CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHANDIGARH

REGIONAL BENCH - COURT NO. I

Excise Appeal No. 60122 of 2018

[Arising out of Order-in-Original No. 10/CE/Commr/PKL/2017-18 dated 07.11.2017 passed by the Commissioner of CE & GST, Panchkula]

M/s Valcano Plywood Industries **......Appellant**
Radaur Road, Village Jorian, Yamuna Nagar, Haryana

VERSUS

Commissioner of CE & ST, Panchkula **......Respondent**
SCO 407-408, Sector 8, Panchkula, Haryana

with

Excise Appeal No. 60123 of 2018

[Arising out of Order-in-Original No. 10/CE/Commr/PKL/2017-18 dated 07.11.2017 passed by the Commissioner of CE & GST, Panchkula]

M/s Sant Gianeshwar Kwatra **......Appellant**
Radaur Road, Village Jorian, Yamuna Nagar, Haryana

VERSUS

Commissioner of CE & ST, Panchkula **......Respondent**
SCO 407-408, Sector 8, Panchkula, Haryana

APPEARANCE:

Present for the Appellant: Sh. Jagmohan Bansal, Sh. Naveen Bindal, Advs.

Present for the Respondent: Sh. Munish Kumar, Authorized Representative

CORAM: HON'BLE MR. ASHOK JINDAL, MEMBER (JUDICIAL)
HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)

FINAL ORDER NO. 60024-60025 /2022

DATE OF HEARING: 11.01.2022
DATE OF DECISION: 11.01.2022

PER ASHOK JINDAL:

The appellants are in appeal against the impugned order wherein the demand of duty on account of clandestine manufacture and clearance of the goods has been confirmed and penalties are imposed.

2. The facts of the case are that an information was received that the DGCEI, New Delhi has booked a case of evasion of excise duty against M/s Dechem Plastic Pvt Ltd, M/s Ashoka Drugs and M/s Shiva Chem who were engaged in manufacturing of Formaldehyde. Further, during the investigation, it was revealed that said firms had manufactured and clandestinely cleared Formaldehyde to various manufacturers of Plywood and Plyboard including the appellant without issuing invoices. It was also revealed that duty liability against majority of clandestine supply was discharged by these firms by issuing invoices to some traders without supplying goods to them. The Show cause notices were issued to these firms who settled the show cause notices by the Settlement Commissioner vide order dt. 13.08.2014 and 30.07.2017. During the course of search of the above said firms manufacturing Formaldehyde, weighment slips issued by various Dharm-Kantas located at Yamuna Nagar evidencing clandestine supply of the Formaldehyde to various manufacturers of Plywood and Plyboard including the appellant were recalled and resumed by the officers of DGCEI. In most of the weighment slips issued by various Dharm-Kantas vehicle numbers, name of factory of manufacturer and signature of buyers of person as acknowledgment

of receipt of Formaldehyde were also available. On verification of weighment slips/sale invoices issued by the above said manufacturers of Formaldehyde to its customers, it was found that these manufacturers have not issued the invoices in respect of all the supplies made to said customers against such weighment slips issued by various Dharm-Kantas including weighment of Formaldehyde as such Dharm-Kantas before delivery of Formaldehyde to various manufacturers of Plywood and Plyboard including the appellant. Sh. Ashok Aggrawal, Director of M/s Dechem Plastics Pvt Ltd and supervising the other two manufacturers of Formaldehyde admitted to have supplied Formaldehyde manufactured in their factories to various manufacturers including the appellant without payment of central excise duty and without issuing any invoice to the buyers mentioned in the weighment slips. On the basis of this information, premises of the appellant were visited on 2-12-2014 by the Anti-Evasion Branch, Panchkula. At the time of visit, Sh. Vikas Kataria partner of the firm was present and statement of Sh. Charnjit Singh, Manager was recorded. The statement of the co-noticee was also recorded. On the basis of the statements and the investigation conducted by DGCEI against the manufacturer of Formaldehyde, a show cause notice was issued to the appellants alleging that the appellants have purchased the Formaldehyde without bills from M/s Shiva Chem., M/s Dechem Plastic Pvt Ltd. as stated by Sh. Ashok Aggarwal in his statement and manufactured and cleared Plywood and Plyboard without accounting in their statutory records without payment of Central Excise duty during 2011-12 and 2012-13. On the basis of that, a demand of Rs. 2,22,13,272/- was proposed to be recovered from the appellants and to impose the penalties. The matter was adjudicated and demand of duty along with interest was confirmed. Penalties were also imposed on both the appellants. Against the said order, the appellants are before us.

3.1 Sh. Jagmohan Bansal, Senior Advocate appeared on behalf of the appellants submitted that in the said investigation, a search was conducted against 26 parties who were alleged to be received Formaldehyde from the manufacturers of Formaldehyde without invoices and without payment of duty, but the show causes notices were issued only to 7 parties and out of these 7 parties, in the cases of two, namely, M/s Shri Mahalaxmi Industries, Yamuna Nagar and M/s LRB Industries, the show cause notices were dropped by the Joint Commissioner vide his order dt. 13.03.2017 which has been accepted by the Commissioner.

3.2 He further submitted that out of these 7 parties, in the case of one of the party, this Tribunal has dropped the demand proposed in the show cause notice. In the case of one of the assessee, namely, Virgo Boards Ltd, this Tribunal vide Final Order No. A/63304/2018 dt. 11.10.2018 has dropped the proceedings. On merits, he submitted that nothing incriminatory was found during the investigation and no inculpatory statement of above appellants have been recorded. Merely, on the basis of the statements of the suppliers, it has been alleged that appellant has received one of the inputs namely Formaldehyde which has been used by the appellant for manufacturing of their final product which has been cleared clandestinely in such a short span of time to the tune of more than Rs. 17 crores.

3.3 It is his submission that to manufacture such a huge quantity, the appellant was required various other inputs namely timber/fatti, core veener, face veneer, phenol, melamine, etc., but the Revenue has failed to establish from where these other inputs have been procured by the appellant and how the appellant has manufactured such a huge quantity of the goods and cleared the same without payment of duty, there is no statement of buyer of the appellant to establish the fact that the appellant has cleared the goods clandestinely. Moreover, no evidence has brought on record with regard to consumption of electricity. It is also submitted that no cross examination of Shri Ashok Aggarwal, supplier has been provided to the appellant. In these circumstances, the impugned order is to be set aside.

4. On the other hand, the Ld. AR reiterated the findings of the impugned order.

5. Heard the parties and considered the submissions.

6. On going through the merits of the case, we find that the case has been booked against the appellant alleging that the appellant has manufactured clandestinely and cleared the goods without payment of duty as they have received Formaldehyde, one of the inputs without payment of duty on the basis of the statements of supplier. We find that to manufacture such a huge quantity of the goods

clandestinely, the appellant requires other inputs and electricity is to be consumed to manufacture such a huge quantity of the goods. From the records, it is not coming out whether the Revenue has made such effort to ascertain the facts from where the other raw materials were procured and how much is the electricity is consumed. Moreover, when it alleged that the appellant has sold the said clandestine manufactured goods, no statement of any buyer is brought on record to establish the fact that the appellant has cleared clandestinely manufacture goods without payment of duty.

7. In the absence of any evidence on record, the charge of clandestinely manufactured clearance of the goods without payment of duty cannot be sustained. No cross examination of Shri. Ashok Aggarwal has been allowed to the appellant to ascertain the truth. No inculpatory statement of the appellant has been found on record to establish the fact that the appellant has received the goods on the basis of the Dharma-Kantas slips provided by the supplier of the goods. The same view was taken by this Tribunal in the case of Virgo Boards Ltd. (supra) wherein this Tribunal observed as under: -

> *"I find that to manufacture their final product the appellant required inputs, namely, timber/fatti, core veener, face veneer, phenol, melamine apart from formaldehyde. It has been alleged that the appellant has received formaldehyde without payment of duty, the Revenue has failed to establish from where the appellant has received other inputs and no any stock taking to that effect has been done to ascertain the truth, merely ,on the basis of the statement of third party or the documents recovered from the possession of the third party the case has been made out against the appellant that they have received one of the inputs clandestinely and*

manufactured of the final product which has been cleared clandestinely. All these allegations are on the basis of assumptions and presumptions without any evidence of record. In these circumstances, in the light of decision of this Tribunal in the case of ***Samrat Plywood Ltd. vide final order no. A/62379-62382/2018*** *wherein it has been held that in the absence of the evidence of procurement of other raw material to their manufacture of their final product, the charge of clandestine manufacture and removal of the goods is not sustainable, merely, on the basis of the receipt one of the raw material, on the basis of the statement of the third party. I hold that the impugned order is to be liable to be set aside."*

8. In the absence of any cogent evidence against the appellant, the charge of the clandestine manufacture and removal of the goods by the appellants is not sustainable, the same is on the basis of assumptions and presumptions. Accordingly, we hold that the proceedings against the appellants are not sustainable.

9. In these circumstances, we do not find any merit in the impugned order. The same is set aside.

10. In result, the appeals are allowed with consequential relief, if any.

(Operative part of the order pronounced in the open court)

(ASHOK JINDAL)
MEMBER (JUDICIAL)

(SANJIV SRIVASTAVA)
MEMBER (TECHNICAL)

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