Alfa Spg. Ltd. and Alfa Casting (P) Vs. C.C.E.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Nov-23-2005

Judge : S Kang, Vice, S T T.V.

Appellant : Alfa Spg. Ltd. and Alfa Casting (P)

Respondent : C.C.E.

Judgement :

1. These are nine appeals filed against the common impugned order. M/s.

Alfa Castings and Shri Gurdev Ram, Manager of Alfa Casting filed an appeal against the adjudication order passed by Commissioner of Central Excise whereby demand of Rs. 49,29,844/- was confirmed and imposed the penalty of the same equal amount on the firm and penalty of Rs. 5 lakhs on Shri Gurdev Ram. Alfa Springs Ltd. filed an appeal against the adjudication order whereby demand of Rs. 51,85,611/- was confirmed and penalty of the equal amount is imposed on Alfa Springs Ltd. and penalty of Rs. 5 lakhs was imposed on Shri Gurdev Ram, Manager of Alfa Castings. Revenue also filed five appeals whereby they challenged the same impugned order whereby the proceedings regarding imposition of penalty was dropped against Shri Rakesh Bagla, M.D. of both the firms and Shri Basiq Ansari, Excise Clerk of Alfa Castings and Shri R.P.Singh and Shri Sadiq Ali, Excise Clerk of Alfa Springs.

2. Brief facts of the case are that M/s. Alfa Castings Pvt. Ltd. is engaged in the manufacture of MS Ingots from scrap. The entire production of ingots by Alfa

Castings Pvt. Ltd. is being sold to M/s.

Alfa Springs Ltd. and M/s. Alfa Springs Ltd. manufactures M.S. Bars.

The officers of revenue Deptt. Visited the factory of M/s. Alfa Castings as well as M/s. Alfa Springs Ltd. on 21.8.96. Verification of finished goods as well as raw-material was conducted and it was found that there are certain discrepancies in the quantities of finished goods as well as in respect of raw-material present in the factory and balance recorded in the statutory record. Separate proceedings were initiated regarding excess and shortage. From the premises of M/s. Alfa Castings Pvt. Ltd. and from the premises of M/s. Alfa Springs Ltd., certain loose slips were recovered. The loose slips are in respect of raw-material received by M/s. Alfa Castings Pvt. Ltd. and for production of ingots. On verification it was found that the quantity of ingots mentioned in the loose slips are not entered in the statutory record. On the basis of these loose slips, a SCN was issued to M/s.

Alfa Castings Ltd. demanding duty in respect of the quantity 3866.620 m.t. of ingots. A SCN was issued to M/s. Alfa Springs Ltd. demanding duty on the ground that they have received the ingots cleared without payment of duty by the castings unit and used in the manufacture of M.S. bars which were cleared on without entering in the statutory records. The adjudicating authority confirmed the demand and imposed a penalty on Shri Gurdev Ram.

4. The contention of the appellant is that the loose production slips which were recovered from the premises of both the units are not recovered to these units rather these are in planted by their employee Gurdev Ram and R.P. Singh as they were not happy with the management.

The appellant also relied upon the some notices issued seeking explanation of Shri R.P. Singh. The contention is that Shri R.P. Singh was never examined by the Excise Officer and no investigation was conducted from Shri Gurdev Ram. However, Shri Gurdev Ram in reply to SCN explained exact position that these production slips were prepared to cause damage to the management. The contention is also that Excise Clerks of both the firms before the Excise Officer explained the entries to the extent that the goods were being cleared without payment of duty but subsequent they retracted from the statement on the ground that the statements were recorded under coercion and theats. The appellant also challenged the authenticity of the document. The contention is that as per the document recovered from the manufacturing unit shows that they are manufacturing more than 3 m.t. of ingots per heat whereas in the SCN the case of the revenue is that they can only manufacture 2.5 m.ts. of ingots per heat. The contention is that as their furnaces are capable of being produced only 2.5 per tonne per heat, therefore, as per the production slips on the basis of which duty is being quantified they have manufactured more than 3 m.ts. of ingots per heat which is not possible. The appellant also contended that as per the norms fixed by the Commissioner of Central Excise, one m.t. of ingot is being manufactured by consuming 1100 units and this norm is fixed after conducting experiments as per direction given by the Tribunal which is evident from the order-in-original passed by Asstt.

Commissioner of Central Excise, Jhansi dt.31.10.01. The production of the ingots as mentioned in the production slips compared that the consumption of electricity during that relevant period shows that they had only consumed 200 to 250 unit for the manufacture of per m.t. of ingots which is not possible. The contention is that investigation was started on the basis that appellants are producing ingots and M.S. Bars and clearing without payment of duty by resorting to theft of electricity. The contention is that the appellant produced a certificate from the concerned officer of the electricity Board to the effect that there is no case of electricity theft against the appellant. There was power cut as per the record whereas the production slips shows the production of goods and in some cases production slips shows nil production whereas actually ingots were produced. The appellant also relied upon the log shut supplied by the Electricity Board.

5. The appellant also submitted that during investigation their sanctioned load was 2700 kv. which is sufficient for running the two furnaces only and in the year 1995, they informed the Range Supdt. that once furnace is being old, therefore, due to frequent faults in the furnace, one furnace is kept stand by and it will be used in the case of other furnace is not working.

6. The contention is also that in the production slips it was also mentioned that the appellants are receiving the scrap from various supplier such as M/s. Vaibhav Associates and A.S. Traders also. The contention is that no investigation was conducted by M/s. Vaibhav Associates and A.S. Traders. However, on enquiry they had denied the sale of scrap to the appellant in respect of other supplier mentioned in the production slips no investigation was conducted. They submitted that some enquiry was conducted from Bakshi Transport, National Transport, Durga Ispat, Subhash Trading etc. and these suppliers retracted from the statements. Some of the supplier in the cross examination denied supply of scrap or by filing affidavits. The contention is that one dairy was recovered from Shri Nasir Khan who was commission agent to show that the appellants were receiving raw-material and also clearing the goods on which no duty has been paid but Nasir Khan in cross examination deposed in favour of the appellant.

In addition to this he also retracted from the statement immediately when the statement was recorded.

7. Two production slips recovered from the premises of M/s. Alfa Springs Ltd. The contention is that in these slips certain entries were made after the recovery of the slips. The contention is that slips were recovered on 21.8.96 and the statement of Sadiq Ali was recorded. In the statement of Excise Clerk, nothing was mentioned regarding the figures showing the receipt and despatch clearance and other names of the customers which was written in 'red ink'. On 21.11.96 he specifically explained these entries. The contention is that if these entries were exist on 21.8.96, the revenue must have asked for explanation as these entries were added after that date, therefore, this explanation only come in the statement recorded in Nov'96. The contention is also that these figures are not in the carbon copy of same document which was also recovered from the Alfa Springs. Shri Sadiq Ali also stated in the statement that copies of these production slips are being regularly sent to their headquarter but from the premises of their headquarter, no such copy was recovered. The enquiries were also conducted from the customers whose names are mentioned in the production slips as customers recovered from Alfa Springs but the customers stated that they had purchased the M.S. Bars from Vinod Enterprises. The contention is that no

investigation was conducted from the Vinod Enterprises and the adjudicating authority simply said that Vinod Enterprises is not in existence at the given address, there was no godown to store the goods. The contention is that as per the finding of the Commissioner, the premises of Vinod Enterprises is having four rooms at a yard and M.S. bars can be stored in the yard. The contention is that in these circumstances as loose slips are implanted by their employee just to harm the management, therefore, no demand can be raised. They also relied upon the following decision in support of their argument:Oudh Sugar Mills v. UOI 8. The appellants also pleaded that Alfa Springs is eligible to take Modvat credit in respect of duty paid by manufacturing unit. In this situation, the appellants are not clearing the goods without payment of duty. The appellant also relied upon the decision of the 'Tribunal in the case of Smithkline Beecham Consumer Health Care Ltd. v. CCE, Chandigarh 9. The appeals filed by the revenue the contention of respondent is that there is no evidence on record that they had omitted or committed anything with intent to evade payment of duty, therefore, they are not liable for any penalty.

10. The contention of the revenue is that in this case certain production slips and production reports were recovered from the premises of both the units. These reports also mentioned the details of receipt of raw-material, vehicle no. and the name of the supplier. Shri Basik Ali who was working as Excise Clerk of Alfa Springs and Shri Sadiq Ali admitted in their statement regarding the entries and receipt of raw-materials, production, they never retracted from the statements immediately and the statements were retracted after two months.

Therefore, the retraction is clear after thought. The revenue also argued that on verification from the suppliers of raw-material, it was found that they were in existence and some of the supplier admitted that they have supplied the raw-material and on verification, it was found that this raw material is not entered in the statutory record.

The revenue also pointed out that at the time of visit, there were five trucks in the factory containing scrap.

11. In respect of the contention of the appellant that they have produced only 2.5 m.ts. of ingots per heat. The contention is that as per the daily production slips, they were producing almost more than 3 m.t. of ingots per heat. The contention is that this weight mentioned in the slips on approximate basis. The contention is that if there are no evidence on record to show that they can only produce 2.5 m.t. of ingot per heat, their capacity of their furnace is 3 m.t. each. In respect of log sheet of the electricity board produced by the appellant. The contention is that these log sheets are not signed by the officer of the electricity board under which these receipts were received by the appellant, therefore, Commissioner of Central Excise rightly ignored and these were not authenticated by the officer of electricity board. The contention is that Excise Clerks of both the units at the time of recovery of the document i.e. daily production reports admitted that these relates to the production and clearance of the goods and only in reply to SCN, the stand has been taken that these documents were implanted by the employees.

12. In respect of the appeals filed by the revenue, the contention is that the employees against whom the proceedings were dropped, are directly involved in the evasion of Central Excise Duty, therefore, liable to penal action.

13. Heard both sides and perused the appeal papers. The case of the revenue is mainly based on the daily production reports recovered from the Alfa Casting Pvt. Ltd. and M/s. Alfa Spring Ltd. M/s. Alfa Castings is manufacturing ingots and all the production is supplied to their sister concerned i.e. Alfa Springs and same is used in the manufacture of M.S. Bars. The daily production reports contains the detailed such as the name of the product, date, number of pieces and approximately weight. These reports also contained the details of raw-material receipt from various suppliers even the names of the suppliers are mentioned. The appellants are relying upon the record of Electricity Board to show that the entries made in the daily reports recovered from the factory are contrary to the record maintained by the electricity board. The appellant mainly relied upon the copy of log sheet which they received/procured from the electricity board to show that some dates, as per the log sheets, there was no power supply to the units whereas as per the production reports, the appellant produced goods. On certain dates when the production slips shows that there was no production, the log

sheets of the electricity board shows that power supply was there and the statutory record also showing production.

These log sheets were produced before the adjudicating authority and adjudicating authority had not taken into consideration the entries in the log sheets as these were not authenticated by the officer of electricity board. We find that the record produced by appellant is copy of record maintained by the Electricity Board, the revenue should verify the facts mentioned the record regarding the electricity supply.

It is also contended by the appellant that the cross examination of certain suppliers of raw-material as well as customers/transporters were as named in the private record was disallowed by the adjudicating authority. The appellant relied upon the decision of the Hon'ble Supreme Court in the case of Triveni Rubber & Plastics (Supra) where Hon'ble Supreme Court held that power consumption norms are enough to prove the production of the goods. In the present case, the contention of the appellant is that they are well within the norms regarding power consumption as determined by the revenue. In these circumstances, we find it is a fit case for remand as the record produced by the appellant by way of log sheets of electricity board in support of the their claim was not taken into consideration. The adjudicating authority decided afresh after taking into consideration the log sheet produced by the electricity board, after getting it verified from the concerned authority and after affording an opportunity of cross examination of the witnesses to the appellants. Both the sides are at liberty to produce evidence in support of their claim. The impugned order is set aside and the matter is remanded to the adjudicating authority. As we are remanding the matter to the adjudicating authority, the adjudicating authority will decide the issue of demand and imposition of penalties afresh, therefore, the appeals filed by the revenue are also disposed of by way of remand.