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

Date of Hearing/Decision: 22.5.2017

Appeal No. E/1088-1089/2010-SM

(Arising out of Order-in-Appeal No. 228-229/CE/DLH/2009 dated 28.10.2009 passed by the Commissioner of Central Excise (Appeals), New Delhi)

M/s Shakti Plastic Udyog Appellant
Shri Sanjay Mittal, Proprietor of M/s Mittal Packers

Vs.

CCE, New Delhi Respondent

Appearance

Shri Naveen Mullick, Advocate - for the appellant

Ms. Kanu Verma Kumar, D.R. - for the respondent

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

Final Order No. 53403-53404/2017

Per Ashok K. Arya :

M/s Shakti Plastic Udyog and Shri Sanjay Mittal, proprietor of M/s Mittal Packers are in appeal against the Order-in-Appeal No. 228-229/2009 dated 28.10.2009 whereunder demand of Central Excise duty of Rs.20,62,451/- along with interest and equivalent penalty has been confirmed against M/s Shakti Plastic Udyog. A penalty of Rs. 6 lakhs has also been imposed on other appellant Shri Sanjay Mittal, proprietor of M/s Mittal Packers.

2. The brief facts are that :

(i) On 29.3.2006, the Central Excise officers visited factory premises of the appellant M/s Shakti Plastic Udyog, B-2656, DSIDC, Narela, Delhi-II. The officers found that the goods produced by M/s Shakti Plastic Udyog were being despatched on the invoices of M/s Mittal Packers, whereas Mittal Packers did not have any manufacturing facility.

(ii) The appellants were issued a Show Cause Notice which was initially adjudicated by Assistant Commissioner vide Order-in-Original No. 06/2008 dated 22.1.2008 confirming Central Excise duty along with interest and equivalent penalty and imposition of additional penalty of Rs. 6 lakhs on Shri Sanjay Mittal.

(iii) The above order-in-original was confirmed by the impugned order in appeal.

(iv) Therefore, appellants are in appeal before the Tribunal.

3. With the background of above facts, both sides represented by ld. Counsels, Shri Naveen Mullick and Ms. Kanu Verma Kumar have been heard.

4. After careful consideration of the facts and submissions of both the sides, it appears that before 1.8.2005 the proprietorship firm viz.

M/s Mittal Packers (having proprietor, Shri Sanjay Mittal, the other appellant) had manufacturing operations at F-1782, DSIDC Industrial Complex, Narela and said premises were not visited by Central Excise officers. Though order in appeal makes a mention in para 4 that F-1782, Narela Industrial complex where M/s Mittal Packers had the establishment have no electricity connection, there is no evidence on record that Central Excise officers visited those premises and there is no evidence that there was no electricity connection there during the period prior to 1.8.2005 in the name of M/s Mittal Packers. Therefore, the demand for the period prior to 1.8.2005 cannot be sustained against the appellant M/s Shakti Plastic Udyog.

4.1 There is statement given by Sri Gulfam Mittal, proprietor of the appellant M/ Shakti Plastic Udyog, saying that the goods manufactured by them were cleared on the invoices of M/s Mittal Packers and they were ready to pay duty on such clearances (in the name of M/s Mittal Packers) for the current financial year 2005-06. In other words, the statement taken is an evidence only for the confirmation of duty for the clearances from 1.8.2005 to 29.3.2006. Thus there is no evidence produced by the department for confirmation of demand for the period prior to 1.8.2005.

4.2 In the light of discussions made above the demand of duty of Central Excise for the period of 1.8.2005 to 29.3.2006 is confirmed along with interest against M/s Shakti Plastic Udyog.

4.3 As the duty has been confirmed for the period from 1.8.2005 to 29.3.2006, this demand is to be requantified by the original adjudicating authority for which the case is being remanded to him/her. Therefore, the penalty imposed on the other appellant, Shri Sanjay Mittal also requires reduction accordingly. Consequently, the penalty imposed by the impugned order of Rs. 6 lakhs on Shri Sanjay Mittal is hereby reduced to Rs. one lakh.

5. In the result, the impugned order is modified to above effect and the matter is remanded for the adjudication of limited issue of requantificaiton of duty, interest and equivalent penalty to the original adjudicating authority, who shall do the same in the light of above findings within four months of issue of this order after giving opportunity of personal hearing and submission of documents, if any, to the appellants.

(Dictated & pronounced in open Court)

(Ashok K. Arya)
Member (Technical)

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