CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL MUMBAI

WEST ZONAL BENCH – COURT NO. 3

EXCISE APPEAL NO: 1065 of 2011

[Arising out of Order-in-Appeal No: SB(47-49)MV/2011 dated 29th March 2011 passed by the Commissioner of Central Excise (Appeals), Mumbai Zone– I.]

Soni & Brothers … ***Appellant***
3-B Dindoshi Village, Behind Patel Vanika,
Western Express Highway, Goregaon (E),
Mumbai 400 063

versus

Commissioner of Central Excise ***…Respondent***
Mumbai – V, Utpad Shulk Bhavan, Sector -E, Plot C-24
Bandra-Kurla Complex, Mumbai – 400 051

WITH

(i) **Excise Appeal No: 1066 of 2011 (Hitesh Jain); (ii) Excise Appeal No: 1094 of 2011 (Bhadresh Shevantilal Shah) and (iii) Excise Appeal No: 1189 of 2011 (Commissioner of Central Excise, Mumbai – V)**

[Arising out of Order-in-Appeal No: SB(47-49)MV/2011 dated 29th March 2011 passed by the Commissioner of Central Excise (Appeals), Mumbai Zone– I.]

APPEARANCE:

Shri None for appellant

Shri Anil Choudhary, Deputy Commissioner (AR) with Shri NN Prabhudesai, Superintendent (AR for Revenue

CORAM:

HON'BLE MR C J MATHEW, MEMBER (TECHNICAL)
HON'BLE DR SUVENDU KUMAR PATI, MEMBER (JUDICIAL)

FINAL ORDER NO: A/86447-86450 / 2019

DATE OF HEARING: 14/05/2019
DATE OF DECISION: 23/08/2019

PER: C J MATHEW

These appeals have been filed by M/s Soni & Brothers, Shri Hitesh Jain, Shri Bhadresh Shevantilal Shah and also by Revenue against SB(47-49)MV/2011 dated 29th March 2011 of Commissioner of Central Excise (Appeals), Mumbai Zone– I.

2. The case of the central excise authorities is that M/s Sony & Brothers had been clearing ‘aluminium sheets’ against delivery challans without corresponding invoices on some clearances and on others with both but describing the goods as ‘aluminium circles’ or ‘aluminium thickness’. The enterprise was in the business of manufacturing ‘aluminium sheets’ and ‘street light fixtures’ which were liable to duty and ‘aluminium circles’ on which the special procedure, under notification no. 17/2007 dated 1st March 2007, required them to pay duty of ₹ 12,000/- per month without reference to actual clearances. However, for the purpose of determining the limit of threshold for commencement of duty liability under notification no. 8/2003-CE dated 1st March 2003, the value of the goods cleared under the compounded levy scheme were also to be included and, for having failed to do so, were held liable to duties, upon crossing the exemption limit of ₹ 4,00,00,000/-, for the years 2007-08 and 2008-09. The original authority confirmed duty liability of ₹20,03,896/- on the manufacturer and, while imposing penalties on the partner of the manufacturing entity, also held the proprietor of M/s

Honesty Aluminium Centre, the buyer of the said goods, liable to penalty for having abetted evasion of central excise duty by the manufacturer.

3. Three of the appellants are not represented and it is seen that on various occasions in the past also they had not been. Furthermore, one of the appeals has been filed by Revenue against the setting aside the duty liability of ₹ 8,91,504/- for 2008-09 which is aggrieved by the finding that the extended period would not apply in the absence of any evidence of suppression of fact.

4. The appeal of Revenue stands dismissed in view of the threshold prescribed in F. No. 390/MISC/163/ 2010/ JC dated 17th December 2015 as amended by F. No. 390/Misc./116/2017-JC dated 4th April 2018 of Central Board of Excise and Customs .

5. The inclusion of the value of 'aluminium circles' for the purpose of determining the ceiling for exemption value under notification no. 8/2003-CE dated 1st March 2003 is only a question of fact. It has been established that the value of all the clearances would exceed the threshold prescribed for discharge of duty liability on the two dutiable products. We, therefore, find no reason to discard the finding of the lower authority on the liability to pay duty on the clearance of 'aluminium sheets' and 'aluminium fixtures' during 2009-10 and ₹ 6,48,792/- on the goods clandestinely removed either

without invoices or by misdescription in the invoices as 'aluminium circles' for the year 2008-09 and 2009-10.

6. It is the case of the other appellant, Shri Bhadresh Shah, who has been imposed with a penalty that he is a *bona fide* purchaser and that evasion of duty at the supplier's end would not be within his knowledge. It is also his submission that, out of the numerous transactions with the supplier, only two or three invoices were found to have declared the goods as 'aluminium circles' and that, for the other five, there were no invoices which could establish otherwise. He relies upon the decisions of the Tribunal in *RK Fans & Allied Products Ltd v. Commissioner of Central Excise, Mumbai – III [2017 (358) ELT 1128 (Tri.-Mumbai)], Hi-Tech Electronics v. Commissioner of Central Excise, Mumbai – V [2007 (218) ELT 604 (Tri.-Mumbai)]* and *Goodwill Electricals v. Commissioner of Central Excise, Mumbai – V [2004 (177) ELT 785 (Tri.-Mumbai)]*.

7. We find that the statement of Shri Hitesh B Jain, partner in M/s Soni & Brothers, admitted to crossing the threshold for payment of duty in 2007-08 and 2008-09. The clearances for the subsequent periods were also furnished. In the other statement, Shri Hitesh B Jain also confirms the mis-declaration of 'aluminium sheets' as 'aluminium circles'. It was also confirmed by the customers of M/s Soni & Brothers that they had been clearing 'aluminium sheets' as 'aluminium thickness' with intent to evade payment of duty. No

evidence has been produced to counter this admission.

8. We also find that the claim of Shri Bhadresh Sheventilal Shah of being innocent of the involvement in the mis-declaration to be acceptable. As purchaser of ‘aluminium sheets’, it would hardly be his place to verify the documents. He was not required to be compliant with central excise procedures, either as a manufacturer or as a registered dealer, and cannot be expected to have any interest other than satisfaction that goods that were supplied as per orders issued by him. In these circumstances, the fastening of a penalty on an uninvolved dealer does not appear to be proper.

9. In accordance with the above, we dismiss the appeal of Revenue, and set aside the penalty imposed on Shri Bhadresh Shah while upholding the other demands and detriments in the impugned order.

10. Appeals are accordingly disposed off.

(Order pronounced in the open court on 23/08/2019)

(C J Mathew)
Member (Technical)

(Dr. Suvendu Kumar Pati)
Member (Judicial)

**/as16052205*