

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

E/70890/2018-EX[SM]

(Arising out of Order-in-Appeal No.220/CE/Alld/2018 dated 24.04.2018 passed by Commissioner(Appeals), CGST & Central Excise, Allahabad.)

M/s. S.D.International

...APPELLANT(S)

VERSUS

Commissioner of Customs, Central Excise & Service Tax, Allahabad
RESPONDENT (S)

APPEARANCE

Shri Kapil Vaish (C.A.) for the Appellant (s)
Shri Pradeep Kumar Dubey (Supdt.) (A.R.) for the Revenue

CORAM:

SHRI ANIL G. SHAKKARWAR, HON'BLE MEMBER(TECHNICAL)

DATE OF HEARING/DATE OF DECISION : 01.01.2019

FINAL ORDER NO.70001/2019

Per ANIL G. SHAKKARWAR :

After hearing both sides duly represented by Shri Kapil Vaish, learned C.A. for the appellant and Shri Pradeep Kumar Dubey, learned Superintendent (A.R.) for the Revenue, I note that the appellants were manufacturers of disposable plastic utensils and Aluminium foil cut to shape. On surprise visit by representatives of Revenue on 20.07.2014, it was noticed by Revenue that there was shortage of finished goods to the tune of Rs.8,69,103/- as compared to the recorded balance in RG-1 and such shortage of finished goods involved Central Excise duty of around Rs.1,07,421/-. Further it was found that raw material valued at

Rs.4,67,103/- was also short as compared to the recorded balance. Therefore appellants were issued with a show cause notice dated 19.08.2015 demanding Central Excise duty of Rs.1,07,421/- on finished goods and Central Excise duty of Rs.57,734/- on raw materials. Appellants paid Rs.92,700/- on 20.07.2014 and Rs.69,449/- on 21.07.2014. The proceedings culminated into confirmation of demands and imposition of penalty and resulted in filing of present appeal. As is apparent from the impugned order Central Excise duty on both finished goods and raw materials stand confirmed and penalty equal to the Central Excise duty on finished goods stands imposed on the appellant under section 11AC of the Central Excise Act, 1944. The learned C.A. for appellant has relied on ruling by Hon'ble Punjab & Haryana High Court at Chandigarh in the case of Commissioner of C.Ex. & S.T., Ludhiana v. Anand Founders & Engineers reported at 2016 (331) E.L.T. 340 (P & H) and submitted that Hon'ble High Court of Punjab & Haryana have held that mere shortage of finished goods in stock-taking is not enough to hold the charge of clandestine removal. He has further submitted that there is no evidence collected by Revenue to establish the persons to whom allegedly clandestinely removed goods were sold and that there is no evidence to establish clandestine removal. I note that the learned Commissioner(Appeals) has found excise duty payable on raw materials. In fact raw materials are not manufactured by the appellant and that excise duty is on manufacture therefore it was wrong on the part of the learned Commissioner(Appeals) to have sustained the order of original authority confirming Central Excise duty on raw

materials. I further note that Hon'ble Punjab & Haryana High Court have held that shortage of finished goods in stock taking cannot be considered to be enough evidence to hold charge of clandestine removal. I do not find any evidence on record to establish that alleged shortage was the goods which were cleared clandestinely. I therefore modify the impugned Order-in-Appeal to the extent that the demand of Central Excise duty to the tune of Rs.1,07,421/- on finished goods is sustained and rest of the impugned order is set aside.

In the above terms, appeal is disposed of. Appellants shall be entitled for consequential relief, as per law.

(Dictated and pronounced in the open Court.)

SD/
(ANIL G. SHAKKARWAR)
MEMBER(TECHNICAL)

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