Commissioner of Central Excise vs. Saakeen Alloys Pvt. Ltd.

Whether clandestine/illicit removal of excisable goods can be established and duty demand sustained solely on the basis of retracted confessional statements, in the absence of corroborating positive evidence such as excess raw material purchase, shortage

Date of Order: March 6, 2014
Case Law No: GIB-GUJHC-2014-06
Source: GST INDIA Biz (www.gstindia.biz)

CASE DESCRIPTION / SUMMARY

BACKGROUND

The assessee, a manufacturer of CTD/Round bars, was subjected to simultaneous searches at its premises and at the premises of its associate concern. Three note-books and one pen-drive were recovered allegedly containing details of illicit clearances. A further search at the premises of a transporter yielded parallel invoices purportedly issued by the assessee. Statements of several persons connected with the manufacturing activities were recorded, but all were retracted almost immediately after recording. On the basis of this material, a Show Cause Notice was issued demanding Central Excise duty of Rs.1,93,26,138/-, comprising approximately Rs.1.85 Crores based on data in the note-books and pen-drive, and approximately Rs.8.25 lakhs based on parallel invoices recovered from the transporter's premises. The Order-in-Original confirmed the entire demand. The Commissioner (Appeals) also confirmed the demand and imposed matching penalties. The assessee approached CESTAT, which set aside the demand of Rs.1.85 Crores while confirming the demand of Rs.8.25 lakhs along with penalties under Section 11(c) of the Central Excise Act. The Revenue challenged the CESTAT order before the High Court.

FACTS

The CESTAT, while dealing with the demand of Rs.1.85 Crores, found that the entire basis for the same rested only on retracted confessional statements and data in the note-books/pen-drive recovered from the associate concern's premises, without any independent corroborating evidence in the form of excess raw material purchases, shortage of finished goods, excess electricity consumption or cash seizure. Further, the opportunity of cross-examination of the person in-charge of records of the associate concern was not made available by the Department. In contrast, for the demand of Rs.8.25 lakhs, the parallel invoices recovered from the transporter's premises were confirmed not only by the proprietor of the transporter but also by independent evidence, and hence this demand was sustained by the CESTAT. The Revenue's appeals before the High Court challenged the CESTAT's decision to set aside the larger demand.

COURT OBSERVATIONS (Verbatim)

"*The Tribunal rightly concluded that in the case of clandestine removal of excisable goods, there needs to be positive evidences for establishing the evasion, though contended by the Revenue.*"

"*In absence of any material reflecting the purchase of excessive raw material, shortage of finished goods, excess consumption of power like electricity, seizure of cash, etc., the Tribunal noted and held that there was nothing to bank upon except the bare confessional statements of the proprietor and of some of the persons connected with the manufacturing activities and such statements were retracted within no time of their recording.*"

"*not permitting the cross examination of a person in-charge of records of M/s. Sunrise Enterprises and absence of other cogent and positive evidences, would not permit it to sustain the demand of Rs. 1.85 Crores raised in the Demand notice and confirmed by both the authorities below.*"

"*Confessional statements solely in absence of any cogent evidences cannot make the foundation for levying the Excise duty on the ground of evasion of tax, much less the retracted statements.*"

"*Appeals since do not raise any question of law, much less substantial question of law, deserves no consideration.*"

FINAL VERDICT

All Tax Appeals filed by Revenue were **dismissed**. The High Court upheld the CESTAT order setting aside the demand of Rs.1.85 Crores (based on note-books and pen-drive) for want of positive corroborating evidence. The confirmed demand of Rs.8.25 lakhs (backed by independent evidence from the transporter's premises) was upheld.

IN FAVOUR OF ASSESSEE