CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, CHENNAI

COURT HALL - I

Excise Appeal No.42443 of 2014

(Arising out of Order in Appeal No. 146 & 147/2014 dated 12.9.2014 passed by the Commissioner of Central Excise (Appeals), Madurai)

M/s. Universal Paper Conversions **Appellant**
527/7, Elavankulam Road
Sankarankoil, Tirunelveli – 627 756.

Vs.

Commissioner of GST & Central Excise **Respondent**
No. 4, Lal Bahadur Shastri Marg
C.R. Buildings, Bibikulam
Madurai – 625 002.

AND

Excise Appeal No.42462 of 2014

(Arising out of Order in Appeal No. 146 & 147/2014 dated 12.9.2014 passed by the Commissioner of Central Excise (Appeals), Madurai)

T. Balakumar, Managing Partner **Appellant**
M/s. Universal Paper Conversions
527/7, Elavankulam Road
Sankarankoil, Tirunelveli – 627 756.

Vs.

Commissioner of GST & Central Excise **Respondent**
No. 4, Lal Bahadur Shastri Marg
C.R. Buildings, Bibikulam
Madurai – 625 002.

APPEARANCE:

None for the Appellants
Shri R. Rajaraman, Authorized Representative for the Respondent

CORAM

Hon'ble Shri P. Dinesha, Member (Judicial)
Hon'ble Shri Vasa Seshagiri Rao, Member (Technical)

Final Order Nos. 40766 & 40767/2024

Date of Hearing : 11.06.2024
Date of Decision: 28.06.2024

Per P. Dinesha,

These appeals are filed by the Appellants against the order of Commissioner (Appeals), Madurai, who vide Order in Appeal No. 146 & 147/2014 dated 12.9.2014 has upheld the demands against the appellants.

2. Today when the matter was taken up for hearing, there is no representation for the Appellants and nor was there any request for adjournment. From the previous order sheet notings, we find that there has never been any representation despite the service of notice on the Appellants and hence we have no option but to decide the appeals on merits, *ex-parte* after hearing the representative for the Revenue. Accordingly, heard Shri Rajaraman, learned Authorized Representative. He would submit that in respect of similarly placed Appellants in the case of Maharaja Paper Board Pvt. Ltd. ('MPB' for short), this Bench has dismissed the appeals filed by the Appellants there in, by upholding the impugned order there in; the Appellant herein is the one who got paper boards manufactured by the said MPB on job work basis who is alleged to have clandestinely removed paper boards. It was thus pleaded that fact of clandestine removal having been established, the duty has been demanded properly from the appellant and therefore, the appeals are required to be dismissed.

3. We have gone through the grounds of appeal placed in the appeal memorandum. It is the case of the appellants that the impugned order confirming the demand of Central Excise duty is liable to be set aside for the reasons that reliance is placed heavily on the statement of T Balakumar, Managing Partner and other than that, there was no other evidence placed on record by the Revenue to suggest the alleged clandestine removal. Further, it is their case that they sought for cross-examination of the Superintendent of Central Excise and other officers, but however, the same was not provided, the Joint Commissioner who adjudicated and passed the Order in Original did not provide reasonable opportunities to the appellants since it was the Additional Commissioner who was seized of the matter and no other buyers who purchased cones from the appellant were examined by the Revenue. Further, when the demand of duty was confirmed against the job worker i.e. MPB, then the demand for clandestine removal against the appellant cannot survive.

4. The Show Cause Notice dated 23.10.2010 has relied upon as many as 40 documents out of which, most of the documents relate to MPB and hence, the same are not of any relevance to the case of the Appellant. It is thus pleaded that the documents have been relied upon mechanically, just to fasten the duty

liability on this appellant also. Moreover, no Show Cause Notice at all was issued to any of the buyers, which are referred at para 11(3) of the Show Cause Notice like Golden Paper Conversions, Super Paper Cones, Excel Paper Conversions & S.M. Paper Conversions. Further, it has been argued that statement of Balakumar is required to be considered in total and not in bits and pieces as done by the adjudicating authority. The appellant has also relied on various judicial precedents, as in paragraph 7 page 19. In a nutshell, it is contended that the impugned order has been passed without adhering to the principles of natural justice since the appellants had specifically requested for adjournment for engaging a counsel, but without rejecting the said request, the order has been passed and therefore, the said order is required to be set aside. This apart, it is also specifically contended that the period of demand is April 2006 to October 2007, the payment was made on 16.10.2007 for which the Show Cause Notice dated 23.12.2010 is clearly barred by limitation.

5. We have considered the grounds of appeal and also the order of this bench which is relied upon by the learned Assistant Commissioner. We find that there appears to be a case made out by the appellant insofar as violation of principles of natural justice is concerned. To start with, it is contended that the

statement of Balakumar is not considered in total, whereas the Revenue has picked up only the selective part, which is not justified. Other than this, there is no denial by the lower authorities that the Joint Commissioner did not afford reasonable opportunities since according to the appellants, it was the Additional Commissioner who has seized of the matter and hence, it was incumbent upon the Joint Commissioner to afford reasonable opportunities as prescribed under the statute. Thirdly, the adjournment appears to have been sought for on the ground of appointing a counsel to defend their case, has not been considered. Every person has a right to have a choice of his counsel to defend him before an authority. Moreover, there is no speaking order to this affect as to why the said request was not acceded to by the first appellate authority. It also appears that the appellant has relied upon various judicial presidents which should have been considered and then the adjudicating authority should have passed a speaking order.

6. In view of the above discussion, we are only tempted to set aside the impugned order and remit the case back to the file of the adjudicating authority, who shall pass a *de-novo* order after affording reasonable opportunities to the appellants. The authority shall thereafter pass a speaking order in accordance with law. The Order in Original is passed

in 2013, and hence, we are of the view that the allegation as to cross-examination of the officers would not serve any purpose since many of them might have been transferred or retired by now. Hence, we only direct the appellants to participate in the *de-novo* adjudication proceedings, ensure the completion of the same and thereby enable the original authority to pass a *de-novo* order within the time frame of 60 days from the date of receipt of this order by the concerned Commissionerate.

7. In view of the above, we set aside the impugned order and allow the appeals by way of remand to the original authority.

(Order pronounced in open court on 28.06.2024)

(**VASA SESHAGIRI RAO**)
Member (Technical)

(**P. DINESHA**)
Member (Judicial)

Rex