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

REGIONAL BENCH - COURT NO.2

Excise Appeal No.231 of 2012

(Arising out of Order-in-Appeal No.07/Kol-I/2012 dated 25.01.2012 passed by Commissioner of Central Excise, (Appeal-I), Kolkata.)

M/s. Oriental Enterprises
(P-46a, Radha Bazar Lane, Kolkata-700001.)

...Appellant

VERSUS

Commissioner of Central Excise, Kolkata-III

.....Respondent

(180, Shantipally, Rajdanga Main Road, Kolkata-700107.)

APPEARANCE

Shri N.K.Chowdhury, Advocate for the Appellant (s)

Shri J.Chattopadhyay, Authorized Representative for the Respondent (s)

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

FINAL ORDER NO. 75466/2022

DATE OF HEARING : 15 June 2022
DATE OF DECISION : 15 June 2022

P.K.CHOUDHARY :

M/s. Oriental Enterprises, Proprietor Shri Girdhari Lal Singhania, the Appellant herein, is engaged in the manufacture and assembling of valves of various types.

2. Briefly stated the facts of the case are that the officers of the Kolkata-I Commissionerate visited the office premises of M/s. Oriental Compressors Valves Industries at P-46A, Radhabazar Lane, Kolkata and their factory premises at 1, Ratanbabu Lane, Cossipore, Kolkata-700007 on 26.10.2007 and found that in that office premises, two other manufacturers viz. M/s. Oriental Enterprises (the Appellant

herein), a proprietorship firm having factory premises at 18A, Ripon Street, Kolkata-700016 and M/s. Oriental Compressors Accessories (P) Ltd., having their factory premises at 171/1, Picnic Garden Road, Kolkata-700039 and a trading concern, M/s. Jagannath Engineering Works, a partnership concern having their office premises at 2nd Floor of the same premises i.e. 46A, Radhabazaar Lane, Kolkata. On the 5th floor of the premises assembling of semi-finished valves was found to be carried out on behalf of M/s. Oriental Compressors Valves Industries, M/s. Oriental Enterprises (the Appellant herein) and M/s. Oriental Compressors Accessories (P) Ltd. by common workers. It was observed that the different component of valves procured and brought to the 5th floor of the premises from the units falling under the jurisdiction of Kolkata-V and Kolkata-I Commissionerate are being cleared. It was observed by the officers of the department that the goods were cleared from the premises at 5th floor of P-46A, Radhabazar Lane, Kolkata in the clearance invoices of M/s. Oriental Compressors Valves Industries and M/s. Oriental Compressors Accessories (P) Ltd. to avail exemption Notification No.8/2003-CE dated 01.03.2003. The Appellant was made to pay an amount of Rs.1,48,670/- on 31.01.2008. Proceedings were initiated by issuing a Show Cause Notice dated 12.01.2009 for the period from 01.01.2006 to 31.03.2007. The Show Cause Notice proposed to appropriate the demand of Rs.1,48,670/- already paid by the assessee vide GAR-7 dated 31.01.2008 and also proposed amount of interest of Rs.16,380/-. The Show Cause Notice also proposed to impose penalty under Section 11AC of the Central Excise Act, 1944. The Adjudicating authority confirmed the demand along with interest as proposed in the Show Cause Notice and appropriated the same since already paid by the Appellant assessee. The penalty of Rs.1,48,670/- was imposed. On appeal, the Ld.Commissioner(Appeals) upheld the Order-in-Original and rejected the Appeal before him. Hence the present Appeal before the Tribunal.

2. Shri N.K.Chowdhury, Ld.Advocate for the Appellant submitted that their clearance value cannot be clubbed treating the M/s. Oriental Compressors Valves Industries and M/s. Oriental Compressors Accessories (P) Ltd. as related parties. It is his submission that the Appellant is having separate trade licence, bank accounts and Balance-sheet. Similarly M/s. Oriental Compressors Accessories (P) Ltd. is also having separate trade licence and both the parties are independent legal entities and are carrying out business of manufacture and assembling of other equipments. M/s. Oriental Compressors Valves Industries is engaged in the manufacture and assembling of various types of valves and other equipments and packing thereof. It is his submission that the Appellant herein had no connection with any of the parties as mentioned above. He vehemently argues that there is no evidence of mutuality of interest between parties. The clearance value of the two other companies cannot be clubbed with the clearance value of the Appellant. He further submits that if the clubbing is not done, the clearance value of the Appellant is well within and covered by the exemption Notification No.8/2003-CE dated 01.03.2003. He also submits that the deposit during investigation does not amount to acceptance of the allegation. In support of his above contention he relies upon the judgement of Hon’ble Punjab & Haryana High Court in the case of Kundan Rice Mlls Ltd. Vs. Union of India reported in 2008 (232) E.L.T. 14 (P & H). He further submits that there is no occasion to impose penalty as the demanded amount was paid along with the applicable interest much before the issuance of the Show Cause Notice and this fact has been well-captured in the Show Cause Notice. He further submits that clubbing is not permissible without issuing any Show Cause Notice to the other units/parties. In support of his above contention, he relies upon the decision of the Hon’ble High Court of Delhi in the case of Commissioner, GST (East), New Delhi Vs. Unitech Containers Pvt.Ltd. reported in 2017 (358) E.L.T. 99 (Del.) and also the order of the Ld.Commissioner(Appeals) in the Appellant’s own case for the period from 16.01.2007 to 07.03.2007.

3. Shri J.Chattopadhyay, Ld.Authorized Representative for the Respondent reiterated the orders of the lower authorities.

4. Heard both sides and perused the appeal records.

5. We find that the dispute in the present Appeal is regarding clubbing of value of clearance without issuing Show Cause Notice to other units.

6. We find that the issue is no more *res integra* in view of the decision of Hon'ble High Court of Delhi in the case of Commissioner, GST (East), New Delhi Vs. Unitech Containers Pvt.Ltd. (supra), wherein it was held that :-

> ***"7.*** *Having perused the said decision, the Court finds that it is distinguishable in its application to the facts of the present case. In that case, both the units whose turnover was sought to be clubbed were in fact issued the SCN. On the other hand, in the present case, the turnover of the four units whose turnover was sought to be clubbed with that of the Respondent were not issued the SCN.*
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> ***8.*** *The Court finds that there is no legal infirmity in the impugned order of the CESTAT. No substantial question of law arises for consideration. The appeal is dismissed. The pending application also stands dismissed."*

7. Similar view has been held by Hon'ble High Court at Calcutta in the case Commissioner of Central Excise, Kolkata-II Vs. Diamond Scaffolding Co. [2011 (274) E.L.T. 10 (Cal.)], wherein Hon'ble High Court held thus :-

> ***"8.*** *In respect of the second point, i.e., clubbing of clearance, the Tribunal further came to the conclusion that clearances of two other units were clubbed with the clearance made by the importer without issuing any show cause notice to the other units and there was no notice to the two units for clubbing clearance with the clearance of the importer. In such circumstances, in our opinion, the Tribunal was quite justified in holding that demand by clubbing the clearance of other units without issuing any show cause notice was not sustainable.*

> ***9.*** *We, thus, find that no substance question of law is involved and consequently, we summarily dismiss this appeal."*

8. In view of the above discussion and by respectfully following the judgements of the Hon'ble High Courts cited (supra), we set aside the penalty imposed under Section 11AC of the Central Excise Act, 1944.

Accordingly the Appeal, filed by the Appellant, is partly allowed to the extent of setting aside of the penalty.

(Operative part of the order was pronounced in the open Court.)

Sd/
(P.K.CHOUDHARY)
MEMBER (JUDICIAL)

Sd/
(P.ANJANI KUMAR)
MEMBER (TECHNICAL)

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