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

REGIONAL BENCH - COURT NO.2

Excise Appeal No.76635 of 2018

(Arising out of Order-in-Appeal No.151-152/SLG-CE/2018 dated 19.02.2018 passed by Commissioner(Appeals) of CGST & CX, Siliguri Appeal Commissionerate, Siliguri.)

M/s. S.N.Plywood Industries
(Bhutnirghat, PS-Falakata,
Dist-Alipurduar-735211,
West Bengal.)

...Appellant

VERSUS

Commissioner of Central Excise & Service Tax, Siliguri
.....Respondent
(C.R.Building, Hakim Para,
Haren Mukherjee Road,
Siliguri-734001.)

WITH

Excise Appeal No.76636 of 2018

(Arising out of Order-in-Appeal No.151-152/SLG-CE/2018 dated 19.02.2018 passed by Commissioner(Appeals) of CGST & CX, Siliguri Appeal Commissionerate, Siliguri.)

Shri Sajal Roy, Partner
M/s. S.N.Plywood Industries
(Bhutnirghat, PS-Falakata,
Dist-Alipurduar-735211,
West Bengal.)

...Appellant

VERSUS

Commissioner of Central Excise & Service Tax, Siliguri
.....Respondent
(C.R.Building, Hakim Para,
Haren Mukherjee Road,
Siliguri-734001.)

<u>APPEARANCE</u>

Shri Anjan Dasgupta, Advocate for the Appellant (s)
Shri A.Roy, Authorized Representative for the Respondent (s)

CORAM: HON'BLE SHRI P.K.CHOUDHARY, MEMBER(JUDICIAL)

FINAL ORDER NO. 75408-75409/2020

DATE OF HEARING : 5 December 2019
DATE OF DECISION : 23 September 2020

P.K.CHOUDHARY :

The facts of the case in brief are that a team of the Anti Evasion Unit of Siliguri Headquarters visited the factory-cum office premises of the appellant on 16.05.2013. During search, physical stock of raw materials and alleged finished goods was taken and it was found that there was no record of finished goods lying in stock as well as stock of raw materials in their factory-cum office premises. Accordingly, finished goods lying in the factory i.e. 2699.01 sqmt, having commercial value of Rs.1,25,957/- were seized along with private documents pertaining to manufacture and sale of finished goods and records pertaining to raw materials for the period 2010-11 to 2012-13. A seizure list was drawn. Statement of the partner of the appellant firm Shri Sajal Roy was recorded under section 14 of the Central Excise Act, 1944. He stated *inter alia* that they have not maintained accounts of stock of finished goods and raw materials lying in the factory. He was able to produce records related to sale only; that the progressive sale value of plywood for the financial year 2012-13 is Rs.1,43,00,500/- and that for 2013-14 (as on 16.05.2013) was Rs.28,03,014/-. Shri Sajal Roy undertook that if the sale value of the finished goods comes under the ambit of Central Excise duty, after computation of its sale from private records and statutory records seized from the factory, Central Excise duty would be paid accordingly. There are nine partners in the appellant firm. The appellant applied for provisional release of seized goods and the same were released provisionally on payment of Cash Security Deposit of Rs.31,489/- vide GAR-& Challan dated 13.08.2013 and on execution of B-11 Bond covering the full value of the seized goods.

2. Show Cause Notice dated 13.11.2013 was issued to the appellant, which was confirmed by the learned Adjudicating Authority ordering for confiscation of seized plywood measuring 2,699.01 Sq.Mtrs., valued at Rs.1,25,927/- under Rule 25 of the Central Excise Rules, 2002. Since the goods were provisionally released, a redemption fine of Rs.31,489/- was

imposed and it was appropriated from Security Deposit of Rs.31,489/- paid by the appellant. A demand of Rs.17,33,886/- has been confirmed along with applicable interest and a penalty of equal amount has been imposed under Rule 25 of the Central Excise Rules, 2002 for contravention of provison of Rule 4, 6, 8, 10 & 11 of the Central Excise Rules, 2002 read with Notification No.08/2003-CE dated 01.03.2003. A penalty of Rs.5,000/- has been imposed on Shri Sajal Roy, Partner of the appellant firm.

3. On appeal, learned Commissioner(Appeals) rejected both the appeals and upheld the adjudication order. Hence the present appeals before the Tribunal.

4. Shri Anjan Dasgupta, learned Advocate appearing on behalf of the Appellants submits that the entire calculation of manufacture *vis-à-vis* consumption of resin has been made on presumption only and without support of any document or logic on clandestine removal. Further while issuing the demand, the consumption of resin has been calculated on average basis and not on the basis of thickness viz. resin consumption which was declared at the time of search proceedings.

5. In respect of the allegation of illicit production of plywood on the basis of consumption of resin, it is submitted that the above allegation is only a presumptive one and the department did not at all follow the Standard Input Output Norms (SION) as given in respect of (A) 1725 (commercial plywood) and thus they did not consider that production and clearance of commercial plywood viz. veneer is opted. It is also submitted that in the entire proceedings, the partners were examined and statements recorded on several occasions, but nowhere in those statements, they were either asked about such clandestine removal or its was admitted/inferred by any such partners.

6. Shri A.Roy, learned Authorized Representative appearing on behalf of the respondent Revenue reiterated the findings of the lower authorities and justified the impugned orders. He further submits that there is no merit in the appeal and prayed that the appeal be rejected being devoid of any merit.

7. Heard both sides and perused the appeal records.

8. I observe that no investigation has been undertaken by the Revenue towards procurement of additional raw materials clandestinely. No other corroborative documents have been produced. Investigations against the consignees have also not been done before raising demand on the allegation of clandestine clearance. The onus is definitely on the department to establish

manufacture and clearance of such goods and also regarding the receipt of payments. In the absence of such investigation and evidence, I am unable to sustain the demand of duty. Once the demand for duty payable is not sustained, there is no justification to impose penalty on the appellant firm as well as on the partner. Accordingly, the impugned order is set aside and the appeals filed by the appellants are allowed with consequential benefits, if any.

(Order pronounced in the open court on 23 September 2020.)

SD/

(P.K.CHOUDHARY)
MEMBER (JUDICIAL)

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