IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

CENTRAL EXCISE APPEAL NO.236 OF 2014

Commissioner of Central Excise, Customs and
Service Tax, Vapi ... Appellant
versus
M/s.Tarapur Grease India Pvt.Ltd. ... Respondent

WITH
CENTRAL EXCISE APPEAL NO.238 OF 2014

Commissioner of Central Excise, Customs and
Service Tax, Vapi ... Appellant
versus
Vinod Vyas ... Respondent

WITH
CENTRAL EXCISE APPEAL NO.239 OF 2014

Commissioner of Central Excise, Customs and
Service Tax, Vapi ... Appellant
versus
Bharat Vyas ... Respondent

WITH
CENTRAL EXCISE APPEAL NO.241 OF 2014

Commissioner of Central Excise, Customs and
Service Tax, Vapi ... Appellant
versus
M/s.Standard Grease ... Respondent

WITH
CENTRAL EXCISE APPEAL NO.242 OF 2014

Commissioner of Central Excise, Customs and Service Tax, Vapi ... Appellant
versus
M/s.Standard Oil and Grease ... Respondent

Mr.Suhas M. Oak for Appellant.
Mr.Prakash Shah with Mr.Jas Sanghavi i/by PDS Legal for Respondents.

CORAM : S.C.DHARMADHIKARI AND
B.P.COLABAWALLA, JJ.

DATE : 16 November 2015

PC :

1. In these appeals by the Revenue challenging the order passed by the Customs, Excise and Service Tax Appellate Tribunal, West Zonal Bench, the principal contention is that the stand of the Assessee (Respondent before us) that there is revenue neutrality, should not have been accepted in the absence of evidence on record.

2. Mr.Oak appearing on behalf of Revenue in support of this appeal submits that there was no evidence on record proving that inputs on which credits were taken, were merely exchanged by the assessees with associate companies. This was a clear case of diversion of these inputs without reversal of

CENVAT credit taken. In these circumstances, the impugned orders of the Tribunal are perverse. There are conflicting and contradictory conclusions rendered because if the argument of revenue neutrality is accepted, then, there was no occasion to impose penalties on the assessees. Ordinarily in such cases, no penalties can be imposed. Having imposed penalties, the Tribunal's orders cannot be prima facie sustained and must be set aside.

3. Mr.Shah, on the other hand, submitted that the Tribunal was dealing with appeals of the assessees. The appeals were filed by one M/s.Standard Oil and Grease and M/s.Tarapur Grease India Private Limited so also some individuals. The order in original dated 31 January/29 February 2012 was challenged because M/s.Standard Grease, Silvassa (`SGS') is engaged in the manufacture of petroleum, lubricating grease, lubricating preparations etc. falling under Chapters-27 and 34 of the First Schedule to the Central Excise Tariff Act, 1985. Adjacent to the factory of M/s.Standard Oil, Silvassa, is the factory of another appellant M/s.Standard Oil and Grease (`SOG'). That is also engaged in the manufacture of same products. M/s.Tarapur Grease India Pvt.Ltd., the third appellant is also manufacturing the same products. These three units are having common directors and partners. They have a common registered head office at Ghatkopar (East), Mumbai. These companies were merged in Standard Grease and Specialities

Pvt.Ltd. with effect from 1 April 2008. The basic raw material is the same. The basic raw material procured was exchanged between these three entities on which CENVAT Credit is taken. This is in order to meet the urgent requirement of raw materials. Though the documents and books are privately maintained, yet on search and seizure, it was found that the goods were never diverted to any third parties but were utilized inter-se. This argument as canvassed before the Tribunal is accepted and Mr.Shah would submit that the same is accepted by applying revenue neutrality doctrine. The Tribunal has accepted the version of the assessee by holding that the tanker register maintained by the transporter and the statements of the transporters would indicate that inputs have been delivered at the places of these companies and none have been diverted to factories of third parties. There is also no evidence on record to suggest that the inputs cleared by the assessees without reversal of the CENVAT Credit were sent elsewhere. Mr.Shah, therefore, submits that the conclusion of the Tribunal in paragraph 5.2 of the impugned order is consistent with the material placed on record. Eventually those with whom the inputs were exchanged, would have claimed credit on the same and when they were utilized in the manufacture of final product, then, this conclusion should be sustained and raises no substantial question of law. The appeals therefore, should be dismissed.

4. We have with the assistance of Mr.Oak and Mr.Shah perused the orders of the Tribunal. The Tribunal has noted the factual controversy. It has noted that three companies are indeed associate companies or concerns/firms. They are in identical business, managed and administered by common partners and directors and have a common head office. The product namely the inputs which were raw materials for all three companies/concerns arrived at the factories and were cleared without payment simply because they were exchanged with the associate companies. It is no doubt true that the procedure adopted was not in consonance with the formalities prescribed by law, however, even the examination of private books and the entries therein having been corroborated by the transporters, resulted in no revenue loss, then, the Tribunal's conclusion cannot be said to be perverse. The Tribunal has found that the jurisdictional Gujarat High Court considered a similar controversy and questions. The Tribunal found that once the inputs have been delivered only at the factories of the assessees from the associate companies, then no loss occurs to revenue. The assessees would derive no benefit by not reversing CENVAT credit on the inputs, when sister concerns are also eligible to take CENVAT credit. Therefore, in the absence of cogent and reliable evidence particularly on the diversion of these inputs, the Tribunal applied the doctrine or principle of revenue neutrality. We do not see how the same was inapplicable in the admitted facts and circumstances.

5. Even the order-in-original and the paragraph which was relied upon by Mr.Oak does not indicate that any other material or evidence was placed. The Tribunal has taken this factual position from order-in-original itself. The only procedure that was required to be complied with was clearance of the raw materials after reversing the credit availed on it. Thus, the duty amount should have been paid and thereafter when these inputs or raw materials were utilized in the manufacture of the final product, the CENVAT credit could have been claimed but this procedure was not followed. It may be, as observed by the adjudicating authority, that this mode of clearance gives some temporary benefit to the associate companies but the objection raised was of diversion of goods. That case could not be substantiated by the revenue as is evident from even paragraph 67.10 of the order of the adjudicating authority.

6. In our view, therefore, merely because the penalty has been notionally imposed on all the assessees, does not mean that the Tribunal's earlier conclusion, and by applicability of the principle of revenue neutrality, is perverse or vitiated by any error of law apparent on the face of record. Imposition of the notional penalty is for infraction of some procedural rule. That has no bearing on the main issue.

7. In these circumstances, the findings of fact do not raise any substantial question of law. Each of these appeals are devoid of merits and stand dismissed. No costs.

(S.C.DHARMADHIKARI, J.)

(B.P.COLABAWALLA, J.)

MST