CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No.2, R. K. Puram, New Delhi, Court No. 1

Date of hearing: 16.01.2018
Date of pronouncement: 21.02.2018

Excise Appeal No. 51598 - 51600 of 2017
(Arising out of Order-in-Original No. RPR/EXCUS/000/COM/009/2017 dated 04.07.2017 passed by the Commissioner, Customs & Central Excise, Raipur).

M/s Prachi Resins Pvt. Ltd. Appellant
Mukesh Singhania
Pramod Lunavat

Vs.

CCE, Raipur Respondent

Appearance:

Ms. Shreya Dahiya & Ms. Shohini, Advocates for the appellant
Sh. H. C. Saini, AR for the Respondent

Coram:

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

Final Order Nos. 50702-50704/2018

Per: **V. Padmanabhan**:

The present appeals have been filed against the Order-in-Original No. RPR/EXCUS/000/COM/009/2017 dated 04.07.2017 passed by the Commissioner, Customs & Central Excise, Raipur.

2. The appellant is engaged in the manufacture of Formaldehyde falling under Central Excise Tariff heading 2912 of the Central Excise Tariff Act, 1985. They were availing the modvat credit/ cenvat credit of duty paid on inputs. One of the main raw materials used in the manufacture of Formaldehyde was methanol on which cenvat credit was being availed. Central

Excise Officers visited the factory and office premises of the appellant on 05.03.1999 and recovered various records and also conducted physical stock verification. Finished goods (Formaldehyde) to the extent of 262.40 MT as well as raw material methanol to the extent of 32.421 MT were found short compared to the statutory record maintained by the appellant. The records resumed from the business premises was scrutinised and investigation was conducted covering the period 03.10.1996 to 26.02.1999, which resulted in issue of show cause notice dated 26.06.2001. The show cause notice was adjudicated and Central Excise duty demand to the extent of Rs.50,79,088/- was confirmed against the appellant alongwith interest and penalty of an equal amount. Such demand was made not only on the raw material and finished product found short at the time of verification, but also on a total quantity of 3996.286 MT of Formaldehyde allegedly cleared clandestinely during the period under consideration. When appeal against the Order-in-Original dated 31.03.2006 was appealed before this Tribunal, the issue was remanded back to the adjudicating authority for denovo decision, after sharing with the appeal copies of the various documents based on which the demand has been worked out. In compliance with the directions of the Tribunal the Adjudicating Authority has passed the impugned order dated 04.07.2017 in which he has once again confirmed the demand of duty as was made in the remand order dated 31.03.2006. Aggrieved by the order, the appellant have filed the present appeals.

3. With this background, we have heard ld. Counsel Ms. Shreya Dahiya and Sh. H. C. Saini, ld. AR for the Revenue.

4. Ld. Counsel for the appellant has advanced the following grievances against the impugned order.

(i) The case was remanded by this Tribunal in the last round of litigation with the direction to share copies of all the relevant documents. However, only Annexure- 1 to 5, 7 to 20 and 20 to 25 have been provided to the appellant on 10.01.2006. Still RG-I register for three years, RG-23A register and Form-4 register was not provided them. Hence, the order has been passed in violation of principles of natural justice.

(ii) It has been alleged that a total quantity of 3996.286 MT of Formaldehyde has been clandestinely cleared. However, as per the registration certificate of the Directorate of Industries, the appellant's manufacturing capacity was only to the extent of 3,000 MT. In the year 1988-99, the appellant already declared clearances to the extent of 3066 MT whereas the alleged clandestine removal is 3337 MT. She submitted that it is impossible to manufacture 6403 MT with the installed capacity of 3000 MT.

(iii) The Adjudicating Authority has recorded that 743 MT of raw material, methanol was not accounted by the appellant out of which, it has been alleged that 453.302 MT of methanol has been consumed, resulting in finished product clandestinely cleared of 1378.595 MT.

(iv) In the absence of any evidence adduced to prove even a single instance of clandestine removal, the demand against the appellant cannot be sustained .

(v) The stock taking conducted by the departmental officers, was on the basis of dip reading which is not an accurate method. Accordingly, the demand is not sustainable.

5. Ld. AR justified the impugned order. He argued that most of the RUDs have already been given to the appellant. Further, the Adjudicating Authority had granted time for the representative of the appellant to approach the office and make photocopies of whatever registers they wanted. However, the appellant has failed to do so and cannot allege later that the RUDs have not been given.

6. We have heard both sides and carefully perused the appeal record.

7. We are conscious of the fact that this is the second round of litigation before the Tribunal. The main grievance voiced by the appellant before us as well as before the Tribunal in the earlier round of litigation is that copies of all the RUDs have not been shared by the Revenue with them. We have perused of the long list of RUDs vis-a-vis, the documents which have already been made available to the appellant and we are convinced that all the main documents leading to the demand and its computation has already been shared with the appellant. Hence, we are of the view that they have been given a fair opportunity to advance the case against them, even in the absence of copies of some of annexures of the RUDs. Hence, we proceed to adjudicate the case on merit.

8. The search was conducted in the business premises on 05.03.1999 during which shortages were noticed both in the finished products as well as

raw material in stock. The stock was ascertained making use of the dip reading method. The appellants grievance is that this is not an accurate method of ascertaining stock. We are inclined to ignore this plea for the reason that appellant themselves follow the said practice for ascertaining the quantity of goods. Further, the method has been adopted by the departmental officers only after obtaining the concurrence of the appellant's representative who was present during the panchnama proceedings. Consequently, we are of the view that the appellant is liable to pay the duty on the finished products found short as well as reverse the modvat credit on the inputs which were found in short. To this extent, we uphold the demand.

9. Next we turn to the allegation of clandestine clearance of finished products. The main raw material used in the manufacture of Formaldehyde is methanol. The department has recovered various documents regarding the receipt, transport, purchase and consumption of methanol. The concerned Chemist of the appellant has been interrogated and in his statement he has indicated the relative quantities of consumed methanol for production of the finished product. After scrutiny of the various documents, the investigation team has concluded that the appellant has failed to account a total quantity of 743.895 MT of methanol out of which 453.302 MT has been established as consumed in the manufacture of formaldehyde, without accounting. On the basis of the formula ascertained from the chemist of the appellant, it has been concluded that this quantity of methanol can produce 1378.595 MT of formaldehyde.

10. The quantity of formaldehyde manufactured has been independently ascertained on the basis of lab test report register, formaldehyde analysis report, transport documents as well as shortage noticed at the time of stock taking. Accordingly, it has been alleged that the appellant has removed 3996.286 MT of formaldehyde during the period under consideration and duty demand on the same has been confirmed.

11. The appellant has seriously challenged the total quantity of formaldehyde allegedly manufactured and clandestinely removed. It is their submission that the installed production capacity of the appellant factory is only 3000 MT whereas in the quantification of Revenue, for the year 1998-99 the alleged clandestine removal is 3337 MT which was on top of the accounted clearance 3066 MT. We find considerable force in this argument raised by the appellant. We note that on the basis of the methanol consumption report, 453 MT of methanol has been found to be consumed but not accounted. This can produce only 1378.595 MT of formaldehyde. We find that the total alleged clandestine clearance of formaldehyde has not been correlated with the quantum of formaldehyde capable of being produced using unaccounted methanol. Keeping in view the production capacity of 3,000 MT per year we can clearly see that the demand projected on the basis of lab test and formaldehyde analyses report is clearly inflated and cannot be sustained.

12. After analysing the various documents recovered and the statement of various persons, we conclude that the appellant, by failing to account the full quantity of raw material received by them has indulged in suppression of facts. Analysis of some of the documents relating to finished product clearly

evidences that appellant has manufactured and cleared significantly more quantity of formaldehyde then what has been accounted. We are of the view that the preponderance of probability clearly indicates clandestine clearance in the present case. However, we are of the view that duty demand cannot be sustained on 3996.86 MT of formaldehyde as has been done by the adjudicating authority. It will be reasonable to restrict the demand to the quantity of 1378.595 MT of formaldehyde manufactured out of the unaccounted methanol which has been consumed to the extent of 453.302 MT. In addition, the appellant will also be liable for payment of duty on the shortage of raw material as well as finished products.

13. In view of the above discussion, the impugned order is sustained to the extent of the quantity indicated above. We set aside the demand over the quantity indicated above. Matter is remanded to the Adjudicating Authority to requantify the demand and redecide the penalties on the basis of the revised computation.

14. In the result, the impugned order is modified and case is remanded for re-quantification of demand.

(Pronounced on 21.02.2018).

(Justice (Dr.) Satish Chandra)
President

(V. Padmanabhan)
Member (Technical)

Pant