
(2016) 05 JH CK 0089

In the Jharkhand High Court

Case No : Tax Appeal No. 1 of 2008 with T.A. Nos. 2-4 of 2008

Gillooram Gaurishankar

APPELLANT

Vs

Commissioner of C. Ex.

RESPONDENT

Date of Decision : 10-05-2016

Acts Referred:

Citation : (2017) 1 AIRJharR 644 : (2016) 341 ELT 574 : (2017) 1 JBCJ 70 : (2017) 1 JCR 198

Hon'ble Judges : D.N. Patel and Ananda Sen, JJ.

Bench : Division Bench

Advocate : S/Shri Ratnesh Kumar and Amit Kumar, Advocates, for the Respondent; Ms. Amrita Sinha, Advocate, for the Appellant

Final Decision : Dismissed

Judgement

D.N. Patel, J.(Oral) - Tax Appeal No. 1 of 2008 : This tax appeal has been preferred against the judgment and order passed by the Customs, Excise and Service Tax Appellate Tribunal (for the sake of brevity hereinafter to be referred to as "CESTAT"), Eastern Zonal Bench, Kolkata in Excise Appeal Nos. EDM-36-40 of 2006, whereby, CESTAT, Kolkata has partly allowed the appeal preferred by the appellant and for imposition of penalty of Rs. 35 lakhs upon the appellant under Rule 173Q of the Central Excise Rules, 1944 for clandestine removal of the goods, the matter has been remanded for re-fixing the amount of penalty upon the company, but, so far as removal of the goods through seven gate passes are concerned, it is admitted fact that these goods were removed without payment of the duty and it is also admitted fact that the goods which were removed, were excisable goods. Nonetheless, in the High Court, learned counsel appearing for the appellant has argued out that the goods, which were removed, were not excisable goods because they are semi-finished goods. The details of seven gate passes are as under :

Sl. No.

Gate Pass No.

Date

1

51

15-11-1990

2

53

28-11-1990

3

54

10-1-1991

4

55

10-1-1991

5

56

10-1-1991

6

57

11-1-1991

7

58

16-2-1991

So far as other fifteen duplicate gate passes are concerned, they were also recovered during the search carried out of the premises of the appellant by the Central Excise officer on 10th May, 1994.

2. For the ready reference, Paragraphs 10.5 and 10.6 of the order passed by the CESTAT, Kolkata in Excise Appeal Nos. EDM-36-40 of 2006, dated 30th May, 2007 read as under :

"10.5 Removal of goods through 7 (seven) gate passes under Annexure-B to SCN for delivery to M/s. Manipur Conductors, Imphal was not proved to be removal of goods on payment of duty on the date of removal, leading any evidence even

before this forum and such removal having been found without payment of duty are held to suffer duty liability as well as penalty.

10.6 Allegation against 15 (fifteen) duplicate GP-2 (gate passes) referred to in Annexure-C to SCN bearing identical numbers but different dates as mentioned in the said Annexure, recovered in the course of search, remained uncontroverted even at this stage without adducing any cogent or credible evidence. These gate passes are bound to be held not used for actual export but for home-consumption of goods clandestinely removed. Such issue therefore calls for imposition of duty as well as penalty."

So far as the duty imposed upon the aforesaid clandestine removal of the goods is concerned, the same was confirmed and so far as penalty imposed upon the company is concerned, the matter was remanded by the CESTAT. There is also penalty, imposed upon the four directors of the company, as stated in Paragraph No. 10.9 of the aforesaid order passed by the CESTAT, Kolkata. The penalty of Rs. 2 lakhs each was levied upon the directors of the company, namely, Mr. G.P. Dalmia, Mr. Kali Kant Jha, Mr. Sanjay Dalmia and Mr. Sunil Dalmia, appellants in Excise Appeal Nos. EDM-37-40 of 2006 before the CESTAT, Kolkata. The appeals preferred by the directors were rejected by the CESTAT, Kolkata and, hence, they have also preferred Tax Appeal Nos. 2 of 2008, 3 of 2008 and 4 of 2008. So far as Mr. Kali Kant Jha is concerned, he has expired and, therefore, he has not preferred any tax appeal in this Court against the order of CESTAT, Kolkata. The aforesaid all four persons are proprietors and Mr. Kali Kant Jha was a manager.

3. Having heard learned counsels for both the sides and looking to the facts and circumstances of the case, it appears that no substantial question of law is involved in this tax appeal. The argument canvassed by the learned counsel for the appellant is based upon facts. It is vehemently submitted by learned counsel for the appellant that the goods, which were allegedly removed without payment, were not excisable at all as they are semi-finished products. This contention is not accepted by this Court, looking to the -

(a) Order passed by the Commissioner of Central Excise, Ranchi which is known as Order-in-Original No. 118/MP/Commr/2005, dated 17th October, 2005, especially Paragraph Nos. 35 and 36 thereof (Annexure-5 to the memo of this tax appeal).

(b) Paragraph Nos. 10.1 and 10.6 of the order passed by the CESTAT, Kolkata in Excise Appeal Nos. EDM-36-40 of 2006.

(c) Paragraph Nos. 40, 41 and 42 of the Order-in-Original dated 17th October, 2005.

4. It is also contended by the learned counsel for the appellant that out of the solid aluminium, wires are being drawn by the appellant and it is semi-finished product and for further finishing, it was sent to M/s. Manipur Conductors, Imphal which is a sister concern of the appellant and, hence, it is not excisable. This

contention is also not accepted by this Court mainly for the reason that drawing of wires out of solid aluminium also tantamounts to manufacturing. Upon the naked aluminium wire even if certain processes are to be done for the end use of the aluminium wire, then every stage is also a separate manufacture and for ultimate end product excise duty will also have to pay by taking Cenvat credit. This concept of Cenvat credit has been developed only for the purpose of payment of the duty at every stage of manufacturing. Hence, this contention of the learned counsel for the appellant that they have removed semi-finished goods which are not excisable, is not accepted by this Court. The so called aluminium wire is a raw material for another manufacturing which is also going to do value addition upon the aluminium wire.

5. Learned counsel for the appellant has also pointed out that under Rule 56B of the Central Excise Rules, 1944, the excise duty is not leviable upon semi-finished goods. This contention is also not accepted by this Court, looking to the fact of the present case. In fact, as per Rule 56B of the Central Excise Rules, there is need of the order to be passed by the Commissioner of Central Excise. No such order has been placed on record by the appellant to get the benefit of Rule 56B. Never such application is preferred by the appellant for getting exemption from imposition of the excise duty. Rule 56B has been enacted for altogether different purposes as looking to the facts of the present case, the goods have moved from the place of Deoghar to the place of Imphal. We are not discussing the purpose of enactment of Rule 56B, otherwise, mainly it is for consumption type of manufacturing. Suffice it to say for disposal of this tax appeal, excisable goods were manufactured and were removed by the appellant without payment of the duty, as stated herein above and these all are admitted facts, looking to the Order-in-Original as well as the order passed by the CESTAT, Kolkata. No substantial question of law has been raised in this tax appeal and, hence, the same is, hereby, dismissed.

Tax Appeal Nos. 2 of 2008, 3 of 2008 and 4 of 2008

6. These tax appeals have been preferred by Mr. Sunil Dalmia, Mr. Sanjay Dalmia and Mr. G.P. Dalmia against the order passed by the CESTAT, Kolkata dated 30th May, 2007. The observations against the appellants are in Paragraph No. 10.9, which reads as under :

"10.9 Penalty of Rs. 2.00 lakh (Rupees two lakh) each levied on S/Shri G.P. Dalmia, Kali Kant Jha, Sanjay Dalmia, Sunil Dalmia who are appellants in Appeal Case Nos. 37-40/06 does not call for interference in view of aforesaid circumstances of confirmation of demand partly by this Order. Such a preventive measure to deter recurrence is rational. We order accordingly."

In view of the aforesaid order passed by the CESTAT, Kolkata for clandestine removal of the goods without payment of the duty, as per Paragraph Nos. 10.5 and 10.6 of the order passed by the CESTAT, Kolkata penalty has been imposed upon all the aforesaid three appellants, i.e., Rs. 2 lakh per appellant. Being

aggrieved by the order of penalty passed by the Commissioner of Central Excise, Ranchi in his Order-in-Original dated 17th October, 2005 and looking to the consistent finding of the fact by the CESTAT, Kolkata also, the present appeals have been preferred by the directors.

7. We have heard learned counsels for both the sides and looking to the facts and circumstances of the case, it appears that there is removal of the excisable goods by the company from Deoghar to Imphal. Looking to the Order-in-Original passed by the Commissioner of Central Excise, Ranchi dated 17th October, 2005 especially looking to Paragraph Nos. 35, 36, 40, 41 and 42 and also looking to Paragraph Nos. 10.5 and 10.6 of the order passed by the CESTAT, Kolkata, the penalty imposed upon the aforesaid appellants cannot be said to be unreasonably excessive or shockingly disproportionate. Whenever, a company is removing excisable goods without payment of the excise duty, not only the company is liable to make the payment of penalty, but, also the persons who are in day to day management of the said company/sole proprietorship are also liable to make the payment of penalty. The removal of excisable goods were substantial looking to the further annexures annexed with the show cause notice issued by the respondent-Department and also looking to the Order-in-Original passed by the Commissioner of Central Excise in his order dated 17th October, 2005. Sizeable amount of Central Excise duty was evaded and, hence, no error has been committed while passing the Order-in-Original by the Commissioner of Central Excise, Ranchi as well as by the CESTAT, Kolkata for imposing penalty of Rs. 2 lakh upon each of the appellants. We see no reason to take any other view than what is taken by the CESTAT, Kolkata. So far as penalty of Rs. 35 lakhs upon the company is concerned, the matter has already been remanded by the CESTAT, Kolkata. The amount of Rs. 2 lakh per head of penalty is absolutely just and proper, looking to the nature of clandestine removal of the goods without payment of the duty. There is no substance in these tax appeals and, hence, the same are, hereby, dismissed.