

**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
MUMBAI**

WEST ZONAL BENCH

EXCISE APPEAL NO: 350 OF 2011

[Arising out of Order-in-Appeal No: SB(63)63/MI/2010 dated 18th November 2010 passed by the Commissioner of Central Excise (Appeals), Mumbai Zone– I.]

Nucleus Technologies

07 Poonam Chambers, Dr Annie Besant Road, Worli
Mumbai – 400018

... Appellant

versus

Commissioner of Central Excise

Mumbai – I

4th Floor, New Central Excise Building, 115 MK Road
Churchgate, Mumbai – 400 020

...Respondent

WITH

EXCISE APPEAL NO: 351 OF 2011

[Arising out of Order-in-Appeal No: SB(63)63/MI/2010 dated 18th November 2010 passed by the Commissioner of Central Excise (Appeals), Mumbai Zone– I.]

Ashish Kumar Govil

Nucleus Technologies

07 Poonam Chambers, Dr Annie Besant Road, Worli
Mumbai – 400018

... Appellant

versus

Commissioner of Central Excise

Mumbai – I

4th Floor, New Central Excise Building, 115 MK Road
Churchgate, Mumbai – 400 020

...Respondent

APPEARANCE:

Ms, Kranti Rathi, Advocate for the appellant

Shri NN Prabhudesai, Superintendent (AR) for the respondent

CORAM:

HON'BLE MR C J MATHEW, MEMBER (TECHNICAL)
HON'BLE AJAY SHARMA, MEMBER (JUDICIAL)

FINAL ORDER NO: A/85816-85817 / 2020

DATE OF HEARING:	27/01/2020
DATE OF DECISION:	11/09/2020

PER: C J MATHEW

Of the two appeals filed against order-in-appeal no. SB(63)63/MI/2010 dated 18th November 2010 of Commissioner of Central Excise (Appeals), Mumbai Zone- I, that of the assessee, M/s Nucleus Technologies, is brought to a closure by recourse to Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019 and upon issue of discharge certificate contemplated in section 127 of Finance Act, 2019, issued by the competent authority. Accordingly, the appeal is dismissed as deemed to be withdrawn.

2. The second appeal filed by Shri Ashish Kumar Govil, the Managing Partner, lies against the imposition of penalty of ₹ 1,00,000 under rule 209A of erstwhile Central Excise Act, 1944 that has been upheld by the first appellate authority.

3. Learned Counsel contends that the appellant was in no way involved with the physical handling of the goods that were allegedly removed without payment of duty. According to him, none of the several statements recorded from the appellant during the course of investigation admit to such connection with the impugned goods as to warrant invoking of rule 209A of the erstwhile Central Excise Rules, 1944. It is also her submission that, with the discharge of the assessee under section 127 of Finance Act, 2019 the appellant has, unfortunately, been placed in a position where the allegation of clandestine removal itself, even if challenged, is beyond adjudication by us. She, therefore, urges that, in line with the decision of the Hon'ble High Court of Bombay in *Commissioner of Central Excise v. Bansal Steel Corporation & Ors* [judgement dated 12th September 2017 in *Central Excise Appeal no. 108 of 2007*] mandating physical connection between the goods and the individual for invoking of rule 209A of the erstwhile Central Excise Rules, 1944, the appeal against penalty may be disposed of.

4. Learned Authorised Representative contends that the seizure of the goods and its liability for duty are beyond controversy with the admission of duty liability by recourse to the scheme in Finance Act, 2019. It is also contended that the decision of the Hon'ble High Court of Bombay in *re Bansal Steel Corporation & Ors* is inapplicable as the dispute arose in the context of issue of fake invoices without

involvement of transportation of goods. On the contrary he has cited a number of decisions of the Tribunal, viz., *Wipro Ltd v. Commissioner of Central Excise, Aurangabad* 92006 (196) ELT 226 (Tri.-Mumbai)], *Paragon Steels (P) Ltd v. Commissioner of Central Excise & Service Tax, Calicut* [2018 (15) GSTL 298 (Tri.Bang.)], *Mytri Enterprises v. Commissioner of Customs, Mumbai* [2004 (174) ELT 389 (Tri.-Mumbai)] and *Vishan Shamlal Milwani v. Commissioner of Central Excise, Aurangabad* [2006 (202) ELT 90 (Tri.-Mumbai)].

5. On a perusal of the decision of the Hon'ble High Court of Bombay in *re Bansal Steel Corporation & Ors*, while the facts leading to the dispute is, as narrated by Learned Authorised Representative, the principle laid down therein is that any of the enumerated activities in rule 209A of the erstwhile Central Excise Rules, 1944 must necessarily involve physical handling. It has been held that

'11. From the above judgment, it is clear that Rule 209A can be invoked and the penalty imposed only when the person has physically dealt with the excisable goods with the knowledge or belief that the goods are liable for confiscation.'

before going on to apply that principle in the context of the factual matrix of the dispute. In view of this decision of the jurisdictional High Court, the other decisions cited by the Learned Authorised Representative are irrelevant.

6. Respectfully following the decision and in the circumstances of the lack of evidence of physical dealing by the appellant of the impugned goods, the penalty is set aside and the appeal is allowed.

(Order pronounced in the open court on 11/09/2020)

(Ajay Sharma)
Member (Judicial)

(C J Mathew)
Member (Technical)

**/as*