CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
SOUTH ZONAL BENCH
BANGALORE

Appeal(s) Involved:

E/17/2009-DB

[Arising out of Order-in-Appeal No. 398/2008 dated 24/11/2008 passed by Commissioner of Central Excise (Appeals-I) Bangalore]

M/s. SCIENTIFIC COMPOUNDS AND PROCESSES PVT LTD
PLOT NO.42, B1 & B2, KIADB INDUSTRIAL AREA, HOSKOTE, BANGALORE-562114

Appellant(s)

Versus

C.C.E.-BANGALORE-I
POST BOX NO 5400...CR BUILDINGS,
BANGALORE,
KARNATAKA
560001

Respondent(s)

Appearance:

Mr. K. Kumareshan, Advocate
B.N GURURAJ
22.2, 3 RD MAIN ROAD CHAMARAJ PET,
BANGALORE ,
KARNATAKA

For the Appellant

Mr. K.T. Pakshirajan, AR

For the Respondent

Date of Hearing: 08/08/2018
Date of Decision:29/11/2018

CORAM:

HON'BLE SHRI S.S GARG, JUDICIAL MEMBER
HON'BLE SHRI P.ANJANI KUMAR, TECHNICAL MEMBER

Final Order No.21812/2018

Per : S.S GARG

The present appeal is directed against the impugned order dated 24.11.2008 passed by the Commissioner (Appeals) whereby the Commissioner (A) has rejected the appeal of the appellant.

2. Briefly the facts of the present case are that the appellants are engaged in the manufacture of "Sabeena" brand detergent Scoring bar 200gms/400gms and 'Kite' brand detergent bar 75gms falling under chapter 34 of CETA, 1985. The appellant is holder of Central Excise Registration No. AAACS9438HXM001. During the course of scrutiny of ER-1 returns filed by the appellant, it was noticed that they have assessed "Sabeena detergent scouring bars on MRP based assessment and are paying duty adopting valuation under Section 4A of Central Excise Act, 1944, whereas 'Kite' detergent bar 75gms were assessed under Section 4 of Central Excise Act, 1944 and duty was paid on advelorem basis, though the said product was notified under Notification No. 13/2002-CE (N.T) dated 01.03.2002 for the assessment of goods on the basis of retail sale price (MRP). Thereafter, on 21.06.2006, Range Officer visited the factory of the appellant for the purpose of verification of the records and after verification of the records, the Range Superintendent objected that instead of determining the value under Section 4A, the appellant had wrongly valued the goods under Section 4 and hence the appellant had short paid duty to the tune of Rs.8,94,277/- and Education Cess of Rs.17,884/-. Thereafter,

the Range Superintendent assured the appellants that on payment of duty and interest, there would be no further proceeding commenced against the appellant. The appellant solely based on this assurance and the fact that the duty paid by them would be available to the buyer which is their sister concern as CENVAT credit, agreed to pay duty amount along with interest and paid the same vide TR Challan No. 005 dated 25.08.2006 and debited the interest vide SI. No. 4 in PLA dated 01.09.2006. Thereafter, after the expiry of 10 months, a SCN was issued to the appellants demanding the duty along with interest and also proposed appropriation and also proposed penalty under Section 11AC. After following the due process, the original authority confirmed the demand and appropriated the amount of duty and interest paid by the appellant and also imposed equal penalty. Aggrieved by the said order, the appellant filed appeal before the Commissioner (A) who rejected the same on the ground that the appellants have wrongly valued the goods under Section 4 instead of Section 4A as the product is covered under Notification No. 13/2002 dated 01.03.2002.

3. Heard both sides and perused the records of the case.

4. Learned counsel for the appellants submitted that the impugned order is not sustainable in law as the same has been

passed without properly appreciating the facts and the law. He further submitted that the impugned order is contrary to the binding judicial precedent on the same issue. He further submitted that the learned Commissioner has ignored the law that valuation under Section 4A is required to be done only if the goods are sold to the ultimate consumer and if there is no sale to the ultimate consumer, Section 4A cannot apply at all. He also submitted that the Commissioner (A) has ignored the fact that the detergent cake was meant for free distribution along with 500gms and 1000 gms detergent powder. Further, the evidence produced by the appellant to prove that 75gms detergent bar was never meant for sale, has also been ignored. Further, he submitted that the appellant has made full disclosure in their return that they were removing the Kite detergent bar weighing 75 grams after valuing it under Section 4 but the lower appellate authority has ignored this admitted fact found in the SCN itself. He further submitted that when the appellants have paid differential duty along with interest much before the issue of SCN and there was no suppression on the part of the appellant, then the Department should not have issued the SCN by invoking the extended period and also imposing the equal penalty. In support of his submission, he relied upon the following decisions:

(i) CCE Vs. Trishul Research Lab Pvt. Ltd., 2002

(144) ELT 204 (Tri. Del.).

(ii) Jayanti Food Processing Pvt. Ltd. Vs. CCE, 2007 (215) ELT 327 (SC).

4.1 He further submitted that proceedings were commenced against the buyer company for denying CENVAT credit of duty paid by the appellant and the same was resolved in favour of the purchaser which is reported in ***CCE Vs. Dynavista Industries Pvt. Ltd., 2015-TIOL-1760-CESTAT-Mad.***

5. On the other hand, the learned AR defended the impugned order.

6. After considering the submissions of both the parties and perusal of the material on record, We find that the appellants have paid the differential duty along with interest after being pointed out by the Range Superintendent that the appellants have wrongly valued the 'Kite' brand detergent cake under Section 4 whereas it should be valued under Section 4A of the Central Excise Act because it is covered under Notification No. 13/2002-CE dated 01.03.2002 which is issued for assessment of goods on the basis of retail sale price under Section 4A of the Central Excise Act, 1944. Further, we find that the definition of "Retail Sale Price" in both Section 4A and Rule 2 of the PC Rules,

1977 make it clear that it is the price at which the goods are sold to the "ultimate consumer" whereas in the present case, there is no sale of detergent cake to the ultimate consumer therefore the valuation based on MRP will not apply as held in the case of ***CCE Vs. Trishul Research Pvt. Ltd.*** cited supra. Further, we find that the appellants have disclosed the valuation method in their return from where the Department discovered the valuation method followed by the appellant. Further, we find that the appellant paid the differential duty on the ground that the same would be available to their sister concern as CENVAT credit. We also find that against the buyer which is a sister concern, separate proceedings were commenced for denying the CENVAT credit on duty paid by the appellant but the same was resolved in favour of the purchaser which is reported in ***CCE Vs. Dynavista Industries*** cited supra. Therefore, in view of the discussions above and relied upon the decisions cited supra, we are of the considered view that the impugned order is not sustainable in law and therefore we set aside the impugned order by allowing the appeal of the appellant.

(Order was pronounced
in Open Court on **29/11/2018**)

P. ANJANI KUMAR
TECHNICAL MEMBER

S.S.GARG
JUDICIAL MEMBER

Parveen...