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

APPEAL No.E/70624,70625,70626/2018-EX[SM]

(Arising out of Order-in-Appeal No.122-124/COMMR.(AUDIT)/CE/APPL/KNP/2018 dated 01/03/2018 passed by Commissioner (Audit), Central Tax & Central Excise, Kanpur)

M/s Kanpur Ban Moonj Store
(In Appeal No.E/70624/2018-EX[SM])

M/s Kanpur Plast Industries
(In Appeal No.70625/2018-EX[SM])

Shri Sanjay Kumar Gupta **...Appellants**
(In Appeal No.E/70626/2018-EX[SM])

Vs.

Commissioner, Central Excise & Service Tax, Kanpur …Respondent

Appearance:
Shri Vaibhav Dixit (Adv.) for Appellant
Shri Mohd. Altaf, Assistant Commissioner (AR), for Respondent

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

Date of Hearing/ Decision : 13/03/2019

FINAL ORDER NO.**70615-70617 / 2019**

Per: Archana Wadhwa

All the three appeals are being disposed of by a common order as they arise out of the same impugned order passed by the Lower Authority.

2. After hearing both the sides, I find that M/s Kanpur Plast Industries is engaged in the manufacture of 'Plastic Moulded Furniture' and was working under the benefit of Small Scale Exemption Notification No.08/2003-CE

dated 01.03.2003. Further, M/s Kanpur Ban Moonj Store is trading unit dealing in various types of plastic furniture. Shri Sanjay Kumar Gupta is a partner in the manufacturing unit as also in the trading unit.

3. The Central Excise Officers visited the factory premises of the manufacturer as also the business premises of the trading unit on 28.03.2013 and conducted various checks and verifications. No incriminating documents was found in the factory premises of M/s Kanpur Plast Industries. However, in the premises of M/s Kanpur Ban Moonj Store, the stock totally valued at around Rs.24 lakhs was found. Revenue entertained a view that goods found in the premises of M/s Kanpur Ban Moonj Store was manufactured by M/s Kanpur Plast Industry and stand removed by them in a clandestine manner. Further, a view was entertained that if such clandestinely removed goods are added in the value of clearances of M/s Kanpur Plast Industries, the same would increase the total clearances available in terms of the Small Scale Exemption Notification.

4. In view of the above backdrop, proceedings were initiated against the appellant proposing denial of the benefit of Small Scale Exemption Notification, by way of

issuance of show cause notice dated 22.04.2014 which culminated into an order passed by the Lower Authorities. Simultaneously present show cause notice dated 22.04.2016 was issued to the appellant proposing confiscation of the goods and imposition of penalty. The said show cause notice stand confirmed by the Original Adjudicating Authority as also by Commissioner (Appeals) vide which the seized goods were confiscated with an option to the appellant to redeem the same on payment of redemption fine of Rs.5 lakhs. In addition penalties were imposed upon the other appellants.

5. It is seen that the appeal against the first show cause notice and Order-In-Original confirming denial of benefit of Small Scale Exemption Notification was dealt with by Commissioner (Appeals) and vide his Order-In-Appeal No.209 to 211/CE/Alld/2018 dated 16.04.2018, the Appellate Authority has held that the Plastic Chairs and Tables seized from the premises of the trading unit cannot be considered to be clandestinely removed goods by M/s Kanpur Plast Industry. As such he has held that benefit of Small Scale Exemption Notification cannot be denied to the assessee and has accordingly set aside the duty confirmed against the manufacturing unit.

6. In the present case the Revenue has seized and finally confiscated the seized goods on the sole ground that they were removed clandestinely by M/s Kanpur Plast Industries and if the value of the same is included in the clearance value of M/s Kanpur Plast they would have crossed the exemption limit. The identical issue raised against the same assessee based upon the same set of facts and circumstances stands decided by Commissioner (Appeals) vide his above referred Order-In-Appeal. As such the issue has attained finality. Thus there is no justification to confiscate the goods or to impose penalty upon the present appellant. Accordingly, the impugned orders are set aside and all the three appeals are allowed with consequential relief.

(Pronounced & Dictated in Court)

Sd/-
(Archana Wadhwa)
Member (Judicial)

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