(2018) 07 RAJ CK 0157

In the Rajasthan High Court

Case No : Central/excise Appeal No. 29 of 2018

Commissioner Of Central Goods And Service Tax @APPELLANT@Hash Man Serve Pharma

Date of Decision : 11-07-2018

Acts Referred:
Central Excise Act, 1944 — Section 14

Citation : (2018) 07 RAJ CK 0157

Hon'ble Judges : Kalpesh Satyendra Jhaveri, J;Vijay Kumar Vyas, J

Bench : Division Bench

Advocate : Anuroop Singhi, Aditya Vijay

Final Decision : Dismissed

Judgement

1. By way of this appeal, the appellant has assailed the judgment and order of the tribunal whereby tribunal has allowed the appeal of the assessee and

dismissed the appeal of the department. The CIT(A) has disposed of the appeal of the assessee by reducing the imposition of recovery of excise duty

and penalty.

2. Counsel for the appellant has framed following substantial question of law:-

(i) Whether in the facts and circumstances of the case, Tribunal was justified in deleting the demand raised for clandestine removal of goods without

considering the sufficient corroboratory evidence being, parallel set of raw material register, requisition slip for issuance of raw material, finished

goods register, confessional statements of Partners of unit and challan books all marked as MSP and MSP(P), to prove clandestine clearnaces? (ii)

Whether in the facts & circumstances of the case, Tribunal is correct in upholding the benefit of SSI exemption granted by Commissioner(Appeals)

without any evidence on records?

3. The facts of the case are that this Order-In-Original is being passed in respect of Show Cause Notice No.IV(6) 115/AE/JP-I/07 dt. 2.1.2008 issued

to M/s. Man Serve Pharma, F-102, RIICO Industrial Area, Sarna Doonger, Jaipur (hereinafter referred to as the â??assessee) manufacturer of P.P.

medicines falling under Chapter Heading 3003 of Central Excise Tariff Act, 1985 on the grounds that they had not accounted for production of P.P.

medicines in their RG-I Register/Book of Account valued Rs.2,76,33,027/- and removed the same clandestinely without issue of any invoice and

without payment of duty Rs.4608059/(CENVAT Rs.4506965/-+Ed. Cess Rs.90139/-+H & S.Ed. Cess Rs.10955/-).

4. Counsel for the appellant has contended that the tribunal has completely misconstrued and misread the finding and conclusion arrived at by the

original authority which reads as under:-

9.2 I find that there is no doubt that theassessee was clearly involved in maintaining two parellel sets of Raw Material Registers, Requisition Slip for

issuance of Raw Material, Finished Goods Register and Challan Books during the period from September 2004 to July 2007. These books/ documents

upon resumption were marked as MSP and MSP (P)/MSP+I proceed to elaborate this:

9.3 In find that the books/documents markedas MSP were used for issuance of the raw material purchased through Bills/Invoices, manufacture of the

finished goods & clearance thereof on payment of duty. These documents are statutory records for manufacture and clearance of the finished goods

under Central Excise Law. Further, I find that the records/books marked as MSP(P) or having Sign of â??Plusâ? were maintained for purchase of

raw material received without the accompanying purchase bills. This is clear from the fact that no purchase bills were found in the factory at the time

of searches of the premises neither were requisition slips for issuance of such raw material for manufacture register for entry of such finished goods

and challan book of clearance of such finished goods clandestinely without payment of duty and without generating Central Excise invoice. This

establishes assessee intent for clandestine production and clearances.

9.4 The fact of such malafide practice ofclandestine removal of the finished good by the assessee is also established by the fact that on 20.7.2007 at

the time of physical verification of the finished goods entered in the statuary registered viz a viz goods lying physically in the factory premises. The

short found goods was valued at Rs.629119/-.

9.5 These facts and documentary evidencehave also been confirmed and corroborated by the following concerned persons with records in their

statements recorded under section 14 of the Central Excise Act 1944.

(i) Sh. Sudhir Natani, active partner confirmed that work related to issue of challan, invoices and entry in RG-I and Form IV was done by Sh. Sanjay

Sharma on his directions. He also confirmed that the goods valued at Rs.629119/- found short in the factory premises during physical verification and

had been cleared by them without payment of duty and without issuing invoices. He also confirmed that they were maintaining two parallel sets of

records and all the records resumed during the search from his various premises were pertaining to M/s. Man Serve Pharma, Jaipur. He also

confirmed that goods cleared on the challans of challan book marked with MSP(P)/ having sign of plus were cleared without issue of invoices and

without payment of Central Excise Duty and agreed to pay the duty. He also disclosed the modus operandi and clarified that they were maintaining

batch wise registers and gods of repeated batches were removed without accounting for and without payment of duty. He also confirmed the value of

gods cleared clandestinely during the period from September 2004 to July 2007 as Rs.27003908/- which was worked out on the basis of documents

resumed during the search.

(ii) Sh. R.S. Natani, partner of M/s. Man ServePharma confirmed that he was also looking after the trading activities of M/s. Natani Medical Hall and

M/s. Zymex Pharmaceuticals, Jaipur as partner and proprietor. He also confirmed that the goods received in M/s. Natani Medical Hall under challan

marked as MSP(P) were received without any invoice. He also confirmed the receipt of medicines under challan marked as MSP(P) without any

invoice from M/s Man Serve Pharma in the name of M/s. Zymex Pharma. He also admitted the recovery of the records of M/s. Man Serve Pharma

and the said films in the premises of firms controlled by him. Thus, it is evident that these firms are also related firms and have mutual interest in each

other and also mutually carrying out illicit activities of the assessee.

(iii) Sh. Sanjay Sharma Computer Operator ofM/s. Man Serve Pharma confirmed in his statements that he was maintaining two sets of documents marked as MSP and MSP(P), for the assessee. He also confirmed that the raw material in the factory premises were sent by Sh. Sudhir Natani, out

of which partly accompanied the bill and partly raw material received without bill. He also confirmed that the receipts of raw material recorded in

MSP(P) register were received without any invoice and the clearances of the finished goods manufactured out of such raw material were made under

the challan marked as MSP(P), without issuing the invoices and without payment of central excise duty. He also confirmed the practice that if the

finished goods were cleared through challans of marked as MSP, then invoices were also issued for the same but if the finished goods were cleared

under challans of book marked as MSP(P), the no invoice were issued. He also confirmed that the said practice was being followed by him from

January 2005 on the direction of Sh. Sudhir Natani.

(iv) Sh. Ram Anugarh Singh, Chemist of theunit has also confirmed in his statement dt. 14.8.2007 stated that he had been working in the unit since

May 2004 and engaged in the work related to manufacture of the medicines as per the direction of Sh. Sudhir Natani. He confirmed that he was

obtaining the raw material from Sh. Sanjay Sharma under requisition slips and maintaining the batch wise daily production registers of M/s. Man Serve

Pharma, Jaipur. He also confirmed the repeated batches of the medicines were manufactured. He also confirmed the practice being adopted by him

for recording the production of the unit.

9.6.2 Further, all the statements were written by the concerned persons voluntarily in their own handwriting, after understanding the provisions of

Section 14 of the Central Excise Act 1944. They have specifically written in the statement itself that they tendered the said statement without any

force, duress or threat and fully agreed with contents. They also not retracted their statements at any stage. The reliance placed by the assessee on

various judgments are different from the facts of the case since there are sufficient material evidence on records such as receipt/clearances of input

without payment of duty, non accountal of the same and the clearance of the tablets on parallel set of invoices.

5. He further contended that both the authorities have confirmed at least evasion of duty of Rs.35 lacs and CIT(A) has partly allowed the appeal and

has wrongly given benefit of SSI exemption.

6. However, the tribunal while considering the matter has gone into detail and recorded the following findings:-

8. On careful consideration of the submissions made by both sides, I find that the assessee is engaged in manufacture and clearance of medicines and

availed the benefit of SSI exemption for the goods manufactured by them in their own name and paying duty on the goods manufactured by them on

behalf of others. The case of the Revenue is based on rough register maintained by Chemist Sh. R.A. Singh. Although statement of Sh. R.A. Singh

was recorded but Sh. R.A. Singh was never asked the question what â??MSP(P)â?? denotes for. Infact the author of the register is only and only,

Sh. R.A. Singh and it is an admitted fact that he was never questioned about what the word â??Pâ?? represents for what? In the defence

submissions filed by the assessee, it is explained that the word â??Pâ?? represents for the goods received back from the buyers as rejected and for

reprocessing. In the absence of any corroborative evidence to that effect, the said defence cannot be discarded. Moreover, the entries made by Sh.

R.A. Singh, it has been explained that from raw material of particular quantity specific quantity of finished goods can be manufactured but he nowhere

admitted that such quantity has been manufactured or produced. Therefore, the presumption taken by the revenue that such quantity has been

produced is without any positive evidence. Further, I find that demand has been confirmed against the assessee based on Annexure D to show cause

notice which shows that entries made in the register as well as entries made in RG 1 register and difference thereof is demanded.

7. He further contended that the tribunal has not considered all the documents and two judgments which sought to be relied upon cannot apply in the

facts of the present case.

8. We have heard counsel for the appellant.

9. The tribunal while considering the matter has considered the explanation tendered by the assessee regarding â??Pâ?? which has been referred in

the document and held that only on the statement recorded of the partner without further corroboration or confirmation of the goods received by the

third party, duty and penalty cannot be imposed.

10. In our considered opinion, the view taken by the tribunal is just and proper. Hence, no substantial question of law arises.

11. The appeal stands dismissed.

