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. 51519 and 52214 of 2018 (SM)

[Arising out of the Order-in-Appeal No. 09-10/CE/DLH/2018 dated 05/03/2018 passed by The Commissioner (Appeals – I), Central Excise, Delhi.]

Shri Ashok Agarwal, Director]
M/s Agarwal Insulator Pvt. Ltd.] Appellants

Versus

CGST CCE, Delhi – I Respondent

Appearance

Shri Somesh Arora, Advocate – for the Appellants.

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

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

Final Order No. 53057-53058/2018 Dated : 28/09/2018

Per. Ashok Jindal :-

The appellants are in appeal against the impugned order wherein demand of duty of Rs. 7,11,718/- has been confirmed against the main appellant alongwith interest and equivalent amount of penalty and penalty of Rs. 50,000/- has been imposed on the co-appellant Shri Ashok Agarwal, Director of the company.

2. The facts of the case are that on being received intelligence that the appellants are availing SSI exemption but their turnover has crossed more than Rs. 2 crores in the financial year 2013-2014, therefore, a search was conducted at the factory premises of the appellant on 29/09/2014, nothing incriminating was found during the course of search in the factory premises and all the stocks of inputs/finished goods were found in order, but during the course of search at the residence of the Director of the appellant company, certain loose sheets were found. Out of these loose sheets, some loose sheets remained unexplained by the Director of the appellant company. Therefore, on the basis of unexplained loose sheets, it was proposed that appellant is engaged in the activity of clandestine removal of goods without issuance of the invoice and not paid duty, therefore a case of clandestine removal has been booked against the appellant by issuance show cause notice dated 03/10/2016. The matter was adjudicated and demand proposed in the show cause notice was confirmed alongwith interest and penalty on both the appellants were imposed. Against the said order, the appellants are before me.

3. The learned Counsel appearing on behalf of the appellants submit that during the course of investigation nothing incriminating was found in their factory premises. All stocks were found in order. Merely on the basis of some loose sheets recovered from the residence of the Director cannot be the basis for alleging clandestine removal of goods in the absence of any

corroborative evidence to show that from where the raw material/inputs were procured, where the goods were sold, how the goods were transported, how much electricity were consumed and what is the production capacity of the appellant. In the absence of any corroborative evidence, demand is not sustainable. He also submits that the son of the Director has filed an affidavit explaining these loose sheets, in question, and owned the same and his own responsibility and these loose sheets written by him, but no credence was given to the affidavit, in that circumstances, the demand is not sustainable. To support his contention, the learned Counsel relied on the decisions of **Modern Laboratories vs. CCE, Indore – 2017 (358) E.L.T. 1179 (Tri. – Del.)** and **Davinder Sandhu Impex Ltd. vs. CCE, Ludhiana – 2016 (337) E.L.T. 99 (Tri. – Del.)**.

4. On the other hand, learned AR opposed the contention of the learned Counsel and submits that in this case the Director himself has admitted during the course of investigation that the loose sheets recovered from the possession of the Director at the residence belongs to the clandestine removal of goods and was ready to pay duty thereon, therefore, without retraction of the said statement, the same is admissible as held by this Tribunal in the cases of **CCE & ST, Ahmedabad – II vs. TEC Papers Pvt. Ltd. – 2014 (2) ECS (230) (Tri. – Ahm.)** and **M/s Windson Chem Industries vs. CCE, Daman – 2012 (2) ECS (118) (Tri. – Ahd.)**.

5. Heard the parties considered the submissions.

6. On careful consideration of the rival submissions, I find that in this case the sole issue arises is that whether in the facts and circumstances of the case, charge of clandestine removal is sustainable against the appellants or not.

7. I find that in this case during the course of investigation, in the factory premises of the appellant, nothing incriminating was found. Moreover, the stocks of raw material as well as finished goods has also found tallied with the statutory records. There are certain loose sheets recovered from the residence of the Director of the appellant company and on the basis of this, the case has been made out against the appellant. I have seen those loose sheets and one of the loose sheet is extracted separately for reference.

8. On going through the said loose sheet, I find that some name i.e. M. Vijayvada is written thereon but to ascertain the truthness of said clearance, no effort has been made by the Revenue to investigate or to find out who is M. Vijayvada. If that effort could have been done, then truth could have been revealed. Simply, on the basis of these loose sheets and without any corroborative evidence, i.e. from where the raw material has been procured, how the goods were transported and how much electricity was consumed it cannot be alleged that the appellant is engaged in the activity of clandestine removal of goods. Merely, the corroborative statement of the Director of the appellant company cannot be the basis in the clandestine

removal of the goods in the light of the decision of this Tribunal in the case of **Davinder Sandhu Impex Ltd.** (supra), wherein it has been held that the incriminating statement relied upon by the Revenue is not admissible evidence in the absence of corroborative evidence.

9. In view of above observations, I find that as in this case Revenue has not come up with any corroborative evidence to support the case of clandestine removal of goods, in that circumstance, the charge of clandestine removal remained unproved. Therefore, I set aside the impugned order and allow the appeal with consequential relief (if any).

(Order dictated and pronounced in the open court.)

Encl. : as above.

(Ashok Jindal)
Member (Judicial)

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