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

Dated: 05/12/2017

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/71808/2017-SM[BR] dated 13/11/2017

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/1185/2011	ANNPURNA PLASTICS PRODUCTS (P) LTD., EF-6, SECTOR, GIDA, GORAKHPUR.
		Name and Address of Respondent
2		-C.C.E Allahabad 38,M.G.Marg, civil Lines, Allahabad

Copy To
3Advocate(s) / Consultant(s):

Ms. Stuti Saggi
ADVOCATES(ALLD)
102, MAHALAXMI ENCLAVE (ADJ. INCOME TAX OFFICE), STANLEY ROAD, CIVIL LINES, ALLAHABAD (U.P.)-211001

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 C.D.R. 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/1185/2011-EX[SM]

(Arising out of Order-in-Original No. MP (Dem-46/2010) 02 of 2011 dated 27.01.2011 passed by the Commissioner of Central Excise, & Service Tax, Allahabad)

Annpurna Plastics Products (P) Ltd.	**Appellant (s)**
Vs.	
C.C.E.-Allahabad	**Respondent (s)**

<u>Appearance:</u>

Ms. Stuti Saggi (Adv.)	for Appellant
Mohd. Altaf (AC) AR	for Respondent

CORAM:
Hon'ble Mrs. Archana Wadhwa, Member (Judicial)

Date of Hearing :- 13.11.2017
Date of Pronouncement :- 1/12/17

FINAL ORDER NO- 71808/2017

Per: Mrs. Archana Wadhwa:

As per the facts on record the appellant M/s Annpurna Plastics Products Pvt. Ltd. are engaged in the manufacture of Poly Propylene Glasses falling under chapter 39 of the first schedule of the Central Excise Tariff Act, 1985. The present appeal stands filed by them against the impugned order of Commissioner of Central Excise vide which he has confirmed the duty of Rs.30,14,062/- on the allegations and findings of clandestine removal alongwith confirmation of interest and has further imposed penalty of identical amount under Section 11 AC of the Central Excise Act, 1944.

2. The appellant's factory was visited by the Preventive Branch of the Central Excise Officers on 29.04.2009, who conducted various checks and verifications. It was found that the Form-IV register and RG-I registers were not available in the factory premises. However, the officers found certain private records including diaries, payment register of labours, electricity bills etc. and resumed the same under panchanama dated 29.04.2009. Statement of Shri Vivek Kumar, Director of the company was recorded alongwith the statement of Shri Golu Agrahari, labour contractor. The said labour contractor admitted having received the payments, as reflected in the payment register of labours, during the relevant years for packing of the glasses at the rate of Rs.16/- per gatta. The electricity bills resumed from the factory also revealed the excess consumption of electricity. The appellant's production capacity was also verified and it was noted that the same is much on the higher side. From the statements of the Directors and the Supervisors, capacity of machines, working hours of the unit, payment made to the labour contractors, rate of payment/box of P.P. Glasses made to the labour, project report submitted to the bank, variations in raw material record as against actual purchase, bank statements of the suppliers of the raw materials, actual production detected in private records and from comparison of the consumption of electricity from production of glasses

shown in their private records, a view was entertained that the appellant was indulging in clandestine activities and was intentionally keeping its clearances below the SSI exemption limit provided under Notification No. 8/2003 dated 01.03.2003.

3. As a follow up action, statements of the other Director, Shri Pashupatinath Gupta was recorded on 07.05.2009, wherein he deposed that they were having one crushing machine and 3 glass making machines and they are running their factory for 20 hours per day in 3 shifts including rest of 4 hours. Shri Sumer Prasbad, Supervisor in his statement admitted that their production of glasses was much more than the production reflected in the Central Excise records. He also deposed that apart from 20 permanent labours, casual labours were also employed by them as per their requirement and as revealed from the private records they had made payment of Rs.9,28,252/- to the labour contractors in the financial year 2008-09 for packing of glasses in boxes.

During the further course of investigation statements of various persons including the other Directors of the company were recorded on various stages. All the said statements are confessional in nature. Revenue, in an endeavour to find out the procurement of the raw materials, used in the production of the glasses cleared by them in a clandestine manner, also approached the various raw material suppliers, the manufacturers and dealers of the raw materials falling under the jurisdiction of the other commissionrates were got verified by the concerned jurisdictional officers to know the actual quantity of the raw material supplied by them alongwith their bank statements. Scrutiny of the same revealed that the appellant had purchased varying quantities of raw materials from the said raw material supplier, which had not been entered by them in any of their statutory records.

Apart from above, Revenue also procured a project report submitted by the assessee before their banks for the purpose of availing loan. As per the said project report the unit was working 24 hours daily and 25 days in month. As per the said project report read with the electricity consumption figures, the final production in the assessee's factory was found to be much more than the production reflected in the RG-I records.

4. Based upon above investigations, proceedings were initiated against the appellant by way of issuance of show cause notice dated 23.04.2010 alleging clandestine production and clearance of their final product and proposing to confirm the Central Excise Duty alongwith confirmation of interest and imposition of penalties.

5. During the course of adjudication, appellant took a categorical stand that they were failing within the small scale exemption limit envisaged in terms of under Notification No. 08/2003-CE and they were also engaged in trading of plastic grantees thermocol thalies from their Head Office. They contended that the entire case of the Revenue is based on assumption and presumption and

without any evidence on record. They also contested the demand on the point of the time bar.

6. While dealing with the above contentions of the appellant, the Commissioner observed that the allegations of clandestine manufacture and clearance are based upon the following facts:-

a) Private record viz packing register.

b) Electricity consumed in manufacture of glasses during the period.

c) The project report furnished to banker for procurement of loan.

d) Capacity of machines installed in the factory.

e) Statement of Sri Pashupatinath Gupta, Director dated 07.05.2009 and other employees under Section 14 of the Central Excise Act, 1994.

f) Details of receipt of raw material and payments made to supplier, after follow up reports from the department.

g) Details of payment made to contract labours for packing during 2008-09.

10) The Adjudicating Authority referred to the various statements of the Directors wherein the excess production was admitted by them. He also observed that though the variation in consumption of electricity cannot be held to be a sufficient ground for raising of demand but the same is strong corroborative evidence when seen in addition to other evidences and confessional statements. As regards the appellant's plea of trading of raw materials, he observed

that apart from a bald statement to that effect, they have not shown any documentary evidence to that effect. Similarly, as regards the project reports, he agreed with the appellant that the project report, on its own, is not enough to prove the charges of suppression of production and clandestine removal but is strong evidence corroborating the other main evidences. He also referred to the statement of the labour contractor wherein, he admitted having received the labour charges for packing of the glasses indicating the suppressed production and clandestine removal. He observed that the said record is strong evidence and viewed in the light of the other corroborative evidence leads to the facts of the clandestine activity of the assessee. The said order is impugned before Tribunal.

11) After hearing the learned Advocate appearing for the appellant as also the learned AR and after going through the impugned order I find that the demands stand confirmed against the appellant alongwith imposition of penalties on the findings of clandestine manufacture and removal of their final product. Such findings are primarily based upon the records seized by the visiting officers including the labour contractor record. The appellant's authorized representative as also labour contractor has admitted that the payments reflected in the said record are in respect of the packaging of the appellant's final product. Inasmuch as the same have not been found to having entered in RG-I records, the findings of clandestine clearances stand arrived at by the adjudicating authority.

Learned advocate submit that inasmuch as the adjudication authority has taken note of the electricity consumption, such findings cannot be upheld. For the above proposition reliance is placed upon the Hon'ble Allahabad decision in the case of Commissioner of Central Excise, Meerut Vs. R.A. Castings Pvt. Ltd. : 2011 (269) ELT 337 (All.). However, I find that in the said case of R.A. Castings Pvt. Ltd., the Revenue's allegations were solely based upon electricity consumption. It was in that scenario, that the Court held that higher electricity consumption cannot be made basis for arriving at the excess production of steel ingots. In the present case, the Commissioner has himself observed that the reference to electricity consumption is only to corroborate the other evidences.

Similarly, in respect of the project report and the capacity of the machine installed in the factory, he has observed that the same are corroborative evidences to the main allegations, which are primarily based upon the entries made in the packaging register and the labour contract register.

Further, though the statements of various persons including the statement of the Director cannot be held to be sufficient evidence, on its own, but when read with the other evidences on record, leads to the inevitable conclusion of the appellant indulging in clandestine activities.

Further, the Revenue in the present case has also approached the raw material suppliers and has been able to establish the procurement of the excess raw materials, including the payments made by the appellant to the supplier. No doubt, that the findings of clandestine removal are required to be based upon sufficient and positive evidences, as held by various decisions but the sufficiency of the evidences is required to be examined independently in each and every case. Inasmuch as in the present case, the Revenue has been able to establish the procurement of the excess raw materials, 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 the inevitable conclusion that the appellants have manufactured and cleared clandestinely their final product.

14. As such, I find no infirmity in the findings of the adjudicating authority. Accordingly, the impugned order is upheld and the appeal is rejected.

(Pronounced in the open Court on...1/12/12...)

Sd/-
(Archana Wadhawa)
Member(Judicial)

प्रमाणित प्रति/Certified True Copy
04/01/18

GS

सहायक पंजीकार/Asstt. Registrar
सीमाशुल्क, उत्पादशुल्क एवं सेवा कर
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38, M. G. MARG, ALLAHABAD-211001