

IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL,
WEST BLOCK NO.2, R.K. PURAM, NEW DELHI-110066

BENCH-SM

COURT – IV

Excise Appeal No. E/51173/2018 [SM]

[Arising out of Order-in-Appeal No. 31-32/SM/CE/JPR/2018 dated 01/02/2018 passed by the Commissioner (Appeals), Central Excise & Central Goods and Service Tax, Jaipur]

R N Forging Pvt Ltd

...Appellant

Vs.

C.C.E. & S.T., Jaipur-I

...Respondent

Present for the Appellant : Ms. Ashmita Nayak &
Mr. Ranjeet Ranjan, Advocates
Present for the Respondent: Mr. P.R. Gupta, DR

Coram: HON'BLE MRS. RACHNA GUPTA, MEMBER (JUDICIAL)

**Date of Hearing: 22.11.2018
Pronounced on : 03.12.2018**

FINAL ORDER NO. 53346/2018

PER: RACHNA GUPTA

The appellants herein are engaged in manufacture of MS ingots. From information as gathered by the Sales Tax Department booking a case against the appellants on 16.06.2009 regarding clandestine removal of excisable goods, the Central Excise Department also conducted the examination of the records of the appellant as were resumed/ seized by the Sales Tax Department. Also on the basis of physical stock of MS ingots taken by the Sales Tax Department itself on 16.08.2009, the further report dated 26.06.2009 and the audit reports dated 26.06.2009 the Department alleged clandestine removal of MS ingots valued at Rs. 66,56,820/- by the appellants. The Sales Tax Department had also demanded an amount of Rs. 8,36,761/- on the unaccounted sales

amounting to Rs. 69,26,820/- vide their Order dated 03.07.2009. The Department accordingly issued a Show Cause Notice bearing No. 164 dated 13.04.2011 proposing the recovery of Central Excise duty amounting to Rs. 5,70,771/- alongwith the interest leviable under Section 11AB and Section 11A of Central Excise Act, 1944 and the penalty proportionate. The said proposal was initially confirmed vide Order of Assistant Commissioner bearing no. 33 dated 12.03.2013. An Appeal was preferred before Commissioner(Appeals) who vide the impugned order has dropped the partial demand in view of order of CTO, Jaipur dated 12.05.2011 vide which demand in respect of sale of Rs. 29,54,545/- has been dropped and that of Rs. 39,72,275/- has been confirmed with the Order for refund of amount of Rs. 3,56,909/-. However, the demand of Central Excise duty amounting to Rs. 3,27,315/- alongwith the penalties of the same amount alongwith Rs. 25,000/- on the Director of the appellant company has been confirmed. Still aggrieved the appellant is before this Tribunal.

2. I have heard Ms. Ashmita Nayak, Ld. Advocate for the appellant. She has submitted that the Central Excise Department has not conducted any search recovery or even any fresh investigation in the present matter. The documents as received from Sales Tax Department merely have been relied upon by the Department to propose the demand vide the impugned Show Cause Notice. Allegations of clandestine removal being serious in nature cannot be confirmed based on the documents received from some other Department. It was the burden of the Excise Department to prove the allegations

but apparently they merely have relied upon not only the initial proceedings but even the adjudications of the Sales Tax Authorities. The allegations are therefore not sustainable. Confirmation thereof is liable to be set aside. Though the impugned Order has dropped certain demand but the basis thereof also is the adjudication of the Sales Tax Department. It is further submitted that all relevant documents were provided by the Director of the appellant to the Excise Department. Careful scrutiny thereof reveals that the impugned allegations are wrong. Even the sales tax Adjudicating Authority vide its Order dated 16.12.2010 has wrongly confirmed the demand of Rs. 39,72,275/-. Despite that all the relevant invoices were made available even to Deputy Commissioner Commercial Tax. It is further submitted that the said Order of 16.12.2010 has appreciated that the appellant was also doing trading activities for its associated Company named as M/s Aditya International. The invoice No. 56 dated 10.06.2009 and invoice 1-13 dated 11.06.2009 have duly been appreciated to be of M/s Aditya International. It is submitted that there were various other invoices for dropping the entire demand but the Adjudicating Authorities below and even Sales Tax Authorities have failed to appreciate the same. The demand herein is therefore liable to be set aside as a whole alongwith the imposed penalties. Appeal is prayed to be allowed.

3. Mr. P.R. Gupta, Ld. DR while rebutting these arguments has submitted that the present case is based upon the documents search, seizures, recoveries and audit reports etc.

of appellant by the Sales Tax Department, initially alleging the clandestine removal of the final product of the appellant i.e. MS ingots to the value of Rs. 69,26,820/-. Since part of said demand i.e. Rs. 29,54,545/- has already been dropped by the Sales Tax Authorities themselves holding those sales to be related with the appellants associated firms M/s Aditya International but the remaining demand has been confirmed. Appellant has not filed any Appeal qua the same. The said order therefore stands attained finality. The Commissioner (Appeals) while duly considering the said decision has dropped the proportionate demand of Central Excise duty. Justifying the Order; Appeal is prayed to be dismissed.

4. After hearing both the parties I am of the opinion as follows:

No doubt the whole case was initially made by the Sales Tax Department and the entire demand of recovery of Sales Tax Department confirmed by CTO Circle-3 Jaipur vide Order 37209. However, after Appeal was preferred Deputy Commissioner Commercial Tax, Jaipur vide order dated 16.12.2010 partially allowed Appeal confirming the Sales Tax liability to the tune of Rs. 1,58,891/- alongwith the interest of Rs. 3,178/- only and the penalty of Rs. 3,17,782/- only in respect of sale of goods valuing Rs. 39,72,275/- and the demand with respect to the remaining sale amounting to Rs. 29,54,545/- was dropped.

5. Perusal of that Order makes it clear that the Sales Tax Department saw accounts books of the appellant and after

conducting the physical verification of the stock with those account books prepared the audit reports showing the unaccounted sale of MS ingots valuing Rs. 69,26,820/-. Based on the documents part of the demand as discussed above was dropped holding it to be the accounted sale for appellant's associate, M/s Aditya International. Invoice nos. 56 and 1-13 (as above) were relied upon. The Show Cause Notice is also based on the said invoices. The Order is clear that there is no other evidence falsifying the confirmed demand. No additional evidence could be produced by the appellant even before the Central Excise Department. Apparently and admittedly no Appeal has been preferred by the appellant against the Order of the Sales Tax Department, confirming the partial demand. As a result, it stands to have attained finality that the appellant have indulged into transaction of sales of their finished goods without any entry of those transactions in the account books as to the extent of the value of Rs. 39,72,275/-. In view of the said final adjudication there seems no reason for recalling the confirmation of the demand of excise duty to the said extent. Resultantly, I find no infirmity in the Order under challenge not even with respect to imposition of penalty upon the Director of the Appellant. Order is accordingly upheld. Appeal is hereby dismissed.

[Pronounced in the open Court on 03.12.2018]

(RACHNA GUPTA)
MEMBER (JUDICIAL)

D.J.