IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH : ALLAHABAD
COURT No. I

APPEAL No. E/839/2012-EX[SM]

(Arising out of Order-in-Appeal No.192/CE/APPL/ALLD/2011 dated 23/09/2011 passed by Commissioner (Appeals), Central Excise, Allahabad)

M/s Rayana Paper Board Industries Ltd. **Appellant**

Vs.

Commissioner of Central Excise, Allahabad **Respondent**

<u>Appearance:</u>

Shri Kapil Vaish (C.A.) for Appellant
Shri Gyanendra Kumar Tripathi (Asstt. Commr.) AR for Respondent

<u>CORAM:</u>

Hon'ble Mr. Anil Choudhary, Member (Judicial)

Date of Hearing : 19/04/2018
Date of Decision : 19/04/2018

FINAL ORDER NO. – 70915/2018

Per: Anil Choudhary

The present appeal is arising out of Order-in-Appeal No.192/CE/APPL/ALLD/2011 dated 23/09/2011 passed by Commissioner (Appeals), Central Excise, Allahabad, wherein he has been pleased to set aside the penalty under Rule 25 of Central Excise Rules, 2002 and has upheld equal penalty of Rs.2,57,970/- under Section 11AC of Central Excise Act, 1944.

2. The brief facts of the case are that the appellant is engaged in manufacture of Brown Kraft Paper falling under Chapter 48 of the First Schedule of the Central Excise Tariff Act, 1985 and is registered with the department. The show cause notice dated 07/05/2010 issued to appellant reveals that during checking of appellant's unit by Central Excise Officers on 01/11/2009, it was noticed that they were clearing Brown Kraft Paper to their sister unit namely M/s Rayana Paper Board & Industries Ltd. Unit-II situated in the same compound for wrapping/packing of News Paper Prints and Writing & Printing Papers manufactured by them without payment of duty and without issuance of invoices or duty paying document as well as without maintaining any such record. Thus they had evaded Central Excise duty to the tune of Rs.2,57,970/- during the period August, 2008 to October, 2009.

3. The Adjudicating Authority upheld the demand of duty Rs.2,57,970/- and imposed equal penalties under Rule, 25 of Central Excise Rules, 2002 as well as Section 11AC of Central Excise Act, 1944. In the appeal to Commissioner (Appeals), appellant did not contest demand of duty as they had already paid the same. The Learned Commissioner (Appeals) was pleased to set aside

penalty under Rule, 25 but upheld the penalty under Section 11AC.

4. The learned counsel appearing for the appellant submitted that both the units were registered and had been paying Central Excise duty; both the units had been availing Cenvat credit; that the Excise duty payable on transfer of kraft paper from Unit-I to Unit-II was available as credit to Unit-II; that the entire exercise was Revenue neutral; that after payment of Central Excise duty Rs.257970/-, Unit-II had availed its credit.

5. The learned counsel further relies on following two decisions of this Tribunal to contend that penalty under Section 11AC was not leviable as the entire situation was revenue neutral:-

Hindustan Zinc Ltd. vs. CCE, Jaipur-II 2008 (232) E.L.T. 687 (Tri.-Del.)

Akash Optifibre Ltd. vs. CCE, Jaipur 2010 (261) E.L.T. 404 (Tri.-Del.)

6. Learned A.R. for Revenue have supported the impugned order.

7. Having considered rival contentions and on perusal of records, I find that both the units of the same company had been registered under Central Excise and

had been paying central excise on clearance of their final products. Duty payable by Unit-I on clearance of kraft paper to Unit-II was available as Cenvat credit to Unit-II. In these circumstances there cannot be any intention to evade payment of duty and the situation is completely revenue neutral. I also note that the present case is squarely covered by the decision of Division Bench in the case of Hindustan Zinc Ltd. (Supra), Para-4 of the said order reads as under:-

"4. We, after hearing both sides, find that the appeal can be disposed of on the point of revenue neutrality. Admittedly, the duty paid by the appellant was being availed as Modvat credit, which the other unit was in a position to utilize. The Tribunal in the case of PTC Industries Ltd. v. C.C.E., Jaipur-I - 2003 (159) E.L.T. 1046 (Tri-Del.) has held that whatever duty is paid by one unit on sale of goods to the assessee's another unit is being available as credit to the other unit, there was no warrant for demanding duty. In the present case, we find that the zinc concentrate was only being transferred to the appellant's own unit and was not being sold at all. Whatever duty was being paid by the appellant was available as credit to them and nothing would go into the Revenue's pocket. The entire excise is revenue neutral as

neither the assessee stands to loose anything by paying higher duty nor the Revenue stands to gain anything by the appellant's adoption of lower assessable value. As such, we are of the view that demand is unwarranted and unsustainable on this count alone. We, accordingly, set aside the impugned order and allow the appeal with consequential relief to the appellant."

8. In view of above I set aside the penalty under Section 11AC and allow the appeal with consequential relief, if any.

(Dictated & Pronounced in Court)

Sd/-
(Anil Choudhary)
Member (Judicial)

Lks