IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CEA No. 20 of 2019 (O&M)
Date of decision: 21.2.2019

Commissioner of Central Excise & Service Tax, Chandigarh-II

……Appellant

Vs.

M/s Sada Shiv Ispat Limited

…..Respondent

CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present: Mr. Anshuman Chopra, Advocate for the appellant-revenue.

Ajay Kumar Mittal,J.

1. The delay in refiling the appeal is condoned.

2. This appeal has been preferred by the appellant-revenue under Section 35G of the Central Excise Act, 1944 (in short, "the Act") against the order dated 8.8.2016, Annexure P.3 passed by the Custom, Excise and Service Tax Appellate Tribunal, Chandigarh (in short, "the Tribunal"), claiming following substantial questions of law:-

> "i) Whether the findings contained in the impugned order are perverse, contrary to law and to record and thus are liable to be set aside?
>
> ii) Whether the learned Tribunal has acted illegally and with material irregularity while setting aside the well reasoned order of the adjudicating authority?
>
> iii) Whether the Tribunal has passed a non speaking order and has failed to appreciate evidence produced by the parties?
>
> iv) Whether the learned Tribunal was justified in dropping the demands raised by the adjudicating authority against the

respondents especially when the Tribunal has failed to give any cogent and legal reasons for the same?

v) Whether the observations and findings of the learned Tribunal to the effect that the average weighment cannot be taken into consideration wile imposing duty are perverse, and are liable to be set aside?

vi) Whether the observations and findings given by the learned Tribunal are based on conjectures or surmises and whether the learned Tribunal has failed to apply its mind and failed to appreciate the complete evidence collected by the investigating agency?

vii) Whether the learned Tribunal has acted illegally and with material irregularity while holding that there is no corroborative evidence to prove that the respondent and its sister concerns are engaged in clandestine removal of the goods?

viii) Whether the learned Tribunal has failed to take into consideration evidence and statements recorded by the investigating agency and has simply passed the order on conjectures and surmises?"

3. A few facts relevant for the decision of the controversy involved as narrated in the appeal may be noticed. The respondent-assessee is a manufacturing unit engaged in manufacturing of iron and steel goods falling under Chapter heading 72 and 73 of Ist Schedule to the Central Excise Tariff Act, 1985. The respondent unit is managed and controlled by two persons namely Sunny Garg and Kewal Garg. Apart from the respondent unit, these two persons manage and control other three sister units namely M/s Sada Shiv Steels Mills (SSSM), M/s Sada Shiv Castings Limited (SSCL) and M/s Sada Shiv Ispat Limited (SSIL). The office of Directorate General of Central Excise Intelligence received an intelligence that these units were engaged in clandestine removal of finished goods i.e. alloy steel products without payment

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of duty through their trading firm in Delhi i.e. Raghav Enterprises, New Delhi which was being run and controlled by its proprietor Suresh Kumar Aggarwal who is brother in law of Kewal Garg. According to the intelligence, all these units used to dispatch the goods on *Kacha Parchi* to Delhi and on receipt of goods in Delhi, they used to destroy the *Kacha Parchi* and in this way they were engaged in clandestine removal of finished goods without payment of duty. Consequently, premises of all these units in Derabassi and premises of Raghav Enterprises, New Delhi alongwith residential houses of all the proprietors at Chandigarh and New Delhi were searched on 21.10.2005. It was found that there was shortage of non alloy steel ingots to the tune of 120.720 MT and shortage of cenvatable scrap of 50.140 MT at the premises of SSCL. Shortage of raw material was found at the premises of SSSM. Shortages of raw material and finished goods were also found at the premises of SSIL. The excess stock of 77.400MT of Alloy/MS Flat were found and seized at the premises of M/s Raghav Enterprises. ₹ 47,00,000/- were also recovered from the residential premises of Sunny Garg and Kewal Garg. Thereafter, some statements were recorded. Show cause notice dated 13.10.2006 was issued to all the parties who were believed to be engaged in clandestine removal in order to evade excise duty. Statements of proprietors of the firms as well as other evidence was collected by the Investigating Agency and after giving due opportunity to the respondents, Commissioner vide order dated 5.6.2008 confirmed the duty as well as penalty against all the firms and their proprietors. Aggrieved thereby, six appeals were filed by the respondent units and their proprietors before the Tribunal. Vide order dated 8.8.2016, Annexure P.3, the Tribunal set aside the order passed by the Commissioner. Hence the instant appeal by the appellant-revenue before this Court.

4. We have heard learned counsel for the appellant-revenue.

5. It is not disputed by the learned counsel for the appellant-revenue that identical appeal i.e. CEA No.8 of 2018 ***(Commissioner of Central Excise & Service Tax, Chandigarh II vs. Kewal Garg)*** filed by the revenue against the impugned order i.e. dated 08.08.2016, Annexure P.3 has already been dismissed by this Court vide order dated 13.2.2019. Accordingly, in view of the order passed in CEA No.8 of 2018, the present appeal is also dismissed.

(Ajay Kumar Mittal)
Judge

February 21, 2019 **(Manjari Nehru Kaul)**
'gs' **Judge**

Whether speaking/reasoned Yes/No
Whether reportable Yes/No

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