of balance sheet resumed in Rs.
2007-08	82,10432	3,46,87,483
2008-09	1,85,20,765	4,71,12,914

9. We have perused the copies of the loose sheets of the balance sheet recovered from the premises of the appellant. On deeper perusal of the said photocopies which are relied upon documents, we find that said balance sheet is indicating the sales figure for the year ending 31/3/2008 and 31.3.2009. We do find that except these three papers, no other document i.e. schedules to the balance sheet was relied upon by the lower authorities. The figures which indicated sales figures of the appellant for these two years as reproduced herein above, do differ from the sales figure as indicated in the audited balance sheet which was filed with the authorities. At the same time, we find that the Director whose statement was recorded and confronted with those loose sheets of balance sheets at the time of resuming specifically stated that these documents are prepared in order to

impress their customers. This averment of the Director of the main appellant is not controverted by the Department in any form. We do agree that due difference between audited balance sheet filed with the authorities and the photocopies of the balance sheet recovered, there can be suspicion as the correct sales figure, at the same time there is absence of other corroborative evidence to show that sales figure recorded in the loose sheets recovered from the appellant premises are correct sales figures. We find that investigation was not carried furher as on specific query from the Bench as to whether the statement of C.A. who signed the balance sheet, whose signature appeared on the loose sheet of the balance sheet was recorded or otherwise, it was informed by the A.R. that there is nothing on record to indicate so. We also find that there is no exercise was undertaken to correlate figures with the clandestine removal details from the note book. There is also no reconciliation to come to the conclusion that the figures shown as sales figure in the loose sheet of balance sheet recovered from the appellant premises are correct sale figure. We also note that, on mere perusal of the said loose sheets which were photocopies, there is some gaps and omissions which could not be answered by the officers of the Department, for example, there is total mismatch of sales figures indicated to the manufacturing expenses recorded. In view of foregoing , we are of the view that in the absence of any corroborative evidence to support the claim that sales figure in which appears in loose sheets of balance sheets are acceptable, we are of the opinion that demand on this count needs to be set aside. The demand of duty on this count is set aside. Consequently, interest and penalty liability as applicable on this issue is liable to be set aside.

10. As regards the personal penalty imposed on Shri R.K. Sachdeva, Director, we find that personal penalty imposed by the adjudicating authority is Rs.8 lakhs under the provisions of Rule 26 of the Central Excise Rules, 2002 which in our view is quite excessive, however, on the face of

the fact that he has accepted that there was clandestine removed goods as recorded in the private note book, we uphold penalty is imposable but reduce the same to to Rs.3 lakhs (rupees three lakhs). The impugned order is modified to that extent in respect of penalty on the individual.

11. Both the appeals are disposed of as indicated herein above.

(Pronounced in the open Court on 06.03.2017)

(M.V. Ravindran)
Member (Judicial

(V. Padmanabhan)
Member (Technical)

scd/