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

REGIONAL BENCH - COURT NO. 3

Excise Appeal No. 171 of 2012

[Arising out of Order-in-Appeal No OIA-CS/132/DMN/NDMN/2011-12 dated 20.12.2011 passed by Commissioner (Appeal) of Central Excise & ST, Daman/ Vapi]

Plastiblends India Limited .... **Appellant**
S No. 74/1, 2, 75/3, 72/28 A-
70/2a, Daman Industrial Estate,
Village-Kadaiya, DAMAN,
GUJARAT

VERSUS

Commissioner of Central Excise & ST, Daman .... Respondent
3RD FLOOR...ADARSH DHAM
BUILDING, VAPI-DAMAN ROAD,
VAPI, OPP.VAPI TOWN POLICE
STATION, VAPI
GUJARAT - 396191

APPEARANCE :

Shri Ragesh S. Mehta, Advocate for the Appellant
Shri L. Patra, Assistant Commissioner (AR) for the Respondent

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

FINAL ORDER NO. A/11042 / 2019

DATE OF HEARING : 27.06.2019
DATE OF DECISION: 27.06.2019

RAMESH NAIR

The brief facts of the case are that the appellant have received various inputs for manufacture of final products on payment of CVD and SAD and availed Cenvat credit. Part of the inputs were sold as such, on which the duty was paid on the transaction value. However, there was short payment of duty in terms of Rule 3(5) of Cenvat Credit Rules as the amount paid by the appellant is short as compared to the amount of credit availed by the appellant.   Accordingly, a show cause notice demanding duty of Rs. 11,04,819/- was issued on the basis of audit objection. The appellants calculated the differential duty and paid Rs. 9,77,045/- and there was a difference of Rs. 1,27,774/-, between the department's calculation and the appellant's calculation. The Adjudicating Authority confirmed the demand of Rs. 11,04,819/- and imposed equal amount of penalty under Section 11AC, and appropriated an amount of Rs. 9,77,045/- paid by the appellant along with interest before issuance of show cause notice. The appellant being aggrieved with order-in-original filed appeal before the Commissioner (Appeals), who upheld the order-in-original and therefore the present appeal.

2. Shri Ragesh S. Mehta, Ld. Counsel appearing on behalf of the appellant, at the outset submits that, according to the appellant, the duty amount was Rs. 9,77,045/- which they have paid along with interest before issuance of show cause notice and the same is not contested by the appellant. His submission is that the amount of Rs. 11,04,819/- is not correct and the appellant have given calculation based on bills of entry and invoices. After concluding the hearing, the Adjudicating Authority called for reports and as per reports of field formation, the duty amount of Rs. 11,04,819/- confirmed and the order was passed accordingly. He submits that the reports obtained after conclusion of the hearing, should have been provided to the appellant which was not done. Accordingly, the principles of natural justice were violated. As regards the penalty, he submits that there is no suppression of facts and malafide on the part of the appellant. Since the duty was paid on the transaction value they were under bonafide belief that it was correctly paid. He submits that proper invoices were raised for sale of inputs as such and the entire transaction was appearing in ER-1 returns. He further submits that even the case is made out based on the

appellant's record and therefore there is no suppression of facts on the part of appellant. Hence, the penalty under Section 11AC was not imposable.

3. Shri L. Patra, Ld. Assistant Commissioner (AR) appearing on behalf of the Revenue reiterates the findings of the impugned order. He further submits that total demand was Rs. 11,04,819/- whereas the assessee had paid Rs. 9,77,045/- hence the penalty cannot be dropped. He further submits that entire case was made out on the basis of audit report and they have not voluntarily paid the amount before being pointed out by the department and therefore, there is suppression.

4. We have carefully considered the submissions made by both sides and perused the record. We find that appellant is contesting only demand of Rs. 1,27,774/- and equal amount of penalty imposed under Section 11AC. As regards the differential duty amount, the appellant had submitted detailed calculation on the basis of bills of entry under which the inputs were procured and invoices under which the inputs were sold as such. According to the appellant, the correct duty amount is Rs. 9,77,045/-. The Adjudicating Authority obtained report from the field formation however, the report was obtained at the back of the appellant after concluding the hearing. Since in the report also there is difference of Rs. 1,27,774/- it was incumbent on the Adjudicating Authority to provide a copy of the report and seek explanation from the appellant, which the Adjudicating Authority has failed to do. Therefore, there is a clear violation of natural justice. In these facts, we are of the view that the matter needs reconsideration for calculation of amount of duty as well as penalty imposed under Section 11AC.

5. Accordingly, we set-aside the impugned order and allow the appeal by way of remand to the Adjudicating Authority for passing a fresh order after providing sufficient opportunity to the appellant to explain their case.

(Dictated and pronounced in the open court)

(Ramesh Nair)
Member (Judicial)

(Raju)
Member (Technical)

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