

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

APPEAL No.E/70059/2018-EX[SM]

(Arising out of Order-in-Original No.ALD/EXCUS/000/MP(Dem-175/2014)17 of 2017 dated 31/03/2017 passed by Commissioner, Central Excise & Service Tax, Allahabad)

M/s Petro Carbon Industries Ltd.

Appellants

Vs.

Commissioner, Central Excise, Allahabad,

Respondents

Appearance:

Ms. Stuti Saggi (Adv.)

for Appellants

Shri Pradeep Kumar Dubey Superintendent AR),

for Respondent

CORAM:

Hon'ble Mr. Anil G. Shakkarwar, Member (Technical)

Date of Hearing/ Decision : 01/01/2019

FINAL ORDER NO.**70002 / 2019**

Per: Anil G. Shakkarwar,

After hearing both the sides duly represented by learned advocate Ms. Stuti Saggi appearing for the appellant and learned A.R. Shri Pradeep Kumar Dubey appearing for the Revenue, I find that the Revenue involved in the present appeal is Rs.17,44,975/-. I note that the appellants were manufacturing Calcined Petroleum Coke from Raw Petroleum Coke. The period of dispute is from June 1991 to October 1993. The representatives of Revenue visited manufacturing unit and other premises of the appellants on 13.10.1993. On

the basis of certain investigations made a show cause notice was issued on 20.02.1995 making allegations of clandestine removal and raising demand of Central Excise duty of around Rs.20 lakhs. The said demand was on account of following issues :-

(a.) The discrepancies between the quantities cleared reflected in the gate passes and weighment slips.

(b.) The discrepancies between the quantity of goods cleared as per RG-1 Register and the number of bags utilized on clearance of the said goods.

(c.) The discrepancies in the quantity recorded in GRs and gate-passes.

(d.) The allegations that in the garb of inputs namely Raw Petroleum Coke, finished goods namely Calcined Petroleum Coke were cleared by debiting cenvat credit availed.

(e.) when the inputs were cleared as such the cenvat credit availed was debited, whereas, as per valuation of the inputs so cleared higher amount of debit was needed to be done.

2. The matter was initially adjudicated on 31.10.2000 which was challenged before this Tribunal. This Tribunal through Final Order No.A/1010-1011/2001-NB dated 06.12.2001 remanded the matter to Original Authority with

direction to consider the submissions made by the appellant before him. Learned Original Authority passed Order-In-Original dated 29.12.2003 through which he confirmed demand on (d) above to the tune of around Rs.3 lakhs. The said Order-In-Original was reviewed by CBEC through review order dated 24.12.2004. On the basis of said review order Revenue filed appeal before this Tribunal. The said appeal was decided through Final Order No.53394/2014 dated 02.09.2014. This Tribunal through the said final order dated 02.09.2014 has put to rest the issue at (e) above. Further, issue at (c) above was put to rest in the earlier round and only two issues remained viz. (a) & (b) above. One at Serial No. a & b which were remanded by this Tribunal to the Original Authority. In compliance to this Tribunal's Final Order dated 02.09.2014, learned Commissioner has passed impugned order and confirmed demand of around Rs.64 thousand in respect of issue (a) and around Rs.16 lakhs in respect of the issue (b). In addition penalties were imposed on two persons who are not appellant before this Tribunal. Aggrieved by confirmation of demand on issues (a) & (b) along with imposition of equal penalties, the appellant is before this Tribunal.

2. Heard the parties and considered submissions.
3. After careful consideration of the submissions and on perusal of record, I note that the issue at (a) above for which

demand of Central Excise duty of around 64 thousand was confirmed was in respect of quantity recorded in gate-passes and quantity reflected in weighment slips. The entire discussion in the impugned order is about how many percent weighment in weighment slips is higher than the weight reflected in gate-passes. It is admitted fact on record that weight recorded in weighment slips was gross weight, whereas the weight reflected in gate passes was net weight. I find that Central Excise duty is to be paid on net weight because the purchaser of the goods has paid for goods which are covered by net weight and the demand is not confirmed on the basis of net weight. I find that demand is confirmed on the basis of gross weight, therefore, the said confirmation is not sustainable. I, therefore, set aside confirmation of demand of Rs.64,000/- along with equal penalty.

4. In find that the other issue involved here in is demand of around Rs.16 lakhs of Central Excise duty on the basis of discrepancies in the weight reflected in clearances shown in RG-1 Register and the clearances arrived at on the basis of packing material utilized as reflected in Bag Register. I find that during the relevant period there was one rule namely Rule 173E of Central Excise Rules, 1994 on statute which required to declared principal raw material required for manufacturing of unit quantity of final product. The provision of law was that through a notification CBEC would declared

principal raw material used in respect of specified final product and on the basis of utilization of principal raw material, there was provision under said rule to estimate goods manufactured. I do not find such packing materials as bags to have been declared through a notification as principal raw material for deciding estimation of manufacture of Calcined Petroleum Coke. Therefore, the entire exercise to decide quantum manufactured on the basis packing material used is without any authority of law. I, therefore, set aside the impugned demand which is around Rs.16 lakh of Central Excise duty and equal penalty imposed. In result I set aside the impugned Order through which Central Excise Duty of Rs.17,44,975/- is confirmed and equal penalty is imposed.

5. In above terms appeal is allowed.

(Pronounced & Dictated in Court)

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

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