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

Date of hearing/decision: 08.08.2018

Ex. Appeal Nos. 50492, 50519, 50536 & 50537 of 2018-SM
(Arising out of Order-in-Appeal No. 309-312/CI/DLH/2017 dated 16.11.2017 passed by the Commissioner (Appeals), Central Excise, New Delhi).

Ashok Kapoor, Partner Appellant
M/s Shree Ganesh Industries
M/s Ganesh Udyog
Anil Kapoor

Vs.

CCE, Respondent

Appearance:

Sh. Naveen Mullick, Advocate for the appellant
Sh.K. Poddar, AR for the Respondent

Coram:

Hon'ble Sh. Ashok Jindal, Member (Judicial)

Final Order Nos. 52752 – 52755/2018

Per: **Ashok Jindal**:

The appellants are in appeal against the impugned orders wherein seized goods namely Kalinga brand PVC Pipes and Cables, Calcium Carbonate CPW, Resin, PVC Granules and Packing material, PVC scrap and Wires and Cables allowed to be redeemed on payment of redemption fine and penalty. Certain penalties on the co-appellants were also imposed. Demand of excise duty was also confirmed against the appellant.

2. Brief facts of the case are that an investigation was conducted on 07.04.2011 at the factory premises of M/s Shree Ganesh Udyog and M/s Shree Ganesh Industries. During the course of search, certain goods namely raw material i.e. resin, finished goods namely plastic granules, PVC Pipes, Wires and Cables were found which were seized under panchnama and various statements were recorded. On the basis of the statements and panchnama, a show cause notice was issued to the appellants to confiscate the seized goods and to impose redemption fine and penalties on the appellants. The said show cause notice was adjudicated and goods seized during the course of investigation were held liable for confiscation. Consequently, redemption fine and penalties were also imposed. Later on, another show cause notice was issued to M/s Shree Ganesh Industries to demand duty on seized PVC pipes on the premise that the said goods are meant for clandestine removal, therefore, they are liable to pay duty. The show cause notice was adjudicated and duty was demanded and penalty was imposed. Against those orders, the appellants are before me.

3. Ld. Counsel for the appellant appeared before me and drew my attention to the show cause notices issued to them wherein the goods were seized in paragraph 4, which is extracted hereinbelow:

Sl. No.	Name & Address of the premises	Description of the goods	Value of the goods / vehicle seized (Rs.)	Remarks, if any.1

1	Factory premises of M/s Shree Ganesh Industries, C-283, Sector -5, Bawana Industrial Area, New Delhi.	Kalinga Brand PVC Pipes and Cables	20,15,710/-	Finished Goods
		Calcium Carbonate CPW, Resin	9,61,200/-	Raw materials/ Packing materials1s
		PVC Granules and Packing materials PVC Scrap.	1,00,000/-	Scrap

4. It is the contention that the goods which were seized in the factory premises of M/s Shree Ganesh Industries, C-283, Sector -5, Bawana Industrial Area, New Delhi, but the panchnama shows that the said address pertains to M/s Shree Ganesh Udyog which is incorrect. He further submits that in the show cause notice, the items mentioned at column 5 were not called to show cause notice to be release after confiscation and on payment of redemption fine. In fact, the items mentioned at Sl. No. 6 which were seized in the factory premises of M/s Kalinga Cables & Pipes, E-648, DSIDC Industrial Area, Narela, Delhi were proposed to confiscate and to be release on payment of redemption fine and penalty to the appellant namely M/s Shree Ganesh Industries. In fact, said wires and cables does not belonging to the appellant. Therefore, redemption fine and penalties imposed on M/s Shree Ganesh Industries is not sustainable. Consequently, penalty on co-appellant is also not imposable. For the seizure of goods in the factory premises of M/s Shree Ganesh Udyog, it is his submission that

the appellant is enjoying the benefit of SSI exemption under Notification No. 8/2003-CE dated 01.03.2003. As finished goods is of worth Rs. 1,31,200/-only and the appellant enjoying the benefit under Notification No. 8/2003-CE dated 01.03.2003, there is no such allegation against the appellant that appellant has crossed the SSI exemption limit. In that circumstances, seized goods cannot be held liable for confiscation. It is his further submission that the raw material has also been seized which has also been confiscated, under Rule 25 of the Central Excise Rules,2004, the raw material cannot be confiscated as held by the Hon'ble Punjab & Haryana High Court in the case of ***CCE vs. Annapurna Impex Pvt. Ltd. – 2009 (244) ELT 35 (P&H***). Therefore, he prayed that the seized goods cannot be held liable for confiscation from M/s Shree Ganesh Udyog. Consequently, no redemption fine and penalty is imposable. Therefore, the penalty on co-appellant also cannot be imposed.

5. With regard to demand of duty against M/s Shree Ganesh Industries on PVC Pipes, it is his contention that goods were lying in their factory and duty is payable at the time of clearance of goods, therefore, as goods have not been cleared by the appellant, no duty cannot be demanded from the appellant. Therefore, demand of duty is required to be set aside.

6. On the other hand, ld. AR opposed the contention of the ld. Advocate for the appellant and submits that merely for typographical error, in name of the appellant, the appellant cannot be absolve from their liability. As

the machinery available in the factory of the appellant was manufacturing branded goods in the brand name of third party. Therefore, they are not eligible to avail the benefit under Notification No. 8/2003-CE dated 01.03.2003. As the appellant has not registered with the Central Excise Department, therefore, the appellant is claiming the branded goods clandestinely. Therefore, the duty is rightly demanded. Moreover, during the course of investigation, it was found by the authorities from the various statements that the appellant is manufacturing branded goods. Therefore, the seized goods are liable for confiscation and duty is rightly demanded from the appellant.

7. Heard the parties considered the submissions.

8. On careful consideration of the submissions made by both the sides, I find that goods have been seized as per the chart below:

Sl. No.	Name & Address of the premises	Description of the goods	Value of the goods / vehicle seized (Rs.)	Remarks, if any.1
5	Factory premises of M/s Shree Ganesh Industries, C-283, Sector -5, Bawana Industrial Area, New Delhi.	Kalinga Brand PVC Pipes and Cables	20,15,710/-	Finished Goods
		Calcium Carbonate CPW, Resin	9,61,200/-	Raw materials/ Packing materials1s
		PVC Granules and Packing	1,00,000/-	Scrap

		materials PVC Scrap.		

As per Sl. No. 5, the goods seized in the factory premises of M/s Shree Ganesh Industries are as follows:

Kalinga Brand PVC Pipes and Cables amounting to rs. 20,15,710/-. Calcium Carbonate CPW, Resin amounting Rs. 9,61,200/- and PVC Granules and Packing materials PVC Scrap amounting Rs. 1,00,000/- whereas as per paragraph 12 of the show cause notice the appellant were called to show cause why the seized finished goods having MRP valued at Rs. 28,02,315/- should not be confiscated under Rule 25 of the Central Excise Rules, 2002. Admittedly, the show cause notice issued for the finished goods having MRP but the seized goods are not the said goods for which the show cause notice has been issued to the appellant. In that circumstances, the finished goods in the brand name of Kalinga brand PVC Pipes and Cables of Rs. 20,15,710/-, Calcium Carbonate CPW, Resin amounting Rs. 9,61,200/- and PVC Granules and Packing materials PVC Scrap amounting Rs. 1,00,000/- cannot be confiscated without issuance of the show cause notice. Therefore, I hold that confiscation of the said goods is bad in law. Accordingly, the said goods cannot be confiscated in the hands of the appellant. Therefore, redemption fine and penalties are set aside on M/s Shree Ganesh Industries and Sh. Ashok Kapoor, Partner thereof on account of confiscation.

9. With regard to seizure of goods in the case of M/s Shree Ganesh Udyog, I find that the goods seized are Kalinga brand wire & Cables to the tune of Rs. 19,39,910/-, plastic granules amounting to Rs. 1,31,200/- and Calcium Carbonate CPW & Resin amounting to Rs. 3,36,250/-, I find that Calcium Carbonate CPW & Resin are the raw materials and same cannot be confiscated under Rule 25 of the Central Excise Rules, 2002 as held by the Hon'ble Punjab & Haryana High Court in the case of ***Annapurna Impex Pvt. Ltd.*** (supra). Therefore, confiscation of Calcium Carbonate CPW & Resin amounting to Rs. 3,36,250/- is set aside. Further, the seizure of Kalinga Wires & Cables of Rs. 19,39,910/- are not manufactured goods by the appellant as the appellant is not having any facility of manufacturing of wires and cables. Therefore, the said seized goods cannot be confiscated. With regard to plastic granules, it is not the case of the Revenue that the appellant are manufacturing branded goods of third party. As the appellant are only manufacturing plastic granules and enjoying the benefit of SSI exemption under Notification No. 8/2003-CE dated 01.03.2003. Further, the Revenue has not come with any evidence that the appellant is not entitled for the said exemption for manufacturing of plastic granules in their factory. Therefore, the said finished goods are not liable for confiscation. In that circumstances, goods seized in the factory of M/s Shree Ganesh Udyog are not liable for confiscation. Consequently, the redemption fine and penalties imposed on M/s Shree Ganesh Udyog is set aside and penalty imposed on Shri Anil Kapoor, Partner is also set aside.

10. It is also observed that some wires and cables having (MRP) to the tune of Rs. 7,57,050/- has been recovered from the residential premises of Sh. Anil Kapoor, Prop. of M/s Shree Ganesh Udyog. As discussed above, M/s Shree Ganesh Udyog is not having the facility to manufacture wires and cables, therefore, the wires and cables recovered from the residential premises of Sh. Anil Kapoor cannot be held for confiscation as these are not manufactured goods by M/s Shree Ganesh Udyog. In that circumstances, the wires and cables seized at the residential premises of Sh. Anil Kapoor are not held liable for confiscation. Consequently, redemption fine and penalty on the goods seized at the residence of Sh. Anil Kappor is set aside and penalty on Sh. Anil Kapppor is also set aside.

11. With regard to the demand of duty against M/s Shree Ganesh Industries on PVC Pipes, I find that the said PVC Pipes have not been removed from the factory of the appellant. As the duty payable at the time of clearances of goods, in that circumstances, at this stage, no duty is payable by the appellant.

12. With these terms, the impugned orders are set aside and the appeals are allowed with consequential relief, if any.

(Dictated and pronounced in the open Court).

(Ashok Jindal)
Member (Judicial)

Pant