IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.

Date of Hearing/Order: 8.11.2017

Appeal No. E/59711/2013-SM

(Arising out of Order-in-Appeal No. 112/RPR-I/2013 dated 15.5.2013 passed by Commissioner (Appeals), Central Excise & Customs, Raipur)

M/s Kailash Traders — Appellant

Vs.

CCE & ST, Raipur — Respondent

Appearance

Ms. Rinky Arora, Advocate - for the appellant

Shri G.R. Singh, D.R. - for the respondent

CORAM: **Hon'ble Mr. Justice (Dr.) Satish Chandra, President**

Final Order No. 57788/2012

Per Justice Dr. Satish Chandra:

The present appeal is filed against the Order-in-Appeal No. 114/2013 dated 15.5.2013.

2. Both parties have agreed that the present case was left out inadvertently and belongs to other group of cases which were decided by the Tribunal, in the case of ***Kailash Traders and Others Vs. CCE*** vide Final Order No. A/52349-52409/2017 dated 9.3.2017, where the Division Bench observed that :

> "The genesis of the present cases arises from the seizure of a diary from Sh Kailash Agarwal (Prop. of M/s Kailash Traders) and M/s Monu Steels (S. K.

Bhansali) respectively in the month of December, 2006. In the diary systematic entries were maintained pertaining to the commission received from the sale of sponge iron and ingots. On the basis of the entries, the visits were made in the factories of M/s Bhagwati Power; and Steel Limited, M/s Sunil Sponge Pvt. Limited; and M/s Monu Steels. The documents were examined and evidences were collected from the transporter too. Finally, the department opined that there was clandestine removal of the ingots and sponge iron, so the demand was raised against the said companies. Penalties were imposed on the buyers as well as on the transporters. The lower authorities has dropped the demand in some cases. Being aggrieved, the department has filed the appeals. On the other hand, where the demand was sustained and penalties were imposed, the aggrieved parties are before the Tribunal.

2. With this background, we heard S/Shri Somesh Arora, Manish Saharan, Kumar Vikram, Abhash Mishra, A. K. Prasad, Bipin Garg, Ms. Rinky Arora and Ms. Shreya Dahiya, ld. Advocates for the assessee – appellant and Sh. G. R. Singh, H. C. Saini and Ms. Kanu Verma, ld. ARs for the Revenue.

3. After hearing both sides at length and on perusal of record, it may be mentioned that the Hon'ble Supreme Court in the case of ***Commissioner vs. Woodmen Industries – 2004 (170) ELT A307 (SC)*** observed that in such type of cases, no penalty can be imposed on a corporate entity. The penalty can be imposed only on a person and not on a firm. Similar views were expressed by the Tribunal in the case of ***Steel Tubes of India Limited vs. CCE, Indore – 2007 (217) ELT 506 (Tri. LB)***.

4. In view of above, the legal proposition is that the penalties in case where it was levied on a firm or legal entity is not desirable. However, the penalty levied on individual or proprietorship firm can be sustained.

5. Regarding the duty demand, it appears that the group matters of the appellant has come up before the Tribunal in the case of ***Sunil Spong Pvt. Limited & Ors. vs. CCE, Raipur*** (Final Order Nos. 53974-53977/2016) (also today at Sl. No. 67 of the cause list)

and the Tribunal has remanded the matter to the original authority for **denovo** adjudication by observing that the impugned order suffers from various inconsistencies with reference to appraisal of facts and also due to violation of principles of natural justice.

6. In the instant case, the ld. Counsel for the assessee have also argued that no physical verification, no cross-examination, no verification from the buyers, no investigation regarding raw material and electricity consumed were made by the department. Ld. Counsels also relied upon the ratio laid-down in the case of ***Continental Cement Company vs. Union of India – 2014 (309) ELT 411 (All.***) where certain guidelines were provided in the cases of clandestine removal. In other words, the corroborative evidence is required as per the ratio laid-down by the Allahabad High Court (supra). Further, there are various missing events and no *res gestai* (as per Section 6 of the Indian Evidence Act) is made out. When it is so, then we deem fit to remand the matters to the original authority to decide the issue **afresh** but by providing an opportunity of hearing to the assessees. Additional evidence, if necessary, may be admitted as per law.

7. However, it is made clear again that as per Rule 26 of the Central Excise Rules, 2002, the penalties can be imposed only on individual or the proprietorship concern as per the ratio laid-down by the Hon'ble Supreme Court (supra).

8. In the result, all the appeals are allowed by way of remand."

3. By following our earlier order (supra), we set aside the impugned order and remand the matter back to the original authority with the above mentioned directions.

4. In the result, appeal filed by the appellant is allowed by way of remand.

(Dictated & pronounced in open Court)

(Justice Dr. Satish Chandra)
President

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