

ORDER IN APPEAL

1. The Hon'ble Bench (Nos. 5775-B, Fluoranthene-Rajkot Bench, constituted by the Dist. Judge (Tribunal) referred to as 'the appellant-1') issuing Central Excise Register No. AAC/HE/2019/4601 in manufacture of taxable goods falling under Slab No. 29 of the First Schedule of Central Excise (with nos. 583 and 604) and 204/2019 (with nos. 204/2019) under CENVAT Credit Rules, 2004 (hereinafter referred to as 'CER, 2004'), has filed an appeal against the C.O. No. 001/2019/Deemed/2019 (Case No. 001/2019) (hereinafter referred to as 'the impugned order') issued by the Assistant Commissioner, Central Excise City Division, Bhavnagar (hereinafter referred to as 'the adjudicating authority').

2. It is stated, the facts are that on the basis of intelligence of Anti-Duty Section of Bhavnagar Commissionerate, an investigation was launched with regard to regular evasion of duty carried out by the trading units with the help of fake bills and supply of books. As per the intelligence, Sri Yogesh Parvika Sangha and Sri Vinayk Bhadranga (hereinafter referred to as 'the appellants'), were the import books of the MS Parvika Sangha, involved in the large scale evasion, by evasion of excise duties to facilitate the export of same. Regarding M/s. SRS India Pvt. Partner of the appellant-1 (hereinafter referred to as 'the appellant-2') was also actively involved in the above said evasion of excise duties. A Show Cause Notice dated 22.06.2018 was issued to the appellants alleging that in various documents such as fake books and bills from the various places of the appellants, the appellant-1 has cleared excise duties worth Rs. 6,34,212/- manufactured in their factory without payment of Central Excise Duty of Rs.20,47,21/- on such excise duty in violation of excise duty levying provision of section 3 of the Central Excise Act, 1944 (hereinafter referred to as 'the Act') read with Rules 4 & 5, Rule 6 & 7 and 11 of the Central Excise Rules, 2002. The appellant-1 was demanded excise duties under Section 11A of the Act on the above duty on goods which were imported under Section 11A of the Act read with Rule 25 of the Central Excise Rules, 2002. Penalty under Sub Rule 1 of Rule 28 of the Central Excise Rules, 2002 was also proposed on this basis. Sangha along with the appellant-2 and appellant-4 for their acts of evasions and commission in the said case.

3. The notice was adjudicated vide C.O. No. 001/2019/Deemed/2019 (Case No. 001/2019) by the Assistant Commissioner, Central Excise City Division Bhavnagar wherein the adjudicating authority adjudged that the appellant-1 has evasively imported goods worth Rs. 21,71,513/- issuing Central Excise duty credit of Rs. 20,47,21/- in violation of provisions of section 3 and 4 of the Act and the duty of Rs. 2,50,17,21/- which was to be recovered from appellant-1 under Section 11A of the Act and order to recover interest of applicable rate on the above amount under Section 11A of the Act and imposed on equal penalty under section 11A of the Act read with Rule 25 of the Central Excise Rules, 2002. Penalties of Rs. 10,00,00/- each on the appellant-2 and appellant-4 as well as Sri Yogesh Sangha were also imposed under the provisions of Rule 28(1) of the Central Excise Rules, 2002.

4. Feeling aggrieved, the appellants had this Appeal on the following grounds:

- that order has failed to respect the self declared facts as stated in their defence copy.
- that the allegation has been made only on the basis of private records / notebooks of the traders which are not authentic documents. No direct material evidence such as Central Excise returns, Weightment slips and declaration of excise payment, bill of material, etc. have been produced. Name of transport used (vehicle registration number) have not been found in the record of the records.

(Signature)

- That the relief sought is made in respect of the goods provided in form of a CD and not in form of a CD case. The CD case, according to the Board, are not made available to the appellants.
- That the Order has been passed only on the basis of third party evidences as the appellant has not received, noted upon, documents (e.g. seized vehicle records etc.) hence the appellant could not request for cross-examination of witnesses.
- That the charges of Standerone removed has been formed without recording statements of the driver / owner of the vehicles by which the goods were removed.
- That the seized goods to establish the procurement of new materials (Hulk / manufacture of goods stands new).
- That the case has been made on the basis of presumptions and presumptions which establishing that the trading name "Hulk" mentioned in the seized vehicle records was pertaining to the appellant as they belong to the owner.
- That the money law book of 18 (1) of 1934 has not been proved or received in the ongoing trial period case as the case is not based on any other alternative evidences. Further the inquiry has not been started to the relevant persons and that there are no any regarding payment of freight charges.
- That the various oral statements of Mrs. Suresha Devi (Mother) (appellant 4) cannot be the sole evidence against the case. No other persons in their statements have stated that the premises involved the removal of excise goods. The appellants only persons the documents / statements of other persons were stated of circulation of excise duty on the basis of seized vehicle records of the trucks and the removal of the same from the trial vehicle records supported by non identified documents.
- The Appellant have been various case laws in support of their claim to set aside the impugned orders detailed below:
 - On Appeal No. 191 of 2011 (2011) 100 Tax LR 100 (CA)
 - Appeal with case law of M.A. Suresha Devi vs the UOI (2011) 100 Tax LR 100 (CA)
 - Mrs. Bapari Das vs. Union of India (2011) 100 Tax LR 100 (CA)
 - M/s. Suresha Devi vs. Union of India (2011) 100 Tax LR 100 (CA)
 - M/s. Suresha Devi vs. Union of India (2011) 100 Tax LR 100 (CA)
 - M/s. Suresha Devi vs. Union of India (2011) 100 Tax LR 100 (CA)

5. The appellants were also before the Commissioner (Appeals), Bapat. The undersigned has been nominated as Commissioner (Appeals) / Associate Authority in regard to the case of appellants vide Board's Order No. 35/2017 Service Tax dated 14.11.2017 issued by the Under Secretary (Service Tax), MCA, Dept. of Revenue, CBFC, Service Tax Wing on the basis of Board's Circular No. 209/4/2017-Service Tax dated 17.10.2017.

6. Personal hearing was held on 28/09/2016. The representatives of appellants 1 and 4 appeared for the trial and reiterated the submissions made earlier. The representatives of appellants 2 and 3 appeared for the trial and reiterated their submissions to the Board.

7. After careful perusal through the facts of case, the grounds mentioned in the appeal and the submissions made by the appellants, the case can be decided in their favour that whether the appellant 1 is liable to pay the Service Tax duty along with interest and penalty and whether the appellants 2 and 4 are liable for massive abatement as covered vide the impugned order or otherwise.

8. During the investigation of the case against appellant 1, detailed in Para 5.7 and para 4 (i) of the impugned order, it has been a part of preliminary scrutiny of the Sales Report / Register of stock and goods for the period from 2011-12 and 2012-13, an invoice or sales bill was issued by the appellant for the goods mentioned in the serial of the seized records which shows that the goods have been removed clandestinely without payment of duty and without issue of invoice. The same was



vetted by appellant's partner of appellant as described in para 6 of the impugned order who confessed in his statement that the goods were sent to trader Sri Nagesh Singh and appellant whose seized records clearly reflected the said entries were in respect of the said goods without due payment and will be issue of invoices. The appellant also confessed that the payment for the said goods was received in cash. Hence, since the a/c correlation was established during the investigation between entries in the seized records for the said goods purchased by the trader and the goods clandestinely removed.

9. As per the statement of the broker of the appellant, Sri Narsingh Bhadourie (appellant-3) has confessed of having purchased goods from the appellant without cover of invoice and without payment of duty and had dispatched the same to his customer (Para 4(b) of the impugned order). The documents seized from his office provided including transit invoice clearly corroborated the same. As regards to the trader Nagesh Singh, neither the trader confessed to have purchased the goods nor appellant has stated the appellant has confessed of having sold goods to him which were concealed with the entries in the customer's seized book/invoice in his own book/billings. Consequently, the trader confessed the goods in question for appellant without cover of invoice and without payment of duty. Thus it is proved that the trader's intention of his mode of sale transactions to evade the payment of Central Excise Duty was a part of the conspiracy for suppression.

10. In the final stage once the goods are shown in the purchaser's records, there is no need for verification of any weightman etc. Inordinate delay, statements of drivers, transit receipts, etc. as regards to the records of the trader considered as a weak evidence, and that fact remains substantiated from the records of the appellant. Hence, the assertion of trading with the 3rd party customer does not stand.

11. As regards to the case law cited by the appellant in support of the adjudicating authority that the same are not applicable as described in para 6, 7 and 8 of the impugned order, it is also agreed to the adjudicating authority's opinion of case law as described in Para 6 & 7 of the impugned order substantiating issuance of the seized documents to the appellant in violation of C.A. While deciding this appeal, only on the following case laws sources of the findings.

a. Collector of Customs, Madras and Officer Vs. D. Bhargava [1963]131IT264(S2) - the apex court in the case has observed that "Smuggling is clandestine conveying of goods to avoid legal duties levied and evasion being its covering guise. It is impossible for the concerned Department to unravel everything of the smuggler. Many facts relating to the said business remain in special or peculiar knowledge of the person concerned inthe assumption of innocence is no doubt, principle just but even duty's practice shows that it may be successfully counteracted by the promoter's ingenuity."

b. M/s. Godeborena & Co. Vs. The C.O. Mysore [1959]111IT281(S2) - the court has observed that "..... In any case of our dealing affairs, the persons by their conduct to leave any evidence. We can't establish a case against a clandestine smuggler on the basis of the denial of the smuggler's own case matter and accept that denial. It is necessary. Hence, a definite act or omission can be established only by a positive and consistent evidence and no trace in mind that it will be not only ineffective in establishing any fact in the case of clandestine activity."

c. M/s. Sanku & Co. Vs. The C.O. [1992]50IT 591(S2) - the court has observed that "..... when there is no direct evidence, the circumstantial evidence

