CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

WEST BLOCK NO.2, R.K. PURAM, NEW DELHI-110066

BENCH-SM

COURT –II

Excise Appeal No. E/50165 & 50208/2018-EX[SM]

[Arising out of Order-in-Appeal Nos. IND-EXCUS-000-APP-206-17-18 dated 29.09.2017 & IND-EXCUS-000-APP-238-17-18 dated 06.10.2017 passed by the Commissioner (Appeals), Customs, CGST & Central Excise, Indore]

M/s. Rajshree Plastiwood **... Appellant**
M/s. Shree Balajee Sales

Vs.

C.C.E., Ujjain **... Respondent**

Present for the Appellant : None
Present for the Respondent: Mr. H. C. Saini, D.R.

Coram: HON'BLE MRS. ARACHNA WADHWA, MEMBER (JUDICIAL)

Date of Hearing/ Decision : 01.06.2018

FINAL ORDER NO. 52177-52178/2018

PER: ARCHNA WADHWA

After rejecting the request for adjournment I proceed to decide both the appeals as they arise out of the same facts and circumstances.

2. As per facts on record, the appellant M/s Rajshree Plastic Wood is engaged in the manufacture of PVC sheet, door frame, etc. falling under Chapter 39 of Annual Tariff Act. Their factory was visited by officers on 22.07.2011 who conducted various

checks and verifications. As a result, it was noticed that the appellant had availed Cenvat credit of duty paid on the polythene films received from one M/s Shree Balajee Sales, a registered dealer, on the basis of the invoices issued by the said dealer. However, the entries in the material received advice, the said goods were mentioned as HDPE cloth. As such, revenue entertained a view that the asessee had availed the credit on the basis of the invoices only issued by the registered dealer without actually receiving the inputs.

3. On the above belief, further investigations were conducted at the end of Shri Balajee Sales and it was found that they have received polythene bags from manufacturer M/s Parwamesh Polymer Pvt. Ltd., Indore. Representative of the Shree Balajee Sales deposed that they have received the material in tubes and cut the sides of the same so as to convert it into sheets and the said sheets have been provided by them to the appellant here in under the cover of Central Excise invoices. It was also noticed that the vehicle nos., in some of the invoices were different as per the inquiries made from the RTO.

4. On the above basis proceedings were initiated against the appellant by way of issuance of SCN dated 29.04.2014 proposing to deny Cenvat credit availed during the period

2009-14 alongwith proposal to impose penalties upon the appellants.

5. M/s Rajshree Plastic Wood during the course of adjudication submitted that all the inputs covered by the invoices issued by Shri Balaji Sales were received by them and payments were made to the dealer by way of cheque, thus establishing the fact of receipt of inputs. The said goods were used for packing of their final product which fact is evident from the affidavit of their customers. As regards the mention of the goods in their material receipt register as cloth, they submitted that it already stands explained by their Production Manager in his statement that the same was a mistake on the part of the person responsible for making entries in the record and in as much as they were earlier using cloth, the said person continued to mention the material as HDPE cloth. They also submitted that their dealer has confirmed having sent the goods to the asessee and the benefit thereof cannot be denied on the sole ground of difference in the description of the goods. The demand was also assailed on the point of limitation.

6. The said show cause notice was adjudicated by the original adjudicating authority who did not find favour with the appellant’s contention and confirmed the demand to the tune of Rs. 16,32,568/- alongwith imposition of penalty of identical amount under Rule 15(2) of Cenvat Credit Rules, 2004 read

with Section 11 AC of the Central Excise Act. Further, penalty of Rs. 4,00,000/- were imposed upon Shri Balajee Sales under the provision of Central Excise Rules, 2002. The said order of the Addl. Commissioner stands upheld by Commissioner (Appeals). Hence, the present two appeals.

7. After going through the impugned order and after hearing the Ld. AR, I find that the entire case of the revenue is based upon the sole fact that the goods/ inputs were described in the dealer's invoice as 'polythene film' whereas the same was mentioned in the appellants material receipt advice as 'HDPE cloth'. The appellants have explained in their very first statement that such mistake was on the part of the clerk responsible for making the entries and inasmuch as they were earlier purchasing HDPE cloth from the other manufacturer for packing of their final product, the store keeper maintained the same description in their records. They had also produced the invoices pertaining to the period prior to the period in question, i.e. for the year 2005-08 to substantiate their plea that earlier they were using the HDPE cloth for packing of their final product.

8. They have also produced an affidavit on record by their customers declaring that the finished products have been received by them packed in plastic films which stands rejected by the appellate authority as an afterthought without giving

any reason. Admittedly, the appellants final products are cleared in packed condition either in HDPE cloth or in polythene film. The appellants by producing invoices for earlier periods have established that their final product was being packed in cloth prior to the period in question. The revenue has not advanced any evidence of purchase of HDPE cloth during the relevant period so as to establish that it was cloth which was being used for packing even subsequent to 2008. Admittedly, the appellants were also entitled to credit in respect of HDPE cloth and as such there could be no malafide motive on their part to receive the cloth in the guise of polythene film. Further, the revenue is silent about the alternate sources of procuring of packing materials. In such a scenario, denying of credit on the sole ground of difference in the description of the goods in the invoices and the material received registered cannot be made the basis for denial of the credit. Accordingly, I set aside the impugned order.

9. In view of the above, I set aside the impugned order on merits and allow both the appeals with consequential relief. In as much as appeal stand allowed on merits, the alternative ground of demand being barred by limitation is not being adverted to.

[Pronounced in the open Court on 01.06.2018]

(ARCHNA WADHWA)
MEMBER (JUDICIAL)

D.J.