IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL,
EAST REGIONAL BENCH : KOLKATA

Excise Appeal No.677 of 2009

(Arising out of Order-in-Appeal No.106-107/CE/BBSR I/2009 dated 09.09.2009 passed by Commissioner (Appeals) of Central Excise, Customs & Service Tax, Bhubaneswar)

M/s Konark Pipes and Synthetics Pvt. Ltd.
B-9,Mancheswar Industrial Estate,Bhubaneswar-751010

Appellant

VERSUS

Commissioner of Central Excise, Customs & Service Tax, Bhubaneswar
C.R.Building, Rajaswa Vihar, Bhubaneswar-751007, Odisha

Respondent

WITH

Excise Appeal No.678 of 2009

(Arising out of Order-in-Appeal No.106-107/CE/BBSR I/2009 dated 09.09.2009 passed by Commissioner (Appeals) of Central Excise, Customs & Service Tax, Bhubaneswar)

Shri Rabindra Kumar Mohapatra, Managing Director of M/s Konark Pipes and Synthetics Pvt. Ltd.
B-9,Mancheswar Industrial Estate,Bhubaneswar-751010

Appellant

VERSUS

Commissioner of Central Excise, Customs & Service Tax, Bhubaneswar
C.R.Building, Rajaswa Vihar, Bhubaneswar-751007, Odisha

Respondent

Appearance:
Shri N.K.Chowdhury, Advocate for the Appellant
Shri A.Roy, Authorized Representative for the Respondent

CORAM:
HON'BLE SHRI P. K. CHOUDHARY, JUDICIAL MEMBER
HON'BLE SHRI P. ANJANI KUMAR, TECHNICAL MEMBER

FINAL ORDER NO.75352-75353/2022

DATE OF E-HEARING : 13.06.2022
DATE OF PRONOUNCEMENT : **17 JUNE 2022**

Excise Appeal Nos.677,678 of 2009

Per P.Anjani Kumar :

The appellants, M/s Konark Pipes and Synthetics Pvt. Ltd., are manufacturer of PVC Pipes of different sizes and varieties. The Preventive Officers on the basis of intelligence received, visited to the factory of the appellants and have observed that the appellants were not maintaining the invoices properly ; were not paying applicable duty ; were assigning the same number of different invoices issued for the same order to different parties and has utilised two sets of invoice Books bearing Serial Number 26 to 50 and thus evaded Central Excise duty. On completion of investigation, show-cause notice dated 21.01.2007 was issued to the appellants demanding duty of Rs.22,56,445/- under the provision of Section 11A of the Central Excise Act, 1944 along with interest under Section 11AB ibid ; seeking to impose penalty under Section 11AC of the Central Excise Act, 1944 read with Rule 25 of the Central Excise Rules, 2002 and seeking to impose penalty on the Managing Director, Shri Rabindra Kumar Mahapatra.

2. The show-cause notice was adjudicated by the Additional Commissioner vide Order-in-Original dated 22.08.2008 and he confirmed the proposal as made in the show-cause notice. The Ld.Commissioner (Appeals) was ordered dated 09.09.2009, upheld the findings of the lower appellate authority. Hence these appeals.

3. The ld.Counsel for the appellants, submits that the show-cause notice was arbitrary and un-called for ; reasonable opportunity has not been given to them for explaining their position ; they have been regularly paying duty and submitting thee returns ; they are supplying mostly to the large industries like, Indian Petrochemicals Ltd. and Reliance Industries Ltd. and therefore, it cannot be alleged that they have not paid duty as the receiving company would not accept any material, which is not duty paid. He further submits that they were using a single set of invoice after making self-authentication ; after delivery of the material , they are submitting a covering bill against one order. The single bill may cover one invoice or more than one invoice. He further submits that in case of commercial exigencies, the invoices numbers/dates may be changed within a short period., but

overall they have followed the procedure and paid applicable tax. He further submits that during the course of issue came before this Bench and in course of hearing held on 15.01.2020, this Bench has ordered the original authority to verify the claim of the appellants that the duty has been duly discharged in respect of 62 invoices. He submits that the Department has seen the admitted records and the same may considered by the Bench.

4. The Ld.Authorised Representative for the Revenue, submits that the verification report dated 24.04.2020 forwarded by the jurisdictional Superintendent of Central Excise, Bhubaneswar IX Range, has since been received and the same is placed before the Bench.

5. Heard both sides and perused the records of the case.

6. We find that the show-cause notice alleges that the appellants have evaded duty of Rs.22,56,445/-. The verification report submitted by the Department in respect of 62 invoices as per the direction of the Bench vide order dated 15.01.2020, shows that the appellants have discharged the duty of Rs.20,91,667/-. Therefore, we find that to that extent, the Demand does not sustain. We find that the duty of balance amount of Rs.1,64,778/- appears to have been not paid as per the verification report. Though the appellant claims that he has paid the duty, but no evidence of the same has been provided. Moreover, we find that the Range Superintendent has given a fair opportunity and we have no reason whatsoever to dis-believe its report and accept the submission of the appellants that the duty is paid. In view of the same, we find that the duty of Rs.1,64,778/- remains to be considered paid along with interest under Section 11B of the Central Excise Act, 1944. We find that the same is liable to be paid by the appellants. Accordingly, we find that equal amount of penalty is liable to be paid by the appellants under Section 11AC of the Central Excise Act, 1944.

7. After going to the procedural infraction alleged to be committed by the appellants, we find that the appellants have not denied the various allegation levied in the show-cause notice. We find that the

show-cause notice did not seek to impose separate penalty under Rule 26 of the Central Excise Rules, 2002 on the appellants. It only proposed to impose penalty under Section 11AC read with Rule 26 of the Central Excise Rules, 2002. As per the findings as above, it is ordered that the appellant shall pay the non-paid duty of Rs.1,64,778/- along with penalty under Rule 11 AC ibid. We do not find that there is need to impose any other penalties. Keeping in view the facts of the case that substantial allegations of the Department that the appellants have not paid duty, have fallen flat. In view of the fact that as against the allegation of evasion of duty about Rs.22 lakhs, the actual evasion of duty is only Rs.1.64 lakhs. Therefore, we find that the procedural infraction, if any, could be taken care of in the penalty already imposed on the appellants under Section 11AC. Moreover, we find that the show-cause notice does not seek to hold the case liable for confiscation. The Adjudicating authority also did not hold that the goods are liable for confiscation. We find that the penalty under Section 26 is inextricably linked to the confiscation of goods as long as there is no confiscation of the goods ordered that there cannot be a case for imposition of penalty under Rule 26. Therefore, we find that the penalty under Rule 26 cannot be sustained either on the appellant or on the Managing Director of the appellant company.

8. In the result, we pass the following order in respect of Appeal No.E/677/2009 :

(1) Duty confirmed against the appellant is restricted to Rs.1,64,778/-.

(2) Penalty of equal demand under Section 11AC would be confirmed.

(3) Appeal No.E/678/2009 is allowed.

(Pronounced in the open Court on 17.06.2022)

Sd/

(P. K. Choudhary)
Member (Judicial)

Sd/

(P. Anjani Kumar)
Member (Technical)

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