

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD**

REGIONAL BENCH – COURT NO.I

Excise Appeal No.70975 of 2018

(Arising out of Order-in-Appeal No.148-150-CE/APPL/KNP/ADG-NACIN/2017-18 dated 12/04/2018, passed by Additional Director General, National Academy of Customs, Indirect Taxes and Narcotic, (ZTI), Kanpur)

M/s Patel Coir Products Pvt. Ltd.

.....Appellant

(F-14-17, Site-I, Industrial Area, Orai-285001)

VERSUS

The Commissioner, CGST

& Service Tax, Kanpur

.....Respondent

(117/7, Sarvodaya Nagar, Kanpur-208005)

WITH

Excise Appeal No.70976 of 2018

(Arising out of Order-in-Appeal No.148-150-CE/APPL/KNP/ADG-NACIN/2017-18 dated 12/04/2018, passed by Additional Director General, National Academy of Customs, Indirect Taxes and Narcotic, (ZTI), Kanpur)

Shri Tabrej Khan, Manager

.....Appellant

(F-14-17, Site-I, Industrial Area, Orai-285001)

VERSUS

The Commissioner, CGST

& Service Tax, Kanpur

.....Respondent

(117/7, Sarvodaya Nagar, Kanpur-208005)

And

Excise Appeal No.70977 of 2018

(Arising out of Order-in-Appeal No.148-150-CE/APPL/KNP/ADG-NACIN/2017-18 dated 12/04/2018, passed by Additional Director General, National Academy of Customs, Indirect Taxes and Narcotic, (ZTI), Kanpur)

Shri Ramesh Kumar Patel, Managing DirectorAppellant

(F-14-17, Site-I, Industrial Area, Orai-285001)

*VERSUS***The Commissioner, CGST****& Service Tax, Kanpur**

(117/7, Sarvodaya Nagar, Kanpur-208005)

.....Respondent**APPEARANCE:**

Shri Anil Kumar Dixit, Advocate for Appellant

Shri Santosh Kumar Agarwal, Authorized Representative for Respondent

CORAM :**Hon'ble Mrs. ARCHANA WADHWA, MEMBER (JUDICIAL)**FINAL ORDER NO. **71932-71934 / 2019**

DATE OF HEARING: 28 August, 2019

DATE OF PRONOUNCEMENT: 29 November, 2019

ARCHANA WADHWA

As per facts on record, the appellant M/s Patel Coir Products Pvt. Ltd. is engaged in the manufacture of EPE Sheet falling under Chapter 39 and Shri Ramesh Kumar Patel is Managing Director of the said company. Their premises were visited by the officers, who found shortages in the raw material. Accordingly, proceedings were initiated against them for confirmation of demand of duty involved in the said shortages. The same resulted in duty confirmation of Rs.1,26,151/- under Rule 14 of Cenvat Credit Rules, 2004 and imposition of penalty of identical amount on the company. In addition penalty of Rs.20,000/- each were imposed upon the Managing Director as also on their Manager Shri Tabrez Khan. The order passed by the Original Adjudicating Authority stands upheld by Commissioner (Appeals) and hence the present appeal.

2. Apart from contesting that the weighment of the raw material was done on eye assessment basis, the appellant

have taken a stand that they had returned 9,250 Kg of raw material to the suppliers on account of defective quality which was informed to the Department on 26 March, 2015 and duty involved on such returned goods amounting to Rs.1,14,696/- was debited on 31 March, 2015 through cenvat credit account. However, Commissioner (Appeals) observed that as the Managing Director as also Manager were available at the time of visit of the officers and did not bring above fact to the notice of visiting officers, the said plea of the officer cannot be accepted.

3. I find that apart from the shortages in the raw material there is otherwise no evidence on record indicating removal of the same. It is also the matter of record that the appellant returned raw material to the supplier after debiting the cenvat credit so availed by them. The said documentary evidence cannot be brushed aside lightly merely on the ground that the said fact was not brought to the notice of the visiting officers.

As such, I find no justifiable reason to uphold the impugned order. The same is accordingly set aside and all the appeals are allowed with consequential relief to the appellants.

(Order Pronounced in the open Court on 29 November, 2019)

Sd/-
(Archana Wadhwa)
Member (Judicial)