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

COURT-I

Date of hearing/decision: 11.01.2018

Appeal No. E/50303, 50304, 51279/2017 EX (DB)
[Arising out of Order-in-Original No. ALW-EXCUS-O-I-O-COM-61-16-17dated 08/11/2016 passed by Commissioner of Central Excise, CUSTOMS (Adjudication)-Alwar]

Rathi Special Steels Ltd.
Sarjit Singh Yadav
Mahipal Yadav … Appellant

Vs.

CCE & ST Alwar … Respondent

Appearance:
Present Mr. R.K. Hasija, Kr. Vikram, Advocate for the appellant
Present Mr. H. Saini, DR for the respondent

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

FINAL ORDER No. 50151-50153/2018

Per Justice Dr. Satish Chandra

1. All three appeals have been filed by the appellant against the Order-in-Original No. 61/2017 dated 08/11/2016.

2. The brief facts of the case are that the main appellant, M/s Rathi Special Steel Ltd is engaged in the manufacture of M S Steel Bars and Rods which attracts the Central Excise duty. On 03/11/2012, at the business premises of transporters, M/s Pahalwan Goods Carrier, some documents were recovered by the Department. Solely based on the entries made in these documents, the Department is of the view that the appellant has manufactured the goods clandestinely and removed the same without payment of

duty. To this effect, the statement of the transporter, Mahipal Yadav was recorded where he submits that the entries in the register/document is made on the basis of transaction. The transactions which were matching, the appellant has accepted the same but the transactions which were not matching, the appellant has denied. Finally, the Department has made out a case of clandestine removal and demanded the duty with the penalties.

3. Being aggrieved the appellant has filed the present appeal.

4. With this background, we heard Shri R.K. Hasija and Shri Kumar Vikram,Ld. Counsel for the appellant, and Shri M.R. Sharma, Ld. DR for the Revenue.

5. After hearing all the parties and on perusal of record, it appears that the entire allegation of the clandestine removal is based on the statement of the transporter as well as detailed culled out from the register of the transporter. In the instant case, the Department has not verified to whom the unaccounted goods were sold. No attempt was made to verify the excess consumption of the raw material and use of the extra energy. It is settled law that the documents recovered from third party cannot be used against the manufacturer to prove the clandestine removal unless they are supported by corroborative evidence. In the instant case, revenue has alleged that huge quantity of goods without payment of duty after manufacturing of the goods were removed. For clearance of such huge quantity of goods, corresponding quantity of raw material also have been procured by the appellant. However, the revenue has not brought any evidence to this effect. Further, none of the customers, to whom such huge quantity of the goods have

been sold were identified or questioned. From the record of the factory, no evidence has been brought on record regarding manufacture of the finished goods for the clearance of the same without payment of duty. When it is so, then by following the ratio laid down in the case of M/s Balaji V/s CCE Raipur (Final Order No. 57776-57777/2017 dated 10/11/2017, we are of the view that the Department has failed to prove the case of clandestine removal. In the said case, it was observed that :-

> *10. The appellant has relied on several case laws. In the case of Continental Cement Company Vs Union of India 2014 (309) ELT 411 (All.) the Hon'ble Allahabad High Court has observed as under:*
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> > *"12. Further, unless there is clinching evidence of the nature of purchase of raw materials, use of electricity, sale of final products, clandestine removals, the mode and flow back of funds, demands cannot be confirmed solely on the basis of presumptions and assumptions. Clandestine removal is a serious charge against the manufacturer, which is required to be discharged by the Revenue by production of sufficient and tangible evidence. On careful examination, it is found that with regard to alleged removals, the department has not investigated the following aspects:*
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> *(i.) To find out the excess production details.*
>
> *(ii.) To find out whether the excess raw materials have been purchased.*
>
> *(iii.) To find out the dispatch particulars from the regular transporters.*
>
> *(iv.) To find out the realization of sale proceeds.*
>
> *(v.) To find out finished products receipt details from regular dealers/buyers.*
>
> *(vi.) To find out the excess power consumption.*
>
> > *13. Thus, to prove the allegation of clandestine sale, further corroborative evidence is also required. For this purpose no investigation was conducted by the Department.*
>
> *11. In view of the above discussions we conclude that the third party evidence produced by revenue for sustaining duty demand has not been corroborated by detailed investigation. The allegation of clandestine clearance cannot be sustained only on the basis of third party evidence.*

> *12.In the result, impugned order is set aside and appeals are allowed.*

6. In view of above discussions and by considering rival submissions and the record of the case, we are of view that the allegation of the Department is very poor and without supporting of the evidence. Therefore, we set aside the impugned order and allow all the appeals.

7. In the result, all the appeals are allowed.

[Order Dictated and Pronounced in the open court]

(V. Padmanabhan)	**(Justice Dr Satish Chandra)**
Member (Technical)	**President**

Rekha