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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Feb-20-1985

Reported in : (1986)(25)ELT69TriDel

Appellant : indo Hacks Ltd.

Respondent : Collector of Central Excise

Judgement :

1. In this matter the allegations are that when the Central Excise Officers visited the factory of the appellants by surprise on 21.5.80; they found as follows : (c) there were 63 fully packed wooden boxes containing 69,709 Hacksaw Blades and another 19100 pieces of Hacksaw Blades in cardboard packing which were ready for despatch. In respect of these, the appellants would not produce any registers or other documents which could show accountal and manufacture; (d) there were 3,578 pieces of Hacksaw Blades in excess in the bonded store-room which were not accounted for; (f) the Central Excise officers also visited the Branch Office of M/s. Technis Industries in Raniganj, Secunderabad on 21.5.80 who were allegedly dealing in Hacksaw Blades manufactured by the appellants, M/s. Indo-Hacks Ltd. In these premises, they found 4,331 pieces of Hacksaw Blades which according to the statement of one Shri C.K. Murthy, representative of the Branch Office were actually supplied by M/s. Indo-Hacks Ltd. without any documents showing the payment of Central Excise duty.

(g) as per the invoices, delivery challans and lorry receipts, the total value of clearances of M/s. Indo-Hacks Ltd. during year 78-79 worked out to Rs.

5,36,648.39. The appellants failed to pay Central Excise duty on clearances above Rs. 5 lakhs as required; (h) during the year 1979-80, the appellants were found to have removed goods for a value of Rs. 36,44,676.60 without accounting for the production and clearances and without payment of duty; (i) during the year 1980-81, the appellants cleared goods of the value of Rs. 2,68,869.10 without payment of duty, claiming the benefit of exemption under notfn. No. 71/78-CE dated 1.3.78 to which they were not entitled, as the clearances of the specified goods from the factory exceeded Rs. 15 lakhs in the past financial year of 1979-80 and the total clearances of all excisable goods cleared had exceeded Rs. 20 lakhs.

(j) apart from clearances of Rs. 2,68,869.10 which were made on gate passes but without payment of duty, it was found that the appellants had cleared goods valued at Rs. 4,61,531.12 without issuing Central Excise gate passes during the year 1980-81.

2. Appearing on behalf of appellants Shri K. Narsimhan made the following submissions in respect of the allegations for the 3 years 1978-79, 1979-80 and 1980-81.

(a) 1978-79 : (i) There was no allegation of clandestine removal but only a charge of non-payment of duty allegedly in excess of the value of the exempted limit of Rs. 5 lakhs.

(ii) The value of the goods cleared' is not correctly computed because the original price list was subsequently revised. As a result of the resolution of the Board of Directors dated 2.2.79, this revision in value was verified and approved by the Superintendent of Central Excise on 4.4.79.

(iii) In view of the fact that these values had been accepted and confirmed, the matter could not be re-opened by the show-cause notice issued on 17.11.80.

(iv) The demand of duty allegedly short-levied for the period 1978-79 was also barred by limitation, especially as there was no allegation in the show-cause notice of suppression of facts.

(b) 1979-80 : (i) As regards part II of annexure B of the show-cause notice, it is stated that the letter of the Director General of Supplies & Disposals, Hyderabad, dated 1.7.80, leaves no doubt that there was no despatch of goods from the factory of the Appellants in respect of 61 invoices which constituted the basis of the allegations in the statement in question. It is claimed that by not disclosing the correspondence that had passed between the Collector of Central Excise and the Director General of Supplies & Disposals, the Collector of Central Excise had violated the principles of natural justice.

(ii) As regards part I of annexure B to the show-cause notice, it is pleaded that the annexures to the show-cause notice were haphazardly prepared without any kind of verification or investigation and that the onus of proving clandestine removal was solely on the department. It is further urged that substantial part of the goods alleged to have been clandestinely removed were in fact non-excisable and therefore were not required to be covered by Gate Pass, certain other entries were against regular gate passes, while certain entries were fictitious for which an ex-employee of the Company was responsible. It was pointed out that in so far as category D goods were concerned, some of the entries in the Gate passes could be tallied in all respects although the value did not agree. It was stated that the basis on which the values were shown in annexure had not been disclosed.

(c) 1980-81 : Shri Narasimhan reiterated the contentions contained in the Appellant's reply to the show-cause notice, claiming that the appellants were eligible for clearance at nil rate of duty upto the first Rs. 5 lakhs in value and thereafter at 75% of the Tariff Rates on the next slab of Rs. 10 lakhs, and that they were entitled to benefit of concessions visualised in Notification No. 80/80, dated 19th June 1980.

3. Shri Narasimhan has submitted before us that all the irregularities which were actually found, could be attributed to Shri R. Ramachandra Rao, former Administrative Officer of the Company. His performance not being satisfactory, he was admonished by the management and he was also told that his services might be terminated if he did not improve. He did not even maintain the basic Excise Records w.e.f 13.4.80 and before that date he had been served with a notice for

termination of his services. He was responsible for all the fictitious entries in the records regarding sales and delivery which he had made for "furthering his nefarious purpose".

4. Shri Narasimhan has stated that in so far as Annexure B, Part I, of the show cause notice is concerned, in respect of goods worth Rs. 4,08,952 despatched to M/s. Technis Industries, (relating to S. No. 1, 2, 3, 13, 15, 17, 20, 23 and 24 of Annexure B, Part I), the factual position is that they were all blanks, cut to size for making hacksaw blades. In so far as hacksaw blades are concerned, invoice covering despatches were required to show not only the size and types but also the "teeth per inch". This was not contained in respect of the said despatches to M/s. Technis Industries and, therefore it should have been concluded that these were in fact blanks and not hacksaw blades.

5. Again in respect of goods valued at Rs. 5,45,022.40 (relating to S.Nos. 49, 50, 58, 62, 81 and 84 of Annexure B), (part 1 of the. show cause notice), it had been submitted by the Appellants that the relevant documents were fabrications made with malicious intent by the former employee Shri R. Ramachandra Rao. These were fictitious inasmuch as one or the other of essential information like the invoice number and date, delivery challan number and date, are also absent. The lorry receipts were also fictitious. It was incumbent on the Excise Authorities to have verified these submissions, which they failed to do. In the absence of conclusive evidence based on such investigation, the inference of removal without payment of duty or without issue of Gate pass is not warranted. Similarly, in respect of entries Nos. 82 and 83 ibid, for goods valued at Rs. 56,050, ' it is stated that they were fictitious. As regards entry 40 to 45, 48, 52 to 54, 71, BO, 85 to 87, 89 and 90 for goods valued at Rs. 3,01,980.40, it is urged that all these entries can be clearly co-related with clearances against Gate passes although discrepancies in the values recorded are admitted. In respect of the balance quantity of goods valued at Rs. 15,72,909.60 it is submitted by the Appellants that allegations in respect of them again suffer on account of lack of investigation. According to the Appellants, the balance amount should really be around Rs. 1.71 lakhs.

It is further stated that the tabular statements have been prepared by the department haphazardly and they are full of discrepancies.

6. It is also stated by the appellants that, as stated by them while dealing with some of the entries in the statements accompanying the show cause notice, the fictitious entries were created with a view to creating necessary evidence for obtaining larger finances from the Banking Institutions.

7. On behalf of the respondent Shri N.I. Ramanathan states that M/s.

Indo Hacks Ltd. have not been able to establish that the relevant entries in their records regarding the production and despatch of excisable goods were fictitious. The department was able to seize not only accounts of such goods but also delivery challans and other documents including lorry receipts, apart from invoices. The Collector had rightly rejected the contention that the invoiced sales were non-existent. It is also not possible for the department now to accept that the value of the total goods despatched by Indo Hacks was not Rs. 5,36,648.39 but only Rs. 3,73,521.29 on the grounds that the value of the goods as invoiced had subsequently to be reduced because the dealers found that the products were of an inferior quqlity, and difficult to sell at invoiced rates. The Collector rightly rejected this contention in view of the fact that the declared turnover to the sales-tax authorities also was of the order of Rs. 5,34,756.20. Besides he has taken the view that once the goods are assessed to duty and cleared, any subsequent reduction of prices is not of concern to Central Excise. Dealing with the arguments that the goods supplied to Technis Industries were Blanks and not hacksaw blades, it was pointed out that the appellants have not furnished any evidence in support of this claim. On the other hand, it is seen that Technis Industries had indented for high speed hacksaw blades and not blanks. Similarly, the invoices and the lorry receipts describe the goods as hacksaw blades.

It is also pointed out that besides the documents like invoices, communication memos etc. the Central Excise officers made a seizure of hacksaw blades at Technis Industries. The Collector has also not accepted that despatches to the Madras Branch notionally were of the order of Rs. 5,45,022.40 as against the figure of Rs. 15,72,909.06 contained in the show cause notice. In view of the fact that not only delivery challans have been found for these despatches but in two cases the department was also able to recover copies of lorry receipts. On the same ground he has rejected the claim that the sale amounting to Rs. 56,050 to M/s. T.I. & M. Ltd., Madras were fictitious. He has not found this contention acceptable in view of the fact that the department has been able to lay hand on delivery challans and invoices and also the fact that M/s. T.I. & M. Ltd., Madras, were supplied with 3 samples of hacksaw blades on 12th September 1979. The Collector further rejected out of hand the contention that the value fo goods computed at Rs. 15,72,909.60 was boosted up value of goods actually valued at Rs. 81,366, for the reasons simply that Indo Hacks have not been able to substantiate this claim.

8. As regards the year 1980-81, the Collector of Central Excise has once again held that the allegation that the appellants removed without payment of duty goods valued at Rs. 4,61,531.12 is proved due to the fact that these clearances are supported by lorry receipts, delivery challans and invoices. In regard to the despatches valued at Rs. 2,10,676/- to M/s. C.K. Murthy & Co. Secunderabad, despatches were effected on inter-office communication memos or on letter-heads of the company. Despatches to Technis Industries valued at Rs. 58 166 are similarly proved by not only documents like invoices, communication memos etc. but also actual seizure of hacksaw blades at Technis Industries.

9. 92,387 hacksaw blades were actually seized in the factory and as the Collector has pointed out, it is indisputable that they were not accounted for in the factory's RG-1, which was also admitted by Indo Hacks. An attempt has been made by the factory to explain that the goods relate to two gate-passes bearing Nos. 51 and 52 both dated 17.5.1980 and it is explained that these goods could not be transported due to break-down of the truck. On the other hand the department has been able to collect evidence of the packing of goods two days before the visit of the Central Excise officers to the factory i.e. on 21st May, 1980. It is on this ground that the Collector has held that the goods were produced and packed after 17.5.80.

10. As regards supplies allegedly made to Director General of Supplies & Disposals, the Collector of Central Excise has held that these goods were also

actually despatched on account of the fact that although the factory prepared 4 copies of the invoices, only 2 copies were produced to the Investigating Officers. Also the invoices quoted Railway receipts which according to the Collector was a sure sign of goods having been transported.

11. We have carefully considered the facts of the case and the submissions made by both sides. We find that this is a strange case in which the Appellants are without doubt guilty of serious lapses. The question in respect of most of the allegations is whether or not their explanations for the lapse are acceptable. These explanations are not easy to accept in view of the mass of circumstantial and documentary evidence against the Appellants.

12. When the Excise Authorities made the case against the Appellants on 21st May, 1980, they found that the Appellants had not maintained the basic records regarding the production and clearance of excisable goods, viz. RG-1 register. The gate passes were also not written for several days. As per the available records, clearly, certain quantities of excisable goods were missing. Certain other quantities were lying in the factory although not accounted for in the excise records. The Excise Officers, therefore, naturally had to take the help of various documents available in the factory to find out the correct accountal of goods manufactured and cleared by the Appellants and their duty liability. To explain away the serious lapses discovered, the Appellants have offered very strange defence. Non-maintenance of excise records is explained away by putting the entire blame on one of their own officials. There is, however, no comment as to how this continued not only for days but for weeks together without coming to the notice of the Appellants and without any remedial action by them. What is even more strange is the manner in which the Appellants have disowned their own documents and other records on two grounds, firstly once again the malicious intent of their former employee who it is said made false entries and fabricated documents to further his own "nefarious purpose" and, secondly, they claim that in many cases such false entries and fabrications were duly authorised by the management with a view not to evade excise duties, but to create evidence to enable them to get additional funds from financial institutions. In their own words taken from their letter to the Excise Authorities, shown to have been received by them on 28th May, 1980 - "we

have created invoices showing despatch of hacksaw blades, despatched ballast material by lorry transport, consigned always to our indenting agents at Madras and Bombay. Such agents who are not actual dealers in our case, used to honour the invoiced amounts through Banks end through Hundis. We used to draw advances against the Hundi amounts so as to keep our financial standing with the Banks at a high credit. Within the period of the grace of the Hundi we used to adjust the amount of advance drawn through the Hundis through our account payee cheques. By this method, though it may appear that we have manufactured and despatched the blades, we state that really no such manufacture or despatch has ever taken place." 13. On a specific query from us as to the reasons for the strange conduct of their employee and the explanation for his malicious intent and nefarious purpose as alleged, all that was said was that since he had been given notice of termination of service, he wished to create difficulties for his employer. On a further query as to whether, in view of the very serious fradulant practices and fabrication of records undertaken by him, any criminal proceedings were started against him, the answer was in the negative. In the circumstances we do not find this explanation acceptable as a defence for the serious lapses relating to non-maintenance of excise records or for either controverting the credibility of available documents which according to the Appellants are false, or otherwise for explaining away any other acts of omission or commission relating to entries in prescribed records and documentation.

14. In fact, considering the scale on which such fabrication and forgery of records has been undertaken and admitted by the Appellants themselves, for the stated purpose of obtaining larger financial assistance from the Banking institutions, it would appear that the Appellants had in fact institutionalised fabrication, forgery and fradulant practices in their entire scheme of functioning.

15. In the foregoing circumstances, we have the unenviable task of trying to differentiate between half-truths, lies and total lies. This is not an easy task in view of the scale on which fraudulent documentation and other irregularities have taken place.

16. Coming now to the specific allegations against the Appellants, pertaining to the 3 years in question, we have first to consider the arguments of the Appellants that the demand of duty relating to the year 1978-79 is barred by limitation, firstly because there was no allegation of clandestine removal in the show cause notice and secondly because there has been no specific, charge of suppression of facts. We find, however, that in the very detailed show cause notice issued to the Appellant, all the allegations that have been listed and the charges taken together cannot but be construed to allege both suppression of facts relating to production, accountal and clearance of goods and therefore also clandestine removal. In fact para 9 of the show cause notice quite specifically says that the Appellants did not account for their entire. production and clearances, and part of the stock was removed clandestinely. Para 10 of the show cause notice, while referring to the Appellant's liability and lapses pertaining to the year 1980-81 also states that M/s. Indo Hacks Ltd. have "continued" the suppression of production in the statutory record of RG.1 and cleared the goods without issuing Central Excise Gate Passes. Read with the earlier para, a clear charge is made here that right from the beginning, the Appellants have been guilty of suppression of production and other irregularities. Accordingly, the demand for duty is made under Rules 9(2) and 173 Q of the Central Excise Rules 1944.

17. In the circumstances we hold that the demand of duty for the period 1978-1979 is not barred by limitation.

18. Coming now to the year 1979-80, we take note of the letter of the Director General of Supplies & Disposals, Hyderabad, dated 1.7.1980 and, in the absence of other evidence to the contrary, take the view that there was no despatch of goods from the factory of the Appellants in respect of the alleged supplies to which the reply of the D.G.S. & D. relates.

19. As regards part I of annexure B to the show-cause notice, we do not think that the Appellants can be given any benefit even if it were accepted that the show cause notice is haphazardly prepared. Nor can we accept that in the circumstances of the case, the onus of proving clandestine removal was solely on the department. When the Appellant's own records are clearly evidencing

production, accountal and despatch of goods, then the onus of proving that the records are false and that no production, accountal or despatch of goods actually took place, is certainly on the Appellants themselves. This onus they have not discharged.

20. We have considered carefully the plea that the documents relating to goods worth Rs. 4,98,952 despatched to M/s. Technis Industries relate in fact to blanks for manufacturing hacksaw blades supplied, by the Appellants and not hacksaw blades. We feel that this contention cannot be accepted in view of the fact that as per the available documents, Technis Industries indented for high-speed hacksaw blades and not only the invoices and lorry receipts describe the goods as hacksaw blades but actual seizure of hacksaw blades manufactured by the Appellants has been effected from the premises of Technis Industries.

21. In respect of the 'Various other allegations relating to non-accountal and clandestine removal of excisable goods, which have given rise to demand of duty and imposition of penalty, we consider it unnecessary to deal with them separately in view of the fact that these are all proposed to be explained away by giving the same reasons such as inadequate investigation, onus on the department, mala fide intent of the former employee and creation of evidence for getting additional financial assistance from the Banking institutions, which we have already dealt with and found wholly untenable. We, therefore, uphold the demand for duty in respect of despatches other than those relating to alleged supplies to D.G.S. & D. referred to above.

22. In respect of 92,387 hacksaw blades seized in the factory, we also agree that the explanation of the Appellants that these goods could not be transported due to breakdown of the truck, is not convincing in view of the department's evidence as regards the actual packing of the goods two days before the visit of the Central Excise officers to the factory. We have also carefully considered the Appellant's submission that in so far as production and clearance pertaining to the year 1978-79 are concerned, they should get the benefit of the Resolution of the Board of Directors dated 2.2.79, which revised the value of the goods after they had already been cleared from the factory. We agree with the Collector that once the correct

assesable value has been declared by the assessee and the goods cleared from the factory, any subsequent reduction in prices to boost the sale of goods, cannot be a matter of concern for the Central Excise in determining the correct assessable value or even for determining the valuation for purposes of claiming exemption.

23. The Appellants have contended that there is no justification for the quantum of penalty imposed. In view however of the scale on which the Appellants have resorted to forgery and fraudulent practices and the amount of duty involved, we feel that the quantum of penalty is amply justified.

24. In terms of the above orders, the appellants get relief in respect of demand of duty pertaining to the alleged supplies to Director General of Supplies & Disposals as we hold that it has been established that no such supply has been made. In view of this finding, appellants' grievance about non-compliance of principles of natural justice in this regard, does not call for any further consideration. The order of the Collector is otherwise upheld. The appeal is disposed of in these terms.