IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
CENTRAL EXCISE APPEAL NO. 162 OF 2018

Kopran Ltd. .. Appellant
VS.
Customs, Excise & Service Tax
Appellate Tribunal and anr. .. Respondents.

WITH
CENTRAL EXCISE APPEAL NO. 163 OF 2018

C.P. Premkumar Nair .. Appellant
VS.
Customs, Excise & Service Tax
Appellate Tribunal and anr. .. Respondents.

WITH
CENTRAL EXCISE APPEAL NO. 165 OF 2018

Vijay R. Tamhankar .. Appellant
VS.
Commissioner of Central Excise, Raigad .. Respondent.

Mr.Vishal Agrawal with Mr. Roshil Nichani I/b Mr. P.K. Shetty for the Appellants.
Mr. Sham Walve a/w. Mr. Ram Ochani for Respondent No.2.

CORAM: M.S. SANKLECHA, J.
AND M.S.SONAK, J.
DATE : 12 JUNE 2019.

PC:

1] Heard learned counsel for the parties.

2] The learned counsel for the parties state that these three appeals can be disposed of with a common order, since the challenge in these appeals is to the same final order dated 16th February 2017 made by the Customs, Excise & Service Tax Appellate Tribunal, West Zonal

Branch, Mumbai (Tribunal).

3] The appellants in Central Excise Appeal (CEXA) Nos.163 of 2018 and 165 of 2018 are the Ex-Assistant Manager (Excise) and Ex-Vice President of M/s. Kopran Ltd. respectively, which is the appellant in CEXA No. 162 of 2018. For all these reasons, it is only appropriate that these appeals are disposed of by a common order.

4] Mr. Vishal Agrawal, learned counsel for the appellants, proposes the following question of law, which according to him, are substantial questions of law involved in these appeals:

> *"(a) Whether the Tribunal was correct in holding that removal of the goods in question by Appellant to the job worker DPPL was without following the prescribed procedure and without cover of any prescribed documents, when in fact no such documents were prescribed under the Cenvat Credit Rules, 2001 and also under the Central Excise Rules, 2001 when the earlier Central Excise Rules, 1944 had already been superseded ?*
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> *(b) Whether the Tribunal was correct in holding that supply of the semi-finished goods by Appellant to its job worker was a case of clandestine removal merely because there might have been some minor discrepancy in Appellant's records regarding entry of some of these goods in Appellant's recent records as the goods were manufacture long back in 1999-2000 and were simply lying in Appellant's premises ?"*

5] The appellant Kopran Limited (appellant in CEXA No. 162 of 2018) is a manufacturer of Pharmaceutical Products Limited and medicaments falling under Heading 30.03. On 22nd May 2002, the Officer of Central Excise, Raigad found sizable quantity of excisable goods (Pharmaceutical goods) at the factory premises of Dhananja Pharma P. Ltd. (DPPL) traceable to M/s. Kopran Limited. These excisable goods were seized under Panahanama and statements of staff and executive of both Kopran Limited as well as DPPL came to be recorded under Section 14 of the Central Excise Act, 1944. Upon completion of investigations, the Show Cause Notice was issued to Kopran Limited demanding excise duty, interests and penalty, i*nter alia,* on the ground that excisable goods were removed from its factory premises to the factory premises of DPPL, without payment of excise duty and compliance with prescribed legal procedures. The penalties were also proposed upon the appellants in CEXA Nos. 163 of 2018 and 165 of 2018.

6] The Adjudicating Authority, by order dated 9th November 2004, after following the principles of natural justice confirmed the demand, ordered confiscation of the seized goods with an option of redemption on payment of fine. The appellants' filed appeals before the Commissioner (Appeals) and they came to be rejected. The appellants filed further appeals to the Tribunal which also came to be rejected vide impugned order dated 16th February 2017.

Hence, the present appeals under Section 35G of the Central Excise Act, 1944.

7] Mr. Agrawal, learned counsel for the appellants, submits that at the relevant time, i.e., in the year 2001, there was no procedure prescribed under the Cenvat Credit Rules, 2011 or under the Central Excise Rules 2001 for removal of excisable goods from the appellants' factory premises to factory premises of DPPL so as to enable DPPL to execute job work in relation to the goods in question. In particular, he submits that there was no requirement of removing the goods under cover of any challan, as, may have been requirement under the Central Excise Rules 1944 as prevalent in the year 1996-1997. He, therefore, submits that the authorities could not have inferred any clandestine removal of goods only because the goods in question may not have been removed under cover of a challan.

8] Mr. Agrawal submits that in any case, the material on record establishes that the goods in question were removed under cover of letter dated 6th December 2001 written on behalf of Kopran Limited to DPPL. In the said letter, it was clearly stated that the goods in question were being sent for re-processing on job work basis. Mr. Agrawal submits that the statements of employees and executives of both Kopran Limited as well as DPPL, very clearly indicate that the goods in question were removed for purpose of re-processing on the job work basis. He submits that batch numbers of the goods as well as the other details were available and all this material militates against any inference on clandestine removal of the goods with an intention to evade payment of excise duty.

9] Mr. Agrawal submits that some minor discrepancies could hardly be said to be sufficient to infer clandestine removal of goods, particularly when in the year 2001-2002, the Rules did not provide for any prescribed procedures for removal of such goods. Mr. Agrawal, therefore, urges admission of these appeals upon aforesaid question, which he submits are substantial questions of law.

10] Mr. Sham Walve, learned counsel for respondent No.2, defends the impugned orders on the basis of reasons reflected therein. He submits that the absence of challan is not the only consideration taken into account by the authorities for holding that excisable goods were clandestinely removed without payment of excise duty. He submits that there was no other contemporaneous record, in support of the appellants case that goods were removed for reprocessing on job work basis to DPPL. He submits that Kopran Limited has maintained meticulous records regards several other aspects and therefore, it is inconceivable that there are no contemporaneous records, if indeed the removal of excisable goods was only for the purposes of reprocessing by the DPPL.

11] In any case, Mr.Walve submits that since three authorities have concurrently recorded the findings of fact and there is no perversity pointed out in the record of such finding of facts, the present appeals involve no question of law, much less, any substantial questions of law. Mr. Walve, therefore, submits that these appeals warrant dismissal.

12] From the perusal of the orders made by the Adjudicating Authority, Commissioner (Appeals) and Tribunal, we are satisfied that inference of clandestine removal of goods drawn concurrently by all the three authorities is not based merely on absence of any challan, under cover of which the goods are normally required to be removed. The inference is mainly on account of absence of contemporaneous record backing the theory that the goods were removed for purposes of reprocessing by DPPL on job work basis. The record indicates that Kopran Limited has a well organised system for documentation, when it comes to record of receipt of raw materials, production, stores and despatch. However, when it comes to goods in question, such documentation, is just not to be found. Even contemporaneous records such as entries in loading Register, Gate outward Register and Returnable Register make no entries in relation to the goods in question. This is certainly a circumstance which is required to be held against the appellants. Therefore, even if we were to accept Mr.Agrawal's case that there were no prescribed procedures under the Cenvat Rules or that there was no requirement of removal of such goods only under a cover of challan, that by itself will not suffice to interfere with the concurrent findings of fact recorded by three authorities.

13] The letter dated 6th December 2011, upon which, Mr.Agrawal places considerable emphasis also does not inspire much confidence. The letter refers to separate discussions on the aspect of conversion charges for reprocessing. However, though the goods in question according to the appellants were removed in December 2011 and were seized only in May 2002, there is nothing on record to indicate that any reprocessing had actually taken place or that any payment terms were agreed or that any payments were made to DPPL for alleged reprocessing.

14] Mr. Agrawal referred to the statements of employees and executives of both Kopran Limited and DPPL. Taking into consideration the limits of jurisdiction under Section 35G of Central Excise Act, 1944, it is really not open to us to re-appreciate or reevaluate the material on record, as if we were exercising first appellate jurisdiction. Nevertheless, the statement of Shri. Arvind Dhavale of M/s. DPPL, hardly supports the theory putforth by the appellants. This statement speaks about transfer of goods since a snake had entered the storeroom. This statement speaks about Kopran Limited removing the goods from BSR within 2-3 days. This statement speaks about the material being '*dummy material'.* The remaining statements also do not fully support the theory putforth by Kopran Ltd in relation to the goods in question.

15] The scope of an appeal under Section 35G of Central Excise Act, 1944, is quite limited. The appellants have to make out a case of involvement of a substantial question of law in the context of challenge to findings of fact, perhaps, such a case can be made out only if perversity is demonstrated. In the record of findings of fact. In the present case, there is sufficient material on record to sustain the findings of fact recorded by three authorities concurrently. The view taken by the Tribunal is certainly, a plausible view based upon the material on record. Accordingly, these appeals give rise to no question of law, much less, any substantial question of law.

16] Mr. Agrawal fairly admitted that he has no separate submissions to make in the context of appeals instituted by C.P. Premkumar Nair and Vijay Tamhankar, the appellants in CEXA Nos.163 of 2018 and 165 of 2018 and that their case is same as the case of the appellant in CEXA No. 162 of 2018.

17] Accordingly, all these three appeals are liable to be dismissed and are hereby dismissed.

18] In the facts and circumstances of the present case, there shall be no order as to costs.

(M.S.SONAK, J.) **(M.S.SANKLECHA, J.)**