CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH AT HYDERABAD
Bench – SMB
Court – I

Appeal No. E/887/2011

(Arising out of Order-in-Appeal No. 126/2009 (V-I) CE dated 30.09.2009 passed by Commissioner of Customs, Central Excise & Service Tax (Appeals), Visakhapatnam)

M/s Sahuwala Cylinders Pvt. Ltd., …..Appellant(s)

Vs.

Commissioner of Central Excise, Customs and Service Tax, Visakhapatnam - I …..Respondent(s)

Appearance
Ms. ASK Swetha, Advocate for the Appellant.
Shri Guna Ranjan, Superintendent (AR) for the Respondent.

Coram:
Hon'ble Mr. M. V. Ravindran., Member (Judicial)

Date of hearing: 14/02/2018
Date of decision: 14/02/2018

FINAL ORDER No. A/30417/2018

[Order per: M. V. Ravindran.]

This appeal is directed against Order-in-Appeal No. 126/2009 (V-I) CE dated 30.09.2009.

2. Heard both sides and perused the records.

3. The issue that falls for consideration in this appeal is regarding demand of the duty on HTS wire scrap removed from the premises of the appellant. The vehicle carrying this scrap was intercepted by the Anti Evasion Officers and on being directed to show documents, the Assistant Clerk cum Cashier, who was accompanying that the goods are taken for weighment of the goods outside the factory premises, since the factory does not have weigh bridge within the premises; on further enquiry, it was informed that permission to remove the goods under weighment challan it is granted to them but the said permission lapsed in the month of June, 2008, which is not still renewed, and under reasonable belief that the material contained the vehicle was being clandestinely removed, they were seized along with the vehicle. Show cause notice was issued for the demand of the duty on such clearances which was adjudicated and the demand was confirmed with interest and equivalent amount of penalty; seized goods and vehicle were confiscated ordered to be released on payment of redemption fine, and the amounts were appropriated encashing the bank guarantee executed. On an appeal, the First Appellate Authority upheld the impugned order.

4. Learned Counsel after taking the Bench through the entire case records submits that there was a procedural lapse committed as they are eligible to avail the facility of removal of scrap

for weighment purposes to the weigh bridge without preparation of documents, that the final goods manufactured by them which were removed on payment of duty as the goods were for railways. It is her submission that due to non availability of weigh bridge, they had cleared the scrap from the factory it was for preparing duty paying documents but Assistant Clerk cum Cashier accompanying the vehicle was to prepare the documents after weighment of scrap. But Revenue has made out the case, as if it was a clandestine removal which is incorrect. She prays for setting aside the impugned order.

5. Learned Departmental Representative reiterates the findings of the lower authorities.

6. On careful consideration of the submissions made by both sides, I find that the impugned order is correct and does not require any interference for more than one reason.

6.1 Firstly, there is no correspondence from the appellant for renewal of the permission to remove scrap on weighment challan. Appellants are aware of the procedure to be followed for removal of goods outside the factory premises as they themselves have stated that there was a permission which expired in June, 2008.

6.2 Secondly, even if there is no weighment challan they could have prepared a adhoc documents which would indicate that the vehicle was being sent for weighment purposes, was to return back to the factory on further documentation, and the documents which were carried by the Assistant Clerk cum Cashier was blank in all respects.

7. In my view, the findings recorded by both the lower authorities in confirming the demand raised with interest and imposing equivalent amount of penalty, confiscating the goods of vehicles is correct and order does not require any interference.

8. The appeal is devoid of merits and is rejected and the impugned order is upheld as correct and legal.

(Operative part of this order was pronounced in open court
on conclusion of hearing)

(M. V. RAVINDRAN)
MEMBER(JUDICIAL)

Lakshmi….