IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

TAX APPEAL No. 143 of 2014
With
TAX APPEAL No. 144 of 2014
To
TAX APPEAL No. 146 of 2014

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COMMI SSIONER OF CENTR AL EXCISEAppell ant(s) V er s us SAAKE E N AL LO YS P V T . L T D. . .. O p p o n en t (s)
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= Appearance:

Ms. AMEE YAJNIK, ADVOCATE for the Appellant(s) No. 1
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CORAM: HONOURABLE Mr. JUSTICE AKIL KURESHI and HONOURABLE Ms. JUSTICE SONIA GOKANI 6th March 2014 COMMON ORDER (

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in holding that evidences collected by Departments are admissible evidences only for one offence while the same set of evidences only for one offence while the same set of evidence are insufficient to establish another offence ?"

{c} Whether the Customs, Excise & Service Tax Appellate Tribunal, while passing Order No. A/10817□1820/WZB/ AHD/2013 dated 15.07.2013, was correct in admitting the evidences for the past clearance and ignore the evidences for the remaining clearances ?"

{d} Whether the Customs, Excise & Service Tax Appellate Tribunal, while passing Order No. A/10817□1820/WZB/ AHD/2013 dated 15.07.2013, was correct in holding that the statement has been retracted even though the same person has admitted the depositions made in the retracted statements in his statement recored subsequent to the retraction ?"

We have heard learned counsel Ms. Amee Yagnik for the Revenue and O/TAXAP/143/2014 ORDER with her assistance, examined the material on record. In the following factual background, these appeals arise.

Messrs. Saakeen Alloys Private Limited, which is engaged in the manufacture of CTD/Round bars, is situated at Visnagar□Mahesana Road, District Mehsana. On the premises of Messrs. Saakeen Alloys Private Limited and Messrs. Sunrise Enterprises, Mahesana simultaneous searches were carried out wherein three note□books and one pen□drive were recovered containing details of illicit clearances made by the said M/s. Saakeen Alloys Private Limited. On 24th November 2007, at the business premises of M/s. Kodiyar Transport Services, Mahesana search was carried out and various documents containing the invoices issued by M/s. Saakeen Alloys Private Limited were recovered. Statement of one Mr. Mohammed Altaf Alambhai Kapadia connected with Messrs. Saakeen Alloys Private Limited was recorded on 23 rd November 2007 which was, within a short time, retracted. Statement also was recorded of the proprietor of M/s. Sunrise Enterprises where he agreed to be the main supplier of Messrs. Saakeen Alloys Private Limited. This statement too was retracted very soon. Likewise, statements of proprietor of M/s. Khodiyar Transport Service, Mahesana and Excise Manager of Messrs. Saakeen Alloys Private Limited were recorded and on the basis of pen□drive seized, panchnama and other documents were drawn. On the basis of entire material, O/TAXAP/143/2014 ORDER show cause notice was issued by the Commissioner of Central Excise dated 7 th October 2010 demanding the duty amounting to Rs. 1,93,26,138/□ Out of this total amount, Rs. 1.85 Crores [rounded off] was based on the data contained in the note□ books and pen drive recovered from Messrs. Sunrise Enterprises and remaining Rs. 8.50 lakhs [rounded off] from the parallel invoices recovered from the office of the transporter - M/s. Khodiyar Transport Services.

The order-in-original was passed on 7th October 2010 confirming the entire demand mentioned in the show cause notice. This was when challenged before the Commissioner of Central Excise, it confirmed the demand and imposed matching penalty.

Aggrieved by such action of both - order in original and that of the Commissioner, the Tribunal was approached by the respondent-assessee and the Tribunal, vide its impugned order, set-aside the demand of Rs. 1.85 Crores confirming the duty demand of Rs. 8.25 lakhs as also the penalties under Section 11 (c) of the Central Excise Act. Therefore, the present appeals raising aforementioned questions of law.

As can be noted from the decision of the Tribunal, it has extensively dealt with the entire factual matrix presented before it. The Tribunal rightly concluded that in the case of clandestine removal of excisable goods, there O/TAXAP/143/2014 ORDER 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. The Tribunal also noted the fact that the requisite opportunity of cross examination was also not made available so as to bring to the fore the true picture and therefore, it concluded against the Revenue observing that 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.

As could be noticed from the material on record that for the remaining amount of Rs. 8.25 lakhs from the transporter's premises, the parallel invoices were recovered which not only were confirmed by the proprietor of the said transporter but independent evidences also affirmed the same. The Tribunal has chosen to sustain such amount levied in order-in-original and in the appellate order of the Commissioner.

Penalties imposed on some of the persons being the Managing Director, the proprietors and others on the basis of such material also hardly requires any indulgence.

All the appeals are based predominantly and essentially on factual matrix. The Tribunal elaborately and very correctly dealt with the details furnished by both the sides and rightly not sustained the demand of Rs. 1.85 Crores, which had no evidences to bank upon. 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. To the extent there existed substantiating material, Tribunal has sustained the levy. No perversity could be pointed out in the approach and treatment to the facts.

Appeals since do not raise any question of law, much less substantial question of law, deserves no consideration. Accordingly, both these Tax Appeals are disposed of.

{Akil Kureshi, J.} {Ms. Sonia Gokani, J.} Prakash*