# CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
# <u>ALLAHABAD</u>

REGIONAL BENCH – COURT NO.I

**Excise Appeal No.1185 of 2011**

(Arising out of Order-in-Original No.MP (Dem-46/2010) 02 of 2011 dated 27/01/2011 passed by Commissioner of Central Excise & Service Tax, Allahabad)

**M/s Annpurna Plastics Products Pvt. Ltd. .....Appellant**

(EF-6, Sector, GIDA, Gorakhpur)

*VERSUS*

**Commissioner of Central Excise, Allahabad .....Respondent**

(38, M.G. Marg, Civil Lines, Allahabad-211001)

**<u>APPEARANCE:</u>**
Ms. Rinki Arora, Advocate for Appellant
Shri Anupam Kumar Tiwari, Authorized Representative for Respondent

**CORAM :**
**Hon'ble Mrs. ARCHANA WADHWA, MEMBER (JUDICIAL)**

**FINAL ORDER NO.70072 / 2020**

DATE OF HEARING: 29 October, 2019
DATE OF PRONOUNCEMENT: 09 January, 2020

**ARCHANA WADHWA**

The present appeal is being disposed of in terms of the directions of the Hon'ble Allahabad High Court, as contained in their order dated 27 March, 2019, vide which the order of the Tribunal was set aside, on the point of limitation and the matter was remanded.

2. After hearing both the sides duly represented by Ms. Rinki Arora learned advocate appearing on behalf of the appellants and Shri Anupam Kumar Tiwari, learned Authorized Representative appearing on behalf of the Revenue, I find that the appellants are engaged in the manufacture of 'Poly Propylene Glasses'. On the basis of proceedings initiated against them alleging clandestine removal of their final product, duty of Rs.30,14,062/- was confirmed along with confirmation of interest and imposition of penalty of identical amount. The said confirmation by the Lower Authorities was challenged before the

Tribunal and vide Final Order No.71808/2017 dated 01 December, 2017, the said findings were upheld and the appeal was rejected. While rejecting the appeal, Tribunal took note of various evidences available in the shape of seizer of records including labour contract record, the consumption of electricity, procurement of raw material as also the payments made by the appellant to such raw material. Accordingly, it was observed as under:-

"Inasmuch as in the present case, Revenue has been able to establish the procurement of excess raw material, excess payments made to the labourers, the excess electricity consumption and the excess installed capacity, the cumulative effect of all these evidences would lead to inevitable conclusion that the appellants have manufactured and cleared clandestinely their final product."

3. The said order of the Tribunal was challenged by the appellant before the Hon'ble Allahabad High Court on various grounds, however, it is seen that during the course of hearing before the Hon'ble High Court, the appellant only pressed one ground that though the issue of limitation was raised in the grounds of appeal but the Tribunal has not given any finding on the said time bar aspect and the matter should be remanded to the Tribunal for reconsideration. The said plea of the appellants was accepted by the Hon'ble High Court who observed that as the issue of limitation has not been considered by the Tribunal and no finding has been given, the matter is remanded to Tribunal for reconsideration. As such, in terms of the Hon'ble High Court decision the aspect of limitation is required to be decided.

4. After hearing both the sides and on going through the impugned orders, I find that as per Section 11A of the Central Excise Act, two periods are provided for raising the demand. One is the normal period of limitation of one year during which a show cause notice can be raised against an assessee. However, in terms of Sub-section 4 of Section 11A, if the short levy or non-levy is on account of fraud, suppression or

willful misstatement or suppression of facts or on account of contravention of any of the provisions and of the Act or of the Rule made their under with an intent to evade payment of duty, the period of five years is available to the Revenue for raising the show cause notice. In the present case, the Revenue's allegation against the appellants are suppression of production and clandestine clearance of the same. The said allegations and findings of the Lower Authorities stand upheld by the Tribunal vide their order dated 01 December, 2017. It is further seen that the said findings of *mala fid*e intent in removing the goods without payment of duty do not stand disturbed by the Hon'ble High Court. In fact it is noted that the appellant himself withdrew all the grounds made before the Hon'ble High Court and insisted only on the ground of limitation. As such, only the time bar aspect needs to be examined.

When the findings of suppression and fraud leading to clandestine removal has not been disturbed by the Hon'ble High Court, the same have attained finality by the order of the Tribunal. In such a scenario, when the fraud and suppression stands established against the assessee, the provisions of Sub-section 4 of Section 11A have to be pressed into service. In terms of the said provisions a period of five years is available to the Revenue to raise the demand. Admittedly the demand in the present case, which is result of investigations conducted by the Revenue stand raised within the said period of five years. As such, Appellants plea that the demand is barred by limitation cannot be appreciated. Accordingly, the same is rejected and impugned order is upheld even on the ground of limitation.

(Order Pronounced in the open Court on 09/01/2020)

Sd/-
**(Archana Wadhwa)**
**Member (Judicial)**

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