CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD

REGIONAL BENCH - COURT NO.I

Excise Appeal No.1010 of 2012

(Arising out of Order-in-Original No.32-COMMR-LKO-CX-2011-12, dated 24.01.2012 passed by Commissioner, Central Excise& Service Tax, Lucknow)

M/s Bihariji Packaging .....Appellant
(B/14-15, Scooter Ancillary, Nadarganj,
Amausi, Lucknow-226008)

VERSUS

Commissioner, Central Excise&
Service Tax, Lucknow ....Respondent
(7-A, Ashok Marg, Lucknow)

APPEARANCE:

Absent on Call, for the Appellant
Shri A. K. Choudhary, Authorized Representative for the Respondent

CORAM: HON'BLE MR. P.K. CHOUDHARY, MEMBER (JUDICIAL)
HON'BLE MR. P. ANJANI KUMAR, MEMBER (TECHNICAL)

FINAL ORDER NO.- 70070/2026

DATE OF HEARING : 12.03.2026
DATE OF DECISION : 12.03.2026

P. K. CHOUDHARY:

The present appeal has been filed by the Appellant assailing the Order-in-Original No.32-COMMR-LKO-CX-2011-12, dated 24.01.2012 passed by Commissioner, Central Excise & Service Tax, Lucknow.

2. The facts of the case in brief are that a Show Cause Notice[1]dated 18.05.2010 demanding Duty of Rs.1,74,43,176/- on the alleged clandestine removal of laminated rolls said to be manufactured from L D Films alleged to be clandestinely

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[1]SCN

removed by M/s Achchyut Packaging during the period 17.10.2006 to 24.10.2007 was issued by DGCEI invoking extended period under proviso to Section 11A (1) of Central Excise Act, 1944 alongwith interest and penalty under Section 11AB and 11AC ibid read with Rule 25 of C E Rules, 2002.

3. An Addendum dated 30.09.2010 was issued demanding Central Excise Duty of Rs.5,64,932/- on alleged clearances of laminated rolls without payment of duty manufactured from holographic film received from M/s Anand Sales, Kanpur during April 2008.

4. Hence the present appeal before the Tribunal.

5. It is the case of the Appellant that:-

- The duty of Rs.1,74,43,176/-under SCN dated 18/05/2010 for the period from 17/10/2006 to 24/12/2007 cannot be demanded on a non dutiable product.
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- Apart from the above alleged clandestine manufacture and removal of laminated rolls is based on the basis of loose slips recovered from M/s Achchyut group of companies and the typed statements of Appellant which are not proved. No follow up action was initiated in the unit of the Appellant. The statements of the drivers were not recorded to prove the transportation of the alleged goods to the Appellants unit. Even the statement of the person said to receive the alleged goods in the Appellant's unit was not recorded. All the allegations are made on the basis of assumptions and presumptions.
- The alleged clandestine manufacture of the laminated rolls is based on the statement of the Appellant in which it was stated that with the help of 1 kg polyester film, 1 kg metalized film, 1.25 kg LD film and small quantity of printing ink and adhesive3.25 kg 3 layer printed laminated roll can be made. Based on these calculations 287 MT polyester film, 287 MT metalized film and substantial

quantity of ink and adhesive are required to manufacture 726 MT laminated rolls alleged to be manufactured by the Appellant. No efforts were made by the officers to prove the receipt of huge quantities of the other raw materials by the Appellant. Department has therefore failed to prove conclusively that laminated rolls were actually made by the Appellant.

- The remaining Demand of Rs.5,64,932/- (Rs.1,80,08,108 – Rs.1,74,43,176 = 5,64,932) has been confirmed on the basis of assumptions and presumptions as well as on the basis of statement of third party namely Swetanshu Dwivedi of M/s Anand Sales Kanpur which was also retracted by him on the very next day i.e. 14/08/2009. The cross examination of Swetanshu Dwivedi by the Appellant was refused without any justification.

- The print out of data said to be retrieved from the computer of M/s Anand Sales Kanpur was not seized in the presence of the witnesses. Cross objections of one of the witness Shri Shiv Mohan Shukla indicates that the computer was not seized in his presence. Therefore recovery of computer is invalid under the provisions of Sec 12F of Central Excise Act 1944 read with Sec 100 of Cr.P.C. Hence print out of that computer cannot be relied upon. The copy of the cross objections supplied by the DGCEI to the previous counselShri S.K. Pandey in another SCN on the same facts is filed as Annexure SA-1 to the written submissions.

- The Appellant has also denied any purchase from M/s Anand Sales in his statement tendered before the officers of DGCEI.

6. Reliance has been placed upon the decision of the Hon'ble Allahabad High Court in the case of **Commissioner CGST**

&Central Excise Vs. Raghunath International Ltd. (2023) 2 Centax 216 (All.).

7. The learned Departmental Representative appearing on behalf of the Revenue has justified the impugned order and prayed that the appeal filed by the Appellant, being devoid of any merits, may be dismissed.

8. Heard the learned Departmental Representative and perused the appeal records.

9. The relevant paragraphs of the SCN dated 18.05.2010 are reproduced below:-

> *"Whereas, an intelligence was gathered by the officers of Kanpur Regional Unit of Directorate General of Central Excise Intelligence (DGCEI), that M/s Acchyut Packaging Pvt. Ltd., Panki, Kanpur (hereinafter referred to as 'M/s Acchyut'), M/s Sparsh Laminators Pvt. Ltd., Panki, Kanpur (hereinafter referred to as 'M/s Sparsh') and M/s Sarvesh Polychem Pvt. Ltd., Kanpur (hereinafter referred to as 'M/s Sarvesh'), collectively referred to as M/s Acchyut group of companies were engaged in suppression of production of LD film and clandestine removal thereof without payment of duty. Accordingly, various teams of the officers of DGCEI, Kanpur searched various concerned premises on 03.12.08. A team of the officers of Kanpur Regional Unit of DGCEI searched the residential premises of Sl.ri K.K. Agarwal, Manager (Sales) of M/s Acchyut, M/s Sparsh and M/s Sarvesh on 13.12.08. During search at his residential premises situated at 58/29, Birhana Road, Manpur, the officers resumed incriminating documents, showing unaccounted sale of D film by the above said three units, to M/s Biharijee Packaging, as detailed in panchnama dated 03.12.08 (RUD NO.1), drawn on the spot."*

10. We find that aSCN dated 18.05.2010 demanding Duty of Rs.1,74,43,176/- on the alleged clandestine removal of laminated rolls said to be manufactured from L D Films alleged

to be clandestinely removed by M/s Achchyut Packaging during the period 17.10.2006 to 24.10.2007 was issued by DGCEI invoking extended period under proviso to Section 11A (1) of Central Excise Act, 1944 alongwith interest and penalty under Section 11AB and 11AC ibid read with Rule 25 of C E Rules, 2002.

11. Thereafter an Addendum dated 30/09/2010 was issued demanding Central Excise Duty of Rs.5,64,932/- on alleged clearances of laminated rolls without payment of duty manufactured from holographic film received from M/s Anand Sales, Kanpur during April 2008.

12. The Commissioner of Central Excise and Service Tax, Lucknow vide Order-in-Original dated 24.01.2012 confirmed the demand of Rs.1,80,08,108/-under Section 11A(1) of the Central Excise Act, 1944 alongwith interest under Section 11AB and also imposed penalty under Section 11AC read with Rule 25 of Central Excise Rules, 2002.

13. The present appeal was filed by the Appellants against the Order-in-Original dated 24.01.2012 vide Appeal No.E/1010/2012-EX [DB] in which a detailed submissions on the grounds of appeal has been made.

14. However in brief the following submissions are being made which are sufficient to set aside the impugned order dated 24/01/2012.

- The CBEC examined the matter in the light of the law laid down by the Hon'ble Supreme Court judgment in case of **Metlex (I) Pvt Ltd 2004(165)E.L.T. 129 (S.C.)** and issued the clarification letter dated 7/11/2007 whereby directing all Chief Commissioners Central Excise to note that manufacturing of printed plastic laminates are not liable to duty. A copy of clarification dated 7/11/2007 as well as the copy of judgment of Hon'ble Supreme Court is filed as Annexure 1 and 2 to these submissions.

- The process of lamination was added in Chapter 39 in Note 16 by Finance Bill 2008 making the activity as amounting to manufacture which was passed by Lok Sabha on 29/04/2008. Therefore the printed plastic laminates falling under Chapter 39 do not attract any duty before 29/04/2008. Hence the demand of Rs.1,74,43,176/-under Show Cause Notice dated 18.05.2010 for the period from 17 October 2006 to 24.12.2007 is bad in law and has been wrongly confirmed and is contrary to CBEC instructions dated 07.11.2007 and the law laid down by the Hon'ble Supreme Court in Metlex case (Supra).

- Undisputedly the Excise Duty is payable at the point of removal of finished goods. No findings has been recorded on this point by the Adjudicating Authority in the OIO dated 24/01/2012 and the duty has been confirmed on presumption only whereas no duty was payable before the passing of finance bill 2008 in terms of CBEC instruction dated 7/11/2007 as well as Hon'ble Supreme Court decision in the case of Metlex (I) Pvt Ltd.

15. The remaining Demand of Rs.5,64,932/- (Rs.1,80,08,108 –Rs.1,74,43,176 = 5,64,932) has been confirmed on the basis of assumptions and presumptions as well as on the basis of statement of third party namely Swetanshu Dwivedi of M/s Anand Sales Kanpur which was also retracted by him on the very next day i.e. 14/08/2009. The Appellant had sought cross examination of the said witness namely Swetanshu Dwivedi. The cross examination of Swetanshu Dwivedi by the Appellant was refused by the Adjudicating authority without any justification. The statement of third parties recorded against the Appellant cannot be used unless cross examination is allowed hence the demand so confirmed is bad in law and against the principles of natural justice. The Hon'ble Supreme Court in case of Andaman Timber Industries (2016) 15 Supreme Court case 785 has set aside the order of the Tribunal and allowed the

appeal of the party on this ground. Hence, the demand of Rs.5,64,932/- is also liable to be set aside.

16. In view of the above discussion, the impugned order cannot be sustained and is accordingly set aside. The appeal filed by the Appellant is allowed with consequential relief, as per law.

(Dictated and pronounced in open court)

Sd/-
(P. K. CHOUDHARY)
MEMBER (JUDICIAL)

Sd/-
(P. ANJANI KUMAR)
MEMBER (TECHNICAL)

LKS