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

Dated: 03/11/2017

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/71292/2017-SM[BR] dated 13/10/2017

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/70719/2016	**Commissioner of CUSTOMS-Meerut-i** EXCISE CHOWK...UNIVERSITY ROAD, MANGAL PANDEY NAGAR, MEERUT, UTTAR PRADESH 250005
		Name and Address of Respondent
2		Chhaya Packers & Printers Pvt Ltd 93a Dheerkhera Industrial Area,, MEERUT ,UP

Copy To

3 Bar Association, CESTAT, Allahabad

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

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

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

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

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

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

10 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad – 38

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

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

13 C.D.R. 14 Office Copy 15 Second Folder Copy 16 Guard File

Asstt. Registrar

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

REGIONAL BENCH : ALLAHABAD

COURT No. I

APPEAL No: E/70719/2016-EX[SM]

(Arising out of Order-in-Appeal No. MRT/EXCUS/000/APPL-I/575/15-16 dated 17/03/2016 passed by Commissioner (Appeals-I), Customs & Central Excise, Meerut)

Commissioner of Central Excise & Service Tax, Meerut-I **Appellant**

Vs.

M/s Chhaya Packers & Printers Pvt. Ltd. **Respondent**

Appearance:

Shri Sandeep Kumar Singh AR for Appellant
Shri Absent on call for Respondent

CORAM:

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

Date of Hearing : 13/10/2017
Date of Decision : 13/10/2017

FINAL ORDER NO:...71292/2017......

Per: Anil Choudhary

The issue in this appeal is whether the Commissioner (Appeals) have rightly dropped the demand raised under Rule 8(3A) of Central Excise Rules, 2002.

2. The brief facts are that appellant is registered with the Central Excise authorities and is engaged in the manufacture of corrugated boxes, corrugated sheets & rolls, and availing CENVAT credit under the provisions of CENVAT Credit Rules, 2004 (hereinafter referred as CCR). During the course of scrutiny it was revealed that during the month of July, 2013,

they were required to pay duty Rs.3,76,820/-, however out of the said duty liability they paid Rs.2,72,034/- and the rest amount of Rs.1,04,786/- though was shown paid through cash, but was actually paid on 26/10/2013. Similarly in August, 2013 duty liability was Rs.4,82,068/-, out of which Rs.2,26,430/- was paid in time and Rs.2,55,625/- was deposited later on in two installment of Rs.2,00,000/- paid on 03/03/2014 and Rs.55,625/- on 29/03/2014 along with interest. The appellant thus defaulted in payment of duty during July and August, 2013 in as much as they did not pay the same within 30 days of the due date of the payment of duty for the respective months of July and August, 2013. In view of the said default they were required to discharge duty on consignment basis on the clearances effected during 06/09/2013 to 31/03/2014 and were barred from utilization of CENVAT credit for payment of duty during such time under Rule 8(3A). It was observed that the appellant did not discharge duty liability consignment wise during September, 2013 to March, 2014, therefore all clearances effected during said period were deemed to have been made without payment of duty of Rs.21,91,325/-. Accordingly, a show cause notice dated 26/09/2014 was issued proposing demand and recovery of Rs.21,91,325/- alongwith interest and penalty.

3. The demand of Rs.21,91,325/- alongwith interest due thereon was confirmed and since Rs.1,92,964/- was already paid through PLA, therefore the said amount was

appropriated towards confirmed demand Rs.21,91,325/- was imposed as penalty under Rule 25 of CER, 2002 read with Section 11AC of the Act.

4. In this regard, the appellant - Revenue contended that they came to know about the short payment of Excise duty only when the details of challans mentioned in the ER-1 return of July and August, 2013 were asked by the Excise Department. It was found that the wrong challan numbers were put in the relevant ER-1 return by their employee, and actually the duty had not been deposited/short deposited. It was further submitted, that subsequently on knowing the fact, the said short paid duty along with interest at applicable rate was paid by them by cash under Challan Nos.00003 dated 26/10/2013, 00004 dated 03/03/2014 and 00017 dated 29/03/2014. The appellant also contended that once duty alongwith interest was paid there is no loss of revenue to the Department, as such demand proposed in the notice is Revenue neutral and the same is to be dropped.

5. The show cause notice was subsequently issued on 26/09/2014, which is more than 12 months from the date when the tax which was erroneously in default was paid along with interest.

6. The respondent is absent on call.

7. Heard the Learned A.R. for Revenue and perused the records.

8. Having considered the grounds of appeal and the facts on record I find that on the date show cause notice was issued there was no default on the part of the appellant. Further, admittedly show cause notice is issued invoking the extended limitation without there being any ground for invocation of extended period, as is evident from the show cause notice. Accordingly, I hold that the show cause notice is not maintainable. Accordingly, this appeal is dismissed.

9. The respondent assessee shall be entitled for consequential benefits if any, in accordance with law.

(Dictated & Pronounced in Court)

-Sd/-

(ANIL CHOUDHARY)
Member(JUDICIAL)

Lks

प्रमाणित प्रति/Certified True Copy
27/11/17
सहायक पंजीकार/Asstt. Registrar
सीमाशुल्क, उत्पादशुल्क एवं सेवा कर
अपील अधिकरण/(C.E.S.T.A.T.)
38, एम.जी.मार्ग, इलाहाबाद-211001
38, M. G. MARG,ALLAHABAD-211001