IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL
SOUTH ZONAL BENCH AT CHENNAI

E/364/2011

(Arising out of Order-in-Appeal No. 208/2011 dated 29.04.2011 passed by the Commissioner of Central Excise (Appeals), Madurai).

M/s. Aruna Match Cottage : Appellant

Vs.

CCE & ST, Madurai : Respondent

Appearance

Shri S. Venkatachalam, Advocate
Shri M. Kannan, Advocate
for the Appellant

Shri K. Veerabhadra Reddy, JC (AR)
for the Respondent.

CORAM :

Hon'ble Ms. Sulekha Beevi, Member (Judicial)
Hon'ble Shri Madhu Mohan Damodhar, Member (Technical)

Date of Hearing/Decision: **18.04.2018**

FINAL ORDER No. **<u>41384/2018</u>**

Per Bench

Brief facts are that the appellant Company is engaged in the manufacture of 'Safety Matches' falling under Chapter heading 3605 of the Central Excise Tariff Act, 1985. The safety matches are manufactured with the aid of power, and they attract Central Excise duty at 12% adv. prior to 07.12.2008 and

8% adv. with effect from 07.12.2008 besides levy of education cess at 2% plus 1% of basic duty. The period of demand is from February 2008 to October 2009. On 16.11.2009 the Officers conducted surprise visit of the premises of the appellant. The appellant had obtained registration only on 21.11.2008 and had filed ER1 returns from February 2009 only. During the search operations, 1767 bundles of safety matches manufactured (lovely brand 140 bundles, Sun 447, Gorka-367, Tatu Car – 276, Dhalwar-149, Doda -86, Emmarald – 300 bundles) were seized by the officers. The value of the seized goods was arrived as Rs.4,23,000/-. The goods were later provisionally released to the appellants on execution of Bank guarantee of Rs. 1,05,750/- and also on execution of Bond. The statement of Shri Nagarajan, Proprietor of the appellant Company was recorded on 03.12.2009 and later on 15.04.2010. After investigation, SCN dated 10.05.2010 was issued which after adjudication confirmed duty of Rs. 4,64,606/- with interest besides duty demand of Rs.32,202/- on seized goods and imposed equal penalty under Section 11 AC of the Act. In appeal, the Commissioner (Appeals) upheld the same. Hence this appeal.

2. On behalf of the appellant, the Ld. Counsel, Shri M. Kannan was represented by the Ld. Counsel Shri Venkatachalam. He argued that quantification of duty based on utilization of 4 kgs of Potassium Chlorate is incorrect. The appellant had to pay duty of only Rs. 3,74,740/- when calculated

on the basis of consumption of Potassium Chlorate at 5 kgs. per unit. Shri Nagarajan, Proprietor had given in his statement that the dipping mixture contained 5 kgs. of Potassium Chlorate. This statement was later modified by the department as 4 kgs. without any basis. That the use of Potassium Chlorate per unit is 4.80 to 5 kgs. and therefore adoption of 4 kgs. is not correct. The duty demand raised on the basis of such low rate consumption is excessive and requires to be set aside. He argued that the appellant has already taken provisional release of the seized goods which were later cleared on payment of duty. The duty on such goods seized and cleared (1767 bundles) would be only Rs. 22,356/- against Rs. 32,202/- confirmed in the order. Since the appellant has already cleared the goods on payment of duty, further demand of duty on this count is incorrect. It is further submitted that there was no suppression of facts and therefore imposition of penalty under Section 11 AC of the Act, especially penalty equal to that of the duty in respect of 1767 bundles of safety matches is incorrect. The Ld. Counsel also argued that the appellant has not been given the option of paying reduced penalty of 25% by the authorities below.

3. The Ld. AR, Shri K. Veerabhadra Reedy, JC, reiterated the findings in the impugned order.

4. Heard both sides and perused the records.

5.1 In the grounds of appeal, para-4 (page16) the appellant's have stated that they are liable to pay duty amount of Rs.3,74,740/- and seeks to reduce the demand confirmed to this extent. The main contention put forward is that the value arrived for the clearance on the basis of consumption of Potassium Chlorate is not correct and that the ratio of 5 kgs of Potassium Chlorate per 100 match units has to be adopted, instead of 4 kgs of Potassium Chlorate. The adjudicating authority has relied on the evidence of finished products manufactured and cleared by the appellants during the relevant period. This was conceded by Sh. Nagarajan in his statement given later on 15.04.2010. Appellants have not produced any reliable evidence to contradict the quantity of products cleared. So they cannot contend to adopt 5 kgs merely on the statement given by Shri Nagarajan. The Commissioner (Appeals) has addressed this contention of the appellant in para 11.1 of the impugned order. It was seen that during the period from February 2009 to October 2009, the appellant company had utilized 4606 kgs. of Potassium Chlorate and manufactured 123754 units of matches. From this it was arrived that the appellants have manufactured 100 units of matches with 4 kgs of Potassium Chlorate. The average value of matches per bundle was arrived on such calculations. We do not find any error in such quantification of demand, though the appellant seeks the same to be modified and to be calculated adopting 5 kgs. of Potassium Chlorate per 100 units.

5.2 The second grievance put forward is that an amount of Rs.32,303/- has been demanded as duty payable on 1767 bundles of matches seized at the time of visit by the officers. These goods were provisionally released to the appellants and later cleared on payment of duty and therefore demand of duty on the same goods for the second time cannot sustain. Instead of confirming the duty demand on the seized goods and appropriating the duty already paid by the appellant has again passed order confirming the duty in this regard, which in our view cannot sustain. Thus, in our view, confirmation of duty demand of Rs. 32,202/- requires to be set aside, and has to be reconsidered. The adjudicating authority has also imposed redemption fine of Rs.32,202/- on the seized goods. Taking note of the facts we are of the view that the said redemption fine is unwarranted, and requires to be set aside which we hereby do.

6. From the above discussions, we hold that the duty demand of Rs. 4,64,606/- for the period February, 2008 to October, 2009 requires no interference and is upheld.

The duty demand of Rs. 32,202/- payable on 1767 bundles of matches is set aside and remanded to the adjudicating authority, who shall consider this issue alone afresh on the basis of the discussions made above.

7. The appeal is partly allowed and partly remanded in above manner with consequential reliefs, if any.

(Operative part of the Order pronounced in the open Court)

(MADHU MOHAN DAMODHAR) (SULEKHA BEEVI C.S.)
MEMBER (TECHNICAL) MEMBER (JUDICIAL)

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