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

COURT-I

Date of hearing: 25.10.2017
Date of Decision: 14.11.2017

Application No. E/ROA/50642-50643/2017
Appeal No. E/679-680/2011

[Arising out of the Order-in-Appeal No. 360 & 361/2010 F. No. 203-204 CE/IND/APPL-I/2010/1642 dated 29/10/2010, passed by The Commissioner (Appeals) Central Excise & Customs, Indore]

M/s Riddhi Siddhi Offset Pvt. Ltd. … Appellant

Vs.

CCE Indore … Respondent

Appearance:

Present Ms Priyanka Goel, Advocate for the appellant
Present Shri M.R. Sharma, DR for the respondent

Coram: Hon'ble Justice Dr. Satish Chandra, President
Hon'ble Mr. V. Padmanabhan, Member (Technical)

FINAL ORDER No. 57833-57834/2017

Per: V. Padmanabhan

1. All these appeals are filed against the Order-in-Appeal No. 360 and 361/10 dated 29/10/2010 passed by Commissioner (Appeals) Indore.
2. Miscellaneous applications have been filed for recall of our Final Order No. 56054-56055/2016 dated 22/11/2016 where the appeals were dismissed for non prosecution. After hearing the Ld. Counsels of both sides, we recall our Final Order for the reasons mentioned in the application for restoration. With the consent of both parties we take the appeals for final disposal.
3. The appellant is engaged in the manufacture of paper boxes and wrapper and other packaging material falling under Chapter 48 of the

Central Excise Tariff Act, 1985. The appellant was availing the SSI exemption benefit under Notification No. 8/2003 dated 01/03/2003. On 29/03/2007 departmental officers carried out search operation at the premises of the appellant and incriminating documents were recovered. It was found that another concern in the name and style of M/s Siddi Vinayak Packaging was found to be functioning in the same premises. Shri Shankar Goyal was the partner in M/s. Riddhi Siddhi whereas his son Shri Naman Goyal was the proprietor of M/s Siddhi Vinayak. Both units were engaged in the manufacture of identical paper products. The officers recovered the computer from the premises and from the printouts from the machine, it was noticed that goods were being cleared under the cover of computer generated challans but no invoice or bills were prepared for such clearance. Further, the value of such goods was not shown in the sales account or turnover of Ms Riddhi Siddhi. Shri Shankar Goyal in his statements admitted the above facts.

4. Shri Naman Goyal, proprietor M/s Siddhi Vinayak admitted in his statement that his unit was functioning in the same premises as M/s Riddhi Siddhi and was undertaking manufacture of goods on job work basis. Department took the view that the clearances made in the names of both units were to be clubbed together. The value of such clearances was ascertained on the basis of records recovered during search proceedings and after issue of show cause notice, the Original Adjudicating Authority confirmed the demand of Rs. 6,05,756/- along with interest and equal amount of penalty. Further, penalty under Rule 26 was also imposed and finished goods valued at Rs. 41 lakh,

already removed without payment of duty was ordered for confiscation. When the order was challenged before Commissioner (Appeals) the same was upheld. Aggrieved by the impugned order present appeals have been filed.

5. With the above background, we heard Ms Priyanka Goel, Ld. Advocate for the appellant and Shri M.R. Sharma, Ld. DR for the revenue.
6. Ld. Advocate argued as follows in support to the appellants.
   i. The duty demand has been upheld only on the basis of the computer print outs. In the absence of any physical records recovered, the allegation of clandestine removal is made only on the basis of assumption and presumption.
   ii. In the absence of any show cause notice issued to M/s Siddhi Vinayak, no clubbing of their clearances with the appellant can be done.
   iii. The charge has been upheld on the basis of the statement of Shri Naman Goyal. However, such statement has been retracted vide affidavit dated 05/04/2007.
   iv. The two units are separate and in the absence of common funding or financial flow back, their turn over cannot be clubbed.
7. The Ld DR justified the impugned order. He argued that the charges stand admitted by various persons in their statements. What is admitted is not required to be proved by revenue.
8. We heard both sides and perused the record. During the course of search proceedings on 29/03/2007, the departmental officers noticed

that in addition to the appellant unit, another unit in the name and style of M/s Siddhi Vinayak was also found to be operating, in the premises and manufacturing identical goods as the appellant. The premises were common and no separate electricity connection was taken by M/s Siddhi Vinayak. There is no lease agreement on record between the two concerns. There is also no record of separate machinery for M/s Siddhi Vinayak Packaging.

9. The details of clearances were printed out from the computer available in the premises. Shri Shankar Goyal, partner of M/s Riddhi Siddhi as well as son, Shri Naman Goyal Proprietor of M/s Siddhi Vinayak admitted in their statements that no separate records of goods manufactured and cleared were maintained and that finished goods were cleared only under the cover of computer generated challans without issue of invoices or bills. Accordingly revenue has reckoned such figures available in the computer as the value of clearances from both units. This has been challenged in the appeal before us with the argument that in the absence of recovery of physical documents, the allegation of clandestine removal cannot be sustained.

10. We note that the computer print outs were taken in the presence of the partner of M/s Riddhi Siddhi as well as proprietor of M/s Siddhi Vinayak. It stands admitted by these persons that the entries in the computer were made on their directions. It further stands admitted that no other record of finished goods as well as raw materials were maintained by these units. Such figures of dispatch of finished goods also stand corroborated by the investigation conducted by revenue

done against one of the major customers, Shri Fakruddun Agarbattiwala of M/s A. G. Agarbatti, Ujjain. In the facts and circumstances of the present case, when it is admitted that no other records have been maintained by the appellants and the figures contained in the computer printout has been admitted to be the details of clearances entered as per the directions of the partner, we are of the view that such figures have been rightly considered to be the value of clearances by the lower Authorities.

11. Now we turn to the charge of clubbing the value of clearances of the appellant with that of M/s Siddhi Vinayak Packaging, a sister concern of the appellant. We find that M/s Siddhi Vinayak Packaging did not have separate equipments or machinery for manufacture of goods. Both the units share the same equipments, have common electricity connection and manufacture identical products. Further, Shri Naman Goyal proprietor of M/s Siddhi Vinayak, who is the son of Shri Sharad Goyal, partner of the appellant, has also admitted the above facts in his statement. Further he has also paid the applicable Central Excise Duty through challan, after availing the SSI exemption on the clubbed value of clearance. In the present appeal it is the argument of the appellant that such a statement cannot be taken cognizance since it stands retracted vide the affidavit filed by Shri Naman Goyal before the Notary Public.

Even though the inculpatory statement stands retracted by Shri Naman Goyal, the fact remains that in spite of having separate identity in the form of partnership unit as well as proprietorship unit, M/s Siddhi Vinayak as well as M/s Riddhi Siddhi are in effect one single factory. This is confirmed from the fact that M/s Siddhi Vinayak has no separate machine for manufacture of the goods and shares the same electricity connection with M/s Riddhi Siddhi. In terms of the SSI exemption notification, for determining the value of clearances eligible for the concession, the values of clearances of different manufacturers from the same factory needs to be clubbed together. In view of the above, we find no reason to interfere with the view taken by lower Authority to club the value of clearances of two units.

12. The lower authorities have ordered confiscation of goods totally valued at Rs 40,90,664/- already removed clandestinely without payment of duty and imposed a penalty of Rs. 9 lakh. But the department has not seized the goods allegedly cleared clandestinely. In the absence of goods, there can be no confiscation of the same and hence, the penalty of 9 lakh imposed in this regard is set aside.

13. In view of the above discussions, the impugned order is upheld but penalty of Rs. 9 Lakh is set aside.

14. In the result appeal is partially allowed.

[Order Pronounced in the open court on_14/11/2017_]

(Justice Dr. Satish Chandra)
President

(V. Padmanabhan)
Member (Technical)

Rekha