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

Application No. E/Misc/40205/2017 &
Appeal No.E/503/2008

[Arising out of Order-in-Appeal No.99/2008 (SLM) dt. 31.07.2008 passed by the Commissioner of Central Excise (Appeals), Salem]

Sivasidh Packages Appellant

Versus

Commissioner of Central Excise & ST,
Salem Respondent

Appearance:

Shri J. Shankarraman, Advocate
For the Appellant

Shri K.P. Muralidharan, AC (AR)
For the Respondent

CORAM :

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

Date of hearing / decision : 12.07.2017

FINAL ORDER No. 41211/2017

Per Bench

Issue relates to alleged non-eligibility of SSI exemption in respect of the appellant on the allegation that the unit had floated fictitious non-existent companies so as to manipulate the purchase production and sales details and kept their clearances well within the exemption limit of Rs.1 crore. The original authority, in *de novo*

Customs, Excise & Service Tax Appellate Tribunal adjudication ordered by the Commissioner (Appeals), has redetermined and confirmed the duty liability of Rs.5,21,702/- along with interest thereon and penalties under various provisions of the law. In appeal, Commissioner (Appeals) set aside the enhancement of penalty under Section 11AC of the Act and fresh imposition of penalties under erstwhile Rule 173Qand Rule 25 of the Rules, however, upheld the remaining part of the order of the original authority. Hence this appeal.

2. Today when the matter came up for hearing, Ld. Advocate refers to an application made on behalf of appellant on 21.05.2009 enclosing additional grounds of appeal and requested that the same may be taken on record along with the appeal petition earlier filed. The ld. advocate submits that while arriving at the aggregate value of clearances, value of export clearances under Form-H certificate had not been taken into consideration, both in the adjudication and appellate proceedings. Ld. counsel fairly concedes that these details had not been produced by the appellant in such proceedings, and he submits that in case the fact of these export clearances are considered, there would be a substantial change in the aggregate value of clearances and on this count, matter may be remanded for reconsideration on the basis of Form-H certificates evidencing export.

Customs, Excise & Service Tax Appellate Tribunal

2.1 Ld. advocate also submits that cenvat credit eligibility has not been granted to them in spite of having produced documents supporting their claim and, for this reason also, he requests that the matter may be remanded with suitable directions.

3. On the other hand Ld. A.R for Revenue takes us to page 35 of the appeal papers where the aggregate value of clearances has been worked out reducing the exemption limit. Ld. A.R submits that value of export clearances also may have been taken into account in such calculation.

3.1 Regarding cenvat credit eligibility, Ld. A.R submits that the procedure for claiming cenvat credit on the date of crossing the exemption limit as set out in erstwhile Rule 3 (2) of Cenvat Credit Rules, 2002 will require to be followed. He also submits that the aspect of cenvat credit eligibility has been addressed by both the lower authorities.

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

5. It is evident that the matter will have to be sent back for *de novo* consideration in view of the additional submissions made by the ld. advocate in respect of the export clearances made through Form-H certificates, the details of which had admittedly, not been placed before any of the lower authorities. So ordered. Matter is accordingly remanded to the original authority for *de novo* consideration. In these

Customs Excise & Service Tax Appellate Tribunal proceedings, the adjudicating authority will take into account the value of export clearances as claimed by appellant subject to requisite evidence being put forth to substantiate the same. He shall, likewise, consider the claim of the appellant on the matter of eligibility of cenvat credit, also taking into account the contentions of the Ld. A.R in para 3.1 above. Needless to say, that the penalty imposed under Section 11AC will be recalculated based on the eventual duty liability that will be arrived at by the authority in such adjudication.

6. Appeal is allowed by way of remand in above terms. MA is also disposed of accordingly.

(dictated and pronounced in court)

(Madhu Mohan Damodhar)
Member (Technical)

(Sulekha Beevi C.S)
Member (Judicial)

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Customs, Excise & Service Tax Appellate Tribunal

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