IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, KOLKATA
EASTERN ZONAL BENCH: KOLKATA

Appeal No.E/76803/2017

(Arising out of Order-in-Appeal No.33/KOL-II/2017 dated 16.06.2017 passed by the Commissioner of Central Excise (Appeal-I), Kolkata)

Commr. Of Central Excise, Kolkata-II

Applicant (s)/Appellant (s)

Vs.

M/s. S.L.Polypack (P) Ltd.

Respondent (s)

Appearance:
Shri S.Mukhopadhyay, Suptd.(AR) for the Appellant/Applicant (s)
Shri N.K.Chowdhury, Advocate for Respondent (s)

CORAM:
Hon'ble Shri P.K.Choudhary, Member (Judicial)

Date of Hearing:- 06.03.2018

Date of Pronouncement:26.04.2018

ORDER NO.FO/75846/2018

Per Shri P.K.Choudhary

1. Briefly stated the facts of the case are that the assessee is engaged in the manufacture of disposable cup, glass bowl, paring of plastics (wastes and scrap) etc. classifiable under Chapter 39 of the first schedule to the Central Excise Tariff Act, 1985. A fire accident took place in the assessee's factory on 11.08.2010 and the finished goods, waste and scrap raw materials and capital goods were destroyed. The assessee filed application for remission of duty under the provision of Central Excise Rules, 2002. In the meantime, a Show Cause Notice dated 02.08.2011 was issued proposing demand of duty along with interest and imposition of penalty. The Adjudicating authority confirmed the demand of duty along with interest and

imposed penalty of equal amount of duty. It has also appropriated the amount as deposited by the assessee. By the impugned Order, the Commissioner (Appeals) upheld the demand of duty along with interest. It has dropped the penalty imposed by the Adjudicating authority. Hence, Revenue filed this appeal before the Tribunal.

2. Heard both sides and perused the appeal records.

3. The Learned SDR for the Revenue reiterates the Grounds of Appeal. It is submitted that the application for the remission of duty has been rejected by the competent authority. Therefore, the assessee is required to pay the entire amount of duty along with interest. The Commissioner (Appeals) should not have dropped the imposition of penalty.

4. I find that the Adjudicating authority had confirmed the demand of duty along with interest which was upheld by the Commissioner (Appeals). The dispute relates to the imposition of penalty. It is noted that the case relates to remission of duty on finished goods and raw materials destroyed in fire. In any event, the Assessee is not disputing the demand of duty along with interest. Incidentally, it is revealed from the appeal of the Revenue that the remission application has been rejected. Hence, it is a case of claim of remission of duty and therefore imposition of penalty under Section 11AC cannot be invoked. Hence, I do not find any reason to interfere with the Order of the Commissioner (Appeals). Accordingly the appeal filed by the Revenue is dismissed.

(Pronounced in the open court on 26.04.2018.)

S/d.
(P.K.Choudhary)
MEMBER (JUDICIAL)

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