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CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066
EXCISE APPEAL BRANCH

Appeal No. E/2088/2009-2091/2009 - EX[DB] WITH E/S/2174-2177/2009-EX   Date **13/10/2011**

Assistant Registrar
C.E.S.T.A.T, New Delhi

To :
M/S SAMRAT PLYWOOD LTD.
VILLAGE: HAIBATPUR, DERABASSI.

M/S SAMRAT PLYWOOD LTD. Appellant
Vs
C.C.E. CHANDIGARH STAY ORDER NO. 1076-79/11-EX Respondent

I am directed to transmit herewith a certified copy of **Final order No.889-892/ 2011 EX[DB]** dated 10-10-11 passed by the Tribunal under **Section 35-C(1)of Central Excises Act, 1944**

Assistant Registrar
(Excise Appeal Branch)

Copy to :

1. Respondent
C.C.E. CHANDIGARH
C.R. BUILDING, PLOT NO. 19,
SECTOR 17-C, CHANDIGARH
160017

2. Adv. / Consult
MR.R. SANTHANAM
C-3/210, JANAK PURI, NEW DELHI - 110 058.

3. C.D.R
4. Bar association. CESTAT. New Delhi
5. Director Publications. Customs. Excise. I.P. Estate. New Delhi
6. M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi -
7. Company Law Institute of India Pvt Ltd.,No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
8. Taxmann Allied Service Pvt Ltd., 59/32. New Rohtak Road. New Delhi - 110005
9. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road, Ahmedabad-15
10. LAWCRUX Advisors Pvt Ltd. LAW House.1-8.Sector - 10. Faridabad 121003 (Haryana)
11. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
12. Office Copy
13. Guard file
14. SH. AJAY JAIN, ADV., 1293, SECTOR-18-C, CHANDIGARH

Assistant Registrar
(Excise Appeal Branch)

P.T.O. -2,

15. SH. ROHIT GUPTA, EXECUTIVE DIRECTOR OF
SAMRAT PLYWOOD LTD. 182/11, INDUSTRIAL AREA, PHASE-I,
CHANDIGARH.

16. SHRI PARMANAND PUROHIT, ACCOUNTANT,
SAMRAT PLYWOOD LTD. DERABASSI.

17. SHRI RAJIVE SINGHAL, DIRECTOR
SAMRAT PLYWOOD LTD. 182/11, INDUSTRIAL AREA, PHASE-II,
CHANDIGARH.

IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.

Date of Hearing : **22.9.2011**

Excise Stay No. 2174 of 2009 in Excise Appeal No. 2088 of 2009

M/s Samrat Plywood Ltd. — Appellant/Applicant

Vs.

CCE, Chandigarh — Respondent

Excise Stay No. 2175 of 2009 in Excise Appeal No. 2089 of 2009

Shri Rohit Gupta, Executive Director — Appellant

Vs.

CCE, Chandigarh — Respondent

Excise Stay No, 2176 of 2009 in Appeal No. 2090 of 2009

Shri Parmanand Purohit, Accountant — Appellant

Vs.

CCE, Chandigarh — Respondent

Excise Stay No. 2177 of 2009 in Appeal No. 2091 of 2009

Shri Rajiv Singhal, Director — Appellant

Vs.

CCE, Chandigarh — Respondent

Appearance

Appeared for Appellant : Shri R. Santhanam, Advocate, Shri Ajai Jain, Advocate

Appeared for Respondent : Shri B.R. Tripathi, CDR, Shri R.K. Verma, Shri Sumit Kumar, Shri S.R. Meena, Shri Sunil Kumar, DRs

CORAM: HON'BLE SHRI D.N. PANDA, JUDICIAL MEMBER
HON'BLE SHRI MATHEW JOHN, TECHNICAL MEMBER

STAY order No. 1076-1079/2011-EX
FINAL Order No: 889-892/2011-EX dated............

Per D.N. Panda :

We have been hearing this matter for a long on different occasions. Today Shri Santhanam, ld. Counsel submits that the demand arose on two principal allegations. The first allegation is that there was a clandestine removal and gave rise to demand of Rs.2,61,95,174/- toward duty. The second count of allegation was under-valuation of the goods which gave rise to demand of Rs.1,03,21,612/-. The aggregate demand arose was Rs.3,65,16,786/-. Demand relating to alleged clandestine removal pertained to the year 2003-04. The under-valuation allegation pertains to the years 2002-2003 and 2004-2005. Search was conducted on 23.1.2005 at various connected places of the Appellant and on the basis of the material recovered and the statement recorded in the course of search, a Show Cause notice dated 27.4.2007 was issued and adjudication was completed on 12.12.2009. The appellant is a manufacturer of plywood, block boards etc. and liable to duty on the goods manufactured by it. In the course of search, there was a stock discrepancy found at one of its depots located at Manimajra. Two computers were seized from that location. No sealing memo was given to the Appellant. So also Panchnama was not given to the Appellant. Copies of these documents were provided in the year 2008 when the Appellant made repeated requests. Reply to the Show Cause Notice was given. The appellant was raising grievance about use of the relevant documents to make allegation without copies thereof given to the Appellant. The authorities paid deaf ear to that.

2. It was also submitted that the statement recorded from different persons in the course of search and investigation followed thereafter were done under duress and coercion. That was also brought to the notice of the authority challenging the veracity of the statement seeking cross-examination of the deponents. Cross-examination was not allowed although prayed. This can be verified from page-379 of Volume-I of the paper book.

3. According to ld. Counsel, the basis of the Show Cause Notice for the purpose of allegation of clandestine removal was tabled as appearing of page-173 of Volume-I of the paper book. The table contains names of the several parties. None of the parties are known to the Appellant in any way nor connected to the Appellant. The Appellant denied that they had ever traded with the Appellant. They were totally strangers and para 16 & 17 of page 449 of Volume-II of the paper book may be perused in this regard. He also submitted that all along there was a prayer to disclose the identity of the persons and to produce them for cross-examination. Specific suggestion appeared in para 18 at page

449 of Vol-II of Paper Book. The Appellant when did not get opportunity of cross-examination, the adjudication is bad in law.

4. Precise question of ld. Counsel was as to whether the adjudication should be treated as proper in the eyes of law when print out generated from the computer was not ~~been~~ authenticated by the appellants since seizure was not made under sealing by the investigation team. The Appellant submitted to the authority that the proposed demand in Show Cause Notice suffered from various inaccuracies.

5. So far as the allegation of under valuation is concerned, ld. Counsel submits that allegation was based on the computer print outs while the Appellant challenged legality of seizure of the computer itself. Those print outs unless produced before the Appellant, it is not practical to use that against the appellant. Revenue alleged that there was cash receipts in respect of unaccounted sale made and that should form part of assessable value. The appellant was not only trading its manufacturing goods in different depot but also it was trading the goods purchased from others. Therefore the cash receipt whether anyway connected to sale not being established by Revenue, that cannot form part of the assessable value.

6. It was also submitted by Shri Santhanam, ld. Counsel that without appreciation of sale value received, merely adding of the cash receipt to the value of the clearance was prejudicial to make allegation of under valuation. Explanation of assesse appearing in page-472, Vol-II of Paper Book were not considered. Para 4 to 14 of the Show Cause Notice when dealt with cash receipts (referred page 471 of Vol-II), the authorities should have considered why the cash receipts were made and whether such receipts anyway were related to the sales. That was not done. When trading was also done dealing with the goods manufactured by others, department's allegation has no basis without properly examining the quantum of purchases made from outsiders. He refers to page 475 of Vol-II in para 8 to make these submissions.

7. Further submission of ld. Counsel is also that rate of duty was arbitrarily applied, although appropriate rate applicable at relevant point of time was suggested by the Appellant in the course of adjudication. The depot list was provided by the appellant to the Department as is apparent from para 558 in Vol-II of the paper book. Therefore, his ~~final~~ concluding submission was that entire material needs to be re-examined by proper appreciation of evidence under law so that the matter shall end in proper adjudication. ~~But~~ That was not being done by Authorities below, the matter needs to be remanded.

8. On the contrary, ld. CDR submits that there was planned evasion of duty made by the Appellant maintaining parallel invoices and parallel set of accounts. That was detected from the seized computers. Print out therefrom revealed modus operandi of the Appellant. He invites attention to para 1.2 at page 54 of the appeal folder (Page-1 of Order-in-Original) to show that the appellant was maintaining private records and how revenue has been evaded. It was submitted that if para 4.9 of Order-in-Original is read as appearing in page 129 of appeal folder, that will suggest how the appellant was operating questionably. When the materials recovered in the course of investigation shows that there were different valuations of goods adopted in different invoices, the department has very rightly adjudicated undervaluation detected.

9. So far as the clandestine removal is concerned, ld.CDR says that when the department found that the computer was not disowned by the Appellant and that has generated the print out in the presence of its own employees and authenticated by them, that is vital evidence to be used against the Appellant. Statements recorded on different dates from different persons were recorded during different periods from different persons and all the statements recorded demonstrated that the appellant was involved in clandestine removal of the goods. He specifically submits that when authority noticed that the Appellant has

maintained two different set of accounts one set mechanically and other set manually through private records, clandestine removals was the ultimate outcome of such conduct.

10. Ld. Jt. CDR also submits that due process of justice was followed at every stage from the moment of issuance of Show Cause Notice. The Appellant was never deprived of the process of natural justice. Therefore the adjudication was not at all made arbitrarily. There should be pre-deposit to be directed in this case without waiver at all.

11. Heard both sides and perused the record.

12. Our patient hearing of the matter has enabled us to record the submissions of both sides in detail as above. The Appellant had never made a prayer to generate print out from the seized computer in its presence in the course of hearing. We have also found that the computer was not disowned by the appellant. We have taken note that statements from different persons have been recorded as is apparent beginning from para 1.4 at page ~~page~~ 55 to para 1.50 at page 81 of the impugned order. When those were evaluated it shows that the Appellant followed dilatory tactics to avoid early adjudication. It prevented the Department to complete adjudication and also to examine the things in proper spirit duly. It is noticeable from the statements recorded that all the particulars were given to the Appellant

but the Appellant no way explained its case. The dilatory tactics apparent from page 60 to page 64 of the impugned order demonstrates that there was no denial of process of natural justice by the adjudicating authority. But we noticed that when the appellant was all along praying for cross-examination of witness whose statements were adopted to be basis of demand under allegation of clandestine removal, the Appellant was prevented of such opportunity. The Appellant has right to the course of natural justice in this regard to lead its evidence in the event of difference. However, except the contention of cross-examination of few witnesses there is nothing on record to show that natural justice was not followed. However, we make it clear that right to cross examination cannot be denied unless that is otherwise warranted by law.

13. We have further noticed from the argument of ld. CDR that when the appellant had maintained private records that needs thorough examination and also parallel invoices if used for clandestine removal that needs thorough corroboration. When we read page 495 of the Paper Book, we find that ld. Adjudicating Authority when used statement of certain persons, that definitely needs proper testing on the touch stone of law. The authority appears to have not appropriately examined the papers seized in the course of investigation. It would be proper for the appellant to point out with reference to the seized document calling for appropriate testing of the materials used against it.

14. We would have kept this matter for further hearing calling pre-deposit. But we find that the appellant deserves a fresh hearing on each aspect of allegation in Show Cause Notice and test the evidence on record. But for dilatory tactics followed, to protect interest of Revenue, following judgement of Hon'ble High Court of Punjab & Haryana in the case of **Shiv Sewa Sadan Vs. CESTAT, New Delhi** reported in 2010 (254) ELT 249 (P&H), We direct the appellant to make deposit of 80.00 lakhs (Rupees Eighty lakhs) within eight weeks from today and produce the challan before adjudicating authority on 20th December 2011 with an application for fixing the date of hearing by him for de novo adjudication. When the appellant has made grievance that they were denied the course of natural justice, they should not seek adjournment on any occasion of hearing before that Authority unless otherwise warranted by sufficient cause and appreciated by the adjudicating authority.

15. Since we have taken a decision of remand of the matter to put an end to the issue, looking to our observations and paying due regard to law, de novo adjudication is to be completed. It would be appropriate for the authority to produce the seized computer before the representative of the appellant on the date of hearing and generate relevant output from the compute for rebuttal by the Appellant. The Accounts if

any generated from the computer is to be compared with ~~audit~~ audited books of accounts since one of the pleading of the appellant was that its accounts were audited by a firm as was observed by an order dated 10.5.2011 by us. Since there was allegation of maintenance of parallel invoices and parallel account, the authority should also take into consideration of the contents of the seized books and test the allegation in Show Cause Notice. We expect that at every stage of hearing, the course of natural justice shall be given due weight. The appellant having filed preliminary replies making inordinate delay, it should not fail to plead its entire defence and place a ~~summarily~~ summary of pleading in most economical expression on the last day of hearing so that the same shall receive attention of adjudicating authority. A gist of submissions to be made shall be produced before the authority at the beginning of each hearing so that the authority shall have opportunity to examine defence of appellant. When we notice that there was also a submission from Shri Santhanam that time frame may be prescribed to complete adjudication leaving all legal pleas open, we have no hesitation to agree to such proposal for rendering justice to the Appellant. We expect that from the date of fixation of first hearing, the matter shall be concluded within six months and the authority shall pass the order within three months thereafter, so that interest of justice shall be served. So far as the