IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.182 of 2018

M/s Radhey Forgings (A Unit of Aruna Industries & Investments Pvt. Ltd.), having its factory located at D/14, Patliputra Industrial Estate, Patna-800013 (Bihar) and its Registered Office at Main Road, Ranchi, Dist.-Ranchi, Jharkhand-834001 through its Manager, Ramesh Choubey, Son of late Bangali Choubey resident of Road No. 17, Rajeev Nagar, P.S. Rajeev Nagar, District-Patna.

... ... Appellant/s

Versus

The Commissioner Of Central Excise, Patna, Commissionerate, Patna

... ... Respondent/s

Appearance :

For the Appellant/s	:	Mr.Sriram Krishna, Advocate Mr. Prabhat Kumar Singh, Advocate Mr. Kartik Kurmy, Advocate Dr. Kamal Deo Sharma, Advocate
For the Respondent/s	:	Mr. Anshuman Singh Sr. SC, CGST&CX

CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE PARTHA SARTHY

CAV JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 28-10-2024

The following questions of law have been framed in this case:-

> "(i) Whether the assessment of excise duty and further levy of interest and penalty are sustainable since there is absolutely no evidence of a manufacture of excisable goods by the appellant herein?
>
> (ii) Whether the proceedings could have been initiated based on the 'registers and loose sheets' recovered from the premises of the appellant without corroboration of the manufacture done and the

clearance effected of excisable goods?"

2. Learned Counsel appearing for the appellant contended that the proceedings initiated were based on loose sheets of papers as recovered on an inspection and there was absolutely nothing to evidence manufacture of goods which had escaped levy of excise duty on its clearance. It is pointed out that the facts of the case are identical to that decided by another Division Bench of this Court in **Commissioner of Central Excise Vs. Brims Products; 2011(271) ELT 184 (Pat)**. It is also pointed out that even the show cause notice does not indicate any evidence having been unearthed with respect to the manufacture of the goods.

3. Mr. Anshuman Singh, learned Senior Standing Counsel, on the other hand seeks to uphold the impugned order of the Tribunal. It is argued that the fact finding of the lower authority cannot be interfered with in an appeal by the High Court which interference can only be on substantial questions of law.

4. The appellant manufactures Forged Grinding Media Steel Balls from Alloy Steel Ingots. An inspection was conducted in its premises on 20.07.2001 by the officials of the Central Excise Department. Stock verification was carried out in

the presence of two employees and 3.280 Metric Tonnes of finished goods were found in excess. The inspection team also inspected two trucks loaded with raw materials; being Alloy Steel Ingots, kept parked at the factory gate of the assessee, for delivery. The total quantity of the raw materials in both the trucks were found to be far in excess of the invoices carried in the vehicles, in support of the consignment. The inspecting team also seized various records, registers, note-pads, note-books and cash-books in loose sheets which was examined to find production far in excess of that recorded and cleared without paying excise duty. These were the grounds on which the penalty was imposed.

5. The two questions of law framed are mixed questions of law and fact. The questions of law were also framed on the ground taken by the assessee that there was no evidence regarding the manufacture of excisable goods by the appellant and the proceedings were based only on registers and loose sheets which cannot lead to imposition of penalty without anything substantiating manufacture. We are justified in framing the questions of law, as would be clear from the decision relied on by the petitioners in ***Hero Vinoth (Minor) Vs. Seshammal*** reported in ***(2006) 5 SCC 545***, from which paragraph no. 24 (iii)

is extracted:-

> “24(i)--
> (ii)---
> (iii) The general rule is that High Court will not interfere with the concurrent findings of the courts below. But it is not an absolute rule. Some of the well-recognised exceptions are where (*i*) the courts below have ignored material evidence or acted on no evidence; (*ii*) the courts have drawn wrong inferences from proved facts by applying the law erroneously; or (*iii*) the courts have wrongly cast the burden of proof. When we refer to “decision based on no evidence”, it not only refers to cases where there is a total dearth of evidence, but also refers to any case, where the evidence, taken as a whole, is not reasonably capable of supporting the finding.”

The allegation against the imposition of penalty is that there is no evidence to establish manufacture and clearance of manufactured goods without payment of excise duty.

6. Since the contention was raised on the basis of the show cause notice, we examined the same, which is produced as Annexure-1 along with the writ petition. We have to observe at the outset that the imposition of penalty was not on account of the allegation of clearance of excisable goods without payment of duty alone as was noticed in the narration of facts. There was excess stock found on verification, there was excess raw materials found to have been consigned to the

appellant in two trucks which were examined by the inspection team at the premises of the appellant; on which examination and proper weighment done, presence of raw material in excess of that declared in the invoice was found. In addition to this was the allegation of manufacture based on the documents recovered from the premises of the appellant on inspection.

7. Insofar as the excess of 3.280 Metric Tonnes of Forged Steel Grinding Media Balls; the same was detected on proper stock verification conducted in the presence of two employees of the appellant. The stock verification report was the basis of the allegation so levelled of excess stock found.

8. Insofar as the excess raw materials found, two trucks bearing registration no. BPL-6955 and BEW-6955 were found standing at the gate of the appellant. The drivers, on demand, produced two invoices bearing serial no. 267 and 291 respectively dated 09.07.2001 and 17.07.2001, both issued by Noticee No. 6; one Bihar Foundry & Casting Limited. Both the trucks were found to contain Alloy Steel Ingots which were weighed in the presence of the drivers and the accounts assistant of the appellant; the weighment slips of which were acknowledged by the drivers. It was found that

the trucks were loaded with raw materials in excess of 11.820 Metric Tonnes of Alloy Steel Ingots; than found from the invoices accompanying the transport. As per invoice no. 267 dated 09.07.2001, the truck bearing registration no. BPL-6955 was transporting 9.00 MTs while the truck bearing registration no. BEW-6955 was transporting 9.080 MTs of alloy steel ingots, supported by invoice no. 291 dated 17.07.2001. Truck bearing registration no. BPL-6955 was found to be loaded, on weighment, with 15.075 metric tonnes in place of 9.000 MTs of Alloy Steel Ingots and the other truck loaded with 14.825 MTs in place of 9.080 M.T.

9. It was alleged in the show cause notice that in the course of investigation, it was found that the raw material supplied by M/s Bihar Foundry & Casting Ltd., was taken to M/s Ashoka Engineering (Bihar) Ltd., for job work and the partially processed raw material was sent to the appellant herein. Invoice no. 291 recovered from one of the trucks also mentioned the job work carried out by M/s Ashoka Engineering (Bihar) Ltd. Though invoice no. 267 did not record such a job work the original produced by the General Manager of the appellant indicated such job work having been conducted. One of the Directors of the appellant was found to

be the Director also of M/s Bihar Foundry & Casting Ltd.

10. With respect to the clearance of excisable goods without payment of duty, the records recovered from the premises of the appellant on inspection was relied on specifically in paragraph no. 10 of the show cause notice. The calculation chart was also annexed as Annexure-XXI along with the show cause notice.

11. The Tribunal had clearly found from the adjudication order that the register recovered from the appellant's premises contained full details regarding the activities of the appellant including attendance of labourers, shifts-run, quantity of LDO consumed, quantity of rod production of different diameters, pieces of balls trimmed, quantity of raw materials received, registration number of vehicles by which quantity of Alloy Steel Ingots were received, breakdown of machine, tripping of power. layoff in the factory and repairing of machines etc. All these registers were admitted to have been initialed by one C.S Pathak, Accounts Assistant, whose statement was recorded in which the initial was admitted. Another initial seen from some of the documents were that of the General Manager of the appellant.

12. In addition to the said note-pad, loose sheets were recovered by the inspection team in which the quantity of Alloy Steel Ingots received by the appellant between March-2000 to April-2001 was disclosed which was in consonance with the figures mentioned in different attendance registers from which the production was assessed. The labourers had also maintained note-books for daily production which entries also corroborated the production as revealed from the attendance registers.

13. Further, cash-books were prepared in loose sheets and then copied on to the register maintained in a book form. The truck hire charges paid for loading and unloading though maintained in loose sheets, these entries were not shown as against loading and unloading in the cash book maintained. All these documents recovered, contain the initials of the General Manager which was accepted by the General Manager examined on oath.

14. ***Brims Products*** *(supra)* was a case in which some loose papers were recovered from the dustbin of the premises of the manufacturer. It was found that the manufacturer assessee had received some consignments of betel-nuts which were not entered in the stock register

maintained; specifically four numbers of consignments. A clean chit was given to the assessee with respect to two consignments finding no actual purchase having been made by the manufacturer of the raw materials. With respect to the other two consignments, it was found that betel-nut was received by the manufacturer which was the main material for manufacture of Pan Masala. A Division Bench of this Court found that the charge of clandestine manufacture and surreptitious removal of finished final product was required to be proved beyond doubt by the Revenue. It was found that the main ingredient betel-nut is not the only raw material which is used in manufacture of Pan Masala. The investigation was confined to the transporters of the consignments and there could be no presumption drawn of a manufacture and removal of the final product. Even if it is assumed that some raw materials were received at the factory of the respondent, the same cannot be a conclusive proof of production and clandestine sale to different parties was the finding recorded. Due to lack of paucity of evidence benefit of doubt was given to the assessee in that case. We are not convinced that the facts apply to the present case.

15. We have already noticed that the proceedings

were initiated on three counts (i) the excess stock found on stock verification, (ii) the excess raw material found physically on inspection of two trucks found at the premises of the appellant with raw materials consigned to the appellant supported by invoices drawn in favour of the appellant but revealing far less quantity than that loaded in the vehicles and (iii) the production details as obtained from the registers, note-pads and loose sheets recovered from the premises. It cannot at all be said that there was no evidence indicating production of excisable goods. The registers, note-pads and cash-books maintained by the assessee clearly indicated the production of the finished product far in excess of that revealed in the books of account, as having been cleared after paying excise duty. We find on facts that there was sufficient evidence to support the allegation of production in excess of that cleared by payment of excise duty.

16. We find absolutely no reason to entertain the appeal, having found the factual premise to have been adjudicated properly by the adjudicating authority and the appellate Tribunal, we find absolutely no reason to interfere with the order passed. We answer the questions of law in favour of the Revenue and against the assessee.

17. The appeal stands rejected.

18. Interlocutory application(s), if any, shall stand disposed of.

(K. Vinod Chandran, CJ)

(Partha Sarthy, J):I agree.

(Partha Sarthy, J)

Ranjan/-..

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