IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI
PRINCIPAL BENCH, COURT NO. II

Excise Appeal No. 53063 -53064 of 2016 SM

[Arising out of order-in-original No. 079-16 dated 16.08.2016 passed by Commissioner of Central Excise, Raipur]

M/s. R K Polymers. **Appellant**
M/s. Fairdeal Agencies

Vs.

Commissioner of Central Excise **Respondent**
Raipur

Appearance:

Shri J M Sharma, Advocate for the Appellants
Shri G R Singh, DR for the Respondent

CORAM:

Hon'ble Mr. Ashok K Arya, Member (Technical)

Date of Hearing/ Decision: 11.04.2017

FINAL ORDER No. 53120-53121 /2017 SM

Per: Ashok K Arya:

The appellants namely M/s. R K Polytubes and M/s. Fairdeal Agencies are in appeal against order-in-original No. 079-16 dated 16.08.2016 passed by Commissioner of Central Excise, Raipur.

1.2 The appellant-assessee, M/s. R K Polytubes is disputing the part demand only of Rs. 3,20,438/- of period 1997-1998 out of the total confirmed demand of Rs. 13,11,438/- for the total period of 1997-1999 saying that it is based only on electricity consumption. The other appeal is filed against penalty of Rs. 2 lakhs imposed on M/s. Fairdeal Agencies, who is a trader in the subject matter.

2. The brief facts are that appellant assessee, M/s. R K Polytubess is a manufacturer of plastic pipes. The department made searches on their premises on 16.2.1991 and recovered certain documents and found some shortages and excesses of the goods. The Show Cause Notice (SCN) accordingly was issued to the appellants which had earlier been adjudicated by the Commissioner vide its order No. 57/2005 dated 12.12.2005 against which the appellant came in appeal before Tribunal. Tribunal vide its order No. A-50276-50277/2013-E(DB) dated 17.1.2014 (in Excise Appeal No. 411-412 of 2006) remanded the matter to the Commissioner for quantifying the duty liability of the appellant along with penalty liability in terms of observations and findings made by the Tribunal in the said order.

2.1 The matter was again adjudicated vide order in Original No. 079/2016 dated 16.8.16 against which the appellants are in appeal in second round before this Tribunal.

3. With this background, both sides represented by learned Counsels Shri J M Sharma, and Shri G R Singh, have been heard.

4. After perusal of facts of the case and the submissions made by both the sides, it appears that appellants assessee is disputing the liability only of the amount of Rs. 3,27,438/- which is for the period 1997-1998 with the argument that this demand is only based on electricity consumption and Tribunal in its earlier order dated 17.1.2014 has clearly held that demand of duty based on electricity consumption cannot be upheld. Learned Counsel on behalf of the other appellant i.e. Fairdeal Agencies also states that the appellant states in their statement that they are trader only and they have wrongly been imposed penalty of Rs.2 lakh vide the impugned order.

4.1 Learned Counsel for the appellant emphasized that the disputed demand for to the period 1997-1998 is based only on electricity consumption, therefore, cannot be sustained.

4.2 Learned Counsel for the Revenue vehemently argues that the duty demand based only on consumption of electricity for the period 1997-1998 was examined and where the duty demand relates only on electricity consumption stand dropped following the observations of earlier order dated 17.1.2014.

4.3 From above discussion, it emerges that there is a dispute which cannot be reconciled without examination and verification at the level of original adjudicating authority. Therefore, it is right that the matter is remanded for the limited purpose of examining the issue that how much demand is based only on electricity consumption which cannot be upheld against the appellant assessee as per the observations given in the Tribunal's earlier order dated 17.1.2014 for the present facts. Further, if the penalty imposed on other appellant, M/s. Fairdeal Agencies is only on account of the disputed demand, which is based only on electricity consumption, then this penalty will not survive. This issue also needs to be examined afresh at the end of original adjudicating authority.

5. In the light of discussions and findings made above, the impugned order is modified to said effect and the matter is remanded for fresh adjudication to original adjudicating authority, who shall decide the same after giving opportunity of hearing to both the appellants.

6. In the result, both appeals are allowed by way of remand in above terms.

(dictated and pronounced in the open court)

(Ashok K Arya)
Member (Technical)

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