IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL,
WEST BLOCK NO.2, R.K. PURAM, NEW DELHI-110066

BENCH-DB

COURT –I

Excise Appeal No.E/659/2010-[DB]
[Arising out of Order-in-Appeal No. 10/2009-10 dated 27.10.2009 passed by the CCE New Delhi]

S I P Industries …Appellant

Vs.

C.C.E. Jaipur-I … Respondent

Present for the Appellant : Mr. B. Garg Advocate
Present for the Respondent: Mr. H.C. Saini, D.R.

Coram: HON'BLE JUSTICE (DR.) SATISH CHANDRA, PRESIDENT
HON'BLE MR. B. RAVICHANDRAN, MEMBER (TECHNICAL)

Date of Hearing: 12/06/2017
Date of Decision: 23/06/2017

FINAL ORDER NO. 54334 /2017

PER: B. Ravichandran

The appeal is against order dated 27.10.2009 of Commissioner of Central Excise Delhi-II. The appellants are engaged in the manufacture of Super Enamelled Copper Binding Wire. They are not registered with Central Excise department but filed declaration claiming the states of a small scale industry within the exemption limit. In July, 1997 the officers of Central Excise conducted certain verification in the premises of the appellant's unit. They have also conducted physical stock taking of finished goods lying in the premises.

The total of 2463.305 KG of final products, branded as well as unbranded, were found, these were seized on the reasonable belief that these are unaccounted goods entitled for non-duty paid clearance. The officers also recovered two note books containing certain hand written details. Statements were recorded from the proprietor of the appellant firm. On completion of investigation, proceedings were initiated against the appellant to demand and recover Central Excise duty of Rs. 37,13,374/- and also to impose penalties under various Rules. The case was adjudicated vide order dated 25.09.1998 by the Commissioner of Central Excise, New Delhi. He confirmed the Central Excise duty demand and imposed penalties. On appeal, the Tribunal vide Final order No. 42 of 2001 dated January 2001 set aside the impugned order and remanded the matter to the Commissioner for denovo adjudication. The observation of the Tribunal in the remand order is as below:

> "From the record of personal hearing held on 9.9.98, we find that the appellants raised specific issue in respect of their capacity of production and produced evidence of consumption of power during the relevant period. They also raised the plea that they were trading in enamelled copper wire and the enamelled copper wire was purchased from M/s. She-rul Insulation (P) Ltd. In the impugned order, no finding in respect of the issues, raised by the appellants, was given by the Commissioner of Central Excise. Therefore, we find that the matter requires re-consideration. The impugned order is set aside and the matter is remanded to the adjudicating authority for de novo adjudication. The adjudicating authority will decide the matter afresh after affording an opportunity of personal hearing to the appellant."

The de novo adjudication was conducted by additional Commissioner who passed orders on 28.12.2005. On appeal, the Commissioner (Appeals) vide his order dated 17.04.2007 set aside the original order and directed the matter to be deiced by appropriate adjudicating authority, Commissioner in the present case.

Accordingly, the impugned order dated 27.10.2009 was passed by the original authority. He confirmed Central Excise demand of Rs. 31,47,253/- and imposed equal amount of penalty in terms of Section 11AC of the Central Excise Act, 1944.

2. The Ld. Counsel for the appellant submitted that the Tribunal in the first round of litigation specifically remanded the matter to examine the issued agitated by the appellant. Even in the second round adjudication, these issues have not been dealt with and summary findings have been recorded by the original authority. In essence, he contested the case against the appellant on various grounds. The main points are a) the appellants do not possess capacity to manufacture such huge quantity of final products in a matter of 51days - from 13.04.1997 to 02.06.1997. b) The authenticity of the two note books which were never recovered from the premises of the appellant and the author of the entries is never established. The witnesses who signed the punchnama have categorically stated that they did not witness any search operation in the appellant's premises and they have signed these punchnama at Arjun Gali which is the location of M/s Sherul Insulations. c) The statement dated 11.07.1007 of the proprietor was under coercion and the same was retracted on 12.07.1997 before the Additional Chief Metropolitan Magistrate, New Delhi. d) The department has no corroborative evidence to allege unaccounted manufacture of excisable goods with or without branded name. When the statements were retracted it is necessary to have corroborative evidence to establish the case. e) The appellants were engaged in trading branded goods received from M/s Sherul Insulation. Only because

the proprietor of the appellant firm is a director of M/s Sherul Insulation, the department discounted the submissions of the appellant. f) There is no evidence referring to additional purchase of raw material transport of goods, inputs or finished goods, flow of money details of buyers in the present case. It is not clear how the duty demand amount was arrived at as no calculation sheet was provided.

3. The Ld. AR supported the findings recorded in the impugned order.

4. We have heard both the sides and perused the appeal records. We note that in the first round of litigation, the Tribunal remanded the matter for a specific finding with reference to capacity of production of the appellant, the consumption of power during the relevant period, trading in enameled copper wire purchased from M/s Sherul Insulation. These aspects were directed to be examined afresh for a specific finding by the adjudicating authority. On careful perusal of the present impugned order, we note that specific findings in all these issues are still lacking. Regarding production capacity, the original authority rather went into the details of suppliers invoices with reference to machinery produced by the appellant. It was observed by lower authority that the delivery challans did not mention type and make etc and no co-relation are possible with the statements made by the appellant. When the appellants made categorical assertion regarding their production capacity, and submitted whatever records in their possession, it is for the Revenue to support the case of possible production in excess of accounted quantity by the appellant. The appellant will not be able to prove

non-production, apart from stating that they have no capacity to produce such huge quantity.

5. Even on the power consumption, no specific finding was recorded. It was observed by the original authority that the "nefarious activities of clandestine removal are so organized that electricity consumption, shifts of operation and machines installed shown of paper, cannot be the actual determination as conclusive evidence". We find such general observation cannot be considered as analysis of evidence to support the case of clandestine manufacture and clearance.

6. We note that two lotus note books formed important basis for allegation of clandestine manufacture. It is clear that the author of entries made in the note book was not identified. The nature and scope of such entries which are not clear. In fact the recovery of note books from the premises of the appellant itself has been put to serious question mark as the witness of punchnama stated that they have signed the punchnama at Arjun Gali which is the location of M/s Sherul Insulation. The original authority based his findings on the ground that the proprietor in his statement accepted ownership of the note books. We note that the statement given on 11.07.1997 by the proprietor was retracted on the next day before the Magistrate. The cross examination of witness to punchnama during the course of personal hearing brought out the defense of the appellant to the effect that these witnesses signed the puchnama at Arjun Gali. It is the appellant's case that M/s Sherul Insulation located many kilometers away from the appellant's unit. We also note that the SSI exemption was sought to be denied to the appellant only on the

ground that they have manufactured wire with branded name of others. Except the submission of proprietor and certain invoices, no other verification was made to establish as to whether these are recognized brand names belonging to identified persons or companies. In this connection, we refer to the decision of Hon'ble Delhi High Court in the case of Minimax Industries 2011 (269) ELT 169 Del. It was observed by the High Court in case of non-existence of exclusive right over the logo or branded name and non-existence of reputation linked to the brand name, the bar for denial of SSI exemption will not operate.

7. Regarding qualification of demand, it is not clear that what type of co-relation between accounted clearance and the proper records and also how the overall duty liability has been arrived at. No chart or calculation is given in the notice. We also perused photocopies of entries in the note books which were relied upon by the Revenue. It is not clear as to how the entries are co-related to arrive at tangible evidence regarding clandestine manufacture and clearance.
On careful consideration of the impugned order and the various submissions made by the appellant, we conclude that the case of the Revenue is not supported by cogent, tangible and credible evidence, to support the allegation of unaccounted clearance.

8. Accordingly, we set aside the impugned order and allow the appeal.

[Pronounced in the open Court on_23.06.2017]

(B. RAVICHANDRAN)	**(JUSTICE (DR.) SATISH CHANDRA)**
MEMBER (TECHNICAL)	**PRESIDENT**