CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No.2, R. K. Puram, New Delhi, Court No. 1

Date of hearing: 09.01.2018
Date of pronouncement: 30.01.2018

Ex. Appeal Nos. 60394 of 2013 & 55546 of 2014
(Arising out of order in appeal No. 139/CE/D-II/13 dt. 20.08.2013 & O-I-O No. 12/2014-15 dt. 31.07.2014 passed by the Commissioner of Central Excise (Appeals), Delhi-II)

M/s Reliance Cable Industries Appellant

Vs.

CCE, Delhi-II Respondent

Appearance:

Sh. V. K. Gupta & Sh. J. P. Kaushik, Advocates for the appellant
Sh. R. K. Mishra, AR for the Respondent

Coram:

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

Final Order Nos. 50359 – 50360/2018

Per: **V. Padmanabhan**:

These appeals have been filed by the assessee against the order in appeal No. 139/CE/D-II/13 dt. 20.08.2013 & O-I-O No. 12/2014-15 dt. 31.07.2014 passed by the Commissioner of Central Excise (Appeals), Delhi-II. Both the appeals have been filed against different show cause notices but the grievances are the same.

2. Brief facts of the case are that the appellant are manufacturing electric wires & cables. The appellant is enjoying the benefit of SSI exemption. On 08.08.2011, a search was conducted at the business premises of the appellant where the raw material, finished goods, books of accounts, loose sheets were

seized. On the basis of the seized material the department has made out a case of clandestine removal. Being aggrieved, the present appeals have been filed by the appellant.

3. With this background, we heard Sh. J.P. Kaushik, ld. Advocate for the appellant who submits that the appellant is not registered with the Central Excise department. He submits that the factory owner is Shri Lalit Jain who is not an educated person. His two statements on 08.08.2011 and 10.08.2011, which were in Hindi and in his handwriting and remaining three statements dated 30.08.2011, 11.04.2013 and 17.05.2013 were signed by Shri Lalit Jain on the printed sheet. It is his submission that he is not acquainted with the computer. Ld. Counsel further submits that there were two old extruders which are still lying in the factory. With the same, it is not possible to manufacture the goods other than the declared goods. Only one machine was found having the capacity of 72 units in one shift of eight hours. To this effect, on 06.10.2017, a certificate was obtained from Chartered Engineer where he has certified the same. His further submission is that there is no case for clandestine removal as the raw material cannot be considered for the purpose.

4. Sh. V. K. Gupta, ld. Counsel submits that the finished goods were seized value at an amount of Rs. 51,500/- and the raw material valued @ Rs. 3,72,960/- which is not unusual in the factory premises when the limit of the SSI exemption was Rs. 1.5 crore. Ld. Advocate further submits that the proper books of accounts, ledger accounts, returns were maintained and they were examined by the lower authorities. He further submits that one diary was recovered from Sh. Lalit Jain and he disowned the same submitting that it

belongs to Sh. Prithibi Raj Jain who is residing with him and worked as a commission agent. He also submits that redemption fine is on higher side in proportionate to the recovered material.

5. On the other hand, ld. AR appearing for the Revenue has justified the impugned order. He submits that loose papers were recovered from the factory and he accepted the guilt. He also submits that three suppliers had confirmed that they have supplied the raw material without invoices. For this purpose, he has drawn our attention to page 10 of the order-in-original. It is the submission of the ld. AR that the appellants were selling the clandestine goods to the fake firm M/s Universal Enterprises, Shahdara, New Delhi. The statement of Sh. Chitranjan Pradhan, Supervisor cum Operator of the appellant confirmed the same.

6. We have heard both the parties at length and gone through the material available on record.

7. The case of the Revenue is that the appellant has manufactured electric wires and cables and cleared the same clandestinely during the period 2008-09 to 2011-12 (upto 08.08.2011) without payment of Central Excise duty. The investigation gathered evidences from which it appeared that the total value of clearances made by the appellant was more than the limit specified in the small scale industries exemption notification and accordingly demand of Central Excise duty to the extent of about Rs. 1.57 crores has been made. Further, the unaccounted raw materials and finished goods found at the time of search in factory was also ordered for confiscation.

8. The main evidences on which the Revenue's case is based as summarised below.

(i) Unaccounted raw material as well as finished goods were found in the factory at the time of search on 08.08.2011.

(ii) Some loose slips and sale invoices, recovered from the factory at the time of search indicated clearances of finished products by using invoices in the name of M/s Universal Enterprises, Shahdara to various customers. The firm in the above name was found to be not in existence at the address cited in the invoices. This firm was admitted to be a fake firm as confirmed by Sh. Chittaranjan Pradhan, Supervisor cum Operator of the appellant. Invoices of such fake firm was made use of by the appellant as cover for clandestine clearances made without payment of duty.

(iii) Certain loose papers were recovered at the time of search at the residence of Shri Lalit Jain, Prop. These loose sheets contained the details of various raw material suppliers and the quantum of such raw materials procured by the appellant. The main supplier of copper wire was M/s Balaji Metal, Shahdara, Delhi. Sh. Naresh Gupta, Prop. M/s Balaji Metal confirmed in his statement dated 08.08.2011 that raw materials have been supplied to the appellant by his firm. He also confirmed the total quantity of such raw material supplied to the appellant during the years 2007-10, 2010-2011 and 2011-12.

(iv) The other major raw material i.e. PVC compound was supplied by M/s Ankur Plastic, Shahdara Prop. Vimal Kaparia. He admitted in his statement dt. 24.07.2012 that raw materials were supplied for payment in cash to the appellant. He also confirmed that the quantum of raw materials as was found in the loose papers recovered from residence of Sh. Lalit Jain was supplied to the appellant.

(v) The other suppliers also confirmed the same. During investigation, upon checking the bank account of the appellant, it was found that some of the supplied raw materials found in the loose sheets were paid for by cheque by the appellant.

(vi) Certain books/ diaries were also recovered from residence of Sh. Lalit Jain. In such diaries, the details were found regarding sale of finished products. Such diaries recorded partywise, datewise, running account of sale value, receipt of sale proceeds and outstanding balance, for the period 2008-09 to 2010/2011. Upon verification of the bank account of the appellant, it was noticed that many of the sale transactions were found tallied with the credit entries in the bank account. Further, many of the entries found in the diaries were also duplicated in the loose sheets.

(vii) The investigating officers recorded the statements of Sh. Lalit Jain on 08.08.2011, 10.08.2011, 30.08.2011, 11.04.2013 and 17.05.2013. In these very detailed statements, Shri Lalit Jain has admitted the fact that raw materials were being procured often by cash without accounting. He also admitted that the finished goods were also cleared clandestinely for payments received by cheque and sometimes in cash. It is seen from the RUDs that he has confirmed in details the transactions with each of the raw materials suppliers as well as finished product purchasers.

On the basis of the above main evidences, Revenue has made the case for demand of duty on the basis of allegations of clandestine removal.

9. The main grounds on which the order has been assailed are summarised below-

(i) Sh. Lalit Jain, Prop. is only standard eight pass and is not comfortable with the use of the English language. Consequently, it has been argued that the statements recorded by him in the firm's computer were obtained under duress and dictated to him.

(ii) The manufacturing capacity of the factory was not enough to manufacture the quantum of goods alleged to have been cleared clandestinely. It has been argued that with only two extruders and winding machine the quantum of production alleged would not have been achieved.

(iii) It has also been argued that the documents recovered from residence of Sh. Lalit Jain do not pertain to the appellant, but pertains to the business of his brother Sh. Prithaviraj Jain who is said to have been working as commission agent.

(iv) The adjudicating authority, in the impugned order, has given detailed findings on all the above grounds. The documents recovered from house of Sh. Lalit Jain clearly indicate the names of various raw material suppliers, quantity of raw materials procured and the period during which the same has been procured. The documents also indicate in detailed the various customers with the details of goods cleared as well as the payments received and pending. Many of the entries found are corroborated by payments made/ received in the bank account of the appellant. Obviously, such transactions are accounted. This leads us to the reasonable conclusion that the documents found are a truthful account of the actual transactions made by the appellant in terms of procurement of raw material as well as manufacture and clearance of the finished products. We also note that in the several statements recorded from Sh. Lalit Jain, he has admitted in detail each and every entry found in such documents. The adjudicating authority has also given detailed findings in para No. 20 on how the appellant factory had the capacity to manufacture the quantum of goods alleged to have been cleared clandestinely. We are convinced on the basis of the Adjudicating authority's finding that appellant had the capacity to manufacture the quantity allegedly cleared clandestinely.

10. The adjudicating authority has dealt with the contention that Sh. Lalit Jain was not well versed in English language in para 17 of the impugned order. He has observed that the plea that he is not well versed with English language has been made for the first time after a gap of more than one year after tendering the statement. For the same reason, we conclude that the plea is nothing but an afterthought.

11. It has been contended that the loose sheet and diaries seized from the residence of Shri Lalit Jain do not pertain to the appellant, but pertains to the commission agent business said to have been run by Shri Prithaviraj Jain, brother of Shri Lalit Jain. This contention has been dealt with in para 16 of the

impugned order. The Revenue has sent repeated summons to Sh. Prithaviraj Jain to seek his clarifications in connection with discrepancies in the statements made by Sh. Lalit Jain and Sh. Prithaviraj Jain. Shri Prithaviraj Jain has chosen to disappear from the scene and absent himself. Accordingly, the adjudicating authority rightly did not place credence on the statements given by Sh. Prithaviraj Jain.

12. After considering the totality of facts and circumstances of the present case, we come to the conclusion that in the light of the evidences placed on record by the Revenue in the form of documents as well as various inculpatory statements, we are of the view that the allegation that the appellant has procured raw materials, manufactured wires and cables and cleared the same clandestinely without payment of duty stands established. Consequently, the demand of duty as well as the penalties imposed in the impugned order is upheld. The order for confiscation of seized goods also stands upheld.

13. In the result, both the appeals are dismissed.

(Pronounced on 30.01.2018).

(Justice (Dr.) Satish Chandra)
President

(V. Padmanabhan)
Member (Technical)

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