IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.
Principal Bench, New Delhi

COURT NO. II

DATE OF HEARING/DECISION : 28/09/2018.

Excise Appeals No. 15-16 of 2007 (SM)

[Arising out of the Order-in-Original No. 51/COMMR/CEX/IND/ 2006 dated 28/09/2006 passed by The Commissioner, Central Excise & Customs, Indore (M.P.).]

M/s Shakti Pumps (India) Ltd.] Appellants
Shri Dinesh Patdar, Director]

Versus

CCE, Indore Respondent

Appearance

Shri Manish Saharan, Advocate – for the Appellants.

Shri P. Juneja, Authorized Representative (DR) – for the Respondent.

CORAM: **Hon'ble Shri Ashok Jindal, Member (Judicial)**

Final Order No. 53059-53060/2018 Dated : 28/09/2018

Per. Ashok Jindal :-

The appellants are in appeal against the impugned order wherein demand of Rs. 22,60,000/- has been confirmed against them alongwith interest and penalty on both the appellants have been imposed.

2. The facts of the case are that on the basis of intelligence, an investigation was conducted at the factory premises of the

appellant on 06/07/2005, wherein several discrepancies were found and one of the discrepancy was that the appellant issued some (without duty paying) invoices during the impugned period. There were certain statements showing their sales during the impugned period which were submitted by the appellant to the banks to obtain loan and the statement of bank manager was also recorded to certify sale figures of appellant. On the basis of these invoices, a case has been made out against the appellant for clandestine removal of the goods, therefore, the impugned order was passed holding that the appellant had clandestinely cleared the goods.

3. The learned Counsel submits that the appellant contested saying that appellant has not cleared any goods against those invoices and these invoices has been created by them to inflate their sale figures to obtain loans from the banks and no incriminating statement has ever been given by the appellant. In that circumstances, demand is not sustainable. To support this, he relied on the decision of **M/s Vijay Packaging Systems Ltd. and others vs. CCE, Hyderabad – 2010 – TIOL – 1662 – CESTAT – BANG.**

4. On the other hand, learned AR submits during the course of investigation, the bank manager himself has certified their sales figures. Moreover, in their statement furnished to the banks, they were shown the higher figures of sales and corresponding invoices has been procured from the appellant which is

corroborative with various sales figures of the appellant, therefore, demand is rightly has been confirmed.

5. Heard the parties considered the submissions.

6. In this case to allege clandestine removal of goods, the Revenue has relied on the following evidence :- (a) statement furnished to the bank for inflated sales figures ; (b) non-duty paying invoices recovered during the course of investigation and (c) statement of one Shri Mahesh Tiwari.

7. I have gone through the records. On going through the records, the name of the consignee has been written on the invoice and after making investigation from the consignee it was found that he has not received any goods from the appellant which proved stand of the appellant. Moreover, no incriminating statement has ever been recorded during the course of investigation. Further, the statement of Shri Mahesh Tiwari which was heavily relied upon by the Revenue was retracted by him very next day. Moreover, during the impugned period, Shri Mahesh Tiwari was not related to the appellant, therefore, the statement of Shri Mahesh Tiwari cannot be the basis to allege clandestine removal of goods. With regard to the figure shown to the statement shows to the bank and the statement of the bank manager, the reason has been explained by the appellant for inflation of the sales figure is to obtaining laon from the bank to maintain regular pace of sales and goods in their stocks. Merely on the ground that appellant has issued certain invoices on which

no duty has been paid and sales figure from the bank cannot be the reason to allege clandestine removal of goods in the absence of the other related evidences, such as, electricity consumption, procurement of raw material, how the goods have been cleared, how the extra labour has been employed and flow back of money. Admittedly, no effort has been made and the only effort has been made from the consignee who also stated that goods were not purchase from the appellant. In that circumstances, I rely on the decision of **Vijay Packaging Systems Ltd. and others** (supra), the charge of clandestine removal of goods remained unproved. In that circumstances, I set aside the impugned order and allow the appeals with consequential relief, if any.

(Order dictated and pronounced in the open court.)

(Ashok Jindal)
Member (Judicial)

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