CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD

REGIONAL BENCH – COURT NO.I

Excise Appeal No.70349 of 2017

(Arising out of Order-in-Original No.63/COMMISSIONER/NOIDA-II/2016-17 dated 28/02/2017 passed by Commissioner Central Excise, Noida)

M/s Surya Food & Agro Ltd. (Unit-II) **.....Appellant**

A-1, Udyog Vihar,

Greater Noida-201301

VERSUS

Commissioner of Central Excise **.....Respondent**

Noida-II, 3rd Floor

Wegmans Business Park, KP-III,

Greater Noida (G.B. Nagar) U.P.-201306

APPEARANCE:

Shri R.S. Yadav, Advocate for Appellant
Shri Gyanendra Kumar Tripathi, Authorized Representative for Respondent

CORAM :
Hon'ble Mrs. ARCHANA WADHWA, MEMBER (JUDICIAL)
Hon'ble Mr. ANIL G. SHAKKARWAR, MEMBER (TECHNICAL)

DATE OF HEARING : 22 May, 2019
DATE OF DECISION : 22 May, 2019

FINAL ORDER NO. **71200 / 2019**

ANIL G. SHAKKARWAR

After hearing both the sides duly represented by learned advocate Shri R.S. Yadav appearing on behalf of the appellant and learned AR Shri Gyanendra Kumar Tripathi appearing on behalf of the Revenue, we note that the appellants were manufacturer of 'Biscuits, Printed Laminated Rolls and Corrugated Boxes'. We further note that it was pronounced in the case of Metlex (I) Pvt. Ltd. V/s Commissioner of Central Excise by Hon’ble Supreme Court reported at 2001 (165) E.L.T. 129 (S.C.) that lamination does not amount to manufacture. Prior to the pronouncement of the said ruling lamination was being considered as manufacture. Therefore, cenvat credit was being taken and on final product duties were being paid. Subsequent to the said ruling by Hon’ble Supreme Court during the period from 11 September, 2007 to 29 February, 2008 the instructions were issued by CBEC to recover cenvat credit paid on inputs going into manufacture of laminated printed rolls. Accordingly, proceedings were initiated against the appellant by way of issuance of show cause notice dated 23 September, 2008 wherein there was a proposal to recover cenvat credit of around Rs.1.35 crore availed on the bare films which were further used in the manufacture of laminated rolls under Rule 14 of Cenvat Credit Rules, 2004. Further, there was another proposal to recover amount of Rs.1.25 crore being a specific percentage of the value of laminated films cleared under the provisions of Sub Rule (3) of Rule 6 of Cenvat Credit Rules, 2004. On contest the issues were adjudicated through impugned Order-In-Original dated 28 February, 2017. The Original Authority has confirmed the disallowance of cenvat credit on bare films and also confirmed the said amount of Rs.1.25 crores under Sub Rule (3) of Rule 6 of Cenvat Credit Rules, 2004 and ordered recovery of interest. Further he has imposed penalty of around Rs. 2.61 crore on the appellant. Aggrieved by the said order appellant is before this Tribunal.

2. After hearing both the sides and on perusal of record we note that it is undisputed fact that during the relevant

period appellant treated lamination as manufacture and availed cenvat credit on bare films and paid central excise duty on laminated rolls and cleared the same along with other manufactured goods. It is clear that the cenvat credit availed by the appellant was debited for payment of central excise duty on laminated rolls. We have also gone through the Final Order in the case of Asian Colour Coated Ispat Ltd. V/s Commissioner of Central Excise, Delhi-III reported at 2015 (317) E.L.T. 538 (Tribunal-Delhi) wherein by majority it was held that when cenvat credit is availed and the same is utilized for payment of central Excise duty on the goods which were not attracting excise duty but duty was paid by utilizing the said credit, under such circumstances such cenvat credit cannot be recovered. To the same effect is Hon'ble Gujarat High Court decision in the case of Commissioner of Central Excise & Customs, Surat-III V/s Creative Enterprises reported at 2009 (235) E.L.T. 785 (Guj.). By following the said ruling and decisions, we hold that the impugned order is not sustainable in so far as it relates to confirmation of demand of Rs.1,35,95,084/- along with interest and equal penalty.

3. Further we note that amount of around Rs.1.25 crore was confirmed under Sub Rule (3) of Rule 6 of Cenvat Credit Rules 2004. We note that the said rule provides for recovery of amount in respect of such goods which are cleared without payment of duty. It is undisputed fact that laminated rolls were cleared on payment of duty therefore the impugned order is not sustainable in respect of the said amount of around Rs.1.25 crore. This view is also supported by the decision of this Tribunal in the case of M/s Montage Enterprises Pvt. Ltd. V/s Commissioner of Central Excise, Noida reported at 2016 (342) E.L.T. 294 (Tri.-All.). Since

the recovery of the said amount of around Rs. 1.25 crore is not sustainable, the interest and equal penalty on the same is also not recoverable.

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

(Dictated and Pronounced in open Court)

Sd/-
(Archana Wadhwa)
Member (Judicial)

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

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