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

APPEAL Nos.E/70618 & 70445/2017-EX[DB]

(Arising out of Order-in-Original No. KNP-EXCUS-000-COM-58-16-17 dated 13/02/2017 passed by Commissioner of Customs, Central Excise & Service Tax, Kanpur)

Shri Shobhit Khandelwal, Director &

M/s A.R. Polymers Pvt. Ltd. **Appellants**

Vs.

Commissioner of Central Excise & S.T., Kanpur **Respondent**

Appearance:

Shri Jayant Kumar, Advocate for Appellants
Shri Pawan Kumar Singh, Supdt (AR), for Respondent

CORAM:

Hon'ble Smt. Archana Wadhwa, Member (Judicial)
Hon'ble Mr. Anil G. Shakkarwar, Member (Technical)

Date of Hearing : 09/01/2019
Date of Decision : 09/01/2019

FINAL ORDER NOs- **70266-70267 / 2019**

Per: Anil G. Shakkarwar

The above stated two appeals are arising out of common impugned Order-in-Original No. KNP-EXCUS-000-COM-58-16-17 dated 13/02/2017 passed by Commissioner of Customs, Central Excise & Service Tax, Kanpur. Therefore, they are taken together for decision.

2. After hearing both the sides duly represented by Shri Jayant Kumar learned Advocate for appellants & learned A.R. Shri Pawan Kumar Singh, Superintendent for revenue, we note that through the impugned order Central Excise duty of around Rs.3 crores was confirmed against the manufacturer-appellant and equal penalty has been imposed on the manufacturer-appellant. Further, the other appellant who is Director of the manufacturing company was imposed with personal penalty of Rs. 30 lakhs. We note that the manufacturer-appellant was manufacturing footwear falling under Chapter 64 of Schedule to Central Excise Tariff Act, 1985. In addition to clearing the goods to retail customers they had also supplied the goods manufactured by them to organization such as CRPF, BSF and Ministry of Defence. The appellants were printing MRP on the goods cleared by them and they were availing benefit of Entry No.180 of Notification No.12/2012-CE dated 17.03.2012. According to the said notification footwear of retail sale price not exceeding Rs.5,00/- per pair were fully exempted. It appeared to revenue that though the goods manufactured by appellants were notified under notification issued under Section 4A of Central Excise Act, 1944, in respect of the goods supplied to Defence, CRPF and BSF there was no need to print MRP on the goods and such goods were required to be assessed under the

provisions of Section 4 of Central Excise Act, 1944. Therefore, proceedings were initiated and a show cause notice dated 05.02.2016 was issued. Through the said show cause notice a demand of around Rs.3 crores differential duty of Central Excise was raised. On contest, the said show cause notice was adjudicated through the impugned Order and demand was confirmed. The appellant was imposed with penalty.

3. After hearing both the sides and on perusal of records, we note that in para-11 of show cause notice, revenue has computed the differential duty and for computation of the same period taken was from 01.01.2011 to 31.12.2015. Further, for computation of said differential duty revenue has taken into consideration duty payable by adopting valuation under Section 4 of Central Excise Act, 1944 and duty actually paid following provisions of Section 4A of Central Excise Act, 1944 and duty payable as worked out as per provisions of Section 4 were reduced by duty actually paid by the appellants under the assessments made by taking into consideration Section 4A of Central Excise Act, 1944. We further note that footwear are notified for the purpose of MRP based assessment under Notification No.49/2008-CE(N.T.) dated 24.12.2008 issued under Section 4A of Central Excise Act, 1944. We further

note that the provisions of Sub-section (1) of Section 4A of Central Excise Act, 1944 are as follows:-

> "(1) The Central Government may, by notification in Official Gazette, specify any goods, in relation to which it is required, under the provisions of the Legal Metrology Act, 2009 (01 of 2010) or the rules made thereunder or under any other law for the time being in force, to declare on the package thereof the retail sale price of such goods, to which the provisions of Sub-section (2) shall apply."

We further note that said Sub-section (2) of said Section 4A is as follows:-

> "(2) Where the goods specified under sub-section (1) are excisable goods and are chargeable to duty of excise with reference to value, then, notwithstanding anything contained in Section 4, such value shall be deemed to be the retail sale price declared on such goods less such amount of abatement, if any, from such retail sale price as the Central Government may allow by notification in the Official Gazette."

The provisions of law as stated above clearly indicate that once the goods are specified by the Central Government in the Notification issued under Sub-Section (1) of Section 4A of Central Excise Act, 1944, the provisions of Section 4 of Central Excise Act, 1944 are not operational in respect of such goods. We note that differential duty is worked out in respect of such goods which are notified under Section 4A ibid by adopting the provisions of Section 4 of Central Excise Act, 1944. We note that Sub-section (2) of Section 4A does not allow such adoption of value for the purpose of assessment of duty. Therefore, we do not find that there was any differential duty payable by the appellant. Further, we note that there were no allegations in the show cause notice taking into consideration the provisions of Section 4A of Central Excise Act, 1944 that there was any differential duty payable.

4. We, therefore, set aside the impugned order and allow both the appeals. The appellant shall be entitled for consequential relief, as per law.

(Pronounced in Court)

(Anil G. Shakkarwar)
Member (Technical)

(Archana Wadhwa)
Member (Judicial)

akp