2014 (2) ECS (230) (Tri. - Ahm.)

In the Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench, Ahmedabad
CCE & ST., AHMEDABAD III
VS.
TEC PAPERS PVT. LTD.

Date of Hearing: 07.03.2014
Date of Decision: 11.04.2014

Appeal No. E/25/2007/SM

[Arising out of order in appeal No. 167/2006 (Ahd-III) CE/DK/Commr(A) dated 29.09.2006 passed by the Commissioner (Appeals-II), Customs & Central Excise Ahmedabad III].

Appearance:
Shri Alok Srivastava (AR) for the appellant
None for the respondent

CORAM
Mr. H.K. Thakur, Hon’ble Member (Technical)


CESTAT in the case of Montex Dyg. and Ptg. works vs. Commissioner of Central Excise and Customs also held as follows:

In this case, there was recovery of a small note book from the factory premises of the respondent which has been admitted by the authorised signatory as well as the Director of the respondent factory, to be including illicitly cleared goods. Both of them have admitted that the said note book contained particulars of illicitly removed excisable goods from the respondent’s factory, and that this notebook was being maintained to monitor the receipt of payments against the illicitly removed excisable goods. The respondent’s director also admitted that the notebook was being maintained under his directions and the parallel invoices were later destroyed. All these confessions on part of the respondent’s director and its authorised signatories and the accountant carry substantial evidentiary value. Further, other facts and circumstances of the case viz. detection of shortage of finished goods in the factory premises of the respondent, seizure of illicitly removed excisable goods under the duplicate invoice number 173 dated 20.03.2004 during road patrolling on 20.03.2004 and recovery of a notebook containing details of clandestinely removed
goods are sufficient indicators of the clandestine clearances being made by the respondent. Not only this, the investigations conducted from the buyers of illicitly removed goods namely M/s Luckey Packaging Industries, M/s Tejas Packaging and M/s Reliance Packaging revealed that those parties have received the Duplex Board illicitly removed by the respondent under the cover of invoices mentioned in the notebook. They also admitted that the invoices either used to be taken back by the respondent or used to be destroyed by them after the goods reached the consignee. (Para 5)

Per: Mr. H.K. Thakur;

The present appeal, filed by the Revenue, is directed against the Order in Appeal No. 167/2006 (Ahd-III) CE/DK/Commr(A) dated 29.09.2006 passed by the Commissioner (Appeals), Central Excise Ahmedabad.

2. Brief stated the facts of the case are that the preventive Officers intercepted one truck carrying Ordinary Duplex Board on 20.03.2004 under the cover of invoice number 173 issued by the respondent. As the original serial number of the invoice was found cancelled and a new serial number 173 was written in the invoice, the Preventive Officers visited the factory premises of the respondent to ascertain genuises of the invoice. On verification, the officers found that the pre-authenticated invoice bearing serial number from 172 to 177 were still lying blank and unused in the records of the Respondent. During the course of physical verification of finished goods in the respondent’s factory, a shortage of 15000 Kg of Ordinary Duplex Board, involving central excise duty of Rs. 21600 and Cess Rs. 169, was detected, which was admitted by the respondent. During the course of search of the respondent’ factory the officers recovered one small note book containing invoice wise particulars of clearances of paper board. On comparing the particulars recorded in the note book with those mentioned in regular of the respondent the officers noticed that the note book contained details of clearances made by them under regular invoice as well as those made by them various buyers by repeated use of the same serial number of invoices. The particular of the note book were confronted to Shri Tusharbhai J. Raval, authorized signatory of the respondent, who admitted that the note book contained clearances of Duplex Board without payment of duty under the cover of duplicate, whose particulars appear in the note book. Shri Hiteshbhai J Parmar, Accountant of the Respondent also admitted that the details contained in the note book mostly pertained to illicit clearances. Shri Yogeshbhai S. Joshi, Director of the Respondent company, also admitted that aforesaid employees were working under his directions and that the note book in question had been maintained by Shri Hiteshbhai J Parmar under his direction.
to keep track of collection of payment of goods illicitly cleared by the respondent; and that the duplicate invoice were being destroyed by them after the goods reached the destination. The Revenue also recorded statements of some buyers of the illicitly cleared goods, four of whom admitted to have received the Duplex Board illicitly removed by the respondent under the cover of invoice mentioned in the note book. They also admitted that the invoices either used to taken back by the respondent or used to be destroyed by them after the goods were received. One buyer, M/s. Mahalakshmi Sales Agency, while admitting receipt of goods under invoice number 132/31.12.2004, 147/19.01.2004, 156/30.01.2004, and 161/15.02.2004, stated that the consignees mentioned the said invoices available with them were for M/s. Supreme Packing, M/s. Bhoomi Packing, M/s. Maruti Packing and M/s. Parshwa Print Pack Private Limited respectively. The Duplex Board, valued at Rs. 113601, loaded in the intercepted truck, involving central excise duty of Rs. 18176 plus Cess Rs. 142, was seized along with the truck valued at Rs. 300000. The Revenue worked out demand of excise duty Of Rs. 1612463 plus Cess Rs. 12598 for the period from January, 2004 to March, 2004 on the basis of clandestine removal of excisable goods ascertained form the note book coupled with the corroborative evidence and statement narrated above. After due process of adjudication the original adjudicating authority dropped the proceeding of the show cause notice relating to demand of duty of Rs. 1612463 plus Cess Rs. 12598 on the grounds of insufficiency of evidence to prove clandestine manufacture and removal. The original adjudicating authority also vacated the seizure of the excisable goods and the truck by treating the invoice number 173 dated 20.03.2004 as genuine. However, original adjudicating authority confirmed demand of duty of Rs. 18176 plus Cess 142 involved on the goods seized from the truck and also the demand of duty of Rs. 3424 plud Cess Rs. 27 (out of the total amount of Rs. 21600 plus Cess Rs. 169, involved in 15000 kg of Duplex Board found short, treating the duty of Rs. 18176 plus Cess Rs. 142, involved on the seized goods as a part of duty on goods found short in the represent’s factory on 20.03.2004). On the appeal by the Revenue the Commissioner (Appeals) rejected the Revenue’s appeal upholding the order of the original adjudicating authority vide the impugned Order in Appeal.

3. The Ld. AR Shri Alok Srivastava argued on behalf of the appellant that the Revenue has adduced sufficient corroborative evidence to prove that the respondent had been indulging in evasion of central excise duty by preparing duplicate invoices bearing repeated use of same invoice numbers. It was his case that the seizure of respondent’s goods in transit on 20.03.2004 under the cover of duplicate in voice
number 173 dated 20.03.2004, detection of shortage of 15,000 Kg. of Duplex Board in the respondent’s factory on 20.03.2004, confessional statements of some of the buyers (whose address could be traced by the investigating officers) of the illicitly removed goods and confessional statements of the respondent authorized signatory as well as the respondent’s Director Shri Yogehbhai S. Joshi, to the effect that the illicitly cleared goods used to be removed under the cover of duplicate invoice and that the note book in question was being maintained under the directions of the Director to monitor the payments of illicitly cleared Duplex Board from the respondent’s factory clearly proves beyond doubt that the respondent had indulged in massive evasion of central excise duty during the period January 2004 to March 2004. He relied upon the following case laws in support of his arguments:

(i). Collector of Customs, Madras and other vs. D. Bhoormaull – [1983 (13) ELT 1546 (SC)];
(ii). Assistant Collector of Central Excise vs. Duncan Agro Industries Limited – [2000 (120) ELT 280 (SC)];
(iii). Commissioner of Central Excise vs. Anjaneya Steel Rolling Mills – [2005 (185) ELT 158 (Tri-Chennai)];
(iv). M.R. Tobacco Private Limited vs. Commissioner of Central Excise, Delhi- [2006 (202) ELT 64 (Tri-Del.);
(v). M.R. Tobacco Private Limited vs. Union of India, Delhi- [2008 (228) ELT 171 (Tri-Del.);
(vi). Karnataka Ginnig & pressing Factory vs. Commissioner of Central Excise, Mumbai- [2006 (204) ELT 156 (Tri-Mumbai)];
(viii). Devi dass Garg vs. commissioner of Central Excise & Crus., (257) LET 289 (Tri-Del.);
(x). Surjeet Singh Chhabara vs. Union of India –[1997 (89) ELT 646 (SC)];
(x). Commissioner of Central Excise, Madras vs. System & Components Pvt. Ltd. – [2004 (165) ELT 136 (SC)];
(xi). Ludhiana Food Products vs. Collector of Central Excise – [1989 (43) ELT 648 (Tribunal)];
(xii). Commissioner of Central Excise, Mumbai vs. Kalvert Foods India Pvt. Ltd. – [2011 (270) ELT 643 (S.C); and
(xiii). Naresh J. Sukhawani vs. Union of India – [1996(83) ELT 258 (SC)].
4. None appeared on behalf of the respondent despite notice. However, it is observed from the appeal papers that the first adjudicating authority as well as the Commissioner (Appeals) have set aside substantial amount of demand of central excise duty of Rs. 1612463 and Cess of Rs. 12598 on the ground of insufficiency of corroborative evidence inasmuch as out of total 76 parties, who bought the alleged illicitly removed goods without payment of duty, investigation have been caused only from 8 parties, who had initially admitted to have received the illicitly removed goods from the respondent out of which 3 parties M/s. Parth Packaing, M/s. Mandali Packing, and M/s. Parshva Rite Pack Pvt. Ltd. retracted their statement at the time of filling their written replies dated 14.10.2014, 01.02.2005, and 26.03.2005 to show cause notice respectively. The authority below held that there was sufficient evidence to prove the charge of clandestine removal of goods against the respondent, as no enquiries were caused from majority of the buyers, transporters, and drivers of transport vehicles through which the alleged illicitly goods were transported. The lower authorities also vacated the seizure of goods valued at Rs. 113601 by treating the invoice number 173 dated 20.03.2004 as a valid invoice despite availability of pre-authorities blank invoice number 173 in the respondent’s factory at the same point of tie.

5. Heard Shri Alok Srivastava, AR and perused the records. I find in this case there was recovery of a small note book from the factory premises of the Respondent which has been admitted by the authorized signatory as well as the Director of the respondent factory, to be including illicitly cleared foods. Both of them have admitted that the said note book contained particulars of illicitly removed excisable goods from the respondent’s factory, and that this note book was being maintained to monitor the recipient of payment of against the illicitly removed excisable goods. The respondent’s Director also admitted that the note book was being maintained under his directions and the parallel invoice were latter destroyed. All these confessions on the part of the respondent’s Director and its authorized signatory and the Accountant carry substantial evidence value. Further, other facts and circumstances of the case viz. detection of shortage of finished goods in the factory premises of the respondent seizure of illicitly excisable goods under the duplicate invoice number 173 dated 20.03.2004 during road patrolling on 20.03.2004 and recovery of a note book containing details of clandestinely removed goods are sufficient indicators of the clandestine clearance being made by respondent. Not only this, the investigations conducted from the buyers of illicitly removed goods namely M/s. Luckey Packing Industries, M/s. Tejas Packing, and M/s. Reliance Packing (as mentioned in the note Book), revealed that those parties have received the Duplex Board illicitly removed by the
respondent under the cover of invoice either used to be taken back by the respondent or used to be destroyed by them after the goods reached the consignee. One buyer, M/s. Mahalakshmi Salas Agency, while admitting receipt of goods under invoice number 132/31.12.2004, 147/11.01.2004, 148/19.01.2004, 156/30.01.2004, and 161/15.02.2004, stated that the consignees mentioned the said invoices available with them were M/s. Supreme Packing, M/s. Bhoomi Packing, M/s. Maruti Packing and M/s. Parshwa Print Pack Limited respectively, which proves the charge of repeated use of same invoice against the respondent. There is nothing on record to show that these persons have retracted those statements any time during the proceeding CESTAT in the case of M.R. Tobacco Pvt. Ltd. vs. Commissioner of Central Excise [2006 (202) ELT 64 (Tri.-Del.)] held as under:

"9. We have perused the case records and heard both sides at length. There is no denial of the fact that ample evidence exists to show the recovery of loose sheets from the premises of the appellants. Though the show cause notice and the order in original refer to them as loose sheets, we find that by referring to the dates and other details contained in them there is a clear continuity interlinking them in a cogent manner. They could have been detached from a note book or exercise book. The countinuity is revealed by the running dates starting from 17.01.2002 and ending up to 18.02.2002. we also notice that the starting point in this investigation is the interception of a tempo carrying non duty paid goods on 19.02.2002. This led to the discovery of the existence of two boras containing contraband and also the recovery of the so-called loose sheet about which the appellants have admitted as goods cleared. In one of the two statements made by the taken place in a clandestine manner. It has also been pleaded before use by the learned SDR that while calculating the duty liability the department has not gone arbitrarily by the production capacity, but by minute details as stood included in the recovered loose slips. Further, we find that the seizures made in transit as impugned order relying on the recovered loose sheets. The statements of Director and Accountant and also the production Supervisor all go to prove that the appellants were engaged in clandestine removal of excisable goods, as detailed in the loose sheets. Having admitted, saying that the details such as purchase of raw material, sale of finished products and payments thereof for argument’s sake. This argument dose not make the case weak in any manner because it is settled position in law that the admitted fact need not be proved. Finding no infirmity in the impugned order we are inclined to go by the reasoning and finding as contained in the impugned order. At this stage of direction of the present order, the learned counsel interprets and pleads for leniency in the penalty imposed by the authority bellow as he had invoked
the provision of Section 11AC and imposed a heavy penalty which is equivalent to the duty demanded. We, however, on considering the facts and circumstance of the matter find that there is no warrant for interfering with the impugned order in any way as the penalty imposed is commensurate to the nature of offence. Both the appeals are, therefore, dismissed.”

The above decision of the Tribunal has been approved by the Hon’ble Delhi high Court as reported in 2008 (228) ELT 171(De.).

5.1. Further, in the case of Karnataka Ginning & Pressing Factory vs. Commissioner of Central Excise, Mumbai – [2006 (204) ELT 156(Tri.-Mumbai)], interalia, in Para 3 as follows:-

“3..........

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.......... the appellant are only concerned with the confirmation of duty of Rs. 1178032 and penalty under Sec. 11AC and penalty under Rule 173Q(1). This duty demand was based in note book recovered from the factory premises of the appellant in the presence of power of attorney holder Shri Rameshchander Agarwal who has confirmed that entries in the note book were made by him. Material on record show that except clearances effected on 3.2.98 and 9.2.98, the remaining clearances are without payment of duty. As per provisional of Sec. 36A of the Central Excise Act, the presumption is that the note book genuine documents and this is further fortified by the admission of the power of attorney holder that the entries therein were made by him. The appellant have not rebutted this presumption. We, therefore hold that the Department has discharged the onus of established clandestine clearance of man made processed fabrics by the appellant. Duty demand, is therefore, sustainable. .....”

5.2. CESTAT in the case of Montex Dyg. & Ptg. Works vs. Commissioner of Central Excise & Customs –[2007(208) ELT 536 (Tri. Ahmed.)] also held as follows:

“11. No doubt, it is well settled law that the clandestine removal charges are required to be proved by production of sufficient and tangible evidence. However, the appreciation of evidence available in each and every case has to be done in the facts and circumstances of that case only. We find that in the instant case, it is not a case of simplicitor recovery of note books but the corroboration of the same by not only the admission of the partner but the admission of merchant-manufactures also. Kachcha/pakka challans contained plethora of information as regards the name of the merchant-manufactures date quality of grey fabrics, total metrage etc. these challans not only prove, beyond doubt, receipts of the goods by M/s. Montex Dyeing
& Printing Works, but not when the details therein are examined with
the entries made in the two note books, entire scenario becomes clear,
inasmuch as the entries in the kachcha as well as pakka challan are
reflected in the two note books maintained by the person in the grey
fabrics section. Further, not only the said entries stands corroborated
by the statement of the partner but are further corroborated by the
statement of the merchant-manufactures. The Revenue has done
a commendable job by recording the statements of 22 merchant-
manufactures out of 49 ,merchant-manufactures involved. All these
22 merchant-manufactures have admitted their quilt of sending grey
fabric to M/s. Montex Dyeing & Printing works in the basis of Katchacha
challans and receiving back the processed fabric without the cover of
Central Excise invoice. As such, we find that the Revenue has able to
discharge its burden to prove clandestine manufacture and removal of
excisable goods. The appellants claim that corroboration in the shape
of installed capacity, electricity consumption, labour employed etc.
his not come on record, does not convince us inasmuch as it is the
sufficiency of evidence on record which has to be considered and the
Revenue cannot be expected to prove its case by producing directed
evidence which would rarely be forthcoming. It is not necessary that
the case of the clandestine removal must always be proved by referring
to electricity consumption or installed capacity or labour employed
etc. in the present case, we find that M/s. Montex Dyeing & printing
works is not disputing the recovery of challans/note books from its
premises. The said entries finds sufficient corroboration in the shape
of the statement of the partner and the merchant-manufacture, which
we have dealt in the preceding paragraph. As such we hold that the
charge of clandestine removal against the said appellants stands
established. Accordingly duty of Rs. 2470054 confirmed against the
said appellants is upheld. .......

6. In view of the above observation, fortified by the case laws relied
upon by Revenue. I hold that the demand of Rs. 1612463 and Cess
of Rs. 12598 for the period January, 2004 to March 2004 along with
interest is sustainable against the respondent.

7. As the demand of Rs. 1612463 plus Rs. 12598 for the period January,
2004 to March, 2004, is sustainable against the respondent company,
I impose a penalty of Rs. 1612463 under Rule 25 of Central Excise
Rules, 2002 read with Section 11AC of the Central Excise Act, 1944
on the respondent company. However, option of reduced penalty of
25% under Sec. 11AC is extended, if the respondent pays the entire
amount of duty alongwith applicable interest, and 25% as reduced
penalty within 30 days from the date of receipt of this order.

7. In view of the above appeal filed by the Revenue is allowed.