CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI.

PRINCIPAL BENCH - COURT NO. II

Excise Appeal No. 50908 of 2021

(Arising out of Order-in-Appeal No. RPR/EXCUS/000/COM/CEX/20/2020 dated 14.12.2020 passed by the Principal Commissioner, Central Tax & Central Excise, Raipur.).

M/s Mukesh Singhaniya **Appellant**
Director, M/s. Prachi Resins Pvt Ltd.,
VIP Road, Village Dharmpura,
Raipur, Chattisgarh-492001

VERSUS

Principal Commissioner, Central Excise Raipur **Respondent**
Central GST Building,
Dhamtari Road, Tikrapara,
Raipur, Chhatisgarh-492001

WITH

Excise Appeal No. 50909 of 2021

(Arising out of Order-in-Appeal No. RPR/EXCUS/000/COM/CEX/20/2020 dated 14.12.2020 passed by the Principal Commissioner, Central Tax & Central Excise, Raipur.).

M/s Pramod Lunawat **Appellant**
Proprietor, M/s. Prachi Resins Pvt Ltd.,
Lunawat Bhawan, Station Road,
Raipur, Chattisgarh-492009

VERSUS

Principal Commissioner, Central Excise, Raipur **Respondent**
Central GST Building,
Dhamtari Road, Tikrapara,
Raipur, Chhatisgarh-492001

AND

Excise Appeal No. 50931 of 2021

(Arising out of Order-in-Appeal No. RPR/EXCUS/000/COM/CEX/20/2020 dated 14.12.2020 passed by the Principal Commissioner, Central Tax & Central Excise, Raipur.).

M/s Prachi Resins Pvt Ltd **Appellant**
Lunawat Bhawan, Station Road,
Raipur, Chattisgarh-492009

VERSUS

Commissioner, Central Excise, Raipur **Respondent**

Central GST Building,
Dhamtari Road, Tikrapara,
Raipur, Chhatisgarh-492001

APPEARANCE:
Mr. Abhishek Jaju, Advocate for the appellant
Shri Ishwar Charan, Authorised Representative for the respondent

CORAM:

HON'BLE SHRI ANIL CHOUDHARY, MEMBER (JUDICIAL)

FINAL ORDER No. 50967-50969 / 2022

DATE OF HEARING: 11.10.2022
DATE OF DECISION: 11.10.2022

ANIL CHOUDHARY:

The appellant is a manufacture of formaldehyde having installed capacity of 3000 MT per annum. One of the major raw materials is Methanol, the appellant was working under the modvat/cenvat scheme and was taking credit of dutiable inputs like methanol, used for production of their finish products-formaldehyde, dutiable under sub-heading 2912 of the CETA.

2. There was a search in the factory premises on 05/03/1999 wherein the stock of raw material and finish goods was verified, as per revenue there was shortage of 32.421 MT of methanol (raw material) and shortage of 262.400 MT of finish stock (formaldehyde). Certain records were also resumed under panchanama. Thereafter SCN dated 23/06/2001 was issued on the appellant company and its two directors Shri Promod Lunawat & Shri Mukesh Singhaniya and one Prachi Polymers, alleging clandestine removal of 3996.286 MT formaldehyde (including 262.400 MT found short) valued at Rs. 2,79,74,002/- on which duty was demanded of Rs. 50,35,320/-. Further, demand of Rs. 43,768/- was raised being equal to modvat on the quantity of methanol found short 32.421 MT. Further, interest and penalty was proposed on

the appellant company. Further, penalty was proposed on the two directors and Prachi Polymers under Rule 209 A of the Central Excise Rules, 1944.

3. The SCN was adjudicated and the proposed demand was confirmed by the Commissioner vide O-I-O dated 31/03-2006. Being aggrieved, the appellant had appealed before this Tribunal and vide final order no. 52720-52722/2016, this Tribunal took notice that the impugned O-I-O have been passed without providing copy of the relied upon documents. Thus, the appellant was prevented by contesting the SCN, and thus there was miscarriage of justice. This Tribunal also took the notice of the submission by revenue that all the RUD's are not available with them. The Tribunal set aside the Order-in-Original and remanded the matter back to the Commissioner to decide the SCN *de novo* after providing copies of the RUD's to the appellant-assessee.

4. Pursuant to remand, vide O-I-O dated 04/07/2017, again the demand was confirmed as proposed in the SCN. The appellant had appealed before this Tribunal and this Tribunal vide Final Order No. 50702-50704/2018 dated 21/2/2018, observed that in spite of its direction in the earlier round, copies of all the RUD's have not been shared by the revenue, however majority of the documents have been shared. Further, observed that the dispute raised as to the method of stock taking (Dip method) may be correct as the same was adopted in consultation with the person of the appellant present at the time of search.

5. So far as the allegation of clandestine clearance, it was observed that appellant have failed to account for a total quantity of 743.895 MT of methanol, out of which 453.302 MT has been established as

consumed in the production of formaldehyde without accounting. As per the formula and explanation of the chemist of the appellant, the quantity of clandestinely manufactured and removed works out at 1378.595 MT which appears to be reasonable on the basis of lab test register, formaldehyde analysis report, transport document, and is also corroborated due to shortage found in the stock of formaldehyde on the date of search. The Tribunal further noticed that as the installed capacity of the appellant is 3000 MT per annum and they have already declared clearance of 3066 MT in their returns, thus, the allegations of clandestine clearance of 3996 MT of formaldehyde is without any reasonable basis. However, the Tribunal confined the demand of clandestine removal of formaldehyde to 1378.595 MT. Further, observed that appellant shall be liable for duty on the shortage found in the stock of raw materials and finished goods at the time of search. The Tribunal allowed the appeal by modifying the Order-in-Original and remanded for re-quantification of duty and to decide the issue of penalty on the basis of revised computation.

6. Pursuant to remand vide O-I-O dated 14/12/2020, the duty demand have been ascertained as follows:

Sr. No.	Quantity MT	Rate per MT	Value (Rs.)	Central Excise duty @ 18% (Rs.)	Remarks
i	262.400	Rs. 7000/-	18,36,800	3,30,624	Shortages detected in the stock of formaldehyde (finished goods, during stock verification on 5.3.99 at the factory premises of Noticee no. 1 (as detailed in Annexure-V to show cause notice)
ii	32.41	-----	-----	43,768 (credit of duty involved)	Shortages detected in the stock of Methanol (raw material), during stock verification on 5.3.99 at the factory premises of Noticee no. 1 (as detailed in

					para 6 of the Show cause notice)
iii	1378.595	Rs. 7000/-	96,50,165	17,37,030	Clandestine removals of Formaldehyde manufactured out of unaccounted methanol consumed. (para 12.5 of Show cause notice)
			Total	20,67,654/- + 43,768/- (credit)= Rs. 21,11,422/-	

7. Accordingly, reduced duty of Rs. 21,11,422 was confirmed and further equal amount of penalty under Section 11AC was imposed. Further, penalty under Rule 209A, Central Excise Rules, 1944 was imposed for Rs. 50,000/- each on the two directors, Shri Promod Lunawat & Shri Mukesh Singhaniya. Penalty on co- appellant Prachi Polymers was maintained at Rs. 5 lakhs.

8. Being aggrieved the appellants are before this Tribunal. Learned Counsel Mr. Abhishek Jaju inter alia assails the imposition of penalty on the appellant Co. and its directors. Learned Counsel urges that in spite of admitted fact that the installed capacity of the appellant is 3000 MT per annum and admittedly, they have shown clearance of formaldehyde during the relevant period of 3066 MT during the financial year 1998-1999. Thus, the confirmation of demand for alleged clandestine removal maintained by this Tribunal at 1378.595 MT is without any reasonable basis. This is evident from the pleading in the show cause notice wherein the demand have been raised on the basis of presumption and assumption, on the basis of resumed documents, ignoring the installed capacity of the factory of the appellant. Further, no allowance have been made for error in stock taking, as Dip method is not the scientific method for ascertaining the physical stock. In this view of the matter,

he states that imposition of penalty is bad and the same may be set aside for the ends of justice.

9. Learned AR for revenue Shri Ishwar Charan relies on the impugned order.

10. Having considered the rival contentions, I find that there is no reasonable explanation in the impugned order and also in the previous order of this Tribunal, whereby the clandestine removal of finished goods have been alleged at 1378.595 MT of formaldehyde. The actual/installed capacity of production have been ignored, which has caused prejudice to the appellant. I further find that the appellant have already suffered civil consequence by the impugned order in view of duty both on the allegation of clandestine removal as well as on the shortage of finished goods and raw materials. I further find that not a single instance of clandestine removal have been found by revenue by way of interception of any consignment without proper invoices/challan etc. In this view of the mater, I find that there is not reasonable basis for imposition of penalty under Section 11AC/Rule 209A of the Central Excise Rules, 1944.

11. In view of my findings and observations, I allow this appeal in part and set aside the penalty under Section 11AC on the appellant company and also set aside the penalty imposed on the two directors Shri Promod Lunawat & Shri Mukesh Singhaniya under Rule 209A of Central Excise Rules, 1944. Appeals are allowed accordingly.

(Order dictated in the open court)

(Anil Choudhary)
Member (Judicial

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