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

Date of hearing/decision: 29.12.2017

Ex. Appeal No. 51358 to 51365 of 2017
(Arising out of order-in-appeal No. DLI/EXCUS/001/99-106/CE/DLH/2017 dt. 16.05.2017 passed by the Commissioner of Central Excise, Delhi-I).

M/s Bhandari Electric Company Appellant
M/s Gaurav Enterprises
M/s Bentex Control & Switchgear Co.
M/s G. R. Electrical Co.
M/s SKN Bentex Group
M/s Darvesh Sales Corporation
M/s Om Shanti Electric Company
M/s Hindustan Electric Store
Ms. Surbhi Sinha, Advocate for the appellant

Vs.

CCE, Delhi-I Respondent
Sh. U. Sengraj, AR for the Respondent

Coram:

Hon'ble Mr. Ashok Jindal, Member (Judicial)

Final Order Nos. 58680 – 58687/2017

Per: **Ashok Jindal**:

The appellants are in appeal against the impugned orders wherein redemption fine has been imposed on them.

2. Brief facts of the case are that one M/s Bentex Control & Switchgear Co. is a manufacturer of electrical motors, control switches and MCBs and distribution boards, electrical fan etc. The search was conducted at the factory premises of M/s Bentex Control & Switchgear Co. wherein raw material, semi finished goods, finished goods found unaccounted in their books of accounts and it was also found that they involved in the activity of clandestine removal of goods, therefore, search was conducted at the end of the co-appellants. All the appellants admitted that they have received goods without duty paying documents clandestinely. Accordingly, duty was paid alongwith interest and 25% penalty was also paid by M/s Bentex Control & Switchgear Co.. But the

same was settled. In the impugned proceedings, the show cause notice was issued for the goods seized during the course of investigation and for imposition of redemption fine and penalty on the appellant. It is also fact on record that goods cleared by M/s Bentex Control & Switchgear Co. to the co-appellant were also found in the possession of the co-appellant which were also seized. The adjudicating took place. The adjudicating authority imposed redemption fine on the appellant namely M/s Bentex Control & Switchgear Co. for raw material, semi finished and finished goods found in the possession of M/s Bentex Control & Switchgear Co. and imposed redemption fine on goods cleared clandestinely by M/s Bentex Control & Switchgear Co. found in the premises of the co-appellants. Against the said order, the appellants are before me in the present appeals.

3. Ld. Counsel appearing for the appellants submits that M/s Bentex Control & Switchgear Co. paid duty at the time of clearance of goods, therefore, no redemption fine is imposable in the light of the decision of this Tribunal in the case of ***K. K. Tobacco Company vs. CCE, Allahabad -2017 (349) ELT 510 (Tri. All)***. It is also submitted that on raw material and semi finished goods cannot be held liable for confiscation as per the provisions of Rule 25 of Central Excise Rules, 2002 are applicable to finished goods not to raw material and semi-finished goods. Therefore, it is prayed that redemption fine imposed on the appellants to be set aside.

4. On the other hand, ld. AR submits that in the case of ***K.K. Polycolor India Ltd. vs. CCE, Haldia -2013 (290) ELT 81 (Tri. Kolkata***) held that finished goods found unaccounted are liable for confiscation. Therefore, the impugned order is to be upheld.

5. Heard the parties considered the submissions.

6. On careful consideration of the submissions made by both the sides, I find that it is a case of imposing redemption fine on the goods seized during the course of investigation. I find in the case of M/s Bentex Control & Switchgear Co. raw material and semi-finished goods were also held for confiscation. I have gone through the provisions of Rule 25 of Central Excise Rules, 2002. The same are applicable to the goods manufactured by the appellant. Admittedly, raw material and semi-finished goods cannot be confiscated as held by this Tribunal in the case of ***Anchal Prints Pvt. Ltd. vs. CCE, Surat-I -2009 (235) ELT 117 (Tri. Ahmd.***). Therefore, I set aside the confiscation of raw material and semi finished goods recovered during the course of search from M/s Bentex Control & Switchgear Co. Consequently, the redemption fine on raw material and semi-finished goods cannot be imposed, the same is set aside.

7. Further, I find that redemption fine has been imposed on the finished goods found in the possession of M/s Bentex Control & Switchgear Co. which was not recorded in the statutory record and finished goods cleared by M/s Bentex Control & Switchgear Co. were found in the premises of co-appellants which has been cleared by M/s Bentex Control & Switchgear Co. without payment of duty. The contention of the ld. Counsel for the appellant that the goods were not meant for clandestine clearance and same has not been cleared. It is a fact on record that the modus-operandi is that the appellant is clearing goods without payment of duty without recording the same in records. Therefore, in the facts and circumstances of the case, the goods found unaccounted in the statutory record is liable for confiscation and facts of the case of ***K.K. Tobacco Company (supra)*** cannot be adopted in the case in hand as in the case of K. K. Tobacco Company nowhere it was found that the appellant was communicated in the activity of clandestine clearance. On

goods found that not recorded in the statutory record goods were held for confiscation which this Tribunal has set aside as on the said goods the appellant paid duty. In this case, the modus operandi of M/s Bentex Control & Switchgear Co. is clear they were not in the habit to enter the finished goods in their statutory record and clearing the same without payment of duty. Therefore, the finished goods found unaccounted in the statutory record during the course of search are liable for confiscation in terms of the decision of the Tribunal in the case of ***K.K. Polycolor India Ltd.*** (supra).

8. Further, I find that the co-appellant have received the goods on which no duty has been paid at the time of clearance. Therefore, the same are rightly confiscated in terms of Rule 25 of Central Excise Rules, 2002 and redemption fine is rightly imposed on the said goods.

9. In view of above observation, I hold that in the case of M/s Bentex Control & Switchgear Co. redemption fine on raw material and finished goods is not imposable but the redemption fine on finished goods is affirmed.

10. The appeal of M/s Bentex Control & Switchgear Co. is partly allowed.

11. For remaining appeals, I find no infirmity in the impugned order, the same is upheld.

12. In the result, the appeal filed by co-appellants namely; M/s Bhandari Electric Co., M/s Gaurav Enterprises, M/s G. R. Electrical Co., M/s SKN Bentex Group, M/s Sarvesh Sales Corporation, M/s Om Shanti Electric Company & M/s Hindustan Electric Store are dismissed.

(Dictated and pronounced in the open Court).

Ashok Jindal
Member (Judicial)

Pant