IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI
PRINCIPAL BENCH, COURT NO. IV

Excise Appeal No. 57639 – 57640 of 2013

[Arising out of Order-in-Appeal No 100-101-CE/DLH/2012 dated 30.11.2012 passed by the Commissioner (Appeals), Central Excise, New Delhi]

M/s. Daga Trading Co. (P) Ltd. **Appellants**
Shri Ramesh Kumar Daga

Vs.

Commissioner of Central Excise **Respondent**
Delhi I

Appearance:
Shri M K Gandhi, Advocate for the Appellants
Shri G R Singh, AR for the Respondent

CORAM:

Hon'ble Shri Anil Choudhary, Member (Judicial)

Date of Hearing /decision: 16.10.2017

FINAL ORDER NO. 58120-58121/2017 SM

Per Anil Choudhary:

The issue in these appeals is whether the learned Commissioner (Appeals) have rightly retained the penalty of Rupees One lakh imposed under Rule 25 of Central Excise Rules, 2002. on Daga Trading Company and Rs. 50,000/- as penalty under Rule 26 of

Central Excise Rules, 2002. on its Director Shri Ramesh Kumar Daga.

2. The brief facts, as per the show cause notice dated 22/12/2010 are that M/s. Sanmati Steel Pvt. Ltd. was manufacturer of 'Elastic Rail Clips' (ERC for short) and they were procuring steel rounds – raw material for manufacturing of ERC. Indian railway was the sole buyer of ERC from the said M/s. Sanmati Steel Pvt. Ltd. Such ERC were manufactured as per design and drawing of Indian Railway. ERC was supposed to be manufactured from the specific raw material, that is "Silico Manganese Spring Steel Round having diameter 20.64 MM and grade 55 Si7". M/s. Rashtriya Ispat Nigam Ltd, (RINL) was one of the manufacturers of such rounds and the other manufacturer are Sunflag Iron and Steel Co. Ltd. and Upper India Steels, Ludhiana. Based on intelligence that M/s. Sanmati Steel Pvt. Ltd. was showing fraudulent purchase of excess raw material, enquiry and investigation was conducted in the matter. Panchnama proceedings were done in the premises of M/s. Sanmati Steel Pvt. Ltd. on 29/03/2010 and on which date, statement of Shri Vinod Kumar Jain, Director of M/s. Sanmati Steel Pvt. Ltd. was also recorded. Follow up search was also done in the premises of these appellants namely, Daga Trading Company Private Ltd. on 08/04/2010 and certain documents were resumed under panchnama and statement of

Shri Ramesh Kumar Daga, Director of M/s. Daga Trading Co. was also recorded on the same day, wherein he stated that they are trading in iron and steel items like round, TMT, structure, square, bars etc. At the present time, they were no longer registered with the Department as at they have surrendered their registration on 14/04/2010. On being specifically asked, he stated that they admittedly made purchases from RINL, Visakhapatnam and also from their depots and they have maintained proper records of purchases and sale like Form RG 23D register, purchase invoices, sale invoices and transport/purchase order documents for the period 2005 – 2006 to 2009 – 2010. In response to further summons Shri Ramesh Kumar Daga, Director appeared before the Excise Authority on 30/04/2010 and gave further statement, wherein he stated that at the time of issue of sales-bills by them, they did not mention the complete description of goods –rounds as mentioned on their purchase invoices in respect of the said items. Instead of complete description/specifications they used to mention only 'rounds'. Further, since 1.4.2005 they made sale of round to M/s. Sanmati Steel Pvt. Ltd. They used to receive the purchase orders telephonically from their buyers who mention the name, size specification, grade of item being purchased. On their conformation of the availability of stock, the sales are made. On being specifically asked if from 01/04/2005, they had purchased 20.64 mm 55Si7 rounds till date, he sought some time, and thereafter on 03.5.2010 he submitted party Ledger account for the relevant period in respect of M/s. Sanmati Steel Pvt. Ltd. After perusing the record, he identified the purchase invoices of Daga trading Company Private Ltd. in respect of rounds and on the basis of these purchase invoices, further entries relating to sale of such rounds had been made in their RG 23 register and other sales records. On the basis of such information, Central Excise officers had prepared some chart in respect of details of purchases by M/s. Sanmati Steel Pvt. Ltd. from Daga trading for the period 01/04/2005 to 31/03/2010 wherein Daga Trading had passed on Cenvat credit amounting to Rs. 5,90,517/-. It was also noticed by the officers that the tariff heading of round 20.64 MM 55 Si7 is 7228.3029, while tariff heading of rounds of other sizes of grade IES 2062 is 7214.9990 as mentioned on the purchase invoices. On being asked whether Daga Trading had ever purchased 20.64 MM 55Si7 grade rounds, Mr Daga stated that there were only four entries regarding such purchases as mentioned at serial number 7, 8, 9 and 10 of the said chart – RUD 11, in respect of M/s. Sanmati Steel Pvt. Ltd., and accordingly, sales invoices were issued to M/s. Sanmati Steel Pvt. Ltd. Shri Daga further stated that except six purchase invoices dated 13.1.2007 to 17.3.2007 corresponding to aforementioned 4 sale invoices bearing number XT 3 to 6, there was no other purchase of round 20.64 MM. On further being asked regarding the freight with respect to the invoices issued to M/s. Sanmati Steel Pvt. Ltd., he stated that sometimes the freight have been paid by them and sometimes by the buyer. In the sale invoices in the freight column, "for godown" mentioned the freight is paid by them and in some mentioned ‘EX Godown’, freight have been paid by the buyer’.

3. Further statement of Shri Vinod Kumar Jain, Director of M/s. Sanmati Steel Pvt. Ltd. was recorded on 20/08/2010 wherein he stated after seeing a chart – RUD 13, of details of purchases made by them from M/s. Daga Trading Company and M/s. Jagdamba Steels, he agreed to the contents of the chart, that they have received cenvatable invoices mentioned in the chart without accompanying the goods shown in these invoices and used the material –rounds 56 IES 20.6 to instead of 20.64 MM SS i7. Further statement was recorded on 28/09/2010 of Shri Vinod Kumar Jain, wherein it is stated that the list of supplies made by Daga Trading Company and M/s. Jagdamba Steels to them during the period April 2005 to March 2010, is a complete list and that list has been signed by him on 20/08/2010 in token of having seen the same and he agreed to deposit the Cenvat amount wrongly availed on the invoices mentioned at serial number one, two, three, six and seven as shown in the chart RUD 13. Further, he agreed to deposit the cheque for the duty involved therein. Further,

Shri Vinod Kumar Jain, Director of M/s. Sanmati Steel Pvt. Ltd. vide letter dated 25/10/2010 informed that they have debited Rs. 50,000 in their Cenvat credit account and Rs. 1,84,918/- in their PLA account.

4. Accordingly, it appeared that M/s. Sanmati Steel Pvt. Ltd. have availed Cenvat credit of Rs.6,21,491/- as per Annexure 'A' to the SCN in a fraudulent manner by suppressing the facts from the Department and such credit was recoverable under Rule 14 of Cenvat Credit Rules 2004 read with section 11 A of the Act. It also appeared that the appellant M/s. Daga Trading Company and M/s. Jagdamba Steel have intentionally mentioned incomplete description of the goods in invoice to suit the requirement of their buyer and thereby issued wrong and improper invoices, facilitating wrong availment of Cenvat credit to the party in a fraudulent manner, without delivery of goods mentioned in their invoices. Accordingly, it appeared that the M/s. Jagdamba Steel and M/s. Daga Trading Company had violated provisions of Rule 11 of Central Excise Rules, 2002 and as such, are liable for panel action under Rule 25 of Central Excise Rules, 2002 read with section 11 AC of the Act read with Rule 15 A of Cenvat Credit Rules, 2004. The Show cause notice was adjudicated on contest and the proposed demand of Rs.6,21,491/- against M/s. Sanmati Steel Pvt. Ltd. was confirmed along with equal amount of penalty. Further penalty was Rs. 50,000/- was imposed on Shri Vinod Kumar Jain

Director of M/s. Sanmati Steel Pvt. Ltd. and penalty on these appellants as aforementioned was imposed along with penalty of Rs. One lakh on M/s. Jagdamba Steel.

5. Being aggrieved, the appellant had filed appeals before learned Commissioner (Appeals) who vide impugned order dated 30.11.2012 was pleased to dismiss the appeal upholding the findings in the order in original.

6. Being aggrieved, these appellants are before this Tribunal. The learned counsel for the appellants states that the whole case of Revenue is made on presumptions and assumptions. It is admitted fact that the appellants were registered dealers. Further admitted fact is that they were procuring iron and steel items including the rounds in question from RINL and others. The appellants are maintaining proper records including register 23 D for making entry of Cenvat credit received and Cenvat credit passed on re-sale to their buyers who were manufacturers. So far the transaction with M/s. Sanmati Steel Pvt. Ltd. is concerned, proper entries have been found to have been made in the records and they have removed the goods on proper invoices. It is not the case of Revenue that the appellant have not sent the goods along with the invoices or M/s. Sanmati Steel Pvt. Ltd. did not receive the goods sent by the these appellants. The only case of Revenue is that M/s. Sanmati Steel Pvt. Ltd. as per the specifications of railway

for manufacture of ERC were required to use a particular grede of rounds wherein it appeared that other than the said particular grade of rounds, they have also purchased some other rounds from the appellant. On the basis of such allegations which is both vague and without any basis the penalty imposed upon them are fit to be set aside. It is not the case of Revenue that appellant have dealt with dutiable goods in any clandestine manner. Accordingly, no penalty is leviable under the provisions of Rule 26 on the M/s. Daga Trading Company or on its Director under Rule 26 of Central Excise Rules, 2002.

7. Heard the learned AR for Revenue who have supported the impugned order and also taken me through the allegations in the show cause notice.

8. Having considered the rival contentions, I find that the whole case of Revenue was made on the presumption that M/s. Sanmati Steel Pvt. Ltd. was requiring a particular grade of rounds as per requirement of its buyer – Railways. As the appellants herein have sold them rounds, which also includes some other grade of rounds, the whole transaction is presumed fictitious and accordingly penalty are being imposed on the appellants. I find that there is no allegation that the appellant have sold the goods which they had not purchased. Nor there is any case made out that they have simply issued excisable

invoices without despatching the goods to M/s. Sanmati Steel Pvt. Ltd. I further note that although it has been admitted by the Director of M/s. Sanmati Steel Pvt. Ltd. Mr Vinod Kumar Jain that he have indulged in procuring other goods other than specified by Railways from Daga Trading Company but it is not the case of the Director of M/s. Sanmati Steel Pvt. Ltd. that they have not received goods from M/s. Daga Trading Company. Under such facts and circumstances, I find that the allegation against the appellants do not stand established and thus no elements of penalty are established, under the provisions of Rule 25 of Rule 26 against these appellants. Accordingly, I allow these appeals and set aside the penalties imposed against these appellants. The appellant shall be entitled to consequential benefits in accordance with law.

9. There appeals are disposed of after obtaining report from the registry, that no other appeals have been preferred against the impugned order.

(dictated and pronounced in the open court)

(Anil Choudhary)
Member(Judicial)

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