CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL,
PRINCIPAL BENCH NEW DELHI

Date of Hearing:9.5.2017
Date of Decision:30.05.2017

Excise Appeals Nos.E/3525-3526,3645,3655, 3663/2010, E/89-91/2011, 178, 190,423, 486, 487-489/2011-SM

[Arising out of Order-in-Appeal No.118-CE-DLH-2010 dated 28.07.2010 in Appeal No.E/3525/2010, Order-in-Appeal No.127-CE-DLH-2010 dated 2.8.2010 in Appeal No.E/3526/2010, Order -in-Appeal No.115-CE/DLH/2010 dated 28.7.2010 in Appeal No.E/3645/2010, Order-in-Appeal No. No.117/CE/DLH/2010 dated 28.7.2010 in Appeal No.E/3655/2010, Order-in-Appeal No.125/CE/DLH/2010 dated 28.7.2010 in Appeal No.3663/2010, Order-in-Appeal No.152/CE/DLH/2010 dated 23.09.2010 in Appeal No.E/89/2011, Order-in-Appeal No.153/CE/DLH/2010 dated 23.09.2010 in Appeal No.E/90/2011, Order-in-Appeal No.158/CE/DLH/2010 dated 23.09.2011 in Appeal No.E/91/2011,Order-in-Appeal No.119/CE/DLH/2010 dt.28.7.2010 in Appeal No.178/2011, Order-in-Appeal No.116-CE/DLH/2010 dt. 28.7.2010 in Appeal No.E/190/2011, Order-in-Appeal No.159/CE/DLH/2010 dt.23.09.2010 in Appeal no.423/2011, Order-in-Appeal No.157/CE/DLH/2010 dt.23.09.2010 in Appeal No.486/2011, Order-in-Appeal No.156/CE/DLH/2010 dt.23.09.2010 in Appeal No.487/2011, Order-in-Appeal No.154/CE/DLH/2010 dt.23.09.2010 in Appeal No.488/2011 and Order-in-Appeal No.155/CE/DLH/2010 dt. 23.09.2010 in Appeal No.489/2011, passed by the Commissioner of Central Excise (Appeals), Delhi-I

M/s.Rajput Steels …..Appellants
Vijay Enterprises,
Hari Ram Babu Lal,
Gangandeep Steels,
Vinayak Industries
Abhishekh Industries,
Saurabh Industries,
Vardhaman Re-rolling,
R.D.Steels,
Singhal Udyog,
Ashish Gupta
Zonark TIE Maf.Co.
R.N. Gupta & Co.

Vs.

CCE,Delhi-I ….Respondent

Appearance:

Shri Rajesh Rawal and Shri Jatin Mahajan, Advocates for the appellants.
Ms. Kanu Verma Kumar and Shri K. Poddar and Shri G.R. Singh, DRs for the respondents.

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

Final Orders Nos.53529-53543/2017

Per B. Ravichandran:

These are 15 appeals involving identical dispute and hence are taken up together for decision. The appellants are engaged in the manufacture of pattas/patties of Stainless Steel liable to central excise duty. During the period in dispute, the appellants were working under Compounded Levy Scheme in terms of Rule 15 of Central Excise Rules, 2002. The said scheme envisages that the manufacturer has to discharge central excise duty on the goods manufactured by them, by making payment of a fixed amount as per the number of machines. Form Appendix-II is a document prescribed for making payment of the central excise duty. After payment of the applicable central excise duty, the appellants have to produce duly stamped, duty paid document to the jurisdictional Superintendent of Central Excise, who permits the clearance of excisable goods.

2. The issue involved in the present appeals is that the Appendix-II challans submitted by the appellants to the Central Excise Superintendent is not actually a genuine document of duty payment. The duty was not deposited in the bank and thereafter, by the bank to the Government Account. After conducting inquiry that the duty paid documents were in fact forged documents, the Revenue initiated action against these appellants to recover central excise duty, which has not been paid to the Government account, and to impose penalty. The cases were adjudicated by the Original Authority, who confirmed the duty demands and

imposed equal amounts of penalty on the appellants in terms of Section 11 AC of the Central Excise Act, 1944 read with the provisions of Central Excise Rules, 2002. On appeal, the original orders were confirmed by the Commissioner (Appeals). The present appeals are against these appellate orders.

3. Ld. Counsels for the appellants submitted that the appellants have followed the procedure for payment of central excise duty under Compounded Levy Scheme. They have deposited the applicable duty through challans and produced the stamped duty paid challans to the jurisdictional officer. Later, it was found that some one sitting in the bank premises unauthorized, took the money and forged the Appendix-II challans. The appellants are not involved in any fraudulent activity. They followed the procedure and visited the authorized bank and paid the applicable central excise duty. The stamped challans were also produced to the central excise officer. The department did not reconcile the duty paid challans with the bank documents, in time. As the appellants are not involved in any fraudulent activity, the demand for extended period cannot be invoked.

4. Ld. Counsel strongly urged that the entire fraud of mis-appropriation of Government duty has been committed within the bank premises, by one Shri Sachin in connivance with the bank officials. The appellants filed Police complaint. The Police Authorities conducted investigation. They have also recovered fake stamps and fake challans from Shri Sachin. The CCTV footage and other evidences will clearly indicate that the appellants followed proper procedure of visiting the authorized bank and depositing the duty in the said bank.

The persons, who perpetuated the fraud, are being prosecuted by the Police and the matter is pending in the Metropolitian Magistrate Court, New Delhi.

5. When the Department has failed to verify the genuineness of the documents, before making clearance, the appellants cannot be charged with fraud, etc. Large number of similarly placed appellants have suffered due to fraud committed by Shri Sachin in collusion with bank employees. The appellants cannot be put to charge twice by demanding again duty.

6. The appellants also relies on the decision of the Tribunal, Hon’ble High Court and Hon’ble Supreme Court in support of their view that they cannot be put to duty demand in the above circumstances. These cases are discussed later in this order.

7. Ld.AR reiterated the findings of the lower authorities. He submitted that the documents submitted by the appellants were not genuine duty paid documents. Admittedly, the goods have been cleared without due discharge of duty. The forged documents submitted by the appellants resulted in the loss of Government revenue. Such submission of forged documents will automatically attract the demand for extended period and penalty.

8. I have heard both the sides and perused the appeal records.

9. The basic facts of the case are not in dispute. Admittedly, the duty liability on the goods has not been deposited to the Government as per the applicable Central Excise provisions. The appellant’s only plea is that they are not party to the forgery and the Police case established that Shri Sachin along with some bank

employees perpetuated the fraud. As the appellants have no role, they cannot be put to demand again. I find that the said submission makes the whole issue simplistic. The background facts of the case will not support such simplistic assertion. Admittedly, it is the Department, which had certain information regarding such fraudulent activity and based on that, initiated an inquiry. I do not find that the failure of the Department to detect the forgery much earlier should extend the advantage to the appellants. The appellants cannot gain, in any manner, on the basis of a forged document. Even if it is considered, for argument sake, that the Department should have found out the fraudulent activity much earlier, I do not find that the same can be the basis for keeping the appellants totally out of picture with reference to non-payment of duty. The appellants have submitted forged documents to the Department. The said documents have no recognition in law. It is clear that no clearance of excisable goods can be permitted based on the said illegal, non-recognised, forged documents. The appellants cannot take a plea that they have followed the procedure set out for payment of central excise duty. It is for them to follow the due procedure and to discharge duty with authorized bank. When such duty is paid to unauthorized person, it is not open to the appellant to plead innocence and to blame the bank and the Revenue.

10. The appellants emphasized that they have filed complaint with local police and the police have investigated the case. The Police also arrived at certain findings and charged some persons for prosecution in the court. In case, it is established in the Court of Law that the accuseds have perpetuated the fraud on the appellant and also possible compensation to the appellant, the same will be an

outcome of the criminal proceedings. The fact remains that the appellants produced a fraud document claiming duty payment. The department is well within their right to proceed and recover the central excise duty, not paid to the Government.

11. The question of time bar was strongly pleaded by the appellant. I note that the Hon'ble Supreme Court in the case of **Aafloat Textiles (I)(P)Ltd. – 2009 (235) ELT 587 (SC)** examined a similar case with reference to submission of SILs, which were not genuine documents and were, infact, forged. The Hon'ble Apex Court held that since fraud was involved, in the eye of law, such documents had no existence. Since the documents have been established to be fraud or fake, obviously, the fraud was involved and that was sufficient to extend the period of limitation.

12. The Tribunal in the case of **Orient Ceramics and Industries Ltd. – 2016 (344) ELT 449 (Tribunal-Delhi),** examining the demand for extended period in similar situation, held as below:-

> "**8.** We have carefully perused the impugned order. The admitted fact is that the goods are not eligible for the concession under the said notification as the certificates are not proper and genuine. They are bearing forged signature of the competent officer as such it is very clear that the goods are not eligible for any concession for the rate of duty based on such forged certificates. The contention of OCIL that the demand for duty arising out of such forged document is hit by time bar is not tenable. In fact, on being informed by the Investigating Officer about forgery and illicit nature of import, OCIL deposited the

full duty liability before even the adjudication of the case. The concession on the goods cannot be claimed based on forged documents irrespective of who is responsible for such forgery. Submission of such forged document for claiming exemption is a clear case of misstatement. OCIL's plea that they are not involved in the forgery and hence, there is no willful misstatement on their part cannot be accepted insofar as the correct duty liability on the imported goods are concerned. Here, we may refer to Hon'ble Supreme Court's decision in *CC (Preventive)* v. *Aafloat Textiles (I) P. Ltd.* reported in 2009 (235) E.L.T. 587 (S.C.). The Hon'ble Supreme Court observed that "since fraud was involved, in the eye of law such documents had no existence. Since the documents have been established to be forged or fake, obviously fraud was involved and that was sufficient to extend the period of limitation".

13. The appellants relied on the certain case laws. In **Binani Cement Ltd. – 2010 (259) ELT 247 (Tribunal-Ahmd),** the Tribunal was dealing with DEPB licence obtained by fraud. It is to be noted that the DEPB licence was issued by the competent authority, though on wrong representation. In the present case, the duty paid challan itself is a forged document. In **HICO Enterprises – 2005 (189) ELT 135 (Tribunal-LB),** the Tribunal was examining the endorsement of transferability made on licence obtained by fraud or mis-representation. In the said case, the DGFT have recorded the discharge of export obligation . In any case, the licence was not a forged document. The Tribunal held that when an endorsement was made by DGFT, the same cannot be questioned by the Customs. The Hon'ble Punjab & Haryana High Court in the case of **Peejay International - 2016 (340) ELT 625 (P&H)** was dealing with the DEPB scrips cancelled by the Department

on finding that the seller had obtained it using forged documents. I note that none of these decided cases will come in aid of the appellant in the present case. Here, the duty paid documents are forged and not recognized in the eye of law. Such fraud will vitiate everything connected to that document. As such, the appellant's plea that the duty cannot be demanded from them is not legally sustainable. Following the ratio of the decision of the Hon'ble Supreme Court in **Aafloat Textiles (I)(P) Ltd. (supra)**, I find that the demands have been rightly confirmed by invoking extended period and I find no infirmity in the proceedings concluded by the lower authorities. As such, all the appeals are dismissed, as devoid of merit.

[Order pronounced on 30.05.2017]

(B. Ravichandran)
Member (Technical)

Ckp.