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

Dated: 28/11/2017

To

Appellant as per address in table below
Respondent as per address in table below

Final Order No. A/71675/2017-SM[BR] dated 27/10/2017

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/70733/2016	**Commissioner of CUSTOMS-Meerut-i** EXCISE CHOWK...UNIVERSITY ROAD, MANGAL PANDEY NAGAR, MEERUT, UTTAR PRADESH 250005
		Name and Address of Respondent
2		Meerut Polypack Pvt Ltd Inside Ramleela Ground, Delhi Road,, MEERUT ,UP

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

Kartikeya Narain
c/o S.C.Kamra & co,Advocates & Solicitors,21 b/1/17,tashkand Marg,Civil Lines,Allahabad,U.P.

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/70733/2016-EX[SM]

(Arising out of Order-in-Appeal No. MRT/EXCUS/000/APPL-I/594/2015-16 dated 22/03/2016 passed by Commissioner of Central Excise (Appeals-I),Meerut)

Commissioner of Customs, Central Excise & Service Tax, Meerut Vs.	**Appellant**
M/s Meerut Polypack Pvt. Ltd.	**Respondent**

Appearance:

Shri Pradeep Kumar Dubey, Supdt. (AR)	for Appellant
Shri Kartikeya Narain, Advocate,	for Respondent

CORAM:

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

Date of Hearing : 27/10/2017
Date of Decision : 27/10/2017

FINAL ORDER NO. 71675/2017

Per: Anil G. Shakkarwar

Present appeal filed by Revenue is directed against Order-in-Appeal No. MRT/EXCUS/000/APPL-I/594/2015-16 dated 22/03/2016 passed by Commissioner of Central Excise (Appeals-I), Meerut.

2. Brief facts of the case are that the respondents were manufacturer of HDPE/PP woven stacks, etc. They were availing facility of Cenvat credit. The officers of Central Excise visited the factory of respondent on 04/09/2013 and noticed

that from 18/08/2013 till 04/09/2013 the records such as RG-I and RG-23A were not maintained by the respondent. The officers conducted stock taking and found that finished goods valued Rs.30,87,050/- were not accounted in the RG-I register and raw materials valued Rs. 40,33,338/- were unaccounted. Through show cause notice dated 03/03/2014 it was proposed to confiscate said finished goods and raw materials under Rule 25 of Central Excise Rules, 2002. On contest the issue was adjudicated through Order-in-Original dated 30/04/2015 and the said goods were confiscated under Rule 25 of Central Excise Rules, 2002 and since the goods were provisionally released. The respondent were directed to pay redemption fine of Rs.15,80,097/-. Aggrieved by the said order, respondent preferred appeal before Commissioner (Appeals). The Learned Commissioner (Appeals) has decided the appeal through impugned Order-in-Appeal and has held that it is an admitted fact that the stocks of finished goods as well as raw materials were not entered in the record up-to-date. However, there was no evidence of clandestine removal. Therefore, it is clear case of improper maintenance of records and that Revenue has not proved its case and has not brought out clearly that the goods manufactured were meant for clandestine removal. The Learned Commissioner (Appeals) has observed that Department did not carried out any investigation regarding clearance of goods, identification of buyers and marketing of goods etc. The Learned

Commissioner (Appeals) has held that the goods were neither liable for confiscation nor penalty could be imposed in the absence of any evidence to show that there was any intention to evade payment of duty. He, therefore, set aside the confiscation and held that there was no reason to impose redemption fine or penalty. Aggrieved by the said order, Revenue is before this Tribunal.

3. Revenue through Grounds of Appeal have relied on the decision of this Tribunal in the case of M/s Chandan Steel Ltd. Vs. Commissioner of Central Excise & S.T., Vapi reported at 2014 (312) E.L.T. 479 (Tri.-Ahmd.) wherein it was held that if the stock taking is conducted in the presence of assessee, assessee cannot later challenge the same and submitted that the ratio of the said case is squarely applicable to the facts of the instant case. It is further stated in the grounds of appeal that it is undisputed that records were not up-to-date from the earlier date and goods in question were not entered in the statutory records on the date of visit by officers and that the Learned Commissioner (Appeals) has erred in deciding the issue without appreciating the martial facts of the case as mentioned above.

4. Heard the Learned A.R. who has presented the said grounds of appeal.

5. Heard the learned counsel for respondent who has submitted a few case laws in support of such non-accountable of goods in record. He has submitted copies of case laws reported at 2014 (307) E.L.T. A81 (Chhattisgarh), 2006 (193) E.L.T. 566 (Tri.-Mum.), 2011 (274) E.L.T. 582 (Tri.-Mum.) and 2002 (148) E.L.T. 967 (Tri.-Del.).

6. Having considered the rival contention and on perusal of records, I find that undisputed facts are that the records of finished goods and records of raw materials, including inputs was not maintained from 18/08/2013 to 04/09/2013. It is undisputed fact that finished goods valued at Rs.30,87,050/- were available in the factory which were not entered into RG-1 register and raw materials valued at Rs.40,33,338/- were available in the factory which were unaccounted for. The whole proceedings were carried out under the provisions of Rule 25 of Central Excise Rules, 2002. Provisions of Rule 25 of Central Excise Rules, 2002 are reproduced below:-

"Subject to the provisions of section 11 AC of the Act, if any producer, (1) manufacturer, registered person of a warehouse, or an importer who issues an invoice on which CENVAT credit can be taken, or a registered dealer,

(a) removes any excisable goods in contravention of any of the provisions of these rules or the notifications issued under these rules; or

(b) does not account for any excisable goods produced or manufactured or stored by him; or

(c) engages in the manufacture, production or storage of any excisable goods without having applied for the

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registration certificate required under section 6 of the Act; or

(d) contravenes any of the provisions of these rules or the notifications issued under these rules with intent to evade payment of duty,

then, all such goods shall be liable to confiscation and the producer or manufacturer or registered person of the warehouse, or an importer who issues an invoice on which CENVAT credit can be taken, or a registered dealer, as the case may be, shall be liable to a penalty not exceeding the duty on the excisable goods in respect of which any contravention of the nature referred to in clause (a) or clause (b) or clause (c) or clause (d) has been committed, or five thousand rupees, whichever is greater."

7. It is very clear from the provisions of Rule 25 that provisions of said Rule are subject to provisions of Section 11AC of the Central Excise Act, 1944. In the show cause notice or during the whole proceedings Revenue has not established that provisions of Section 11AC were applicable in the present case. Therefore, I do not find any infirmity with the finding of Commissioner (Appeals). Therefore, I uphold the impugned Order-in-Appeal and dismiss the appeal filed by Revenue. The respondent shall be entitled for consequential relief, as per law.

(Dictated & Pronounced in Court)

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

akp

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13/12/17
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अपील अधिकरण(C.E.S.T.A.T.)
38, एम. जी. मार्ग, इलाहाबाद-211001
38, M. G. MARG, ALLAHABAD-211001