CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNALSOUTH ZONAL BENCH CHENNAI

S.No.	Appeal	Appellant	Respondent
1.	E/394/2011	Maharaja paper Board (P) Ltd.	Commissioner of Central Excise, Tirunelveli
2.	E/393/2011	P.G.Radhakrishnaraja, M.D.	Commissioner of Central Excise, Tirunelveli
Arising out of Order-in-Appeal No.194 & 195/2011 dt. 29.04.2011 passed by the Commissioner of Central Excise (Appeals) Madurai			

Appearance :

Shri M. Kannan, Advocate
For the Appellants

Shri R. Subramaniyan, AC (AR)
For the Respondent

CORAM :

Hon'ble Shri Madhu Mohan Damodhar, Member (Technical)
Hon'ble Shri P. Dinesha, Member (Judicial)

Date of hearing / decision :19.06.2018

FINAL ORDER No. 41871-41872 / 2018

PerMadhu Mohan Damodhar

The facts of the case are that M/s.Maharaja Paper Board (P) Ltd., appellant in E/394/2011 (hereinafter referred to as appellant-company), were engaged in manufacture of paper boards for availing SSi exemption Notification No.8/2003-CE. The appellant company had also declared that they undertook job work for one Universal Paper Conversion (UPC, for short) under Notification NO.214/86-CE. Consequent to investigations conducted by department officers, it appeared that appellant company had manufactured and cleared final products without accounting the inputs and clearance in Form-IV and in RG-1 Registers respectively. It also appeared that appellant company had obtained waste paper from various suppliers without bills on payment in cash; that there was deliberate non-accountal of receipt of waste paper and finished goods; that there was suppression of production and clearance. Accordingly, a show cause notice was issued on the appellant company and also on Shri P.G.Radhakrishnaraja, their Managing Director, proposing demand of Rs.12,80,462/- with interest for the period 1.4.2006 to 08.10.2007 and also imposition of penalties under various provisions of law. In adjudication, the adjudicating authority vide order dt. 30.03.2010 confirmed the proposed demand with interest, imposed equal penalty under Section 11AC of the Central Excise Act on the appellant company and a penalty of Rs.10,000/- each on Shri P.G. Radhakrishna Raja and one Shri T. Balakumar under Rule 26 of the Central Excise Rules, 2002. In appeals filed by the appellant company and Shri P.G. Radhakrishna Raja to Commissioner

(Appeals) who vide impugned order dt. 29.04.2011 upheld the order of the original authority. Hence these appeals.

2.1 Today when the matter came up for hearing, on behalf of the appellants, Ld. Advocate Shri M.Kannan submits that the second appellant Shri P.G. Radhakrishna Raja (Appeal No.E/393/2011) had passed away on 12.04.2013 and submitted Death Certificate dt. 16.04.2013 issued by Rajapalayam Municipality, Tamil Nadu. He submits that the appeal of late Shri P.G.Radhakrishna Raja would be abated in view of the Rule 22 of Customs, Excise and Service Tax Appellate Tribunal (Procedure) Rules, 1982.

2.2 In respect of appeal E/394/2011, Ld.Advocate made the following submissions :

i) Value of paper board for the purpose of quantification should be fixed at Rs.12 per kg. as adopted by the appellant company and the quantification of the differential duty would therefore be required to be re-determined.

ii) As the appellant company had not collected any duty amount from UPC, the demand of differential duty may also be re-determined by extending “cum duty benefit”.

3. Heard ld. A.R Shri R. Subramaniyan who supports the impugned order.

4. Heard both sides and have gone through the facts.

5.1 Ld. Advocate has submitted that duty liability requires redetermination by adoption of value of paper board at Rs.12 per kg. Ld. Advocate has also drawn our attention to invoices of the appellant company made out to UPC dt. 26.12.2007 & 10.10.2007 in pages 98 & 99 of the appeal book to point out that the value in both these invoices is Rs.12,000/- per ton which works out to Rs.12 per kg. While this may indeed be the case, no further evidence has been submitted before any of the lower authorities or even before this forum, to establish that the pricing of Rs.12000 per ton was the rule and not the exception. On the other hand, we find that SCN in para 15.1 to 15.5 has elaborately gone into the *raison d'etre* for adopting the value of Rs.13 per kg. We find that the very same invoices had been produced before the lower appellate authority who, in Para 13 of the impugned order has noted that they were invoices beyond the period of dispute. The plea of the appellant on this score is therefore found to be specious, and is therefore rejected.

5.2 On the plea for cum-duty benefit, we find that this is a case where the entire transactions were done clandestinely, right from the getting raw materials, to the production and the clearances all of which were sought to be kept away from the eye of the department.

In such a scenario, we are of the firm opinion that there cannot be any mitigation of the tax liability by grant of cum duty benefit. On this score also, appellants' plea fails.

5.3 In the event appeal of the appellant company in E/394/2011 is dismissed.

6. To sum up —

i) Appeal E/393/2011 abates due to death of the appellant.

ii) Appeal E/394/2011 is dismissed.

(operative part of the orderpronounced in court)

(P. Dinesha)
Member (Judicial)

(Madhu Mohan Damodhar)
Member (Technical)

gs