CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
West Block No.2, R.K.Puram, New Delhi

COURT-II

Date of hearing/decision: 01.06.2017

Appeal No.E/50576/2017

[Arising out of the Order-in-Appeal No. 303/CE/DLH/2016 dated 09/02/2017, passed by the Commissioner (Appeals-1), Central Excise Comm'rate, Delhi)

Ashoka Wire Industries … Appellant

Vs.

CCE, Delhi -II … Respondent

Appearance:

Present Shri V.K. Gupta, Advocate for the appellant
Present Ms Kannu Verma Kumar, DR for the respondent

Coram: Hon'ble Mr.Ashok K. Arya, (Technical Member)

FINAL ORDER No. 53864/2017

Per Ashok K. Arya :

1. M/s *Ashoka Wire Industries* is in appeal against Order in Appeal 303/2016 dated 09/02/2017 whereunder confiscation of the goods weighing 2625.05 kilograms of copper wire in WIP condition valued at Rs. 13,12,525/- under Rule 25 of Central Excise Rules, 2002 with an option to redeem the same on payment of redemption fine of Rs. 3,25,000/- has been sustained.

The penalty of Rs 50,000/- imposed on the appellant under Rule 25 of Central Excise Rules 2002, has also been sustained.

2. The brief facts are that:

i. Appellant *M/s Ashoka Wires Industries* are engaged in manufacturing 'refined copper wires' falling under CETH 7408.1990.

ii. During the preventive checks of factory premises of the appellant 2625.05 kilograms copper wire in WIP condition was found in excess and the same were seized under Section 110 of Customs Act, 1962 as made applicable vide Notification No. 68/63-CE DATED 04.05.1963 on the reasonable belief that the same were kept with intention to remove without payment of Central Excise duty thereon.

iii. The appellant was issued show cause notice dated 22/01/2014 which was adjudicated by Order in Original No. 8/ 2015-16 dated 26/10/15.

iv. The Order in Original was sustained in appeal by the Commissioner Appeal vide Order in Appeal dated 9/2/17.

v. Therefore, appellant is in appeal before the Tribunal.

3. With the background of above facts both the parties represented by Ld. Counsels Shri, V.K. Gupta for the appellant and Ms. Kanu Verma Kumar for the Revenue have been heard.
4. After having carefully considered the facts of the case and submissions of both the sides it appears that the goods which were lying in the factory premises in WIP (Work in Progress) have wrongly been confiscated though the Department mentions that they had the reasonable belief that goods were likely to be removed without payment of duty. However, there is no evidence with the Department that subject goods were to be removed without payment of duty When the goods were lying in factory premises, how there could be a reasonable belief on the part of the Department that ”goods were likely to be removed without payment of duty”, cannot be understood.
5. The Ld. DR, for the revenue says that there was no raw material account in case of the goods which were lying in (WIP) that is why the Department believed that the goods were likely to be removed without payment of duty. But the Ld. Advocate for the appellant says there is no Rule binding the appellant to maintain the raw material account as they were not claiming any Cenvat credit for the raw material used for the goods manufactured by them. In this regard the Ld. Advocate refers to the Tribunal’s

decision in case of *Jitendra Agarwal & Kay Cee Electricals Vs CCE, New Delhi* 2000 (117) E.L.T. 208 (Tri).

6. From the facts of the case and submissions of both sides, this case appears to be more of unreasonable interpretation of facts and thus committing unreasonable action against the manufacturer assessee. In this case no confiscation was warranted; however, the Department confiscated the goods and imposed redemption fine of unreasonable amount of Rs. 3, 25,000/-. There is neither any justification for the confiscation of the goods nor any proper reason to impose high amount of redemption fine for redeeming the confiscated goods. The Tribunal in the case of *Jitendra Agarwal and kay Cee Electricals* (supra) for similar facts has observed as under:

> **4.**The ld. JDR, further submits that the seizure of the goods was made under Section 110 of the Customs Act on the basis of the reasonable belief that the said goods were liable to confiscation under Rule 173 Q of the Central Excise Rules. However, no fact constituting such reasonable belief is forthcoming either from the records or from the arguments put across before me today. However, the mere allegation that the goods in question were kept in the appellant's factory for the purpose of clandestine removal without payment of duty, cannot, in my view, constitute any reasonable belief for seizure of the goods. It is the further submission of the JDR that, under Rule 173H, it was
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> mandatory for the factory to explain the licit character of the goods by way of proper duty paying documents. I have considered the rival submissions. The issue before the Tribunal at present is whether the non-accountal of the goods in question in the Form IV Register and the factum of the goods not having been covered by any invoice would suffice for the purpose of confiscation of the goods under Rule 173Q of the Central Excise Rules and whether the omission to do so on the part of the party would call for imposition of penalty to the extent the lower authorities did by way of their respective orders. Having examined the facts and circumstances of the case, I held the view that there was no justification for confiscation of the goods and imposition of penalty on the appellants in the brief circumstances as stated in the show cause

> notice and I hold that the facts and circumstances set forth in the show cause notice would not suffice for such an order of imposition of penalty and confiscation of the goods. To that extent, the order of confiscation and imposition of penalty is beyong the scope of the show cause notice itself. Further the Id. Commissioner (Appeals) has upheld the order of confiscation and imposition of penalty on the parties without stating any reasons for the same.
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> 5. In the light of the above discussion, the appeals are only liable to be allowed. Therefore, the order of the lower appellate authority is set aside and the appeals are allowed with consequential benefits to the respective appellants.

7. Consequently, following the ratio of the Tribunal's decision (supra), the confiscation is hearby set aside and, therefore, there cannot be imposition of any redemption fine also. Further, the penalty imposed is also hearby dropped.

8. In the result the impugned order is set aside and appeal allowed with consequential relief, if any, to the appellant.

[Order dictated and pronounced in the open court]

(Ashok K. Arya)

Member (Technical)

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