IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL,
REGIONAL BENCH : ALLAHABAD

E/811/2012-EX[DB]

(Arising out of Order-in-Original No.18/COMMISSIONER/2011-12 dated 18.01.2012 passed by Commissioner, Customs, Central Excise & Service Tax, Noida.)

M/s. Prabhat Zarda Factory

…APPELLANT(S)

VERSUS

Commissioner of Customs, Central Excise & Service Tax, Noida

RESPONDENT (S)

APPEARANCE

Shri Rajesh Kumar (Advocate) & Shri Arun Kumar Singh (Advocate) for the Appellant (s)
Shri Mohd. Altaf (Asstt.Commr.) (A.R.) for the Revenue

CORAM:

MRS. ARCHANA WADHWA, HON'BLE MEMBER(JUDICIAL)
SHRI ANIL G. SHAKKARWAR, HON'BLE MEMBER(TECHNICAL)

DATE OF HEARING/DATE OF DECISION 19.07.2018

FINAL ORDER NO.71786/2018

Per Mrs.Archana Wadhwa :

As per facts on record, the appellant is engaged in the manufacture of scented tobacco. Originally the factory of the appellant was located at two industrial plot bearing No.E-63 and 64, Sector-8, Noida. The appellant was registered with the department at the said address. Subsequently, in the year 2007, due to shortage of space the appellant acquired two adjacent plots No.E-60, 61 Sector-8, Noida and information in this regard was given to the department vide letter dated 22.05.2007. However, since the appellant company was already registered with the department fresh registration was not applied for.

2. The appellant's factory was visited by the Central Excise officers on 24.04.2009, who conducted verification of the stock at plot No.63 and 64 as also at plot No.61 and 62. As a result it was found that there was excess stock of raw materials etc. lying at the premises at Plot No.E-60 & 61. Inasmuch as the said premises were not registered with the Central Excise department, the officers entertained a view that the said storage of raw material at unauthorized place was a clandestine storage with an intention to use the raw material for clandestine manufacture of excisable goods. Accordingly the same were seized under a Panchnama and based upon the enquiries conducted, separate proceedings by way of a show cause notice dated 05.03.2008 were initiated proposing confiscation of the same. The said proceedings resulted in passing of an order by the Assistant Commissioner confiscating the goods and imposing penalties. The same are not the subject matter of the present appeal.

3. As a result of stock verification at the registered premises at E-63 & 64, the goods were found short. The raw material flavor was a Cenvatable raw material whereas saffron was non-Cenvatable. From the said shortages, Revenue entertained a view that the short-found raw materials have been used in the manufacture of the final product which stand removed in a clandestine manner. Accordingly proceedings were initiated under show cause notice dated 13.12.2012 proposing confirmation of demand of duty as also for imposition of penalties. The said show cause notice stand culminated into the impugned order confirming the demand along with confirmation of interest and imposing penalties.

4. After hearing both sides we note that there is no dispute about the factual position. Admittedly the appellants were registered at premises E-63

and 64 and subsequently they also procured the two extra plots at E-60 & 61. Intimation to that effect was given to the Revenue.

It is also a fact that the said newly acquired plots were also put to search and the extra raw material was found to be stored therein. The appellants have contended that the material found short at E-63 & 64 was lying at the plot Nos.E-60 and 61. The entire order of the Commissioner in confirming the demands is on the sole ground that the said two plots E-60 and 61 were not registered with the central excise department and as such raw materials stored therein cannot be taken note of. As such by holding that the raw materials were not found in the registered premises he has concluded that the same have been used in the manufacture of the appellants' final product, which has been cleared without payment of duty.

5. Though it may be a technical offence on the part of the appellant not to get the newly acquired plots registered with the Revenue, but it is also a fact that the information regarding new plots was duly given to the Revenue under the cover of their letter dated 22.05.2007. As such the fact that the raw materials were found in excess in the said new premises cannot be ignored. Inasmuch as the raw materials were in excess at the new premises, the shortages detected by the officers at the registered premises were not real, but pseudo shortages. As such it cannot be concluded that short found raw materials have been used in the manufacture of the final product.

6. Otherwise also we find that the findings of clandestine removal on the basis of shortages detected by the visiting officers cannot be upheld as observed by the Hon'ble Allahabad High Court in the case of Commissioner v. Meenakshi Castings [2011 (274) ELT 180 (All.)] as also in the case of CCE, Chandigarh v. Nachiketa Paper Ltd. [2008 (225) ELT 194 (P & H). As such, viewed from that angle, no duty liability can get fastened on the appellant.

7. In view of the above, the impugned order is set aside and appeal is allowed with consequential relief to the appellant.

(Operative part of the order was pronounced in the open Court.)

SD/	SD/
(ANIL G. SHAKKARWAR)	**(ARCHANA WADHWA)**
MEMBER(TECHNICAL)	**MEMBER (JUDICIAL)**

sm