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

APPEAL No. E/70851/2018-EX[SM]

(Arising out of Order-in-Appeal No. NOI-EXCUS-001-APP-1868-17-18 dated 21/03/2018 passed by Commissioner (Appeals), Goods & Central Tax, Noida)

RRK Polymers Pvt. Ltd.	**Appellant**
Vs.	
Commissioner of Central Goods	
& Service Tax, Noida	**Respondent**

<u>Appearance:</u>

Request for Adjournment	for Appellant
Shri Shiv Pratap Singh (Dy. Commr.) AR	for Respondent

<u>CORAM:</u>

Hon'ble Mrs. Archana Wadhwa, Member (Judicial)

Date of Hearing	:	11/03/2019
Date of Decision	:	11/03/2019

FINAL ORDER NO. - **70524/2019**

Per: Archana Wadhwa

After rejecting the request for adjournment, I proceed to decide the appeal itself inasmuch as a short issue is involved. Accordingly, I have heard learned A.R. Shri Shiv Pratap Singh appearing for the Revenue and have gone through the impugned orders.

2. As per facts on record, the appellant is engaged in manufacture of HDPE Woven Fabric, HDPE Woven Fabric Laminated Paper, Laminated Bags & Corrugated Boxes falling under Chapter 39 & 40 of the First Schedule of the Central Excise Tariff Act, 1985. Their factory was visited by the Central Excise Officers on 26/09/2014 who conducted various checks and verifications. As a result unaccounted final products as also raw materials were seized.

3. On the above basis proceedings were initiated against them by way of issuance of show cause notice dated 19/03/2015 proposing confiscation of the seized raw materials as also the final goods. The seizure of the raw materials was vacated by the Original Adjudicating Authority and he confiscated the seized finished excisable goods valued at Rs.1,62,000/- involving the duty of Rs.16,810/-. An option was given to the assessee to redeem the payment of redemption fine of Rs.10,000/- and penalty of Rs.10,000/- was also imposed in terms of Rule 25 of the Central Excise Rules, 2002 read with Section 11 AC of the Central Excise Act,1944.

4. The said order was challenged before Commissioner (Appeals) on the ground that the appellants is falling

within small scale exemption benefit and were enjoying the exemption in terms of the Notification. They were also doing trading of the goods and value of the clearance as reflected in their balance sheet was inclusive of the sale value of the traded goods. They also contended that the Department has nowhere denied the benefit of the exemption Notification. There was no evidence that the finished goods lying in their factory were made for clandestine removal.

5. The Commissioner (Appeals) disposed of assessee's appeal by observing as under:-

> *"4. I have considered at length the material available on record and the submissions made by the appellant. In the instant appeal the sole dispute is restricted to the validity of confiscation of seized finished goods valued Rs.1,62,000/- involving duty of Rs.16,810/- under Rule 25 of the Central Excise Rules, 2002 and imposition of penalty thereon. I observe that during search operation, the departmental officers have found that unaccounted goods are lying in the factory premises and the appellant is not maintaining any requisite records of purchase, production and sale of finished goods as well as raw material, which establishes intention of un-accounting of goods to facilitate commitment of evasion. It shall irresistibly be concluded that there was an intention of evasion to the extent quantified*

in the adjudication. I hold that the Original Authority has sufficiently addressed the contention about confiscation of seized goods and imposition of penalty thereon. I also find that the appellant has not presented any credible defense for not maintaining any statutory records. Therefore, I hold that the appellant has failed to demonstrate any infirmity in the impugned order to justify any interference. The charge of interest is a normal consequence once the amount is held as payable on due dates, also the penal provisions are correctly imposed by the Original Authority."

6. As seen from the above, the Appellate Authority has simplicitorily observed that there was an intention on the part of the assessee to remove the goods in question without payment of duty. He has neither referred to any evidence on record nor has established such an intention on the part of the assessee. He has also not denied that the appellants were working under the small scale exemption Notification. In this scenario, confirmation of demand of duty or confiscation of the goods and imposition of penalties was neither justified nor warranted. However, the appellants are duty bound to enter such goods in their record to show their clearances on the basis of documents issued by them.

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

(Dictated & Pronounced in Open Court)

Sd/-
(Archana Wadhwa)
Member (Judicial)

Lks