CUSTOMS EXCISE & SERVICE TAX APPLELLATE TRIBUNAL PRINCIPAL BENCH, NEW DELHI.

COURT NO. II

Excise Appeal No.50648 of 2021 (SM)

[Arising out of Order-in-Appeal No.92(SM)/CE/JPR/2020 dated 27.11.2020 passed by the Commissioner (Appeals), Central Excise and Central Goods and Service Tax, Jaipur].

M/s. Prayag Polytech Pvt. Ltd., **Appellant**
C-587, Industrial Area, Phase-I,
Bhiwadi (Rajasthan).

VERSUS

Commissioner of Central Excise, **Respondent**
Central Excise & Central Goods & Service Tax,
NCR Building Statue Circle,
Jaipur-302 005.

APPEARANCE:

Shri Bipin Garg and Ms. J. Kainaat, Advocates for the appellant.
Ms.Tamanna Alam, ld. Authorised Representative for the respondent.

CORAM:

HON'BLE SHRI ANIL CHOUDHARY, MEMBER (JUDICIAL)

FINAL ORDER NO.50213/2022

DATE OF HEARING/DECISION:02.03.2022

ANIL CHOUDHARY:

Heard the parties.

2. This is the second round of litigation before this Tribunal with respect to the same issue.

3. The brief facts are that the officers of Revenue conducted an inspection in the factory premises of the appellant on 10.01.2001. In the course of inspection, a statement was obtained regarding the physical stock, which is signed by Excise Clerk. Based on such written statement of

stock verification and comparing it with the RG-I figures, shortage in the stock of three items of finished goods were worked out and accordingly, a show cause notice dated 10.11.2005 was issued invoking extended period of limitation. In the show cause notice, it is observed that the Director of the appellant filed a written representation dated 15.01.2001 (within a week), wherein it was stated that the physical verification of stock has not been done properly and the same is done only by eye estimation and there is bound to be discrepancy. It was further explained that there was an earlier inspection on 3.2.2000, on which date, the department has worked out an excess quantity of 18.625 MT. This quantity was put under seizure and remained under seizure till the date of next inspection being 10.01.2001. This quantity lying under seizure was not considered in the physical stock on 10.01.2001, and thus, there remained only a balance quantity of 8.720 MT, which was apparently due to calculation error, being based on eye estimation.

4. However, it appeared to Revenue that this is a case of clandestine removal and they required the appellant to show cause as to why not duty of Rs.6,15,645/- be demanded along with penalty and interest.

5. Upon considering the arguments of both the sides and on going through the Panchnama dated 10.01.2001, I find that there is no calculation sheet. Against the quantity mentioned against all the three items of stock of finished goods, it is not explained how the said quantity has been arrived at. Thus, evidently, it is a case of eye estimation. Further, I find that there is only an apparent difference of about 8 MT in the three items, which is insignificant, not requiring any adverse inference. I find that the show cause notice is wholly mis-conceived under the facts and circumstances.

6. In view of my findings, I allow this appeal and set aside the impugned order. The appellant shall be entitled to consequential refund, if any under Section 35 FF with interest, as has been held by this Tribunal - Division Bench in the case of **Parle Agro Pvt. Ltd.**

[Order dictated and pronounced in open court].

(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

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