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

COURT NO. I

DATE OF HEARING : 17/10/2017.
DATE OF DECISION : 17/10/2017.

Excise Appeals No. 83-84 of 2011

[Arising out of the Order-in-Appeal No. 166/CE/DLH/2010 dated 05/10/2010 passed by The Commissioner (Appeals), Central Excise, Delhi – I.]

CCE, Delhi – I   Appellant

Versus

M/s Madaan Plastic Industries]   Respondents
Shri Baldev Singh, Proprietor]

Appearance

Shri R.K. Mishra, Authorized Representative (DR) - for the appellant.

Shri V.R. Sethi, Advocate – for the Respondents.

CORAM : **Hon'ble Shri Justice Dr. Satish Chandra, President**
Hon'ble Shri B. Ravichandran, Member (Technical)

Final Order No. 57249-57250/2017 Dated : 17/10/2017

Per. B. Ravichandran :-

These two appeals by Revenue are against order dated 05/10/2010 of Commissioner (Appeals), Delhi – I. The main Respondent had two manufacturing units in Naraina Industrial Area, New Delhi. They were engaged in the manufacture of shoes and not paying Central Excise duty as the said shoes are valued below Rs. 250/- per pair. The case of the Revenue is that unit No. 1 located at A-71 of the Naraina Industrial Area have procured raw material which could not have been used by them in full and second unit located at A-30 of the same industrial area used the purchased raw materials to make PVC compound which was cleared back to Unit No. 1 for further manufacture of shoes. The Revenue held that PVC compound blend arising as a intermediate product is not consumed captively and thus duty liability will arise on its clearance. On this issue, proceedings were initiated against the respondent to demand and recover Central Excise duty paid on PVC compound manufactured and cleared by the unit located at A-30 of the respondent. The Original Authority confirmed the duty liability and imposed penalties. On appeal, vide the impugned order, the Commissioner (Appeals) set aside the demand proceedings and allowed the appeals by the respondents.

2. Aggrieved by the above order, the Revenue is in appeal. The learned AR elaborated the grounds of appeal and submitted that the intimation given by Unit No. 2 at A-30 of the Industrial Area to the Sales Tax Department cannot be relied upon. Further, the statements given by the responsible persons indicated that Unit No. 2 was involved in making PVC compound blend and cleared the same to the Unit No. 1. Sufficient evidence exists for denying the exemption for PVC compound manufactured at Unit No. 2 and the impugned order erred in arriving at the finding contrary to the evidence.

3. The learned Counsel appearing for the respondents submitted that there is no evidence regarding violation of any provisions of law by Unit No. 2. Their registration with the Sales Tax Authorities has been verified and the same was mentioned in the original order itself. Further, even otherwise if the raw materials are supplied by Unit No. 1 and compound is made by Unit No. 2 and supplied back to Unit No. 1 the duty demand still unit does not survive in view of Notification No. 83/94-CE. This, the learned Counsel submitted as an alternative plea which in any case will cover the case against duty demand made on PVC compound.

4. We have heard both the sides. Upon perusal of the impugned order we note that the Commissioner (Appeals) categorically recorded that the demands was made on presumption and inference without any categorical evidence to support the claim of the Revenue that the PVC compound manufactured by Unit No. 2 was cleared to Unit No. 1. Further, he also held that manufacture of footwear at Unit No. 2 itself could not be discounted as no contrary evidence was brought forth by the Revenue. The grounds of appeal by the Revenue rather reiterates the original order without categorically disputing the findings in the impugned order. We also note the claim of the respondent for Notification 83/1994-CE dated 11/04/1994 has got force in the facts of the case. On careful consideration of the impugned order and the grounds of appeal, we find no justifiable

reason to interfere with the findings recorded in the impugned order. Accordingly, the appeals by the Revenue are dismissed.

(Order dictated and pronounced in the open court.)

(Justice Dr. Satish Chandra)
President

(B. Ravichandran)
Member (Technical)

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