FAX : 0532-2400149 REGISTERED / AD

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
38,MG Marg Civil Lines,Old Red Building,Allahabad-211001
Regional Branch, Allahabad

Dated: 03/01/2018

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/71982/2017-EX[DB] dated 11/12/2017

I am directed to transmit herewith a certified copy of order passed by the Tribunal under section 35-C(1) of the **Central Excise and Salt Act, 1944.**

Asstt. Registrar

Application	Appeal	Name and Address of Appellant
1	E/902/2005	**CHANDRAVATI POLYMERS P LTD** C/O M/S Kunj Bihari Lal Charitable Trust, Indraprashta Dental College & Hospital,46/1 Site-IV,Industrial Area Sahibabad U.P.
		Name and Address of Respondent
2		-C.C.E. GHAZIABAD C.G. O. Complex-II, Kamla Nehru Nagar, Ghaziabad 201302

Copy To

3Advocate(s) / Consultant(s):

R.R. AGARWAL (Senior Advocate)
& SIDDHARTH YADAV (Advocate)
8A/56, DWARIKAPURI COLONY,
MUIR ROAD, ALLAHABAD-211002

4 Bar Association, CESTAT, Allahabad

5 Director Publications, Customs, Excise. I.P. Estate, Delhi

6 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, Opp ICICI Bank of Defence Colony New Delhi-3

7 Company Law Institute of India Pvt. Ltd., No.2 (old no.36), Vaithyaram Street, T. Nagar, Chennai-17

8 Taxmann Allied Service Pvt. Ltd., 59/32, New Rohtak Road, New Delhi-110005

9 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)

10 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi - 110070

11 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad -- 38

12 The ICFAI society, 52, Nagarjuna Hill,Punjagutta Hyderabad.-500082

13 M/S Knowledge Processing Pvt. ltd.(taxmanagementindia.com),FF-19,1st Floor,Cross River Mall,CBD Ground,Near Karkardooma Court,Delhi-110032

14 S.D.R (Commissioner AR) :- . **Along with Assessment records . As per Hon'ble Bench direction, you are directed to send back the assessment records to concerned Commissioner**

15 Office Copy 16 Second Folder Copy 17 Guard File

Asstt. Registrar

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

APPEAL No. E/902/2005-EX[DB]

(Arising out of Order-in-Original No.11/Comm./GZB/2004 dated 30/04/2004 passed by Commissioner of Central Excise, Ghaziabad)

M/s Chandravati Polymers Pvt. Ltd. **Appellant**

Vs.

Commissioner of Central Excise, Ghaziabad **Respondent**

Appearance:

Shri R. R. Agarwal (Senior Advocate) &
Shri Siddharth Yadav (Advocate) for Appellant
Shri Rajeev Ranjan (Joint Commr.) AR for Respondent

CORAM:

Hon'ble Mr. Anil Choudhary, Member (Judicial)
Hon'ble Mr. Anil G. Shakkarwar, Member (Technical)

Date of Hearing : 11/12/2017
Date of Decision : 11/12/2017

FINAL ORDER NO. 71382/2017

Per: Anil Choudhary

This appeal is arising out against Order-in-Original dated 30/04/2004 passed by the Commissioner of Central Excise, Ghaziabad, among other grounds mainly on the issue of natural Justice.

2. The brief facts are that the appellant was engaged in manufacturing of industrial and decorative laminates falling under Chapter Sub-heading 3920.37 of schedule to CETA having its factory at Sahibabad. As it appeared to Revenue

that there was some clandestine activity on the part of the appellant, there was a search/inspection on 21st November, 1995 by DGAE at the Delhi office and the factory. It was seen that appellant was manufacturing decorative laminates of sizes 2.44 x 1.22 x 3mm thickness and that almost 95% of total production was supplied to Railways, while some quantity was rooted to local market through their consignment agent M/s Ratnakar Enterprises, New Delhi. Prior to supply of the goods to Railways, the goods are pre-inspected by Railways or their inspecting agency. It appeared that the appellant had been supplying laminated sheets of 3mm thickness to Railways and the quantity supplied was much in excess to that, which were shown to have been manufactured in the factory. Further alleged that in some cases where supplies were made to Railways, were not covered by gate pass issued from factory. The appellant had been issuing delivery challan/invoices from the registered office to cover such supplies. Further facts as per the SCN dated 30th January, 1996 are as follows:-

"Enquires to establish that traders supplied laminated sheets of less than 3mm thickness Para-3.1 of the notice stated that M/s Brite Plywood Agencies, New Delhi had supplied 43,754 laminated plastic sheets valued at Rs.1,40,81,557/- from 1991-1995 to M/s CPPL, M/s Ratnakar Enterprises and Aar Em Plywood and Salmica, the thickness of the laminated sheets being 1.5mm, 1mm or 0.8mm as per statement of

Aor

Vijay Kumar Sethi partner of M/s Brite Plywood Agency, recorded on **13/12/1995**. Shri Sethi also stated that he deals only sheets of thickness 1mm or 0.8mm and such sheets of Sundak brand were sold to M/s CPPL, M/s Ratnakar Enterprises and Aar Em Plywood and Salmica. The statement of Sashikant Gupta director of Sundak India Ltd. was also recorded on **12/12/1995** stating that he never sold any laminated sheet of thickness of 3mm and above to M/s Brite Plywood Agency from January, 1991 to 1995 as such it was presumed that the plywood of 3mm thickness was never supplied by Brite Plywood Agency to M/s CPPL, M/s Ratnakar Enterprises and Aar Em Plywood and Salmica rather the salmica supplied was of thickness 1.0mm or 0.8mm.

Para 3.2, 3.3 & 3.4 of SHOW CAUSE NOTICE stated about Globe Timber Traders, M/s Gorinder Sales Corp, M/s Capital Sales Corp respectively by Basan Das Pahwa, Gorinder Pal Singh and Praful Kumar Vohra stated that their firm didn't deal with the laminated sheets of thickness respectively of 1mm, 1.5mm and 1.5mm and no supply was made of sheets of 3mm thickness/

Para 3.5, 3.6, 3.7, 3.8 & 3.9 of the SHOW CAUSE NOTICE relating to M/s Sumeet Enterprises, M/s Vishal Plywood, M/s Sudhir Company, Vishal Traders have stated to supply laminated sheet of thickness 1.5mm but admitted that the thickness of laminated sheets was not mentioned in the bills as per the market practice.

3. The appellant contested the show cause notice by filing defence reply on 18/03/1998, as is mentioned in Para-4 of the impugned order. The appellant also made prayer for cross-examination of the witnesses of Revenue, whose statement have been relied upon in the show cause notice, namely Vijay kumar Sethi, Sashikant Gupta, Basan Das Pahwa, Gorinder Pal Singh and Praful Kumar Vohra.

4. The Learned Counsel further states that during the period of adjudication proceedings being pending, there were major disturbances in the appellant industry as due to non-payment of the dues of the Pradeshiya Industrial and Investment Corporation of U.P. Ltd. (PICUP for short), vide Panchnama proceedings, acquired the possession of the factory premises including that administrative office as is evident from the copy of Panchnama dated 05/10/2002. The appellant informed the Jurisdictional Commissioner from time to time, including letter dated 17/04/2003, wherein they informed that their entire factory including administrative office have been sealed by PICUP in October, 2002 and till date is under the possession of PICUP. They further expect to get back the possession of the unit in the near future, in view of the continuing negotiations. Further, praying that as soon as their office is unsealed by PICUP, they shall inform the Commissioner and take steps for making proper pleadings in

the matter of adjudication of the show cause. The Learned Counsel further drawn attention to auction sale notices issued by PICUP dated 21st November, 2003, wherein PICUP have advertised the appellant unit for sale under the powers vested by virtue of Section 29 of the State Financial Corporation Act. The Learned Counsel further draws the attention to letter dated 03/07/2004 written by PICUP to the appellant as regards application of the appellant for revival of the unit/one time settlement. Thereafter the possession of the factory including that of administrative office was handed over to the appellant only on 19th July, 2004, but prior to this, the impugned order was passed on 30th April, 2004. As such the appellant did not have proper opportunity to lead evidence in the matter.

5. As regards the prayer made by the appellant for cross-examination of certain witnesses, the Learned Counsel draws attention to the findings from the impugned order wherein the Learned Commissioner have recorded that appellant's request to cross examine some of the traders who issued invoices for sale for laminated plastic sheets to appellant and its sister concerns, cannot be exceeded to at this stage as at present not only appellant, but its sister concerns and its directors Shri Manoj Prabhakar Jain also are not traceable as several letters written to them for attending personal hearing in the case have returned undelivered and also pasting of such letters at the factory gate also have not fetched any results.

The Learned Commissioner also observed that cross-examination is not warranted in the facts of the case as ample evidence is available to show that the traders had supplied the laminated plastic sheets of thickness up to 1.5mm. Further, the Learned Counsel states that the prayer of cross-examination have been rejected mechanically and shows clear cut shyness on the part of Learned Commissioner to exercise the jurisdiction vested in him. Accordingly, he prays for setting aside the impugned order and to remand the proceedings back to the adjudicating authority to pass a fresh order in accordance with law, after providing opportunity for cross-examination, and hearing.

6. The Learned A.R. for Revenue have relied on the impugned order.

7. Having considered the rival contentions and on perusal of records, we are satisfied that the appellant was prevented due to sufficient reasons and genuine reasons from making a proper representation at the adjudication proceedings, as they were not having access to their own records at the relevant time, which were lying under seizure or possession of PICUP. We further find that sufficient reasons have not been assigned for denial of cross examination. In the circumstances we allow this appeal by way of remand. We set aside the impugned order and remand the matter back to the file of the adjudicating authority with directions to pass a reasoned order, after hearing the appellant, including

providing of opportunity to cross-examine the witnesses necessary in support of their contentions. We also direct the appellants to file a fresh reply to show cause notice and also a fresh application, as regards their prayer for cross-examination giving the proper names, etc. of the witnesses, as available on the record and as per their knowledge and also to give brief reasons as to why they seek to examine the witness by way of cross-examination. We also observe that the provisions of Section 9D of the Act provide for examination of witnesses the statements of which Revenue seeks to rely upon in support of its allegations in the show cause notice. An examination of witnesses during the proceedings also includes their cross-examination by the defence side or the appellant's. We further observe that Hon'ble Supreme Court in the case of Andaman Timber have observed that examination of witnesses and cross-examination is an essential feature in a judicial proceedings under the Central Excise Act. The appellant is directed to file their reply to show cause notice and any other applications with respect to any prayer they want to make within a period of 90 days and appear before the concerned adjudicating authority and seek opportunity of hearing. As the matter is very old the impugned order being of the year 2004 and the facts related to the period 1994-95, we hope and trust the adjudicating authority shall dispose of the adjudicating proceedings preferably within a period of one year from receipt of a copy of this order. The registry is directed to send back assessment records back to the concerned Commissioner through the office of Commissioner, A.R.

(Dictated & Pronounced in Court)

-Sd/-
(ANIL G. SHAKKARWAR)
Member (TECHNICAL)

-Sd/-
(ANIL CHOUDHARY)
Member(JUDICIAL)

Lks

प्रमाणित प्रति/Certified True Copy

29/01/18

S.T.A.T.)

M. G. MARG, ALLAHABAD