IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH AT MUMBAI
COURT No. I

APPEAL No. E/803/10

(Arising out of Order-in-Appeal No. AKP/31-35/NSK/2010 dated 29.1.2010 passed by Commissioner of Central Excise (Appeals), Nashik)

Commissioner of Central Excise, Nashik **Appellant**

Vs.

Renuka Industries **Respondent**

Appearance:

Shri S.V. Nair, Assistant Commissioner (AR), for appellant
Shri Jayesh Doshi, Chartered Accountant, for respondent

CORAM:

Hon'ble Mr. Ramesh Nair, Member (Judicial)

Date of Hearing: 3.11.2017
Date of Decision: 5.3.2018

ORDER NO……………………………

The facts of the case are that consequent to a detailed investigation, it was revealed that a modus operandi adopted by the respondent, wherein the respondent is engaged in the manufacture of parts of travel goods such as flaps/divider flaps/folios etc. and cleared to M/s. Om Industries, Uttarakhand, on the strength of central excise invoice and once the goods reached the factory premises of M/s. Om Industries, Haridwar, the original and duplicate copy of invoices were brought back to the respondent's factory and the same were destroyed and a fresh parallel set of central excise invoices were prepared showing the inputs cleared as such to M/s. Om Industries, Haridwar, on which cenvat credit was not available and thus no central excise duty was paid and the parallel set of central excise invoices on which the inputs were shown as cleared as such were accounted for in the sales register of the respondent. Thus the respondent cleared manufactured goods i.e. luggage components, to M/s. Om Industries, Haridwar, clandestinely without accounting for in the daily stock account register without following central excise procedures and without payment of duty and by adopting such modus operandi, they evaded central excise duty. On the basis of the above investigation, a show cause notice was issued considering the entire supplies of parts under central excise invoice are not towards the parts, but for the final product which is liable to duty. The demand of excise duty amounting to Rs.23,09,251/- was proposed. The adjudicating authority while adjudicating the show cause notice, confirmed the entire demand along with interest and also imposed penalties. Being aggrieved by the order-in-original, the respondent filed appeal before the Commissioner (Appeals) who, after considering the finding given by the Commissioner and the submissions made by the respondent, reduced the demand to Rs.9,03,277/-. Being aggrieved by the said impugned order, the Revenue filed appeal on the ground that as per the modus operandi of the respondent, whatever clearances of parts shown under the invoices, the respondent might have cleared the finished goods. Therefore, the Commissioner (Appeals) is wrong in reducing the demand.

2. Shri S.V. Nair, learned Assistant Commissioner (AR) appearing on behalf of the Revenue, reiterates the grounds of appeal. He submits that the documentary evidence i.e. 10 parallel invoices recovered from the respondent clearly indicate that all the clearances made to M/s. Om Industries were finished goods and not parts. He submits that once the modus operandi of the respondent has been exposed, thereafter there is no need of 100% evidence. In support, he placed reliance on the following judgments:-

(i) *P. Pratap Rao Sait vs. CC, Cochin – 1988 (33) ELT 433 (Tri.);*

(ii) *Jay Prakash Chawla vs. CC, Cochin – 1987 (28) ELT 153 (Tri.)*;

(iii) *Varre Siva Prasad Babu vs. CCE, Guntur – 1985 (22) ELT 433 (Tri.)*.

3. Shri Jayesh Doshi, learned Chartered Accountant appearing on behalf of the respondent, submits that the investigation recovered only 10 parallel invoices. However, the partner of the respondent's firm has categorically stated that all the clearances of parts shown in the invoices are not towards the finished goods. The respondent has been

clearing in majority cases the parts as such to M/s. Om Industries and as per the statement given by the partner, average 30 to 35% cases are clearances of finished goods and not the 100%. He submits that the department did not have any evidence to establish that in all the cases, only finished goods were cleared. Therefore, the learned Commissioner (Appeals) has rightly upheld the demand only to the extent of 35% of the total demand confirmed by the adjudicating authority. In absence of any evidence, the demand of duty in respect of 100% parts shown to have dispatched to M/s. Om Industries cannot be treated as clearance of finished goods.

4. I have carefully considered the submissions made by both the sides. I find that there is no dispute that the respondent was indulging in clandestine removal of finished goods under the guise of parts as such. The only issue to be decided is whether all the invoices issued showing the clearance of parts are for the removal of finished goods or some part of finished goods and the remaining parts as such. In this regard, the department could lay their hands only on 10 invoices and there is no other evidence found. The partner of the respondent firm Shri Ajay V. Shete in his statement clearly stated that they have manipulated the invoices in respect of around 35% clearances of the total consignment despatched to M/s. Om Industries, Haridwar and not in all cases. The learned Commissioner (Appeals) relying on the

above evidence held that the department has no evidence except the 10 invoices. However, on the basis of the statement admitting 35% clandestine removal against the total consignment of parts as per the invoices, the learned Commissioner (Appeals) reduced the demand. I find that since the department had no evidence except the 10 invoices and the partner of the respondent firm has given the statement as discussed above, there is no reason to demand the duty on the entire clearances of the parts treating the same as clearances of finished goods. In this peculiar circumstances, the benefit of doubt goes in favour of the respondent. Therefore, I do not find any infirmity in the impugned order. Hence the same is upheld. The Revenue's appeal is dismissed.

(Pronounced in court on 5.3.2018)

(Ramesh Nair)
Member (Judicial)

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