CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
CHENNAI

REGIONAL BENCH - COURT No. III

Excise Appeal No. 40825 of 2016

(Arising out of Order-in-Original No.15/2016 (C) (CEx) dated 09.02.2016 passed by Commissioner of Central Excise, Puducherry Commissionerate, 1, Goubert Avenue, Puducherry 605 001)

M/s.Sri Rajalakshmi Packaging .... Appellant
R.S.No.141/7, Sulthanpet,
Vilianur Commune,
Puducherry 605 110.

VERSUS

The Commissioner of GST &
Central Excise, ... Respondent
Puducherry Commissionerate,
No.1, Goubert Avenue,
Puducherry 605 001.

WITH

Excise Appeal No. 40826 of 2016

(Arising out of Order-in-Original No.15/2016 (C) (CEx) dated 09.02.2016 passed by Commissioner of Central Excise, Puducherry Commissionerate, 1, Goubert Avenue, Puducherry 605 001)

Shri N. Saravanan, Managing Partner .... Appellant
M/s.Sri Rajalakshmi Packaging,
R.S.No.141/7, Sulthanpet,
Vilianur Commune,
Pudhcherry 605 110.

VERSUS

The Commissioner of GST &
Central Excise, ... Respondent
Puducherry Commissionerate,
No.1, Goubert Avenue,
Puducherry 605 001.

APPEARANCE :

Shri V. Ravindran, Advocate for the Appellant
Smt. Anandalakshmi Ganeshram, Authorized Representative for the Respondent

CORAM :

HON'BLE MR. P. DINESHA, MEMBER (JUDICIAL)
HON'BLE MR. M. AJIT KUMAR, MEMBER (TECHNICAL)

FINAL ORDER Nos.40778-40779/2025

DATE OF HEARING : 22.04.2025
DATE OF DECISION :31.07.2025

Per: Shri P. Dinesha

Both these appeals arise out of a common impugned order. The second Appellant has challenged the levy of penalty under Rule 26 of the Central Excise Rules, 2002 since he is the Managing Partner of the Appellant-firm.

2. Facts in brief as could be gathered from the impugned Order-in-Original No.15/2016 dated 09.02.2016 admits that the Appellant is engaged in the manufacture of Corrugated Paper Cartons Boxes; they also cleared such products without payment of duty, without even Central Excise Registration and without following the procedure prescribed

under the Central Excise Law. There appears to be a search by the Headquarters Preventive Unit, Puducherry followed by the issuance of Show Cause Notice dated 01.05.2015 to which it appears that the Appellant filed its replies. The Adjudicating Authority after considering the replies in adjudication passed the impugned Order-in-Original No.15/2016 dated 09.02.2016 by confirming the demands as proposed in the SCN, which order has been assailed in this Appeal.

3. Heard Sri V. Ravindran, ld. Advocate for the Appellant-Assessee and Smt. Anandalakshmi Ganeshramld. ld. Asst. Commissioner for the Respondent-Revenue.

4. The primary contentions of Sri V. Ravindran, Ld. Advocate are multi-fold: the Appellant believed in good-faith that kraft paper was captively used in the manufacture of carton boxes the value of clearance of which did not cross the threshold limit as mandated in Notification No.6/2000 – CE; that they maintained proper accounts under Income Tax and Sales Tax law the turn-over has been picked up by the Central Excise Authority from the documents maintained

under these laws; and the valuation as confirmed in the impugned order in any case, is not as per law. He would thus urge that the above grounds are sufficient to even prove that there was no suppression, that too with an intention to evade Excise Duty and hence, the larger period invoked to demand duty lacks merit. He would also contend that the sole dependency on the documents maintained for income-tax returns and sales-tax purposes to demand the impugned duty by the Adjudicating Authority without any other documentary evidence/s is unsustainable.

4.1 Ld. Advocate has relied on the following case laws in support:

(i) **Mira Textiles & Industries (I) Ltd. Vs CCE Chennai** 2004 (165) ELT 240 (Tri.-Chennai) as confirmed by the Hon'ble Supreme Court in 2015 (320) ELT A328 (SC)

(ii) **Shri Krsna Urja Project Pvt. Ltd. Vs CCE Jaipur** – 2019 (369) ELT 926 (Tri.-Del.)

(iii) **Omkar Traders Vs CCE Ahmedabad** – 2010 (252) ELT 572 (Tri.-Ahmd.)

(iv) **Alpa Management Consultants Pvt. Ltd. Vs CST Bangalore** – 2007 (6) STR 181 (Tri.-Bang.)

(v) **Pushpam Pharmaceuticals Company Vs CCE Bombay** - 1995 (78) ELT 401 (SC)

(vi) **Densons Pultretaknik Vs CCE** - 2003 (155) ELT 211 (SC)

(vii) **CCE Baroda Vs L.M.P. Precision Eng. Co. Ltd.** – 2004 (163) ELT 290 (SC)

(viii) **Anand Nishikawa Co. Ltd. Vs CCE Meerut** – 2005 (188) ELT 149 (SC)

(ix) **Uniworth Textiles Ltd. Vs CCE Raipur** 2013 (288) ELT 161 (SC)

(x) **Welspun Syntex Ltd. Vs CCE & ST Silvasa** - 2025 (1) TMI 6 – CESTAT Ahmedabad

(xi) **Aditya Industries Vs CCE Hyderabad** 2007 (220) ELT 196 (Tri.-Bang.)

(xii) **M.S.Naina Vs CC West Bengal, Calcutta** - 2000 (123) ELT 39 (Cal.)

He would conclude by praying for setting aside the demands and remand the case for fresh adjudication, for the reasons stated in the synopsis filed during hearing.

5. *Per contra*, Smt. Anandalakshmi Ganeshram, Ld. Assistant Commissioner relied upon the findings in the impugned order and prayed for sustaining demand confirmed in the impugned order, but however, had no objection for remanding the matter for fresh adjudication.

6. We have carefully considered the rival contentions and perused the documents placed on record; we have also considered the judicial pronouncements relied during the course of hearing. Upon hearing both sides, the issues that arise for our consideration are that (1) whether the demand of duty confirmed in the impugned order is correct? And (2) whether the demand is hit by limitation?

7. The period of dispute is 2010–11 to 2014–15 and the SCN issued is dated 01.05.2015. Para 4.3 of the SCN below the Table explicitly mentions the method of computing the Excise duty liability, on the basis *'….. to offset the inconsistency in the total income identifiable in the income-tax returns, sales invoices, and the VAT/CST Returns….'*. Other than comparison as tabulated in Annexure-I to the SCN, we do not find any Relied Upon Document (RUD) even whispered about in the SCN; the same position continued until the passing of the Order-in-Original and therefore, we concur with one of the arguments of the ld. Advocate that the demand alleging suppression has been raised by relying only on the statutory documents maintained under different tax laws.

8. It is an admitted position of law that the purposes of Direct Tax and Indirect Tax which operate on different platforms, are different and the requirements of maintaining accounts/books may thus differ. The only common factor, however, is the collection of tax as authorized by the relevant statute/s and it is undisputed that income reported for the purpose of income-tax may not attract Central Excise duty *per se*. Hence, the Central Excise Authority undertaking adjudication may call for details reported under Income Tax Act since the Central Excise Levy is on the manufacture or removal of the manufactured goods but not on the sales of the same. To treat the income so declared as turn-over for Central Excise law is perhaps not the correct approach and hence, the request of the Appellant for Cross-examination of the Central Excise authorities who had ignored the very basics and purpose of declaration of income, appears to us to be in order. This is because, when a Statutory Authority over-steps the boundary, it cannot be said that such an act was always permissible or authorized by law. Perhaps the officer who felt it proper to levy Central Excise duty on the income tax returns alone could justify the legality of the same in his cross examination.

9. The other aspect is the denial of Cenvat Credit of the duty paid on input, i.e. kraft paper. On the one hand, the Adjudicating Authority at para 16.1 doubts the very procurement, in a proper manner, of the kraft paper while accepting its Income Tax records and Central Sales Tax records as the basis for duty demand. The crux of the Adjudicating Authority is the doubting of purchase but does not dispute manufacturing activity as if it was so difficult for the Authority or even the search team to unearth from the records and prove the un-accounted purchases. When the income under IT and Sales Tax is shown, the same takes into account the expenditure as well and so the Adjudicating Authority appears to have proceeded differently. Surprisingly, when amendment w.e.f. 01.09.2014 vide Notification 21/2014-CE (NT) dated 11.07.2014 was brought to his notice whereby 3rd proviso to Rule 4(1) and last proviso to Rule 4(7) of CCR, 2004 came to be inserted restricting the period from one-year to six months for availing credit of duty paid on inputs, the Adjudicating Authority adopts the same for the period under dispute though most part of the dispute related to the period prior to 01.09.2014, by categorically holding that '*.. in the absence of any such explicit provisions, no inference can be drawn*

that the invoices issued prior to 01.09.2014 will not be hit the time prescribed under Rule 4 of the CCR, 2004…..', which is unfortunately not the correct interpretation of law. Moreover, from the reply to the SCN, there is a specific mention by the Appellant as to procuring the raw materials after paying appropriate excise duty under proper cenvatable invoice, the burden on the Appellant stood discharged and the onus would shift to the Revenue to disprove. The Adjudicating Authority therefore cannot simply assert without any verification or examination that the procurement of inputs is improper. By doing so, the officer has not discharged his statutory duties in the manner it was expected from him. In fact, the Appellant has even referred in its reply, to its earlier letter dated 02.03.2015 furnishing all the invoices for the years 2010–11 to 2014–15 but unfortunately, this plea also has failed to impress the Adjudicating Authority in any way.

10. Considering from any angle, therefore, we feel that the impugned order has been passed in a haste and in an arbitrary manner which makes it difficult for us to sustain and hence, we have no hesitation in setting aside the same. In the interest of both the parties, we deem it appropriate to remand the case back to the file of the Adjudicating

Authority. However, since the Adjudicating Authority has never doubted the bonafide claim of the Appellant and the fact that he has applied the amended law to the earlier period, the allegation as to suppression that too, with an intention to evade duty does not arise and hence, the demand, if any, has to be worked only for the normal period.

11. There cannot be any scope to levy penalty in view of our observations in the earlier paras. All other contentions are left open.

12. Insofar as the second Appellant is concerned, we do not find any merit warranting levy of penalty under Rule 26 of Central Excise Rules, 2002 against him and hence, we delete the same. The impugned order is set aside to this extent and **Appeal No.40826 of 2016** of the second Appellant is allowed.

13. The appeals are disposed of as indicated above.

(Order pronounced in open court on 31.07.2025)

(M. AJIT KUMAR)
Member (Technical)

(P. DINESHA)
Member (Judicial)

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