IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.
Principal Bench, New Delhi

COURT NO. IV

DATE OF HEARING : 18/05/2017.
DATE OF DECISION : 18/05/2017.

Excise Appeals No. 1096-1100 of 2009 (SM)

[Arising out of the Order-in-Appeal No. 128, 129, 130, 131 & 132/RPR-I/2008 dated 25/09/2008 passed by The Commissioner, Customs & Central Excise, Raipur.]

CCE, Raipur Appellant

Versus

M/s Jain Carbide & Chemical Ltd. (Unit – I)]
M/s Jain Carbide & Chemical Ltd. (Unit – II)]
Shri P.N. Khandelwal, Chief Executive] Respondents
M/s Astha Steels]
M/s Chhattisgarh Golden Roadlines]

Appearance

Shri G.R. Singh, Authorized Representative (DR) – for the appellant.

Shri Krishan Mohan K. Menon, Advocate – for the Respondent.

CORAM : **Hon'ble Shri B. Ravichandran, Member (Technical)**

Final Order No. 53362-53366/2017 Dated : 18/05/2017

Per. B. Ravichandran :-

These 5 appeals by the Revenue are against the common impugned order dated 25/09/2008 of Commissioner (Appeals – I), Raipur. The respondents I and II namely, M/s Jain Carbide & Chemicals Ltd. (Unit I and II) are engaged in the manufacture of

Ferro Alloys such as Silico Manganese chips, liable to Central Excise duty. Central Excise officers, Raipur conducted certain investigation in January 2003, with reference to unaccounted clearance of excisable goods by these two respondents. The case started with detention of a lorry carrying 18 M.T. of Silico Manganese on 23/01/2003. Thereafter follow up investigations were carried out and proceedings were initiated against these two respondents to demand and recover Central Excise duty of Rs. 2,99,954/- and Rs. 30,71,427/- towards unaccounted clearance of excisable goods during the period 17/10/2002 to 23/01/2003. Notice was also issued to other three respondents for imposition of penalty under Rule 26 of Central Excise Rules, 2002. The case was adjudicated by the Original Authority, who confirmed the duty demand and imposed penalties under Section 11AC of the Central Excise Act, 1944 and Rule 25 and Rule 26 of Central Excise Rules, 2002. On appeal, vide the impugned order, the Commissioner (Appeals) set aside the original order and allowed all the appeals. Aggrieved by this order, the Revenue is in appeal.

2. The learned AR elaborated the grounds of appeal on behalf of Revenue. He submitted that the Commissioner (Appeals) erred in not appreciating the various evidences collected by the officers, during the follow up investigation. The Commissioner (Appeals) relied only on the earlier proceedings with reference to seizure and confiscation of 18 M.T. of excisable goods which was dropped by the Original Authority. It is the case of the Revenue

that the register maintained by the security staff and the evidences gathered from the weighment bridge should have been appreciated by the Commissioner (Appeals). The Commissioner (Appeals) did not examine all the evidences in correct prospective and summarily rejected the findings of the Original Authority. The learned AR submitted that the impugned order should be set aside and the original order should be restored.

3. The learned Counsel appearing on behalf of the respondents submitted that the case against the respondents was mainly based on three types of evidences :-

(a) the seizure of truck carrying 18 M.T. of Silico manganese on 23/01/203 by the officers ;

(b) the register maintained by the security staff of the main respondents in the factory gate and ;

(c) evidences collected from weigh bridge.

4. He submitted that regarding seizure of final products during transit, the case was separately adjudicated and the Deputy Commissioner vide his order dated 31/05/2006 categorically held that there is no allegation at all, regarding non-duty paid nature of the seized goods. After due examination he dropped the proposal to confiscate the goods. Regarding the register maintained by the security staff, he submitted that the nature of goods referred to and the author of such entries were never cross verified, to take this register as a supporting evidence of clandestine removal. The records recovered from weigh bridge

did not indicate the removal of excisable items by the appellant without duty payment. In many cases neither the name of the appellant nor the nature of product weighed has been indicated in the weigh slips. It is the case of the respondents that the demand against the respondents is without any corroborative evidence and, as such, cannot stand legal scrutiny. The learned Counsel supported the impugned order.

5. I have heard both the sides and perused the appeal records. As mentioned by the learned Counsel for the respondent the evidences which formed basis of the proceedings against the respondent are broadly falling under three categories. The first one is relating to seizure of 18 M.T. of finished product by the officers on 23/01/2003. Admittedly, the said case was adjudicated and the Deputy Commissioner vide his order dated 31/05/2006, after examining all evidences available, held that there is no case for confiscation of said goods or the lorry carrying the said goods. However, he imposed penalties of Rs. 5,000/- each under Rule 25 and Rule 26 on the respondent/ manufacturers and Rs. 3,000/- on the transporter under Rule 26. The order was contested by Revenue only with reference to quantum of penalty which was enhanced by the Commissioner (Appeals) vide his order dated 31/05/2007. As such, I find that the seizure of the said excisable goods did not add to any evidence, to allege clandestine removal. This aspect has been examined in the impugned order, in detail, and the Commissioner (Appeals) observed that the allegations in the present

proceedings are virtually the same as in the first proceedings which resulted in the said order of the Deputy Commissioner.

6. On the second set of evidence regarding register maintained by the security staff, a perusal of the appeal records clearly indicate that the nature of product indicated in the entries and the author of the entries was not identified, during the investigation. The source of the register and the contents were not vouched. Further, as observed in the impugned order, a further collaboration of this unauthenticated entries is certainly required. The same is not available in the present case.

7. The third set of evidence are in the form of documents recovered from weigh bridge. The impugned order records that the weighment slips do not mention the name of the party and the description of the goods. Even the Original Authority recorded that though invoices issued by the respondents I and II have indicated the goods as Silico manganese slag loose, the correctness of the description was questioned only on the ground that the weighment slip has indicated the weight upto 3rd decimal. It was taken as a proof of fake invoice issued by the respondent. I find such type of inferences without any collaborative evidence will not assist the cause of Revenue, to establish the case of clandestine removal. On careful consideration of the impugned order, more specifically para 11 of the same, I find that in the present appeals, the Revenue has not brought out any point to interfere with the finding recorded in the

impugned order. Accordingly, I find these appeals are without merit. The appeals are accordingly dismissed.

(Dictated and pronounced in open court)

(B. Ravichandran)
Member (Technical)

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