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

Appeal No. E/40095/2017

(Arising out of Order-in-Appeal No.152/2016 dated 14.12.2016 passed by the Commissioner of Central Excise (Appeals – I), Coimbatore at Madurai)

M/s. Plasweave Pvt. Ltd. Appellant

Vs.

CCE, Tirunelveli Respondent

Appearance

Shri M. Kannan, Advocate for the Appellant
Shri S. Govindarajan, AC (AR) for the Respondent

CORAM

Hon'ble Ms. Sulekha Beevi C.S., Member (Judicial)

Date of Hearing / Decision: **28.05.2018**

Final Order No. **41627 / 2018**

Brief facts of the case are that during the course of audit, it was noticed that in the ER-1 returns relating to principal input for the months of January and February, 2011, the closing stock of these months in respect of PP granules and MB granules did not tally with the opening stock of February 2011 and there was a shortage of 7850 Kgs. and 774.5 Kgs. respectively of the above said granules. Show cause notice was issued proposing to demand and recover the credit availed on these inputs and for imposing penalties. After due process of law, the original authority confirmed the demand, interest and imposed equal penalty which was upheld by the Commissioner (Appeals). Hence this appeal.

2. The ld. counsel Shri M. Kannan appearing on behalf of the appellant submitted while accounting opening stock for the month of December 2010, the appellant had erroneously accounted to the tune of Rs.8624.50 Kgs. as excess and the same was rectified by short accounting 8624.50 Kgs. in the opening account for the month of February 2011. The shortage was only because of the rectification doen by the appellant in their accounts due to the error which was committed for the earlier period wherein excess quantity was entered. That there was no intention to evade payment of duty and there is no actual shortage of stock as alleged by the department. It is argued that the ld. counsel that in ER6 returns, they had properly reflected the shortage and there was no suppression. The rectification made good could not to be linked in the ER 6 returns as there was no facility in such returns of making that the previous error in account has been rectified by showing shortage. The department does not have a case that the conduct and accounting are not proper. Further, the Range Officer vide letter dated 21.9.2012 had raised the issue by a query to which the appellant had replied vide their letter dated 23.11.2012 and 2.5.2013 explaining the error committed in the accounts and rectification of the same. Even

though the department was fully convinced, the show cause notice has been issued after more than one year after CERA raised the objection. He submitted that the period involved being February 2011, the show cause notice issued on 23.4.2015 is time-barred.

3. The ld. AR Shri S. Govindarajan supports the findings in the impugned order.

4. Heard both sides.

5. The duty demand is Rs.97,543/-, which has been confirmed along with interest and equal penalty has been imposed under section 11AC of the Act.. The ld. counsel for appellant has adverted to para 6 of Order-in-Original wherein it is brought out that for the period November 2010 and December 2010, the appellant shown excess quantity of inputs which was thereafter rectified by showing shortage in the month of January and February 2011. The Table in the Order-in-Original, which explains the facts, is reproduced as under:-

Raw material Tariff Item	Closing Stock of Nov. 10 – Kg.	Opening stock of Dec. 10-Kg.	Difference – Kg.
3902 1000	18,275	26,125	7850 Excess
32061190	10,699.50	11,474	774.50 Excess
	Closing Stock of Jan ‘ 11 – Kg.	Opening Stock of Feb. ‘ 11 Kg.	
39021000	31,150	23,300	7,850 – Short
32061190	11,729	10,954.50	774.50 – Short

6. It is very much clear from the records that there was no actual shortage and only was an error in the accounting which

was later rectified. Department does not have a case that the appellant has diverted the raw materials. Hence, I am of the view that the disallowance of credit cannot sustain on merits.

6.1 It is also seen that the appellant had replied to the query raised by the Range Officer explaining the error in accounting and the subsequent rectification. Even then show cause notice for the period February 2011 has been issued only on 23.4.2015 invoking extended period alleging suppression of facts. There is absolutely no evidence to establish suppression of facts with intent to evade payment of duty. Hence the demand is time-barred.

7. In the result, the appellant succeeds both on merits as well as on limitation. The impugned order is set aside and the appeal is allowed with consequential relief, if any.

(Operative portion of the order was
pronounced in open court)

(**Sulekha Beevi C.S.**)
Member (Judicial)

Rex