Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench at Ahmedabad

REGIONAL BENCH-COURT NO. 3

Excise Appeal No. 10691 of 2017- DB

(Arising out of OIO-RAJ-EXCUS-000-PR-COM-65-16-17 dated 29/12/2016 passed by Principle Commissioner Customs, Excise and Service Tax-RAJKOT)

Parot Power Pvt Ltd **........Appellant**

18 Sadguru Industrial Estate Morbi Rajkot Highway
Near Lajai Village
Morbi, Rajkot

VERSUS

C.C.E. & S.T.-Rajkot **......Respondent**

Central Excise Bhavan,
Race Course Ring Road...Income Tax Office,
Rajkot, Gujarat-360001

WITH

(i) Excise Appeal No. 10692 of 2017- DB (Anand Rameshbhai Vadhadia)
(ii) Excise Appeal No. 10857 of 2017- DB (Navneet Mansukhbhai Jivani)
(iii) Excise Appeal No. 10859 of 2017- DB (Kantilal Bachubhai Goriya)
(iv) Excise Appeal No. 10870 of 2017- DB (Satish Chandulal Chhatrola)
(v) Excise Appeal No. 10983 of 2017- DB (Kishor Kanaiyalal Chandrala)
(vi) Excise Appeal No. 10266 of 2018- DB (Shri Anand Rameshbhai Vadhadia)
(vii) Excise Appeal No. 10267 of 2018- DB (Parot Power Pvt Ltd)

[(Arising out of OIO-RAJ-EXCUS-000-PR-COM-65-16-17 dated 29/12/2016 passed by Principle Commissioner Customs, Excise and Service Tax-RAJKOT), (Arising out of OIA-RAJ-EXCUS-000-APP-122-123-2017-18 dated 14/11/2017 passed by Commissioner(Appeals) Commissioner of Central Excise, Customs and Service Tax-RAJKOT)]

APPEARANCE:

Shri Paresh M Dave & Shri Parth Rachchh, Advocate for the Appellant
Shri Tara Praksah, Deputy Commissioner (AR) for the Respondent

CORAM: HON'BLE MEMBER (JUDICIAL), MR. RAMESH NAIR
HON'BLE MEMBER (TECHNICAL), MR. RAJU

Final Order No. 10344-10351/2024

DATE OF HEARING: 11.12.2023
DATE OF DECISION: 07.02.2024

RAMESH NAIR

All the present appeals are filed by the Appellants against the Order-in-Original No. RAJ-EXCUS-000-PR.COM-65-16-17 dated 29.12.2016 passed by the Principal Commissioner, Central Excise, Customs & Service

Tax, Rajkot and Order-In-Appeal No. RAJ-EXCUS-000-APP-122 to 123-2017-18 dated 15.11.2017 passed by the Commissioner (Appeals), GST & Central Excise, Rajkot.

1.1 Brief facts of the case are that the M/s. Parot Power Pvt. Ltd., (M/s P.P.) are engaged in the manufacture of 'Electrostatic Precipitator' (also known in trade parlance as 'Tar Catcher'), Electromagnets for Liquid /Slurry Applications, Electromagnets for power Applications, Ball Mills for Grinding etc. falling under Chapter 84 and 85 of the First Schedule to the Central Excise Act, 1985. On the basis of intelligence that M/s. P.P are engaged in manufacture and clandestine removal of excisable goods i.e. Tar Catcher without obtaining Central Excise Registration and without accounting the same in the statutory records, a team of officers of Anti–evasion Section, Central Excise, Commissionerate, Rajkot, carried out search of the factory premises of M/s. P.P. on 11.10.2013 under panchnama. During the search various documents were resumed. Also the finished goods i.e. Tar Catcher valued at Rs. 25 Lakh which were found in the factory premises at the time of search, were placed under seizure, under a reasonable belief that the same were manufactured in contravention of the provisions of Central Excise law and would have been removed clandestinely. Search was also conducted at the residential premises of the Shri Anand Rameshbhai Vashadia, Director and two note books having date-wise entries and file containing 'Estimates' were resumed for further investigation. During the investigation statements of director were recorded. Subsequently, a show cause notice dated 17.09.2014 was issued by the Deputy Commissioner, Division-II, Rajkot proposing confiscation of seized goods valued at Rs 25,00,000/- and imposition of penalty.

1.2. During further investigations, statements of various buyers were also recorded. Accordingly, show cause notice dated 10.03.2016 was issued to M/s. P.P, calling upon them to show cause as to why Central Excise duty of Rs. 3,21,68,909/- should not be demanded from them under proviso to sub-section (4) of Section 11A of Central Excise Act, 1944. There were proposals for interest and penalty and for personal penalty on other co-noticees. In Adjudication vide order dated 29.12.2016 demand of central excise duty was confirmed along with interest and penalty and a penalty under Rule 26 of Central Excise Rules, 2002 was also imposed on the Director of the M/s P.P. and other co-noticee. Similarly, show cause notice dated 17.09.2013 was culminated in the adjudication order dated 31.03.2016 whereby the redemption find of Rs. 5 Lakhs imposed and penalties were also imposed on the appellants. Being aggrieved with the impugned order dated 31.03.2016 appellants have filed the appeals before the Commissioner (Appeals) which came to be rejected and the order in original was upheld, therefore, all the present appeals are before us.

2. Shri Paresh M. Dave and Shri Parth Learned Advocates appearing on behalf of the appellants submits that since 15 entries involving 15 parties/buyers are excluded while issuing show cause notice, the credibility and reliability of the Note Books are lost. Only 5 parties/ buyer are arraigned in SCN/Adjudication proceedings and penalty only on five such persons is imposed; but other parties/buyers are not arraigned at all in the proceedings though duty demand for them also is confirmed. Other 107 parties/buyers have submitted affidavits during adjudication, but such persons were neither called for verification nor were their affidavits accepted. It is also not clear why the case of clandestine removal is made only for 'Tar Catchers' and not any other machine /equipment. These overall facts clearly show that the Revenue's case is not sound and there are internal contradictions in the Revenue's case.

2.1 He also submits that Learned Commissioner has confirmed the demand on the basis statements of parties/buyers, one supplier of raw material, and one director of the appellant and except these statements there is no evidence in support of the case of clandestine manufacture and removal. But these statements are not admissible as evidence because the mandatory procedure laid down under Section 9D of the Central Excise Act is not complied with by the Adjudicating authority. The statements recorded by the investigating officers are therefore of no evidentiary value, and no central excise demand is sustainable on the basis of such inadmissible evidence. He placed reliance on the following Judgments:-

- Forward Resources Pvt. Ltd. Vs. Commissioner, Surat –I-2023(69)GSTL 076
- Reynolds Petrochem Ltd. Vs. Commissioner, Surat -2023(68)GSTL 292.
- Shree Hari Steel Industries & Others Vs. Commissioenr, Bhavnagar – 2022(8)Tax Management India 1251
- J.P. Iscon Pvt. Ltd. -2022(63)GSTL 64.

- G-Tech Industries Vs. Union of India – 2016(339)ELT 209(P&H)

2.2 He further submits that in the present case, admittedly, none of the persons whose statements were recorded during the investigation were examined as witness and there is nothing on record to show that the Adjudicating authority formed the opinion that, having regard to the circumstances of the case, these statements should be admitted in evidence in the interest of justice. The Adjudicating authority has not made any attempt to comply with the conditions and requirement of Section 9D of the Central Excise Act before admitting the statements as evidence. Therefore all the statements, which are not proved not admitted as evidence in terms of Sections 9D of the Act, are inadmissible and unreliable against the appellant. When these statements are discarded, there is no case against the appellant about recovering cash from clients, and the demand of excise duty therefore falls.

2.3 He also submits that the Note Books is not reliable. As perusal of the Note Books shows that no clear facts or details about any illicit activities are recorded therein. No reference to a particular equipment or machine is recorded; no details of quantity of equipment/machine are recorded; the price /value of the goods is not recorded; and it is also not recorded in the Note Books that the details were for selling any goods in unaccounted manner against cash payment, and that the goods were 'Tar Catchers' . It is a settled legal position that a serious charge of illicit manufacture and clandestine removal of excisable goods cannot be upheld on the basis of rough jottings in diaries or note books , and unsubstantiated and unclear details or figures written in loose sheets, note books or diaries. He placed reliance on the following judgments:-

- Mahesh Silk Mills Vs. Commr. Of Central Excise, Mumbai – 2014(304) ELT 703(Tri. Ahmd.)
- Commissioner Vs. Mahesh Silk Mills – 2015(319) ELT A52(Guj.)
- Ruby Chlorates (P) Ltd. Vs. Commr. Of C. Exise, Trichy -2006(204) ELT 607(Tri. Chennai)
- Deena Paints Vs. CCE- 2000(11)TMI 1216-CESTAT Delhi
- Shakti Chemical Industries Vs. Collector of C. Excise, Baroda - 1995(75)ELT 410 (Tribunal)
- Kashmir Vansapati (P) Ltd. Vs. Collector of C. Excise- 1989(39)ELT 655 (Tribunal)

2.4 He also argued that except 5 parties, no other alleged buyer is contacted by the revenue and statements of none of the parties/buyers except 5 are recorded. For raw material supplies, only one person is contacted and statement of only one alleged raw material supplier is recorded. It is a settled legal position that cogent and reliable evidence of substantial quantum of alleged evasion, sufficient number of buyer, sufficient number of raw material suppliers and transporter etc. must be adduced by the revenue. A case of the clandestine activities has to be established by the revenue by leading cogent, reliable and independent evidence. Such case cannot be mode out only on statements recorded by the investigating officers. The customer/ buyers who are alleged to have paid cash must be located, statements of such persons must be recorded for proving cash payment by them, the amount of cash transaction should also be established as actually received by the assessee, and such evidence has to be brought on record. In absence of such evidence, a case of clandestine activities is not acceptable. He placed reliance on the following decisions:-

- Grace Castings Ltd. Vs. Commissioner, Ahmedabad 2019(369)ELT 751 (Tri.-Ahmd)
- Commissioner Vs. Motabhai Iron & Steel Industries -2015(316)ELT 374 (Guj.)
- S.M. Energy Teknik & Electronics Ltd. Vs. Commissioner, Vadodara 2015(328)ELT 443(Tri. Ahmd)
- Mahesh Silk Mills Vs. Commissioner of Central Excise - 2014(304)ELT 703 (Tri. Ahmd)
- Commissioner Vs. Mahesh Silks Mills -2015(319)ELT (A52)- Gujarat High Court
- J.P. Iscon Pvt. Ltd. -2022(63)GSTL 64 (Tri. Ahmd)
- Arya Fibers Pvt. Ltd. Vs. Commissioner, Ahmedabad -2014(311)ELT 529 (Tri. Ahmd)

2.5 He also submits that the figures and details of the Note Books were actually the details of estimates given to the clients. The appellant has explained in the adjudication that the Note Books were kept for recording rough details, and not for orders or actual transactions for selling any equipment/machine. Some of the details were in respect of estimates given to the prospective customers; but the Note books were not maintained for recording the actual purchase orders or transactions for selling equipment/machine.

2.6 He further submits that the limited production capacity of the appellant company is not considered by the Ld. Commissioner. The case against the appellant is for manufacturing about 176 Tar Catchers during a period of about 21 months, in addition to the machine sold under bills/invoices. Admittedly, the revenue has not established with any evidence that the appellant was competent to manufacture such quantity of machine; in fact, the revenue has not addressed the issue of the appellant's manufacturing capacity and capability in this proceedings. On the other hand, the appellant has prima facie established by virtue of certification of a qualified Chartered Engineers agency that the production capacity was much lower than the quantity of machines allegedly manufactured and clandestinely removed. Such evidence could not have been just discarded without bringing on record any contrary evidence of equal or more qualified agencies. A large number of parties/persons (i.e. 107 parties) whose names and details appears in the Note Books have submitted on oath that they had not received or purchased any Tar Catchers, or any other machines/equipment, from the appellant. Clarification by such persons made on oath cannot be discarded without verifying the factual explanation tendered by them, without establishing by any other admissible evidence that their affidavits were false or untrue. Only because the affidavits were submitted during the adjudication proceedings, the Ld. Commissioner could not have summarily rejected such evidence.

2.7 He also argued that the revenue has not established that the appellant company actually manufactured 176 Tar Catchers illicitly and sold such goods fetching price aggregating to Rs. 26,03,35,513/- during the period of 21 months, and therefore the demand of central excise duty of Rs. 3,21,68,909/- is confirmed without any jurisdiction and without any justification. For establishing the case of clandestine manufacture and removal of excisable goods, the revenue is under obligation to establish with evidence that the manufacturer had procured adequate raw materials for manufacturing such goods; the revenue is also under obligation to establish with evidence that infrastructure like labour force, electricity, and fuel etc, were actually employed and utilized for manufacturing the concerned quantity of goods; the revenue is also under obligation to identify and locate the buyers to whom such goods were supposed to have been sold and delivered; the revenue is also under obligation to establish with evidence like transport, loading staff etc. that such goods were actually transported from the manufacture's premises to the buyer's place; it is also incumbent upon the revenue to establish with evidence that the manufacturer had made payment for raw materials used in manufacture of the goods and that the buyers had made payment to the manufacturer in cash or unaccounted manner for purchasing the goods in clandestine manner; and the revenue was also under obligation to establish all such factors not only on the basis of statements recorded by the investigating officers but by virtue of independent corroborative evidence in form of documents.

2.8. As regard the appeals related to seizure and confiscation of the two Tar Catchers valued at Rs, 20 Lakhs found lying at premise of the appellant, on the ground that statutory records were not maintained and these goods were not entered in RG-1, he submits that these two tar catches were not entered in the statutory records like RG-, but that was for the reason that the appellant company was availing SSI exemption at that time and therefore the appellant company was also exempted from licensing Control and from maintaining any statutory records like RG-1 because the goods were fully exempt from payment of excise duty. He placed reliance on the following decisions:-

- Dayal Industries 2006(199)ELT 237
- Booster -2008(221)ELT 412 (Tri. Del.)
- HR Products -2006(195)ELT 112
- Deccan Industries 2003(157)ELT 86 –maintained by SC 2003(158)E A71(SC).

2.9. He also submits that it is settled legal position that fully manufactured goods were not liable for seizure or confiscation on the ground that they were not recorded in RG-1 or such statutory registers if the goods were lying in the factory of manufacture itself, and no preparations or attempts were made by the manufacturer to remove such goods clandestinely. He placed reliance on following documents:-

- Bhilai Conductors -2000(125)ELT 781(Tri.)

- Kirpal Springs – 2003(156)ELT 768

3. On other hand Shri Tara Prakash, the Learned Deputy Commissioner (Authorized Representative), appearing for the revenue supports the findings of the impugned orders.

4. We have heard both the sides and perused the records. We find that in the instant case, the entire case of the Revenue is based on the two note books seized from the residence of the Director Shri Anandbhai Vadhadia and that the note books were accepted as the details of transaction of sales of Tar Catchers by the said Director. However we find that Shri Ananad Vadhadia in his statement recorded on 08.12.2015 has specifically stated that quotation price to customers were given in some cases which were recorded on right side of two diaries, some cases where advance payments was received against such quotation price were also mentioned in note books, the transaction mentioned in the note books were not actual sales, and that goods were actually not delivered/sold to the customers in some cases where advance payment was received. We also gone through the said disputed Note Books and find that the said note books not clearly shows fact/details about the details of alleged clandestine manufacture and clearance of the disputed goods. It is an admitted position of facts that out of 176 parties found by the revenue officers in said two note books, only five parties were contacted during the investigation and there is no evidences of the remaining parties.

4.1 We also find that appellant filed a reply to show cause notice before the Learned Commissioner with various documents including affidavits of 107 persons/ parties whose name appeared in said disputed two Note Books. By these affidavits, the concerned persons clarified that they had not purchased or received any Tar Catchers from the appellant. We also observed that revenue itself excluded the 15 entries of 15 parties of the said Note Books while issuing show cause notice. Thus, the authenticity of said Note Books is not reliable. It is not open to drop the evidence in favour of the assessee and to pick up the partial evidence which may be against the assessee. It is the appreciation of entire evidence which needs to be done for arriving at the final conclusion, which cannot be arrived on the basis of pick and choose method. We find that only on the basis of said disputed entries of the Note Books charges of clandestine manufacture of

'Tar Catchers' and clandestine clearances of the said goods from appellant's factory is not sustainable. The investigation in the present case has been very sketchy and will not support the findings in the impugned order.

4.2 The allegation of clandestine production and removal are required to be arrived at on the basis of positive and tangible evidences including the evidences relating to procurement of raw-materials, conversion of the same to final products, clearances of the same and identification of the buyers and receipt of unaccounted cash etc. It has been the ratio of various decisions of the higher courts that mere entries in the private records, do not, *ipso facto,* lead to the allegation of clandestine removal unless there is corroborative evidence to that effect from independent sources. Testing on the said touch stone, we find that the revenue has not been able to produce sufficient evidence so as to hold against the appellant. There is no evidence of procurement of such a huge quantum of raw material for final product at any place; no evidence of transports of either the raw material or the final products; no statement of the transporters deposing against the assessee; no evidence of the buyers in respect of such a huge quantum of removal of final product; no statement of any production staff indicating the production of such a huge quantum of the final products; no recovery of any cash amount from the buyers or cash payments to the input suppliers. It is well settled that the charges of clandestine removal are required to be made on the basis of positive and tangible evidence, the same being quasi-criminal in nature. The Revenue has miserably failed to produce corroborative evidence on records so as to substantiate the charges of clandestine removal. In the absence of corroborative evidence, in the present case "the charge of clandestine clearance" cannot be levelled against the appellant.

4.3 We also noticed that the Learned Commissioner has confirmed the demand of duty on the basis of statement of five parties/ buyers, one raw material supplier and one director of the appellant. Appellants had specifically requested for cross examination of the said witnesses, but the witnesses were not offered for cross examination and the impugned order does not contain any reason for denial of this opportunity. Clearly, adjudicating authority has not followed the procedure as prescribed under Section 9D of the Central Excise Act for placing reliance on the statements of said witnesses. In this connection we note that denial of cross-examination and relying on the statements, put the impugned order in legal jeopardy. The provisions of Section 9D of the Central Excise Act, 1944 is very clear and by now, it is well-settled legal position that the Adjudicating Authority, if he intends to rely on the contents of any statement recorded under the Central Excise Act, 1944, then the procedure, as prescribed under Section 9D, has to be followed scrupulously. In fact, in a decision, the Hon'ble Punjab & Haryana High Court in the case of *Jindal Drugs Pvt. Ltd.* - 2016 (340) E.L.T. 67 (P&H) held that Adjudicating Authority cannot straightaway rely upon the statement recorded during the investigation before the central excise officer, unless and until, he can legitimately invoke clause (a) of Section 9D(1). The statements given under Section 14 are to be examined before the Adjudicating Authority and if the same is not done, it cannot be taken as reliable evidence. If the maker of the statement is examined by the Department, cross-examination of the said person must be allowed, if sought for by the assessee. We find legal ratio regarding cross-examination of the person, whose statement has been relied upon by the Department, has been laid down by the Hon'ble Delhi High Court in *Basudev Garg* - 2013 (294) E.L.T. 353 (Delhi) = 2017 (48) S.T.R. 427 (Del.) and Hon'ble Allahabad High Court in *Parmarth Iron Pvt. Ltd.* - 2010 (260) E.L.T. 514 (All.). Further, reference can be made to the decision of Hon'ble Delhi High Court in *J.K. Cigarettes Ltd.* - 2009 (242) E.L.T. 189 (Delhi) = 2011 (22) S.T.R. 225 (Del.)and Hon'ble Allahabad High Court in *Govind Mills Ltd.* - 2013 (294) E.L.T. 361 (All.). In the present case, we find that the statements were relied upon as corroborative evidences and the cross-examination of witnesses who made such statements was denied without valid ground. We find that, the admissibility of these evidences is legally not sustainable, and the same cannot be the basis for confirmation of duty on the goods allegedly manufactured and cleared by the appellant.

4.4 On the another issue related to confiscation of two Tar Catchers seized on 11.10.2013 at the appellant's unit, we find that in the matter of *Koch Rajes C.D. Industries Pvt. Limited* v. *Commissioner of Central Excise, Mumbai-IV* [2006 (193) E.L.T. 566 (Tri. - Mumbai)], the CESTAT held in Para 3(b) of the decision as under :-

> *"(b) The law on confiscation of goods, in the factory and not entered in RG-1 production record is well settled. From the following decisions of the Bombay & Andhra Pradesh High Courts & of this Tribunal.*

(i) Southern Steels Ltd. v. U.O.I. - 1979 (4) E.L.T. (J 402) (A.P.)

(ii) Kirloskar Brothers - 1988 (34) E.L.T. 30 (Bom.)

(iii) Nalanda Tobacco - 1997 (91) E.L.T. 275 (A.P.)

(iv) Bhilai Conductors Pvt. Ltd. - 2000 (125) E.L.T. 781 (Trib.)

It is very clear that mere non-entry of the productions in the RG-1 will not bring in the liability to confiscation under provision of the Central Excise Rules if there is no corresponding material of clandestine clearance also available. Unaccounted production goes in tandem with clandestine removal and evidence of both has to be present in a given case to avoid the charge to be determined on an assumption/presumption. Applying the tab for liability to confiscation in this case under Rule 173Q(1), we find the test to be not positive. The confiscation arrived is to be not upheld & is to be set aside."

4.5 Similarly in the case of *Commissioner of Central Excise & Customs* v. *Resham Petrotech Ltd.* [2010 (258) E.L.T. 60 (Guj.)], the Hon'ble High Court of Gujarat held as under :-

"3. As can be seen from the impugned order of Tribunal and the record, the respondent has tendered explanation as to why the necessary entries were not made in the statutory records. The said explanation has not been disproved by any evidence to the contrary. The Tribunal has found that the explanation tendered is reasonable and does not warrant any confiscation of goods.

4. It is an accepted position that the liability to pay duty arises at the point of time when the goods are to be removed from the factory premises. Admittedly, the goods were found lying in the factory premises. Therefore the occasion to pay duty had not arisen. In other words, the liability to pay duty had not accrued in law. In the circumstances, it is not possible to accept the contention of the appellant that an inference should be drawn that the goods were to be clandestinely removed and hence confiscation was permissible. Such an inference should be possible if there are other surrounding or attendant circumstances. In the present case, no such evidence exists on record. The Tribunal was, therefore, justified in coming to the conclusion that the confiscation of goods was not justified."

4.6 Further, in the case of *Commissioner of Central Excise, Chandigarh* v. *Sadashiv Ispat Ltd.* [2010 (255) E.L.T. 349 (P & H)], the Hon'ble High Court of Punjab and Haryana held as under :-

"8. A perusal of the impugned order shows that no evidence has been produced by the Revenue that the respondent had cleared the goods unaccounted and the goods were kept for clandestine clearance. In the present case, even if the goods had not been entered in the RG-1 register, yet the same cannot lead to the conclusion that the goods were meant for clandestine removal. Both the Commissioner as well as the Tribunal have returned a concurrent finding of fact that there was no mens rea on part of the respondent to clandestinely remove the goods.

9. The appellant had formulated the following question of law for adjudication by this Court :-

> *"Whether "mens rea" is a pre-condition for confiscation of unaccounted exciseable goods under Rule 173Q(a), (b), (c) of erstwhile Central Excise Rules, 1944 and present Rule 25(a), (b), (c) of Central Excise Rules, 2002?"*

10. This question has squarely been answered by a Division Bench of this Court in Commissioner of Central Excise, Jalandhar. v. Indo German Fabs reported as 2007 (209) E.L.T. 184 (P & H), wherein while relying on the judgement of Hon'ble Supreme Court in Hindustan Steel Ltd. v. State of Orisa, reported as 1978 (2) E.L.T. (J159) (S.C.), it was held that element of mens rea is normally required to be shown for imposition of penalty. Same view was taken in The Commissioner of Income Tax, West Bengal v. Anwar AH, reported as AIR 1970 S.C. 1782.

11. In the present case, the Department has failed to prove the element of mens rea for imposition of penalty. It has been so held by the Commissioner as well as the Tribunal that no case was made out to impose penalty. The finding recorded that no case was made out for imposition of penalty is not shown in any manner to be perverse.

12. In view of the above, we find no merit in this appeal and the same is accordingly dismissed."

4.7 In the case of Commissioner of Central Excise, Hyderabad v. Srinivasa Frozen Foods Ltd. [2010 (262) E.L.T. 594 (Tri. - Bang.)], also, CESTAT held as under :-

"5. I have considered the submissions made at length and perused records. The issue involved in this case is regarding the confiscation of the goods which were found unaccounted in the RG-1 of the respondent. It is undisputed that these goods were found in the factory premises of the respondent. The allegation in the show cause notice that these goods were kept without entering in the records, with an intention to

clear the same without payment of excise duty, is not supported by any evidence. Further, it is also seen that as regards the allegation of the clandestine removal in respect of other show cause notice, which also was issued based upon the very same investigations and visit by the officers, the respondent had settled the issue before the Settlement Commission. The proceedings which were settled by the respondent before the Settlement Commission cannot be brought into play for holding against the respondent in another show cause notice.

6. Be that as it may, I find that the goods once they are in the factory premises, no penalty can be imposed on the respondent under the provisions of Rule 173Q, as has been held by the majority decision of the Tribunal in the case of Bhillai Conductors (P) Ltd. (supra). In view of this, I hold that the goods which were found in excess in the factory premises are not liable for confiscation and the adjudicating authority's order of dropping the issue under the show cause notice is correct and does not require any interference on this count."

4.8 In the light of the above settled law on the issue it is observed that in the present case also the goods were lying within the appellant's factory. There was no evidence on record to show that there was any attempt to remove those goods clandestinely without payment of duty. In view of the above decisions on the issue, we hold that the goods in question were not liable to confiscation. Accordingly, we set aside the confiscation of the goods.

5. In view of the above discussions, the impugned orders cannot be sustained and accordingly the same is set asides. All the appeals are allowed with consequential reliefs as per law.

(Pronounced in the open court on 07.02.2024)

RAMESH NAIR
MEMBER (JUDICIAL)

RAJU
MEMBER (TECHNICAL)

Raksha