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

Court IV

Date of hearing: 07.12.2017

Appeal No. E/51450, 51712/2017–ST [SM]
[Arising out of the Order-in-Appeal No. BHO-EXCUS-002-APP-102/103-17-18 dated 19/05/2017 passed by the Commissioner of Customs & Central Excise, Raipur]

Patil Rail Infrastructure Pvt. Ltd. … Appellant

Vs.

CCE , Raipur … Respondent

Appearance:
Present Ms. Surbhi Sinha, Advocate for the appellant
Present Shri G.R. Singh, DR for the respondent

Coram: Hon'ble Mr. S.K. Mohanty, Member (Judicial)

FINAL ORDER No. 58324-58325/2017

Per S.K. Mohanty

1. The issue involved in both these appeals are identical and accordingly, the same are taken up for hearing together and a common order is being passed.

2. Brief facts of the case are that the appellants are engaged in the manufacture of PSC sleeper, which are solely used by Indian Railways for laying down or maintenance of railway track. The said sleepers are manufactured by the appellants according to the specifications and other parameters provided by the Indian Railways. During the process of manufacture, some PSC sleepers developed crack or bends, and some PSC sleepers are broken by Railway Inspection Agency during quality control test. The quality control test by the Railways is the mandatory requirement of PSC sleepers to attain the stage of marketability and excisability under Section 2 (d) and Section 3 of the Central Excise Act, 1944. In this

case, during scrutiny of ER-1 Returns for the relevant period, the Central Excise Department observed that the closing balance for a particular month was reflected less, as opening balance in the subsequent month and accordingly, the Department had alleged that the difference in quantity of rejected sleepers broken at the factory were removed clandestinely, without payment of Central Excise duty. The Department has also alleged that the appellants have not followed the procedures prescribed under Rule 21 of the Central Excise Rules, 2002 for remition of duty on those defective goods. Accordingly, the Department initiated show cause notice proceedings against the appellant, seeking confirmation of the duty demand. The show cause notices were adjudicated vide order dated 22/12/2015 and 08/01/2016, wherein the proposals made therein were dropped. Feeling aggrieved with the said adjudication order, the Revenue filed appeals before the Ld. Commissioner (Appeals), which were disposed of vide the impugned order dated 19/05/2017, in confirming the duty demand against the appellants and also penalties were imposed on the appellants. The impugned orders passed by the Ld. Commissioner (Appeal) were challenged by the appellants before this Tribunal.

3. The Ld. Advocate appearing for the appellants submits that PSC sleepers manufactured by the appellant attained the stage of marketability, only when the sleepers are found to be used by the Indian Railways. She further submits that in case of defective sleepers, which were not found fit for use by Indian Railways, the same were sold by the appellants as scrap on payment of appropriate Central Excise duty. Thus, she submits that since the

defective PSC sleepers were not removed out of the factory, there was no requirement of payment of any Central Excise duty and also for observance of the procedures laid down in Rule 21 of the Rules.

4. On the other hand, the Ld. DR appearing for the Revenue reiterates the findings recorded in the impugned order.

5. Heard both sides and examined the case records.

6. It is not the case of the Revenue that the appellants had removed the defective PSC sleepers in as it is condition out of the factory, without payment of Central Excise duty. Appreciating the facts of the case and the nature of activities undertaken by the appellants, the Adjudicating Authority, while dropping the proposals made in the show cause notices, had held as under:-

> *13. Thus, it is clear that remission of duty is applicable for final products when such goods are claimed by the manufacturer as unfit for consumption or for marketing, at any time before removal of excisable goods. The Noticee manufacture and supply concrete sleepers to Indian Railway only. The final test of such concrete sleepers is conducted by Indian Railway agency by breaking few sleepers which are rejected by the Inspecting agency. Therefore I find sufficient force in the Noticee's contention that Railway sleepers attain the stage of marketability only when the sleepers are found fit for use by Indian Railways. The broken sleepers are dutiable only when they are marketable and removed from the factory. The Noticee is found to have paid appropriate Central Excise duty on sale of inputs as scrap obtained from broken sleepers. Further I have gone through the letter dated 23/01/2014 of S.E.C. Railway authority which has laid condition to the Noticee not to take the rejected sleepers outside the plant. Thus the inference of removal of goods, as alleged in the SCN, cannot be accepted.*

7. PSC sleepers, in this case, before inspection and certification by Indian Railways cannot be considered as fully manufactured goods in marketable condition. Hence, there was no necessity of maintaining the RG-1 register, before certification by the

inspecting agencies. However, since the appellants entered the entire manufacturing particulars in the RG-1 register, the demand cannot be fastened on the sole ground that the procedures laid down in Rule 21 of the Rules have not been followed by the appellants. Since, the defective PSC sleepers, in question, were not removed from the factory, and were sold as waste scrap on payment of appropriate duty, I am of the considered view that the duty demand confirmed in the impugned orders cannot be sustained for recovery.

8. Therefore, I do not find any merits in the impugned orders. Accordingly, after setting aside the same, I allow the appeals in favour of the appellants

[Order dictated and pronounced in the open court]

(S.K.Mohanty)
Member (Judicial)

Rekha