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

E/792/2007

(Arising out of Order-in-Appeal No. 66/2007 CEX dated 27.08.2007 passed by the Commissioner of Central Excise (Appeals), Coimbatore).

M/s. M.R.P. Tapes : Appellant

Vs.

CCE & ST, Coimbatore : Respondent

Appearance

Shri C. Saravanan, Adv.,
For the appellant

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

CORAM

Hon'ble Shri D.N.PANDA, Judicial Member
Hon'ble Shri MADHU MOHAN DAMODHAR, Technical Member

Date of Hearing/Decision: 15.02.2017

FINAL ORDER No. 40394 /2017

Per: D.N.Panda,

After a long enquiry on the allegation of clandestine removal, claim of SSI benefit as well as cum-tax benefit, appellant submitted that in so far as the financial year 1995-96 is concerned, in the course of search, investigation found certain unaccounted transactions made through 86 parallel invoices. But that allegation is baseless. The duty element involved in such invoices was Rs.3,90,442/- (Rs. 1,65,946/- + Rs.2,24,496/-). Apart from above, Revenue alleges that there were ledger entries showing clandestine clearance not disowned by the appellant. 462 invoices (167+243+52) were recorded in the ledger resulting in unaccounted clearance which needs scrutiny by Tribunal. That involved duty element of Rs. 5,50,459/-. But no such duty demand on these transactions is leviable without tangible evidence came to record. So also appellant is entitled to cum-duty benefit (abatement).

2. Revenue's plea is that the above said parallel invoices and ledger entries demonstrating unaccounted clearance has caused prejudice to Revenue for which the appellant does not deserve any consideration.

3. Heard both sides and perused the records.

4. In absence of any cogent and credible evidence led by appellant to repel Revenue's contention, entire allegation of Revenue is proved. The incriminating evidence i.e. parallel invices aggregating to 86 discovered in the course of investigation and ledger entries relating to 462 invoices (167 +243+52 invoices) not disowned by appellant demonstrated clandestine removal. That established prejudice caused to Revenue for no payment of duty on all the 538 invoices.

5. At this juncture, prayer of the appellant is that SSI exemption is permissible to it for the financial year 1996-97 which deserves consideration. Appellant also says that if recorded clearances as well as the alleged clandestine clearances are aggregated, such aggregate figures does not exceed the ceiling prescribed to grant SSI benefit to the appellant. That is also subject to cum-duty benefit. Similarly, the contention of the appellant in respect of the

demand of 1995-96 is that it shall enjoy the cum-duty benefit. But we do not find any material from record to show that the discovered invoices revealed any mention of duty element therein. Therefore appellant is not entitled to cum-duty benefit. Further, law is well settled that an unaccounted transactions not known to law does not confer any right on the claimant to get any benefit under law. Therefore appellant shall not get any cum-duty benefit.

6. Only to determine the SSI benefit if any permissible, the matter is remanded to ld. Adjudicating authority for consideration. If the appellant is entitled to SSI benefit for the financial year 1996-97, taking the recorded transaction and clandestine clearances that shall be considered by the authority. If the authority is satisfied that the appellant's conduct is not questionable, there shall not be any penalty. Otherwise that may be levied in accordance with law granting fair opportunity of hearing to the appellant.

7. Ld. Counsel at this stage says that there being no provision for penalty under Section 11AC during the material period since that section came into force w.e.f. 28.08.96, appellant is not liable to penalty under that section prior to that period. There is no difference to such proposition

8. In the result appeal is allowed partly to the above extent and remanded to the Adjudicating Authority with above direction.

(Dictated and pronounced in open Court)

06/03/18

(MADHU MOHAN DAMODHAR)
TECHNICAL MEMBER

6/3/2018

(D.N. PANDA)
JUDICIAL MEMBER

BB

Customs, Excise & Service Tax Appellate Tribunal

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