CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
SCO 147-148, SECTOR 17-C, CHANDIGARH-160017

SINGLE BENCH
COURT NO.1
Appeal No. E/1051/2010

[Arising out of the Order-in-Appeal No. 56-57/CE/DL-II/2010 dated 17.02.2010 passed by the CCE (Appeals), Delhi-II]

Date of Hearing/Decision: 01.06.2018

For Approval & signature:

Hon'ble Mr. Ashok Jindal, Member (Judicial)

CCE, Panchkula **Appellant**

Vs.

Pragati High Tech Products (P) Ltd. **Respondent**

Appearance

None- for the appellant
Shri. Tarun Kumar, AR- for the respondent

CORAM: **Hon'ble Mr. Ashok Jindal, Member (Judicial)**

FINAL ORDER NO: 62435 / 2018

Per Ashok Jindal:

The Revenue is in appeal against the impugned order wherein the ld. Commissioner (A) dropped the penalty against the respondent.

2. The facts of the case are that the respondent were manufacturing densified wood and classifying as plywood following under Chapter Heading No. 4412 instead of densified wood which classified under 4413. In these set of facts, some enquires were conducted at the end of the respondent which they have clarified during the course of investigation itself by they are classifying the

same under chapter heading 4412 instead of 4413. After discussion with the Department, it was accepted by the respondent that correct classification is 4413 and paid the differential duty along with interest. Thereafter, a show cause notice was issued to the respondent to demand differential duty along with interest and to impose penalty under Rule 25 of the Central Excise Rules, 2002. The matter was initially adjudicated and demand was confirmed along with interest and penalty under Rule 25 was also imposed. On appeal, the Ld. Commissioner (A) confirmed the demand along with interest but dropped the penalty against the respondent. Against the order of dropping the penalty against the respondent, the Revenue is in appeal.

3. The Ld. AR submits that as respondent has intentionally classified their goods as plywood under chapter heading 4412 instead of 4413 as densified goods, therefore, penalty is imposable.

4. None appeared on behalf of the respondent nor any request for adjournment has been received. Considering the gravity of the matter, the appeal is taken up for disposal.

5. Heard the ld. AR and perused the record.

6. On going through the show cause notice, I found that certain queries were made with the respondent during the course of investigation itself and the respondent has clarified while they are classifying their goods under chapter heading 4412 as plywood instead of classifying 4413 as densified goods and it was alleged in the show cause notice, the respondent has wrongly classified the goods, therefore, differential duty sought to be recovered along with

interest and proposal was made under Rule 25 of the Cenvat Credit Rules, 2002 to impose penalty. To impose penalty under Rule 25 of the Central Excise Rules, 2002, the provisions of Section 11AC of the Act are required to be complied with. As in the show cause notice, there is not such allegation of fraud, collusion, wilful statement, suppression of fact or having intention not to pay duty under the Act or rules. In that circumstances, provisions of Rule 25 of Central Excise Rules, 2002 are not attracted to the facts of this case. Moreover, in the show cause notice itself, it has been alleged that the appellant has wrongly classified their goods. In that circumstances, no penalty is imposable on the respondent, therefore, I do not find any infirmity in the impugned order, the same is upheld.

In result, the appeal filed by the Revenue is dismissed.

(Dictated and pronounced in the open court)

Ashok Jindal
Member (Judicial)

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