CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH - COURT NO. 1

Excise Appeal No. 55780 of 2014

(Arising out of order-in-original No. 15/2014-15 dated 27.08.2014 passed by the Commissioner of Central Excise, New Delhi)

DATE OF HEARING : 21.02.2018
DATE OF DECISION : 26.03.2018

M/s Shivan Cables ….. **Appellants**
(Rep by Sh. Shriniwas Kotni, Adv.)

VERSUS

CCE, New Delhi-IV ..… **Respondent**
(Rep. by Sh. M.R. Sharma, DR)

CORAM : HON'BLE MR. JUSTICE (DR.) SATISH CHANDRA, PRESIDENT
HON'BLE MR. V. PADMANABHAN, MEMBER (TECHNICAL)

FINAL ORDER NO. 51061/2018

PER JUSTICE (DR) SATISH CHANDRA :

The present appeal is filed by the assessee-Appellants against the order-in-original No. 15/2014-15 dated 27.08.2014 passed by the Commissioner of Central Excise, New Delhi. The period in dispute is 2008-09 to 2010-11.

2. The brief facts of the case are that, during the period under consideration, the assessee-Appellants were not registered with the Central Excise Department and availing the SSI Exemption for manufacturing aluminium wire. It is the submission of the assessee-Appellants that they were also involved in the job work and trading. A search was conducted at the factory as well as residential premises of the assessee-Appellants on 10.12.2009. On the basis of the seized documents, a case of clandestine removal was made out by the Department. Being aggrieved, the assessee-Appellants have filed the present appeal.

3. With this background, we have heard Shri Shriniwas Kotni, learned counsel for the assessee-Appellants and Shri M.R. Sharma, learned DR for the Revenue.

4. The learned counsel for the assessee-Appellants took a preliminary objection that in the instant case, there is a violation of principle of natural justice. He submits that the Department has seized the **"relied upon"** and "**un-relied upon documents**". Only the **"relied upon documents"** were given and copies of the "**un-relied upon documents"** were not given. For the purpose, he relied upon a number of case laws relating to the principle of natural justice and submits that the matter may be remanded. He also submits that the cross-examination opportunity was also not provided.

5. On the other hand, learned DR justified the impugned order.

6. After hearing the learned counsel on the Preliminary Objection, we find that the lower authority in para 4.14 has observed that :

> **"4.14 In the reply to the show cause notice filed during the course of personal hearing held on 16.09.2013 it was contended by Shivan that they had not been provided with relied upon documents No. 9,10,11 and 12. I find from record that copy of these documents were once again supplied to Shri Subhash Kumra, proprietor of Shivan on 4.3.2014 under his dated acknowledgement, though all the relied upon documents had already been handed over to Shri Subhash Kumra, proprietor on 31.05.2012 along with show cause notice dated 29.05.2012 under his dated acknowledgement, copy of which is also on record."**

Thus, the relied upon documents were made available to the assessee-Appellants.

7. Further, regarding the cross-objection, in the impugned order in para 4.24.1, the lower authority has observed that :

> **"4.24.1 I observe that there is no legal basis for the plea that export opinion of only Government agency can be relied upon. The show cause notice specifically discloses in the relied upon document no. 22 and 23 as to what documents were sent to the hand-writing**

expert for obtaining his opinion and the opinion gives reasons for coming to the conclusions drawn. I find that though cross-examination of hand-writing expert has been sought no reason for the same has been given. There is no allegation of any bias against the hand-writing expert. Further, what or how the truth is sought to be established by the cross-examination has not been elaborated, making the request frivolous. Even in the last personal hearing when Shivan concluded their case they did not press for cross-examination of the hand writing expert. It is obvious that the request for cross-examination was frivolous and they did not require his cross-examination."

So, the Preliminary Objection raised by the assessee-Appellants is rejected as opportunity of cross-examination was provided.

<u>ON MERIT :</u>

8. The learned counsel, at the strength of written submissions, submits that the Department has made no investigation regarding purchase of raw material and onward transportation. There was also no investigation on the sale of the finished goods and excess onward transportation. At the strength of the written submissions, he submits that there was no extra power consumption. But on a specific query from the Bench - whether they were having any DG set?, he was unable to reply in affirmative. He further submits that they were engaged in the manufacture of aluminium wires with the help of seven machines in the factory as per the panchnama. In a nutshell, he submits that the Department

has raised the demand merely on the basis of surmises and conjectures. It is the submission of the learned counsel that the order-in-original is perverse and suffers from complete non-application of mind as the adjudicating authority has failed to appreciate the entirety of the demand baised on mere presumptive calculations and not on any valid evidence of clandestine removal. He also submits that, according to the Department, the assessee-Appellants had manufactured the huge quantities of finished goods, whereas the assessee-Appellants even did not possess the raw materials, machinery and entire set up required for manufacturing of 'aluminium wire'. The Department has no evidence which is to be considered on the capacity of the assessee-Appellants to manufacture the alleged quantities, the machines required, the infrastructure and premises, the electric connection required and the manpower required. There is no investigation on the purchase of raw material and onward transportation. Lastly, he made a request that the impugned order may kindly be set aside.

9. On the other hand, the learned DR for the Revenue, by justifying the impugned order, submits that, the customers were examined and two of them have confirmed that they have purchased the material without bills due to heavy competition in the market. To substantiate his justification that the raw material was also supplied without bills and hand written kacchi slips were also recovered, he drawn our attention to the findings given in para 4.10 - 4.14 of the impugned order.

10. We have heard both sides and perused the material available on record.

11. At the very outset, regarding the extended period, we agree with the findings given in para 2.19 of the impugned order. Hence, the plea of the assessee-appellants' is rejected.

12. From the record, it appears that the assessee-Appellants are running a small scale factory established in the year 2001 for the business of drawing aluminium wire from aluminium rod, which tantamounts to manufacturing under the provisions of the Central Excise Act, 1944. Thus, the assessee-Appellants are carrying on the activities of the work of drawing wires of small gauges from the large gauge with the help of five drawing machines from one gauge to another. They were also performing small job works of the similar nature for other manufacturers. The said activities have been undertaken with the help of only five machines installed in the year 2001 as per the details given in the impugned order in para 2.7. During search, various incriminating documents were found. Accordingly, panchnama was prepared in the presence of independent witnesses. The factory was found to be operative from ground, first, second and third floor built on the premises. The ground floor was having three wire drawing machines, one welding machine and one weighing machine. While the first floor was being used for office purposes, three wire drawing machines and one

welding machine was found installed on the second floor. One more wire drawing machine and one more welding machine was found installed on the third floor. Thus, a total of seven wire drawing machines, three welding machines and one weighing machine were installed in the factory premises. The factory was having nine employees on their roll. Some raw material and finished goods were also found in the premises.

13. At the residential premises of the proprietor, there was a recovery of Saraswati Ledger Book mentioned in Panchnama dated 10.12.2009 where some entries were found. As per the document, total value of the aluminium wire removed to various buyers comes to Rs. 6,86,79,454/- @ Rs. 120/- per KG as per minimum rate mentioned by assessee-Appellants in the bills for the corresponding period. The proprietor's statement was recorded on 10.12.2009. As per the handwriting expert, the document no. 11 was written by the proprietor, Shri Subhash Kumra.

14. It appears that the Kacchi Parchies show the purchase of raw material both by the assessee-Appellants as well as by some other unit. The details of purchase of the raw material were available on Kacchi Parchies. Further mention of the word 'SCRAP' on the Kacchi Parchies shows that it was for the manufacture of the aluminium wire as well.

15. The allegation of the assessee-Appellants that non-relied upon documents were not supplied, it appears that initially they have requested for the same, but, later, during the course of personal hearing dated 18.07.2014, they have not pressed for the same.

16. Regarding the investigation made by the Department with M/s H.K. Wire, the same has been challenged on the ground that unaccounted clearance has just been admitted by Shri Sanjay Aggarwal, but no document has been recovered to corroborate the statement. Shri Subhash Kumra, the proprietor, tendered his statement where he has accepted the use of Kacchi Parchies and the same has matched with the material seized from the proprietor of the assessee-Appellants. Thus, there was no justification for grant of the cross-examination, as rightly observed by the lower authorities. Further, no request for cross-examination of any person was made during the personal hearing held a number of times. Even on the concluding date i.e 18.07.2014, the assessee-Appellants did not press for cross-examination of any person. This is merely an afterthought to buy time for delaying the proceedings.

17. In the instant case, we are fully satisfied that the assessee-Appellants have used the Kacchi Parchies for purchase of the unaccounted raw material and sale of the finished goods. When it is so, then we find no reason to interfere with the impugned order

and the same is hereby upheld along with the reasons mentioned therein.

18. In the result, the appeal filed by the assessee-Appellants is dismissed.

(Pronounced in the open court on 26.03.2018)

(V. PADMANABHAN)
MEMBER (TECHNICAL)

(JUSTICE (Dr.) SATISH CHANDRA)
PRESIDENT

Golay