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

E/50/2009

(Arising out of Order-in-Appeal No. 180/2008-CE (SLM) -183 dated 18.12.2008 passed by the Commissioner of Central Excise (Appeals), Salem)

Commissioner of Central Excise, Salem — Appellant

Vs.

M/s. Sri Vari Packs — Respondent

Appearance

Shri S. Govindarajan, AC (AR) for the Appellant
None for the Respondent

CORAM

Hon'ble Shri D.N. Panda, Judicial Member
Hon'ble Shri Madhu Mohan Damodhar, Technical Member

Date of Hearing / Decision: **24.03.2017**

Final Order No. 40591/2017

Per D.N. Panda

None present for the respondent.

2. The order of the learned Commissioner (Appeals) on the first issue as to eligibility of SSI exemption appears in para 6.2 to 6.5 of the impugned order. He has only created confusion without understanding what is the controversy.

3. Learned AR explains that the respondent was a manufacturer of certain goods and to avail SSI exemption, it

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created a fictitious unit called M/s. Coastal Paper Packaging. Once a fictitious unit is created to make abuse of the process of law the respondent should have been deterrently dealt under law with penal consequence. But that was not the approach of the learned Commissioner (Appeals) in principle. Therefore, he has to re-adjudicate the matter on the principal issue as to whether the fictitious unit has any recognition in law and whether there is any bonafide claim by the appellant.

4. We make it clear that the fictitious unit being non-existent in law is not entitled to any benefit under law. Therefore, learned Commissioner (Appeals) has to clearly come to a factual finding what was the *modus operandi* followed by the respondent M/s. Sri Vari Packs in respect of export and clearances. If he is satisfied that export was made by fictitious unit, the respondent should not be granted any relief in respect of the export. If otherwise, that shall be considered appropriately under law. The clearances made by the fictitious unit if merely are sham transaction, respondent is liable to duty thereon and SSI benefit if any admissible is to be allowed taking the entire clearances, that is both existing and fictitious unit into consideration.

5. So far as cum-duty benefit is concerned, there is no material to suggest that the prices charged were inclusive of

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6. Revenue's appeal having been confined to the above two issues, the matter is remanded to learned Commissioner (Appeals) to call for the entire adjudication record and reexamine the entire issue taking the evidence into consideration as available on record, without taking any fresh evidence at the readjudication stage. The pleadings of the respondent, if any, shall be recorded and a reasoned and speaking order passed.

7. In the result, Revenue's appeal is remanded to learned Commissioner (Appeals) with the aforesaid direction.

(Dictated and pronounced in open court)

05/04/2017

(**MADHU MOHAN DAMODHAR**)
Technical Member

4.4.2017

(**D.N. PANDA**)
Judicial Member

Rex

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