CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No.2, R. K. Puram, New Delhi.

Date of hearing/decision: 31.05.2017

Excise Appeal No. 3386 of 2012
(Arising out of order in appeal No. IND/CEX/000/APP/210/12 dated 26.07.2012 passed by the Commissioner (Appeals), Central Excise, Customs & Service Tax, Indore).

M/s Kisan Extrusions Limited — Appellant
Sh. Archit Agarwal, Advocate for the appellant

Vs.

CCE, Jaipur — Respondent
Sh. R. K. Mishra, AR for the Respondent

Coram:

Hon'ble Shri Anil Choudhary, Member (Judicial)
Hon'ble Mr. Ashok K. Arya, Member (Technical)

Final Order No. 53649/ 2017

Per: **Anil Choudhary**:

The issue in this appeal by the appellant-assessee, a manufacturer of HDPE pipes and sprinkler system is that whether on the fact that appellant cleared HDPE pipes to third party on payment of duty, and also uses some HDPE pipes for captive consumption in the manufacture of 'sprinkler system' and have paid duty @ 110% of the cost, are liable to pay duty (on captive consumption) by way of reversal under Rule 6(3) of the Cenvat Credit Rules, 2004, on the price of sprinkler system, being an exempted product, on the allegation of the Revenue that HDPE pipes and sprinkler systems are one and the same.

2. Ld. Counsel for the appellant states that the Adjudicating authority in the order-in-original have accepted that 'sprinkler system' is a separate product than the HDPE pipes. Further, he also submitted that they are not contesting the demand of Rs. 10,72,895/- for the period after September, 2006 and they have reversed the duty as proposed by the Revenue. So far as the demand prior to September, 2006 is concerned, it is stated that an amount of Rs. 8,21,653/- has been confirmed on the mistaken belief that the appellant have used exempted HDPE pipes in the sprinkler system. Ld. Counsel also point out from para 5.3 of the order-in-appeal wherein it is an admitted fact that the appellant had paid excise duty @ 16.32% on the intermediate products viz. HDPE pipes, which were used in the manufacture of HDPE coupled pipes (sprinkler pipes). Accordingly, the very basis of confirmation of demand by the ld. Commissioner is wrong. In this view of the matter, ld. Counsel prayed for setting aside the demand of Rs.8,21,653/- relating to the period upto September, 2006. As regards penalty, ld. Counsel states that there is no malafide intention or suppression of facts and transactions were properly recorded in the books of accounts in the ordinary course of business. Penal provision are not attracted.

3. Ld. AR appearing for the Revenue relied on the impugned order.

4. Having considered the rival contentions, we find that the duty demand confirmed for the period upto September, 2006 is factually on wrong premise i.e. the appellant have used exempted HDPE pipes in the manufacture of sprinkler system whereas the fact is that they have paid duty @ 110% on cost as applicable before using the pipes. Further, the Revenue have admitted that

sprinkler system is a separate product and not the same as HDPE pipes. In this view of the matter, we set aside the demand for the period upto September, 2006. There is no suppression of facts on the part of the assessee. Accordingly, we set-aside the penalty (including for the period past September, 2006). Thus, we allow the appeal partly. The appellant shall be entitled for consequential relief, if any.

(Dictated and pronounced in the open Court).

(Anil Choudhary)
Member (Judicial)

(Ashok K. Arya)
Member (Technical)

Pant