CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No.2, R. K. Puram, New Delhi, Court No. 1

Date of hearing: 05.06.2017
Date of decision: 30.06.2017

Excise Appeal Nos. 54511 – 54512 & 54835 of 2014

(Arising out of order in original No. JAI-EXCUS-001-COM-171-13-14 dated 26.05.2014 passed by the Commissioner of Central Excise, Jaipur).

M/s Prem Jain Ispat Udyog Pvt. Limited Appellant
Prem Chand Jain, Director
J.D. Pant, General Manager

(Rep. by Sh. Arunabh Dey, Consultant)

Vs.

CC (Prev.) Jaipur Respondent

(Rep. by Sh. R. K. Mishra, AR)

AND

Excise Appeal No. 54784 of 2014

(Arising out of order in original No. JAI-EXCUS-001-COM-171-13-14 dated 26.05.2014 passed by the Commissioner of Central Excise, Jaipur).

CCE, Jaipur-I Appellant- Revenue

(Rep. by Sh. R. K. Mishra, AR)

Vs.

M/s Prem Jain Ispat Udyog Pvt. Limited Respondent

(Rep. by Sh. Arunabh Dey, Consultant)

Coram:

Hon'ble Mr. Justice (Dr.) Satish Chandra, President
Hon'ble Mr. V. Padmanabhan, Member (Technical)

Final Order Nos. 54473 – 54476/2017

Per: **V. Padmanabhan**:

These appeals are against the order-in-original No. JAI-EXCUS-001-COM-171-13-14 dated 26.05.2014 passed by the Commissioner of Central Excise, Jaipur. Appeals have been filed by M/s Prem Jain Ispat Udyog Pvt. Ltd., Sh. Prem Chand Jain, Director and Sh. J.D. Pant, General Manager. The same order has also been challenged by the Revenue.

2. Acting on the information that the assessee has indulged in clandestine removal of finished goods without payment of duty, Central Excise Officers carried out search operations in the assessee's factory as well as the residence of Sh. P. C. Jain, Director and other connected premises on 06.07.2012. From the factory premises, the officers recovered 32 loose slips/ kachhi parchis from the office premises of the assessee. On physical verification of stock of finished goods shortage of finished products to the extent of 88.209 MT was noticed involving Central Excise duty of Rs. 4,31,199/-. Statements were recorded from Sh. J.D. Pant, General Manager and Sh. P.C. Jain, Director. On completion of investigation show cause notice dated 05.08.2008 was issued proposing demand of Central Excise duty amounting to Rs. 60,87,300/- on the basis of the kachha slips and inculpatory statements given by Sh. J. D. Pant, General Manager as well as Sh. Prem Chand Jain, Director. In reply to show cause notice the demand was mainly contested on the following grounds:

(i) Statements recorded under Section 14 cannot be considered as relevant in light of Section 9D of Central Excise Act untill the makers are permitted to be cross examined;

(ii) They signed on the statement on instruction of Anti-Evasion officers and contents were not read out before them. Further both statements of Sh. Pant and Jain recorded on 6.7.12 were without summon and under threat by Central Excise officers;

(iii) Physical verification report is not correlated with any modus oprandi and reasons for arriving at physical discrepancy and panchnama. Statements are silent about the method of carrying out physical verification;

(iv) Out of 32 slips, 25 slips of various dates were of different dispatches, which correlate and reconcile with the excise invoices issued to respective parties. Thus, the clearances were duty paid and there was no clandestine clearance;

(v) Balance 7 slips were pertaining to stock/ sale which did not materlize due to different reasons like withdrawal of orders etc; and

3. After due process of adjudication, the ld. Commissioner passed the impugned order as follows:

(i) Demand of Excise duty on clandestine clearance was upheld to the extent of Rs. 30,01,451/-;

(ii) Demand amounting to Rs. 30,85,849/- was dropped;

(iii) Penalty equal to the duty confirmed was imposed under Section 11AC;

(iv) Penalties are also imposed under Rule 26 on Sh. J. D. Pant, General Manager and Sh. P. C. Jain, Director for Rs. 2,00,000/- and Rs.3,00,000/- respectively.

4. Aggrieved by the impugned order, appeals have been filed by the assessee, General Manager and Director against the demand for excise duty and penalties. Appeal has also been filed by the Revenue challenging the dropping of the duty demand.

5. With the above background, we have heard both the sides. The assessee were represented by Sh. Arunabh Dey, ld. Consultant and Sh. R. K. Mishra, ld. AR for the Revenue.

6. Revenue has challenged the dropping of demand to the extent of Rs.30.85 lakhs. The demand of about Rs. 60 lakhs was proposed in the show cause notice on the basis of the quantification relying on 32 kachha parchis recovered during search proceedings. The assessee contended during the course of adjudication

that out of 32 slips, 25 slips of various dates were of different despatches, which correlate and reconcile with the excise invoices issued to the respective parties. They have further claimed that all the clearances were duty paid and there was no clandestine clearance. The adjudicating authority has carefully gone through the said 25 slips alongwith the connected invoices and other documents submitted by the assessee and has given detailed discussions in para 36 of the impugned order. With reference to each kachha parchi and the relevant invoice, he has recorded that the quantity, size, truck No. name of consignee mentioned in the invoice are completely matching with the details so given in the recovered kachha parchi. Further, he has recorded that the subject invoices have been duly entered in RG-1 register as well as the ledger account. In the light of the above, he has concluded that the subject consignee were cleared on payment of Central Excise duty.

We have gone through the records of the case as well as the findings of the adjudicating authority in this regard. We are of the view that since the adjudicating authority has given detailed findings that all the goods covered by 25 kachha parchis have been cleared on payment of duty, we find no reason to take a different view. Consequently, we uphold the dropping of demand of Rs.30,85,849/- and reject the Revenue's appeal.

7. The adjudicating authority has confirmed the demand amounting to about Rs. 30 lakhs on the basis of seven kachha parchis in respect of which the assessee was not in a position to submit proof for clearance of goods under invoices without payment of duty. He has further recorded that both Sh. J. D. Pant, General Manager as well as Sh. P.C. Jain, Director have given inculpatory statements under Section 14 of the Central Excise Act to the effect that goods

covered by kachha parchis were clandestinely cleared without payment of duty. Further, the assessee has also paid the entire duty for the goods covered by 32 slips.

These findings of the adjudicating authority have been challenged by the assessee in the present appeals. It is their submission that the goods covered by these seven slips were never despatched from the factory for various reasons. It is their submission that the kachha parchis were initially made for internal use indicating the quantity of material, name of the party, place to which goods to be despatched and other details. Later on, the relevant quantum of goods are identified from the stockyard and loaded into the despatch truck whose number is also included in the kachha parchi. In respect of these seven kachha parchis, the orders placed by the customers have got cancelled and hence no goods were despatched to the parties indicated in the kachha parchi.

8. On going through the impugned order, we note that the adjudicating authority has not given due consideration to the submissions made by the appellant. The allegation of clandestine removal has been upheld in respect of goods mentioned in the seven parchis only on the basis of inculpatory statements given by Sh. J.D. Pant, General Manager and Sh. P.C. Jain, Director. We find from the record that Revenue has not undertaken any verification either with the buyers or even with the transporters. No investigation appeared to have been carried out to prove that such goods were manufactured in the factory but not accounted for.

9. Clandestine clearance is a serious allegation and needs to be established on the basis of tangible evidence. It is well established fact that only on the basis of

the inculpatory statement, the charges of clandestine clearance cannot be upheld. The inculpatory statements given by the General Manager and Director also do not specifically cover the seven parchis. In the absence of any corroborative evidence to indicate that the goods covered by seven parchis were cleared by the appellant, we are of the view that the charge of clandestine clearance and demand of duty cannot be sustained. The assessee has cited a large number of decisions to support the contention that clandestine clearance cannot be upheld without tangible evidence.

10. In view of the above discussions, the appeals filed by the appellant-assessee and their General Manager and Director are allowed. The appeal filed by the Revenue is rejected.

(Pronounced on 30.06.2017).

(Justice (Dr.) Satish Chandra)
President

(V. Padmanabhan)
Member (Technical)

Pant