

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD**

REGIONAL BENCH – COURT NO.I

Excise Appeal No.70940 of 2018

(Arising out of Order-in-Appeal No.65-66-CE/APPL-KNP/LKO/2018 dated 29/01/2018 passed by Commissioner (Appeals), Customs, GST & Central, Lucknow)

M/s Tirupati Glass Industries,

.....Appellant

Jaroli Kalan, Agra Road,
Firozabad

VERSUS

Commissioner of Central Excise, LucknowRespondent

WITH

Excise Appeal No.70941 of 2018

(Arising out of Order-in-Appeal No.65-66-CE/APPL-KNP/LKO/2018 dated 29/01/2018 passed by Commissioner (Appeals), Customs, GST & Central, Lucknow)

Mr Pankaj Kumar Gupta

.....Appellant

M/s Tirupati Glass Industries,
5 Gunjan Colony,
Firozabad-283203

VERSUS

Commissioner of Central Excise, LucknowRespondent

APPEARANCE:

Shri Kapil Vaish, Advocate for Appellant
Shri Mohd. Altaf, Authorized Representative for Respondent

CORAM :

Hon'ble Mr. ANIL G. SHAKKARWAR, MEMBER (TECHNICAL)

DATE OF HEARING : 10 May 2019
DATE OF DECISION :10 May 2019

FINAL ORDER NO. **70938-70939 / 2019**

ANIL G. SHAKKARWAR

After hearing both the sides duly represented by learned Chartered Accountant, Shri Kapil Vaish on behalf of the appellant and learned AR, Shri Mohammad. Altaf on behalf of the Revenue, I note that the appellant was manufacturer of goods falling under Chapter 70 of Schedule to Central Excise Tariff Act, 1985. In fact the activity was printing of glass bottles and said activity was declared as manufactured through Chapter Note of Chapter 70. Officers of Central Excise visited the appellants unit in the month of March 2016 and detained goods available within the factory since the appellant was not paying Central Excise duty and had not obtained Registration. The said goods were seized on 30 March, 2016. The value of the seized goods was around Rs.34 Lakhs. The seized goods were provisionally released in the month of April 2016. On 15.09.2016 a show cause notice was issued with a proposal to confiscate the said goods under the provisions of Rule 25 of Central Excise Rules, 2002. It was proposal to impose personal penalty on the other appellant under Rule 26 of Central Excise Rules, 2002. On contest the Original Authority decided the matter through Order-in-Original dated 27.02.2017, wherein the goods were ordered to be confiscated under Provision of Rule 25 of Central Excise Rules, 2002 and under the said Rule penalty of Rs.4,25,000/- was imposed on the appellant. Further, option to redeem the confiscated goods was provided on payment of redemption fine of Rs.4,25,000/-. The other appellant was imposed with penalty of Rs.10,000/- under Rule 26

of Central Excise Rules, 2002. Aggrieved by the said order appellant preferred appeal before Commissioner (Appeals) who did not interfere with the said Order-In-Original dated 27.02.2017. Aggrieved by the said order appellant is before this Tribunal.

2. Both the appeals are arising out of same impugned Order-In-Appeal, therefore, they are taken together for decision.

3. The main contention of learned chartered accountant was that the provision of said Rule 25 are subject of provisions of Rule 11AC of Central Excise Act, 1944. Further, penalty under Section 11AC of said Act can be imposed only when demand of Central Excise Duty is raised under Section 11A of Central Excise Act, 1944. Therefore, combine reading of provisions of Section 11A and 11AC of Central Excise Act, 1944 with that of Rule 25 of Central Excise Rules, 2002 indicates that only if Central Excise Duty is demanded by invoking provisions of said Section 11A than only provisions of said Rule 25 can be invoked.

4. The learned AR has supported the impugned order.

5. Having considered the submissions from both the sides, I note that on provisional release the goods were placed at the disposal of the appellant and as per the submissions during hearing appellant has cleared the said goods on payment of duty whenever the occasion for clearance arose. Therefore, it is not established that the goods which were confiscated were cleared without payment of duty and therefore, there was no occasion to demand central excise duty on the same. As a result there was no occasion for invocation of provisions of Section 11AC of Central Excise Act, 1944 in respect of the confiscated goods. I, therefore, hold that order of confiscation under Rule 25 of Central Excise Rules, 2002 is not as per the provision of law in the present case. Whereas the confiscation is not as per the provision of law, the charge of abatement for clandestine removal does not survive. I, therefore, set aside the impugned order and allow both the appeals.

(Dictated and Pronounced in open Court)

Sd/-
(Anil G. Shakkarwar)
Member (Technical)