

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI.
PRINCIPAL BENCH - COURT NO.III

Excise Appeal No.54880 of 2023 (SM)

[Arising out of Order-in-Appeal No.RPR-EXCUS-000-APP-116-22-23 dated 17.01.2023 passed by the Commissioner (Appeals),CGST & Central Excise and Customs, Raipur (C.G.)]

M/s.Trivedi Ispat Pvt. Ltd.,
Sarora Industrial Area,
Raipur (C.G.).

Appellant

VERSUS

Commissioner of Central Goods
and Service Tax and Central Excise,
GST Building, Dhamtari Road,
Tikrapara, Raipur-492 001 (C.G.)

Respondent

APPEARANCE:

Shri Rajnish Kumar Verma, Advocate for the appellant.
Shri Arun Sheoran, Authorised Representative for the respondent.

CORAM:

HON'BLE MS. BINU TAMTA, MEMBER (JUDICIAL)

FINAL ORDER NO.58486 /2024

DATE OF HEARING:21.08.2024
DATE OF DECISION:02.09.2024

BINU TAMTA:

1. The present appeal is directed against the order-in-appeal no.RPR-EXCUS-000-APP-116-22-23 dated 17.01.2023, whereby the Commissioner (Appeals) confirmed the demand of central excise duty on account of shortage found in the raw material and the finished goods under Section 11A/11A(4) read with Section 174 of the CGST Act, 2017¹ and imposing equivalent amount of penalty under Section 11AC 1(a)of the Central Excise Act, 1944 ².

¹ The Act, 2017

² The Act, 1944

2. M/s. Tridev Ispat Pvt. Ltd.³ is engaged in manufacture of M.S. Ingots, for which, Sponge Iron, Pig Iron, and scrap are the raw materials. During the search conducted at the factory premises of the appellant on 12.04.2012, stock verification of inputs and the final product was conducted in the presence of Shri Ashish Agarwal, Director of the appellant company and two independent witnesses. On stock verification, shortage of 197.115 MT. M.S. Ingots (finished goods), 154.56 MT of Sponge Iron and 11.04 MT of Pig Iron (raw material) was detected, against which the appellant deposited central excise duty of Rs.13,15,617/- vide their Cenvat account. During investigation, it was also found that the appellant had removed their finished goods clandestinely as revealed from the scrutiny of loose papers, indicating unaccounted despatches by the appellant. The central excise duty payable on such clandestine removal was worked out to Rs.71,45,014/-.

3. Show cause notice dated 31.03.2014 was issued to the appellant and five other noticees demanding central excise duty on two counts i.e. Rs.13,15,617/- for shortage detected in the raw material and finished goods under Section 11A(4) of the Act along with interest for late payment and penalty and Rs.71,45,014/- on account of clandestine removal of goods. On adjudication, the demand was confirmed, however, the appellant approached the High Court challenging the denial of cross examination, whereby the matter was remanded for re-adjudication. On remand, the Adjudicating Authority confirmed the demand of Rs.13,15,617/- along with interest and equal amount of penalty and dropped the remaining demand of Rs.71,45,041/-. Being aggrieved, the appellant filed the appeal before the Commissioner (Appeals), which has been rejected by the impugned order. Hence, the appellant has approached this Tribunal.

³ The Appellant

4. Heard Shri Rajnish Kumar Verma, learned Counsel for the appellant and Shri Arun Sheoran, learned Authorised Representative for the Revenue.

5. The submission made by the Learned counsel for the appellant are as under:-

5.1 The appellant challenged the conclusion that short-found inputs and finished goods were clandestinely removed on the ground that --

.The factory search lacked proper authorization.

.The stock verification was based on estimation, not physical verification.

.Verification methods were inappropriate and not in line with mandated procedures.

.The stock verification process was hastily conducted and flawed.

.There is no evidence of clandestine transportation or sale of goods.

.The payment of duty before show cause notice issuance was under coercion.

5.2 That shortages cannot be assumed as clandestine removal without corroborative evidence.

5.3 That no comprehensive investigation was conducted to determine the nature of the alleged discrepancies relying on the decision of **Hon'ble Gujarat High Court** in the case of **Principal Commissioner of CGST & C.Excise Vs. Shah Foils Ltd. :2020 (372) ELT 632 (Gujarat)**, wherein it was held that onus to prove clandestine removal must be discharged by sufficient, cogent, and unimpeachable evidences.

5.4 The reliance solely on the initial statement of the Director, without further examination or verification, is insufficient as evidence.

5.5 The demand for short-found inputs and finished goods amounts to a double demand, which is unjustifiable.

5.6 The show cause notice was time barred.

5.7 That in the absence of evidence of clandestine removal, no duty is payable, and hence no penalty should be imposed.

6. The learned Authorised Representative for the respondent reiterated the findings of the Authorities below and submitted that sufficient opportunity was granted to the appellant to declare the stock and, therefore, the difference found was on the basis of the declaration given by the appellant themselves, which they could not explain. The learned Authorised Representative relied on the principle that admitted facts need not be proved or established by the Department and hence no further corroboration is required.

7. The controversy in the present appeal is limited to the demand of central excise duty towards shortage in the raw material and the finished goods. The case of the Revenue is that the stock verification was conducted in the presence of Shri Ashish Agarwal, where opportunity was granted to him to declare the stock themselves as on 12.04.2012, as the stock maintained in their registers was only up to 9.04.2012. As a result, the appellant themselves declared the stock by taking into account the sales, purchase, production and consumption of both the raw material and the finished goods. The said declaration is as under:-

Items	Opening Balance	Production	Sales	Closing
M.S. Ingots	176.775	531.960	398.570	310.165
Runner Riser	36.080	21.280	30.000	27.360
		553.240		

%
85.67
3.43

Items	Op.Balance	Purchase	Consumed	Closing
Sponge	555.840	574.840	531.120	599.560
Pig Iron	131.510	48.040	38.510	141.040
Scrap	51.030	30.000	51.340	29.690

620.97

Stores (Rs.) 0.000 3543692.00 829860.00 2713832.00

The chart itself reflects the discrepancy which the appellant could not explain though he was specifically asked to explain the reason for the difference found. The Panchnama records that he accepted the difference. Since he admitted the shortage, he deposited the central excise duty as determined through their Cenvat account on 12.04.2014 itself.

8. The statement of the Director of the appellant was recorded under Section 14 of the Act on 12.04.2012, where he agreed with the difference in the stock maintained. The relevant part of the statement is quoted below: —

“Q.5 Please go through the stock of finished goods as well as raw material declare by you and the stock found during the course of physical verification in the presence of independent witness and you as mentioned in the Panchnama dated 12.04.2012, please explain the difference?

Ans.: I am agree with the stock found during the course of physical verification and agreed to pay the duty involve on such shortage of stock as mentioned in the Panchnama dated 12.04.2012. I am debiting herewith an amount of Rs.13,15,617/- (Cenvat – Rs.12,77,298/- Education Cess – Rs.25,546/-, Sec. Education Cess – Rs.12,773/-) vide Journal Voucher No.01 dated 12.04.2012 from our Cenvat Credit Account.”

9. There is no reason to ignore the statement recorded under Section 14 of the Act which has evidentiary values.

10. The learned Counsel for the appellant is trying to mix-up the issue of shortage in the raw material and the finished goods with the issue of

clandestine removal of goods. The Adjudicating Authority has very consciously confirmed the demand only in respect of the shortage in stocks and dropped the demand relating to the clandestine removal of goods. Therefore, there is no reason to link the issue of clandestine removal with the present demand of central excise duty. In this regard, the decision in the case of **Principal Commissioner of CGST and Central Excise, Raipur Vs. G. P. Ispat Pvt. Ltd.**⁴, where also during physical verification of stock, shortage of finished goods and raw materials was found and the General Manager of the company admitted the shortage. The Chhattisgarh High Court observed as under: —

"12. The stand of the Revenue, therefore, is that **it is not a case where the Revenue alleged clandestine removal and therefore were obliged to establish the allegation of clandestine removal by the assessee. It was a case of huge shortage of finished products as well as raw materials and lack of any fair explanation by the assessee. The responsible authorities or persons of the assessee-Company accepted the shortage and volunteered to make good the demand of Excise duty** of which a significant amount thereof came to be paid and for payment of the balance amount a plea was taken that since the Company was in financial distress, therefore, further time and indulgence ought to be extended to them. However, instead of sticking to their words and despite time having been granted by the Excise authorities, to the Company, they approached the appellate Tribunal and the Tribunal without taking into consideration the statements and acceptance made by the responsible officers of the assessee, got taken in by the line of arguments made before it that it was a case of clandestine removal, therefore, onus has to shift upon the Revenue to establish the same on the basis of the principles extracted from the case of *Anand Founders & Engineers* as well as *Continental Cement Company* (supra).

14. The Court therefore fails to appreciate as to why the statements duly recorded under statutory provisions of Section 14 of the Central Excise Act, 1944 was ignored or not taken into consideration by the appellate Tribunal. Nowhere did the private respondents plead that the allegation of clandestine removal was made against them. The department all along sought clarity from them for such huge difference in the physical stock vis-à-vis their book of accounts and only explanation offered by the respondents-Company was that the goods have been "dislodged".

⁴ 2019 (368) ELT 76 (Chhattisgarh)

15. Since it is a case of acceptance and failure to explain the huge variation in the stock and the variations were not having been disputed, the demand so made and calculated by the assessing authority was in conformity with the law. The ratio relied upon by the Tribunal that it will be governed by the principle of clandestine removal seems to be misplaced in the facts and circumstances of the case. The ratio of *Anand Founders & Engineers and Continental Cement Company*, (supra) have no applicability to the present case."

The decision of the High Court in the above case has been affirmed by the Apex Court by dismissing the special leave petition filed by **G.P Ispat Pvt. Ltd.**⁵. The present case is squarely covered by the observations of the High Court in **G.P Ispat Pvt. Ltd.** (supra), as allegation under consideration is limited to shortage in the stock, which has been admitted by the Director of the company, and there is no explanation for such shortage by the appellant.

11. During the course of arguments, the learned counsel for the appellant submitted that the statement made by the Director was under threat, pressure and coercion, however, I do not find any merits in the submissions. Firstly, from the contents of the Panchnama, it is evident that the proceedings were held in a calm and cordial atmosphere and there was no pressure on Shri Ashish Aggarwal, which is evident from the fact that though he was requested for the personal search however, he politely denied it. The relevant para of the Panchnama is quoted below:-

"The entire preventive proceedings were held in calm and cordial atmosphere. The officers at the end again requested Shri Ashish Agrawal, Director of the unit for their personal search which was politely denied by him. During the proceedings, due respect was paid to all and no damage was done to any movable or immovable property of the unit or any person. We, the panchas and Shri Ashish Agrawal read the panchnama and read out to us and found exactly written as was conducted, we and

⁵ 2019 (368)ELT A 38 (SC)

Shri Ashish Agrawal, Director signed the panchnama without any fear, greed and duress. The proceeding of panchnama was conducted at 19.00 hrs.”

12. Also there has been no retraction by the appellant of the statement made under Section 14 of the Act. I agree with the submissions of the learned Authorised Representative that what is admitted need not be proved, as held by the Apex Court in the case of **CCE, Madras Vs. Systems and Components Pvt. Ltd.** ⁶, the charge of shortage in stocks stood conclusively proved by the admissions of the authorized signatory of the company. Similarly, the observations of the Tribunal in the case of **K.P. Basheer Vs. Collector of Central Excise, Cochin** ⁷, that the admitted facts need not be proved or established by the Department. The principle enunciated by the Apex Court in **K.I. Pavunny Vs. Asstt. Collector** ⁸ that confessional statement of accused, if found to be voluntary, can form the sole basis for conviction. The Court has further gone ahead to say that, if retracted, Court is required to examine whether it was obtained by threat, duress or promise and whether the confession is truthful. Though in the present case, there is no retraction of the statement made by the Director, however, the Apex Court in the case of **Surjeet Singh Chhabra Vs. Union of India** ⁹ have observed that the confession, though retracted, is an admission and binds the petitioner.

13. Lastly, the principles settled by the Apex Court in **CC Vs. D. Bhoormal** ¹⁰ clarifies the code of conduct to be followed, as under:-

⁶ 2004 (165) ELT 136(SC)

⁷ 1999 (109) ELT 247 (T)

⁸ (1997) 90 ELT 241 (SC)

⁹ (1997) 89 ELT 646 (SC)

¹⁰ 1983 (13) ELT 1546 (SC)

“The law does not require the prosecution to prove the impossible. All that is required is the establishment of such a degree of probability that a prudent man may, on the basis, believe in the existence of the fact in issue. The Hon’ble Court further observed that ‘secrecy and stealth being its covering guards, it is impossible for the preventive department to unravel every link of the process. Many facts relating to this illicit business remain in its special or peculiar knowledge of the person concern.”

14. Similarly, the challenge that the stock verification was not proper as it was based on eye estimation and not on physical verification and the same was conducted in a short span of time of six hours which is unpractical, has no substance as no such objection was taken at the time of stock verification, rather the Panchnama was accepted and duly signed by the appellant. Both the Authorities below have observed that the appellant has now taken this defence and, therefore, all these objections raised at this later stage has no legs to stand being an afterthought as no such issues were raised during the physical stock verification. The appellant is trying to cover-up their admission by taking technical glitches, however, there is no merit therein.

15. Learned counsel for the appellant has cited several decisions holding that mere shortage cannot result in assumption of clandestine removal, however, they are not relevant as the issue in the present case is not relating to the clandestine removal. Moreover, as observed by the Commissioner (Appeals) and the case laws cited by the appellant, the evidences, which were available were different from the instant case and the appellant has not brought out the facts of the individual cases to show that the same were comparable. On perusal of the decisions relied on by the appellant, I find that the factual situation is absolutely different.

16. The Adjudicating Authority has categorically concluded that the appellant had contravened the provisions of Rule 4, 6, 8,10, 11 and 12 of Central Excise Rules, 2002¹¹ by not recording its production of finished goods found short during the physical verification and not determining the central excise duty on the goods found short. Had the investigation not been taken up by the Department, the shortage in the stocks would not have come to light causing loss to the Government exchequer. In the circumstances, the imposition of mandatory penalty on the shortage detected, the appellant has been rightly held liable for penal action under Section 11 AC(1)(a) of the Act. Reliance has been placed on the decision of the Apex Court in the case of **Punjab Tractors Ltd. Vs. CCE, Chandigarh** ¹², where the Court has held that for violation of the Rules, the appellant is undoubtedly liable to pay the penalty as prescribed under the said Rules. The Tribunal also in the case of **Amtek Auto Ltd. Vs. CCE, New Delhi** ¹³ has also held that the penalty is warranted for contravention of the Rules. Hence, no interference is called for in the imposition of penalty on the appellant.

17. Thus no interference is called for in the impugned decision and hence the same is affirmed. The appeal is, accordingly dismissed.

[Order pronounced on 2nd September, 2024]

(Binu Tamta)
Member (Judicial)

Ckp.

¹¹ Rules, 2002

¹² 2005(181) ELT 380 (SC)

¹³ 2001 (127) ELT 295 (T-Delhi)