

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CEA No.80 of 2014

Reserved on:27.07.2015

Date of decision:07.08.2015

Commissioner of Central Excise, Ludhiana

....Appellant

Versus

M/s Nexo Products (India)

.....Respondent

**CORAM: HON'BLE MR.JUSTICE S.J.VAZIFDAR, ACTING CHIEF JUSTICE  
HON'BLE MR.JUSTICE G.S.SANDHAWALIA**

Present: Mr.Kamal Sehgal, Advocate, for the appellant.

Mr.Sudip Singh, Advocate, for the respondent.

\*\*\*\*

**G.S.Sandhawalia J.**

1. The present appeal has been preferred by the Revenue under Section 35-G of the Central Excise Act, 1944 (for short the 'Act'), aggrieved against the orders passed by the Commissioner (Appeals) Central Excise, Jalandhar dated 24.08.2007 (Annexure A3) and the Customs, Central Excise & Services Tax Appellate Tribunal, New Delhi dated 21.02.2014 (Annexure A4) wherein the demand and penalty of ₹14,76,183/- dated 17.07.2006, imposed by the Adjudicating Authority under Section 11-A of the Act was set aside.

2. The appellant-Revenue has raised the following substantial questions of law:

“i) Whether the Hon'ble Tribunal is justified in rejecting the appeal of the Department without discussing the arguments put forth in the ground of appeal duly supported by relevant citations of Hon'ble Supreme Court of India & Tribunal?

ii) Whether the department is expected to prove the case of clandestine removal with mathematical precision even after voluntary admission by the party in written statement to this effect?

iii) Whether the order of the Tribunal is perverse on account of not having considered and given reasons in relation to the appellant's submission?”

3. The respondent-assessee, who is manufacturer of fasteners i.e., nuts and bolts, washers, rivets etc., was issued a show cause notice dated 25.04.2006 on account of the inspection on the premises dated 19.12.2005. At the time of inspection and after making physical verification in the presence of the Proprietor and the Production Manager, shortage of 14,25,900 pieces of nuts and bolts valued at ₹14,76,183/- was detected which involved evasion of tax to the tune of ₹24,26,480/-. Notice was issued on the basis of admission made by the Proprietor that the said quantity of finished goods were cleared on cash sale basis, without issuance of any invoice and without payment of Central Excise Duty and without the names and addresses of the buyers. That payment of the appropriate Central Excise Duty having not been made and was, accordingly, recoverable on account of the removal of the goods in a clandestine manner and penal action was also liable to be imposed.

4. The respondent submitted his reply that they were maintaining RG-I Register for all accounts and nuts & bolts and no separate account had been maintained as per the size of the nuts, bolts and washers. No physical verification of the stock was made and the whole case was made for coercing the Proprietor to give the statement which was, accordingly, retracted and withdrawn. Plea taken was that it was not possible to segregate nuts and bolts and find the sizes by comparing with the recorded balance as they had stock of approximately 91 lacs pieces of various sizes of nuts and bolts and it was impossible to find a shortage from such a huge quantity. The daily stock account which is the photocopy register was also attached in respect of the defence and the plea taken was that they were exporting those items and it was not possible for them to sell such a huge quantity in the Indian market and even otherwise, they were hot dipped galvanized nuts and washers which are consumed by industrial consumers and cannot be sold in the open market. For production of such huge quantity,

various kinds of chemicals, electricity, labour and wages would have been required and to substantiate the allegation, the Department was bound to further show some evidence. It was also pointed out that the entire account of duty had already been deposited on the same date of the visit and the show cause notice was of the same amount and it was not required to be issued and no penalty could be imposed, in such circumstances as the payment had been made prior to the notice being issued. Without meeting any of the contentions which were raised in the show cause notice, the Adjudicating Authority, however, confirmed the demand and also directed that interest be paid along with penalty of the equal amount, both upon the manufacturer and the Proprietor, separately, vide order dated 17.07.2006.

5. The manufacturer preferred an appeal which was allowed by holding that the confessional statement/admission could not be made the sole basis for a case against a person who had retracted from the statement at the first stage of the case as there were no other corroborative evidence of clandestine removal.

6. As noticed, the demand, penalty etc. were set aside vide order dated 24.08.2007. In the appeal filed by the Revenue, the plea that the assessee was manufacturing different varieties of nuts and bolts and was maintaining RG-I register for making entries was also taken into consideration to come to a conclusion that it was impossible for the visiting Officers to detect the shortage on variety basis and no inventory had been prepared. The sole statement of the Proprietor could not be a valid ground to impose the demand and penalty and the appeal of the Revenue was, accordingly, dismissed on 21.02.2014.

7. Counsel for the Revenue has laid much stress on the fact that it was a case of clandestine removal and it was virtually impossible for the Department to verify the true facts.

8. The said submission is without any merit. Specific defence had been taken by the manufacturer that no effort had been made to segregate the nuts and bolts into various sizes and to find the shortage by comparing the same with the recorded balance and there was huge stock of 91 lacs pieces of various sizes of

nuts and bolts and it was impossible for the Department to come to a conclusive factual finding that there was shortage of 14,25,900 pieces of particular size and if they were all mixed together. The onus would lie upon the Department to undertake the said exercise which was not possible in such a short period due to the large number of inventory which was there at the site. Nothing was brought on record, in any manner, to show that to manufacture such a large amount of 14,25,900 pieces, there was material which had been consumed since neither any relevant record had been shown to show that electricity had been consumed or labour had been utilized to manufacture the said quantity. Neither the fact of purchase of raw material from the vendors or the sale to the consumers was brought on record. In the absence of any corroborative evidence, the levy of such a huge demand was, thus, totally arbitrary and has been rightly set aside.

9. It is apparent that the demand was raised and a sum of ₹14 lacs was taken on the same day and in order to justify the said demand which had been encashed, a show cause notice was issued on 25.04.2006 thereafter. Thus, not only the demand was confirmed but even the penalty had been imposed, which was without any basis. The confirmation is not only on the manufacturer but also on the Proprietor. Such action which had illegally created the demand without even meeting the defence of the manufacturer, has, thus, been rightly set aside by the Commissioner (Appeals) and upheld by the Tribunal. The retraction was made at the earliest, the moment the show cause notice was served and in such circumstances, the questions of law which have been raised by the appellant are answered against the appellant-Revenue and the appeal is, accordingly, dismissed.

**(S.J.Vazifdar)**  
**Acting Chief Justice**

**(G.S.Sandhawalia)**  
**Judge**

07.08.2015  
sailesh