CUSTOMS EXCISE & SERVICE TAX APPLELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
COURT NO. II
Service Tax Appeal No. 50647 of 2021

(Arising out of Order-in-Appeal No. 004/CRM/ST/JDR/2021 dated 11.01.2021 passed by the Commissioner (Appeals) CGST, Jodhpur.)

M/s Agarwal Polysacks Ltd (Unit-II)
Plot No. E-277/277A,
Mia Basni Phase-II,
Jodhpur, Rajasthan-342005

Appellant

Vs.

Commissioner, CGST- Jodhpur
G-105, New Industrial Area,
Opp. Diesel Shed, Basni,
Jodhpur, Rajasthan-302002

Respondent

APPEARANCE:

Shri Om. Prakash Agarwal, Chartered Accountant for the Appellant
Ms. Tamanna Alam, Authorised Representative for the Respondent

CORAM:

HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)

FINAL ORDER NO. 50244 / 2022

Date of Hearing: 11.02.2022
Date of Decision: 11.02.2022

ANIL CHOUDHARY:

Heard the parties.

2. The issue involved in this Appeal is whether the demand raised is sustainable in lieu of revenue neutrality as well as time barred.

3. So far, the demand of Rs. 68,110/- is concerned, the same is with respect to receipt of rent. The learned Counsel points out that they had led evidence before the court below that the total receipts under the 'taxable receipts' for service tax was below 4 lakhs. In support thereof, they produced their balance sheet, which is admitted fact. However, the court below have rejected the claim of SSI exemption on the ground

that the Appellant have not produced any evidence, in respect of the same. I find that this observation is contrary to the facts on record and accordingly, the benefit of SSI exemption is held to be allowed. Thus, the demand of Rs. 68710/- is set aside.

4. So far, the demand of Rs. 1,12,846+ Rs. 803/-, totaling Rs. 1,13,649/- the same have been raised in respect of GTA service received by the Appellant, under reverse charge mechanism. The learned Counsel points out that they are manufacturer of polysacks etc., which are dutiable and they have removed their finished products on payment of duty both by way of Cenvat credit and account current. It is further urged that the demand is also barred by limitation as the show cause notice was issued on 17/10/2019 relating to the payment for the period up to June, 2017.

5. Also relies on the ruling in the case of **Texyard International vs. CCE Trichi 2015(40) S.T.R. 322 (Tri.-Chennai)** wherein, under similar circumstances of Revenue neutrality, it was held that extended period of limitation is not available. Accordingly, this ground is also allowed and the demand under the GTA is also set aside.

6. So far, the demand of Rs. 163/- is concerned, the same is due to calculation error, on the part of the Appellant, as pointed out by the Revenue, the same is not contested.

7. Accordingly, the Appeal is allowed and the impugned order is set aside in the aforementioned terms. All penalty imposed are set aside, the Appellant is entitled for the consequential benefits.

(Order dictated in the open court)

(ANIL CHOUDHARY)
Member (Judicial)

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