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

E/688/2007

(Arising out of Order-in-Appeal No. 103/2007 (M-II) dated 21.06.2007 passed by the Commissioner of Central Excise (Appeals), Chennai).

M/s. Sapna Packaging Industries — Appellant

Vs.

CCE, Chennai-II — Respondent

Appearance

Shri G. Natarajan, Advocate,
for the appellants

Shri A. Cletus, ADC (AR)
for the Respondent.

CORAM :

Hon'ble Shri Madhu Mohan Damodhar, Member (Technical)

Date of Hearing/Decision: 28.06.2017

FINAL ORDER Nos. 41103 **/ 2017**

The brief facts of the case are that the appellants are engaged in the manufacture of corrugated boxes falling under CTH 4819.1010. On scrutiny by the department it appeared that the appellant had manufactured and cleared the goods in excess of Rs.100 lakhs, the limit prescribed under SSI Notification No. 9/2003 dated 01.03.2003 during the years 2001-02 and 2002-03.

Accordingly proceedings were initiated inter-alia proposing demand of differential duty of Rs.4,50,148/- along with interest thereon and imposition of equal penalty under various provisions of Central Excise Act, 1944. These proposals were confirmed by the original authority and upheld by the Commissioner (Appeals) vide impugned order dated 21.06.2007. Aggrieved, appellants are before this forum.

2. Today when the matter came up for hearing, the Ld. Advocate Shri G. Natarajan, submits that initially corrugated boxes were exempted from levy of Central Excise duty, however the duty liability was imposed on them in 2001. He submits that they are not contesting the demand of differential duty liability, however they pray for allowance of cenvat credit during the period when they are liable to discharge duty liability. Ld. Advocate also seeks relief from imposition of penalty.

3. On the other hand, Ld. AR submits that clandestine removal effected by double invoicing has been made in this case, which has been voluntarily admitted by the proprietor of the firm and hence the appellant cannot escape from penalty. With regard to the prayer of the appellant for being permitted to avail cenvat credit, ld. AR says that the show cause notice itself extended cum-duty-benefit; that this aspect has already been considered by both the authorities below, who have found that no evidence has been given by the appellant that the materials reflected in the invoices have been received in the factory of manufacture.

4. Heard both sides and gone through the submissions made by both sides.

5. On going through the facts it clearly emerges that the appellant had followed a modus operandi of issuing double set of invoices for clearing the goods without discharge of duty liability even after reaching the exemption limit of one crore. It is not the case where on account of imposition of duty liability on otherwise exempted product, viz., corrugated boxes, the appellant had been in some confusion with respect to duty liability and for which reason the present differential duty liability has arisen. On the other hand, the appellant though in the know of their duty liability, intentionally evaded that liability by devious means including the issue of duplicate set of invoices. From para-4 of the impugned order it also emerges that the department has corroborated this conduct with documentary evidence. It is also seen that at the show cause notice itself cum-duty benefit was extended to the appellants. The aspect of extending cenvat credit benefit was considered and rejected with cogent reasons by the authorities below. In the circumstances, I do not find any infirmity in the impugned order, for which reason the appeal is dismissed.

(Order dictated and pronounced in the open Court)

28/06/2017

(MADHU MOHAN DAMODHAR)
MEMBER (TECHNICAL)

BB

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