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

Date of Hearing/Decision:29.05.2017

Excise Appeals Nos.56336-56338/2013-EX(DB)

[Arising out of common Order-in-Original No.COMMISSIONER/RPR/CEX/131/2012 dated 31.12.2012 passed by the Commissioner of Central Excise & Customs, Raipur (C.G.)]

M/s.Moonlight Alloys (P) Ltd. Appellants
Shri S.C.L. Gupta, Director
M/s.Naman Alloys Pvt. Ltd.

Vs.

CCE, Raipur Respondent

Appearance

Rep. by Shri B.L. Narsimhan, Advocate for the appellant.
Rep. by Shri M.R. Sharma, DR for the respondent.

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

Final orders Nos. 53641-53643/2017

Per B. Ravichandran:

These three appeals are against the common order dated 31.12.2012 of Commissioner of Central Excise, Raipur. The main appellant, M/s. Moonlight Alloys (P) Ltd. are engaged in the manufacture of low and medium carbon ferro alloys, liable to central excise duty. Shri S.C.L. Gupta (second appellant) is the Director of the first appellant company. M/s. Naman Alloys (P) Ltd.(third party) are engaged in the manufacture of Ferro Alloys and was a regular customer of appellant no.1. The central excise officers conducted certain verification of records in the premises of M/s. Bajrang Transport Service, Raipur in October, 2007. Upon verification of a register recovered there, the Revenue entertained a view that the main appellant indulged in unaccounted clearance of excisable goods. On conclusion of the investigation, a show cause notice dated 6.10.2010 was issued to recover the short paid central excise duty and to impose penalties.

2. The case was adjudicated by the Commissioner. A central excise duty of Rs.29,43,066/- was confirmed against the main appellant along with a penalty of equivalent amount. Penalties of Rs.50 lakhs, Rs.30 lakhs and Rs.1 lakh were imposed on the appellant no.2 and 3 and M/s. Bajrang Transport Service, respectively.

3. Ld. Counsel appearing for all the three appellants submitted mainly on the following points:-

(a) Based on certain entries in the register maintained by the transporter, regarding movement of certain goods weighing 56.55 Mts., a case was made against the main appellant regarding unaccounted clearance of dutiable items. The statements of Proprietor and Manager of the transport company were also recorded. Other than these entries in the register of the transporting firm, there is no other evidence in the case.

(b) There is no evidence for procurement of raw materials for production of this additional unaccounted clearance, additional power consumption, transfer of funds, employment of labour, etc.

(c) Shri Santosh Modi, Proprietor of the Transporting Firm stated that they issue bilties against the transportation of the goods in cases, where the consignee pays freight against the receipt of goods at their end. In the present case, apart from certain entries in the register, no other document like billty, consignment note, loading advice, etc. has been recovered.

(d) No incriminating documents were found either from the premises of the appellant or M/s. Naman Alloys. No case of clandestine removal can be established based on certain private records seized from a third party, without any corroborative evidence. The statement of proprietor and Manager of Transport Firm did not indicate any involvement of appellant in clearing the goods without payment of duty. There is no admission regarding the transporter involvement in transporting the goods from the premises of the appellant. Further, no statement was recorded from the proprietor of M/s. Naman Alloys Pvt. Ltd.

(e) As per the practice in the transport operation, sometimes, the truck is sent by transporter for loading. However, the same is returned without loading due to various reasons. However, the entry made for sending the truck remains. The Department presumed the transportation of goods from the main appellant's premises based on such entries, without any corroboration.

(f) The demand is barred by limitation. The show cause notice dated 6.10.2010 covered the period September, 2005 and the Department had full knowledge in October, 2007 itself. As such, the demand as well as penalties are to be set aside.

4. Ld.AR reiterated the findings of the Original Authority.

5. We have heard both the sides and perused the appeal records.

6. We note that the whole case against the main appellant is based on the certain entries in the records maintained by the transporter. The impugned order observed that M/s.Bajrang Transport Service provided the transport to the goods manufactured by the main notice. It was observed that the records maintained by the transporter and the main appellant were cross verified. Most of the entries of the records of the transporter were found tallying with the statutory records of the main appellant. Four entries did not tally with the statutory records. As such, it created a doubt regarding the main appellant clearing unaccounted finished goods without payment of duty. On careful perusal of the impugned order, we note that the four entries found in the hand written register maintained by the transporter were the basis for demand of central excise duty. We have perused the said documents – register, which has columns for date, material, loading, unloading, filled, empty, rate, charges, diesel, expenses. We find that in respect of these four disputed entries, the details with reference to date, loading (Moonlight), unloading (Naman Alloys) are given. In none of the entries including these four entries, the details/nature of goods loaded are mentioned. The demand against the main appellant is apparently for both – Ferro Titanium and Ferro Molybdenum. We note that Ferro Tatanium is having a value of Rs.69 per kg., whereas Ferro Molybdenum is Rs.2050 per kg. We are not clear as to how the product, which is cleared unaccounted, has been identified, to arrive at the duty liability. The show cause notice did not elaborate as to how the exact nature (Ferro Titanium /Molybdenum) of unaccounted goods were identified. Admittedly, the records recovered from the transporter formed basis of the case. Comparison of such records with the statutory records of the main appellant directly led to the demand

of goods, on account of un-recorded clearances. Even here, we note that the observations made by the Original Authority at para 4.1.4 and 4.1.5 are very vague and summarizing. He has not recorded, which type of records of both the parties were compared. It appears that the Revenue placed reliance on sales register of the main appellant. It is also seen that the record seized from the transporter did not show the nature of items transported, weight, rate and freight amount, in any of the entries. Most of the entries even do not have the weight of materials transported. Only in respect of the four entries, where the weights were noted, the Revenue demanded duty stating that the same is not figuring in the appellant's records. It would appear that a case of short payment was sought to be made on the basis of presumption rather than admissible, cogent evidences.

7. We also note that the proprietor of the transporting firm, Shri S. Modi, in his statement explained the basis of maintenance of records. The statement, nowhere brings out any support to clandestine manufacture and clearance of excisable goods by the main appellant. The statement of Shri Ajit Gupta, which explained the manufacture and account maintenance of the main appellant has not been examined and commented upon by the Original Authority.

8. On careful reading of the impugned order and the relied upon evidences by the Adjudicating Authority, we find that the Revenue has failed to bring out any cogent, credible and corroborative evidence of unaccounted clearance of dutiable items by the main appellant. In our opinion, the case is built up on some entries maintained by the third party without any element of corroboration from any other source. The entries themselves are so sketchy and vague that they fail even as a main source of evidence. Overall, the case of Revenue, of unaccounted clearance

fails on account of lack of any cogent evidence and the allegation, being mainly on the presumptive inference. We find that the impugned order cannot be sustained on these grounds. Accordingly, the impugned order is set aside. The appeals are allowed.

[Operative portion already pronounced in open court]

(Anil Choudhary)
Member (Judicial)

(B. Ravichandran)
Member (Technical)

Ckp.