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

E/41242,41243/2013

[Arising out of Orders-in-Appeal No.56 & 58/2013 [P], dated 20.02.2013 passed by the Commissioner of Central Excise (Appeals), Chennai]

M/s. PREMIUM POLY ALLOYS
M. SANKARANARAYANAN — APPELLANT/S

Versus

COMMISSIONER OF CENTRAL EXCISE, PUDUCHERRY — RESPONDENT

Appearance:

For the Appellant — Shri G. Natarajan, Adv.
For the Respondent — Shri K.P. Muralidharan, AC (AR)

CORAM:

Hon'ble Smt. Archana Wadhwa, Member (Judicial)

Date of hearing **03-07-2017**
Date of pronouncement **05-07-2017**

FINAL ORDER NOs. 41123 - 41124 / 2017

Per Archana Wadhwa:

As per facts on record, the appellant M/s. Premium Poly Alloys is engaged in the manufacture of specific plastic compounds known as "fillers". The appellant is supplying their final product to various Units including one M/s. Kalaimahaa Plastic Industries (hereinafter referred to as 'KPI'). The said KPI was engaged in the manufacture of plastic sheets out of the said "fillers".

1.1 Factory of KPI was visited by Central Excise officers and certain records were seized from their premises. One ledger under the name of M/s. Premium Poly Links (hereinafter referred to as 'PPL') along with certain other documents were also seized from the premises of KPI, showing supply of "fillers" to them. On the basis of the same, Revenue entertained a view that non-duty paid "fillers" were supplied by the present appellant M/s. Premium Poly Links and the entries made in the ledger under the name of M/s. Premium Poly Links relates to the present appellant. Accordingly, as a follow-up action, their premises was also visited but no discrepancy were found and no incriminating documents were recovered. During the further course of investigation, statements of the appellant-General Manager Shri M. Sankaranarayanan, who is the second appellant, along with the statement of one of the transporters were recorded. Inasmuch as, the entries made in the said ledger recovered from KPI's premises did not match with the entries made by the appellant in their statutory records showing clearance of the "fillers", Revenue was of the view that the said goods stand cleared clandestinely by the appellant.

2. In the above background proceedings were initiated against the appellants by way of show-cause notice dated 07.04.2010 proposing to confirm the differential duty of Rs.9,55,201/- in respect of "fillers" allegedly cleared by them during the period Apr.06 to Dec.'06 without payment of duty. The said proceedings resulted in confirmation of demand against the manufacturing Unit along with penalties on the partner and General Manager. The order passed by the original adjudicating authority was upheld by Commissioner (Appeals) in respect of the manufacturing Unit along with upholding of confirmation of interest and imposition of 100% penalty. However, penalty imposed on the partner was set aside and penalty imposed upon the General Manager was reduced from Rs.1,00,000/- to Rs.10,000/-. Hence, the present two appeals by the manufacturing Unit as also by the General Manager.

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3. Shri G. Natarajan, Advocate appeared for the appellant submits that the entire demand of the Revenue is based upon a ledger recovered from the sister Unit i.e., third party premises of KPI. In fact, the said ledger is captioned as "PPL", whereas, their company name is "PPA". As such, it is their contention that the ledger does not belong to them. Further, the description of the goods mentioned in the ledger is as C40, T10 etc., whereas, the goods manufactured by them are named as "Prima Fab 715". As such, by no stretch of imagination, the entries made in the said ledger can be related to company.

4. Learned Advocate further submitted that they are supplying "fillers" to M/s. KPL but all such transactions are reflected in their statutory records. It further stands argued that as per settled law no duty liability can be fastened upon the assessee on the basis of the records recovered from the third party's premises. The Revenue has not been able to produce any evidence to show purchase of excess raw materials, transportation of the same to the appellant's factory, manufacture of excise goods and receipt of unaccounted sale proceeds. In the absence of such evidences corroborating the factum of clandestine removal, the confirmation of duty on the finding of clandestine removal is against the settled principle.

4.1 Learned Advocate also explains that the statement of the transporter that he has transported the goods to the factory of KPI is a general statement inasmuch as they were admitted supplying the goods to KPI, which transportations are reflected in their records. Similarly, statement of the General Manager, without any reference to specific cases is a general statement and in the absence of any corroborative evidence cannot be relied upon.

5. Learned Departmental Representative for the Revenue reiterates the reasoning of the lower authorities and submits that inasmuch as the entries made in the ledger account recovered from the KPI factory clearly reflect the receipt of the materials from the present appellant, the confirmation of demand is sustainable. Accordingly, he prays for rejecting the appeal.

6. After considering the submissions made by both sides and after going through the impugned orders, I find that the Revenue's case is solely based upon the ledger recovered from KPI's premises. Admittedly, the appellant is supplying "fillers" to M/s. KPI. However, the said ledger is captioned as "Premium Poly Links", whereas, the appellant's name is "Premium Poly Alloys". Not only that, the entries in the said ledger describes the goods as C40, T10, C Bages or T Bags, whereas, the goods are being described by appellant in various invoices as "Premium Fab 715", "PF 705", "PS 503" etc. The lower authorities have simplicitor ignored the said plea of the appellant on the ground that KPI has stated that the said goods have been supplied by the appellant and as such the said plea of the appellant lacks merits. The Revenue has not been able to establish clandestine removal by making further investigation and producing evidences on record as regards the purchase of the raw material and actual manufacture and clearances of their final product. It is well settled law that the allegation of clandestine removal are required to BE supported by production of sufficient evidences to establish the clandestine manufacture and clearance. Admittedly, no such evidence stand

produced. Further, during the visit of the officers in the appellant's factory neither any unaccounted raw material nor final product was found nor any incriminating documents recovered. No doubt, that Revenue is not expected to prove its case by mathematical precision by establishing and proving each and every link but some evidence indicating such clandestine activities is required to be adduced by them. Demands cannot be confirmed on the basis of entries made in the records of third person. In the case of *Rama Shyama Papers Ltd. Vs Commissioner of Central Excise, Lucknow* reported in *2004 (168) E.L.T.494 (Tri.-Del.)*, it was held that liability cannot be fastened on an assessee on the strength of documents seized from the possession of third party in the absence of corroborative evidence/material. Similarly, in the case of *Charminar Bottling Co (P) Ltd., Vs Commissioner of Central Excise, Hyderabad-II* reported in *2005 (192) E.L.T.1057 (Tri.-Del.)*, the Tribunal held that the allegation of clandestine removal based on third party documents without corroborative evidences is not sustainable. The amount of raw material required by the appellant for manufacture of the allegedly clandestinely removed "fillers" is to the extent of 200 tonnes. There is nothing on record to show as to how such a huge quantity of raw materials was received and used in the production of alleged clandestinely removed final product. There is no statement of any Production Manager or the labour etc., to show that such a huge quantity of the final product was manufactured by them. At the initial stage of investigation they denied having supplied such clandestine material to M/s. KPI. As such, in view of the settled position of law as recorded in the decisions mentioned above, the confirmation of demand of duty on the company cannot be upheld. For the same reasons, penalty imposed upon the appellant as well as upon the General Manager is required to be set aside. In view of the above, I set aside the impugned order and allow both the appeals with consequential relief to the appellants.

(To be pronounced in open court on **05-07-2017**) 5/7/17

5/7/17

(ARCHANA WADHWA)
MEMBER (JUDICIAL)

ksr
05-07-2017

Customs, Excise & Service Tax Appellate Tribunal

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सहायक पंजीकार / Asst. Registrar
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चेन्नै / Chennai