

Commissioner of Central Excise Vs. Nand Mangal Steels Ltd.

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Court : Punjab and Haryana

Decided On : Feb-22-2008

Reported in : 2008(127)ECC144; 2008(153)LC144(P& H); 2008(226)ELT701(P& H)

Judge : Satish Kumar Mittal and; Rakesh Kumar Garg, JJ.

Appellant : Commissioner of Central Excise

Respondent : Nand Mangal Steels Ltd.

Disposition : Appeal dismissed

Judgement :

Rakesh Kumar Garg, J.

1. The Department of Central Excise has filed the present appeal under Section 35G of Central Excise Act, 1944 (for short 'the Act') against the order dated 28.5.2007 passed in Excise Appeal No. 281-83 of 2006 by the Custom, Excise and Service Tax Appellate Tribunal, New Delhi by raising the following substantial questions of law:

1. Whether mere denial of cross-examination of the Government examiner of questioned documents 'has prejudiced the case of the respondents and is sufficient to drop demand on 220 parallel invoices and 16 Grs' when their issuance

and clearance was otherwise accepted by the authorized signatory and the Director of the noticee in their statements under the Central Excise Act ?

2. Whether the Tribunal was justified in holding that no material was disclosed by the department in the show cause notice to establish the consumption of electricity when in the show cause notice dated 18.3.2005 at para 14 it is clearly recorded that the consumption of electricity was based on scrutiny of electricity bills vis-a-vis production of steel ingots by the noticee during the period of April 2000 to August 2001. The abnormal consumption of electricity by the noticee was further sought to be buttressed by Annexure AE which is a chart showing electricity consumption and which was enclosed as Annexure E with the show cause notice ?

3. Whether retraction of statement dated 3.9.2001 by Shri Ramesh Kumar Jha, authorized Signatory vide letter received on 10.9.2001 is legal and can be given due credence particularly when 1) when there is no evidence of undue influence and coercion 2) when Sh. Ramesh Kumar Jha never appeared thereafter and 3) when his statement was endorsed as correct by Sh. Sunil Gupta, Director of M/s Nand Mangal Steel Ltd., Industrial Area 'C', VPO Kanganwal, District Ludhiana ?

2. The respondent-assessee is engaged in the manufacture of nonalloy steel ingots falling under Chapter sub heading 7206.90 of the Schedule to the Central Excise Tariff Act, 1985 (5 of 1986) for which the assessee is registered with the Central Excise Department and is availing benefit of Cenvat Credit Scheme.

3. On 3.9.2001, acting on the information that the respondent was resorting to clandestine removal of non-alloy steel ingots and was evading the excise duty, the Central Excise officers visited the factory of the respondentcompany and verified the stock of the finished goods and raw material. There was no discrepancy of stock of finished goods. But, the officers detected shortage of raw material of 84.800 MT of sponge iron and the respondent immediately reversed the Cenvat credit of Rs. 75,980/- vide RG-23A Part II account debit entry No. 123 dated 3.9.2001. The officers also searched the factory head office, residential premises of Shri Raman Kumar Jha, Authorized Signatory and Sunil Kumar Gupta, Director of the respondent-company and nothing incriminating was found. It appears that an informer provided copies of 220 parallel invoices and 16 original copies of the

GRs to the Central Excise Officers. The statements of the authorized signatory and the Director of the respondent company were recorded. Based on these, it has been alleged that the respondent-company had been issuing more than one invoices against a particular serial number, clearing goods under all these invoices and subsequently destroying the parallel invoices.

The Commissioner, Central Excise Commissionerate, Ludhiana vide order dated 22.12.2005 held that the respondent cleared 3988.355 Mts of Steel ingots,(finished goods) on the basis of the said parallel invoices without payment of duty and confirmed the demand of duty and imposed penalty.

Aggrieved against the said order, the assessee filed an appeal before the Custom, Excise and Service Tax Appellate Tribunal, New Delhi and submitted that the demand of duty was confirmed on the basis of the photo copies of parallel invoices procured from the informer which were not issued by them at all and the adjudicating authority had proceeded only on the basis of the report of the handwriting expert and the respondent-assessee was not allowed to cross examine handwriting expert. It was the case of the respondent-assessee that there was no legal evidence with the department to proceed against them and therefore, the demand of duty and imposition of penalty was not justified. The Tribunal after perusing the record and considering the arguments of both the parties recorded a finding that the alleged invoices and the statement on the basis of which duty and penalty has been imposed upon the assessee is not corroborated by any independent, unimpeachable evidence, such as any material/ evidence showing purchase of raw material/excess consumption of electricity/transport and delivery of goods to consignees mentioned in the invoices/payment to assessee etc. and therefore, charge of clandestine removal against the assessee was not proved. The Tribunal also found that the statement of the authorized signatory of the respondent was retracted by him on 4.9.2001 and the same could not be relied upon by the Revenue to make the basis for passing the impugned order of imposing duty and penalty. The relevant part of the finding of the Tribunal recorded vide order dated 28.5.2007 is reproduced as under:

In the present case, we find that the statement dated 3.9.2001 of Shri Raman Kumar, authorized signatory of the appellant was retracted by him on 4.9.2001 as received by the office on 10.9.2001. The adjudicating authority brushed aside the retraction of statement by saying an afterthought. We find that in the present case the officers searched the factory, office, residential premises of the Director and the authorized signatory and no incriminating documents were found. There is no discrepancy of the stock of the finished goods. The department failed to produce any material corroborating the parallel invoice etc. and the statement relied upon was retracted very next day. It is particularly noted that the photo copies of the invoices provided by the informer, to the department were not supported by any material and, therefore, demand of duty on the basis of said invoices cannot be sustainable. In any event, the appellant already reversed the Cenvat Credit on the shortage of inputs as detected during the stock verification. Therefore, demand of duty and imposition of penalty upon the appellant company and the other appellants are set aside and the appeals are allowed with consequential relief.

4. We have heard learned Counsel for the appellant. However, we are not inclined to accept the submissions made by the counsel for the appellant/revenue. As in the present case, the department has failed to produce any material corroborating the parallel invoices etc. and the statement of the assessee which was relied upon by the department was retracted on the very next day. It is also note worthy that the photo copy of the invoices provided by the informer to the department were not supported by any material and during the search by the officers of the department in the factory, office, residential premises of the Director and the authorized signatory, no incriminating documents were found. Therefore, the demand of duty on the basis of the said invoices in the present case is not sustainable. It is also not disputed that the respondent has also reversed the Cenvat credit on the shortage of inputs detected during the stock verification and therefore, demand of duty and imposition of penalty was rightly quashed by the Tribunal. Thus, we find no ground to interfere in the finding of fact recorded by the Tribunal and in our view no substantial question of law was arisen in the order of the Tribunal. Dismissed.

