CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, WEST ZONAL BENCH AT MUMBAI

REGIONAL BENCH - COURT NO. 02

Excise Appeal No. 1192 of 2006

(Arising out of Order-in-Original No. 621/05/V/2005/COMMR/RH dated 30.12.2005 passed by Commissioner of Central Excise, Mumbai-V)

M/s Braco Electricals **.....Appellant**
Dattapada Road, Opp. Special Steel,
Borivali (East),
Mumbai-400066

VERSUS

Commissioner of Central Excise, Mumbai-V **.....Respondent**
5th Floor, Utpad Shulk Bhavan,
Plot No. C-24, Block 'E',
Bandra Kurla Complex,
Bandra (East), Mumbai-400051

WITH

Excise Appeal No. 1193 of 2006

(Arising out of Order-in-Original No. 621/05/V/2005/COMMR/RH dated 30.12.2005 passed by Commissioner of Central Excise, Mumbai-V)

Ramesh Sobhani **.....Appellant**
Dattapada Road, Opp. Special Steel,
Borivali (East),
Mumbai-400066

VERSUS

Commissioner of Central Excise, Mumbai-V **.....Respondent**
5th Floor, Utpad Shulk Bhavan,
Plot No. C-24, Block 'E',
Bandra Kurla Complex,
Bandra (East), Mumbai-400051

Appearance:

Shri Rohit Pardesi along with Shri N.S. Patel, Advocates for the Appellant
Shri Ajay Kumar, Authorized Representative for the Respondent

CORAM:
HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)

FINAL ORDER NO. A/86308-86309/2019

Date of Hearing: 23.01.2019
Date of Decision: 22.07.2019

Per: S.K. MOHANTY

Brief facts of the case, leading to these appeals are as under:

1.1 M/s Braco Electricals (appellant No.1) was engaged in the manufacture of Cable Glands, Terminals falling under Chapter 85 of the Central Excise Tariff Act, 1985. During the disputed period, the Central Excise department gathered information that the appellant No.1 had manufactured and removed the final product clandestinely to M/s The Brihan Mumbai Electric Supply & Transport Undertaking (BEST) without payment of Central Excise duty and that the goods were removed under simple delivery challans, without accompanying with Central Excise invoices. It was also observed by the department that the appellant No.1 had one more unit manufacturing similar goods, under brand name 'Braco', which was not declared to the Central Excise department. The intelligence report of department had confirmed that clandestine removal of goods had resulted in evasion of Central Excise duty and that the SSI exemption limit was exceeded on adding the value of such clearances to the turnover declared to the department.

1.2 On the basis of intelligence, the officers of Central Excise department visited the factory of appellant No.1 and the premises of M/s Braco Sales Corporation. During the course of investigation, the department observed that the stock of finished goods available in the factory premises was less than the stock position reflected in the statutory RG-1 register. Further, the department also recovered the private records maintained at both the above premises. During the course of investigation, statements of various persons were recorded under Section 14 of the Central Excise Act, 1944.

1.3 On the basis of detailed investigation into the matter, the department had initiated show cause proceedings against the appellant No.1 and Shri Ramesh R. Sobhani, Proprietor of Braco Sales Corporation (appellant No. 2, herein), seeking for confirmation and recovery of the proposed duty demand along with interest and for imposition of penalties. The matter was adjudicated vide the impugned order dated 30.12.2005 by the learned Commissioner of Central Excise, Mumbai, wherein Central Excise duty demand of Rs.49,45,041/- along with interest was confirmed and equal amount of penalty was imposed on the appellant No.1. Besides, the impugned order also imposed penalty of Rs.2,50,000/- on the appellant No. 2 under erstwhile Rule 209 of the Central Excise Rules, 1944 read with Section 38A of the Central Excise Act, 1944.

1.4 The learned adjudicating authority has mainly recorded the following findings in support of confirmation of the adjudged demands against the appellants:

(a) The Appellant No. 1 did not submit any evidence to show that the sales effected to BEST was purely trading in nature and not removal of final products from the factory. In this context, description furnished in the purchase orders was referred to in the impugned order.

(b) The good were removed in clandestine manner and in contravention of the provisions of the Central Excise Rules, 1944.

(c) The private registers/documents etc. maintained by the appellant proved the fact that the goods were clandestinely removed without payment of central excise duty. The appellant's contention that the bills are not sales invoices was not accepted by the department.

(d) The appellant's contention that the value of exports made during the relevant period was not accepted in the adjudication order on the ground that the annexure to the SCN did not consider the export clearances for computation of the duty liability.

(e) The adjudicating authority also recorded further observations in support of confirmation of the adjudged demands.

1.5 Feeling aggrieved with the impugned order dated 30.12.2005, the appellants have filed these appeals before the Tribunal.

2. The learned Advocate appearing for the appellants submitted that the department has only considered the hand written private records maintained by Shri Satish Batra for arriving at the conclusion that the goods were removed in clandestine manner, without payment of central excise duty. In this context, he has stated that the department had never recorded the statement of such person and co-related such records with the alleged clearance of goods from the factory.

Accordingly, it is submitted that the private records maintained by him for accounting the job worked goods cannot be considered as removal of finished goods without payment of duty. Further, he has also stated that the department had not brought on any iota of evidence to show the clandestine removal of goods by the appellants. The learned Advocate also submitted that the persons, whose statements were recorded under summon have not specifically stated that the subject goods were removed from the factory without payment of central excise duty. The learned Advocate also contended that the value of goods exported through merchant exporter have not been excluded from the value of goods arrived at by the department for computation of the adjudged duty demand. Thus, the learned Advocate pleaded that the charge of clandestine removal solely based on the private records cannot be sustained for confirmation of the adjudged demands. In this context, the learned Advocate has relied upon the decision of this Tribunal in the case of Balajee Structural Pvt. Ltd. Vs. CCE, Raipur-2016 (341) ELT 457 (Tri.-Del.) and CCE, Raipur Vs. S.K. Sarawagi & Co. Pvt. Ltd.-2018 (12) GSTL 42 (Tri.-Del.) to state that in absence of corroborative evidence of procurement of raw material, use of electricity, flow back of transaction amount etc., the charges of clandestine removal cannot be leveled solely based upon the private records.

3. On the other hand, the learned AR appearing for the Revenue reiterated the findings recorded in the impugned order and further submitted that upon proper scrutiny of the statutory vis-à-vis the private records maintained by the appellant, since the adjudged

demands were confirmed on the appellants, the same are in conformity with the statutory provisions.

4. Heard the learned Advocate for the appellants, the learned AR for Revenue and perused the case records, including the written submissions filed by both sides.

5. I find that the department has solely considered the hand written private records prepared by Shri Satish Batra to hold that the same are the sales invoices issued by the Appellant No.1. However, on perusal of the case records, it transpires that the private records reflected the particulars of bills raised by the job workers, showing quantum of material received, consumed for manufacture of resultant final product, generation of scrap and the job work charges. Further, it is also noticed that the submissions of the appellant No.1 that it had maintained the job work register and the daily stock account, reflecting the transaction particulars, were not considered by the adjudicating authority inasmuch as no such findings were recorded by him in the impugned order. In the reply to show cause notice dated 03.04.2002, the appellant no.1 had submitted the evidences of exports with statutory documents and the remittances received by it towards exportation of goods. However, the adjudged demands were confirmed on the basis of private records, without proper co-relation of the data of actual export and value of alleged clandestine removal of goods. The information furnished by the appellants regarding the waste and scrap sent for job work for recycling and the duty paid goods supplied to BEST were also not properly addressed in the impugned order. The department had not adduced any

material evidence to show purchase of excess raw material, manufacture of alleged final product, electricity consumption and other evidences etc. to demonstrate that the appellant had in fact, clandestinely manufactured and cleared the final product out of the factory premises, without payment of central excise duty. Thus, in absence of proper substantiation of the allegation of clandestine removal, the charges leveled against the appellants cannot be sustained for confirmation of the adjudged demands. I find that the case of the appellant is squarely covered by the decision of the Tribunal, referred supra.

6. In view of above, I do not find any merits in the impugned order, so far as it confirmed the adjudged duty demands on the appellants. Since, there is no sustainable demand; consequential penalties imposed on both the appellants cannot also be sustained. Therefore, the impugned order is set aside and the appeals are allowed in favour of the appellants.

(Order pronounced in the open court on 22/07/2019)

(S.K. Mohanty)
Member (Judicial)

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