IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH AT MUMBAI

APPEAL NO: E/85943/2013

[Arising out of Order-in-Appeal No: Th-I/RKS/55/2011 dated 13th December 2011 passed by the Commissioner of Central Excise (Appeals), Mumbai – I.]

Paratex (India) …*Appellant*

versus

Commissioner of Central Excise
Thane – I ***…Respondent***

Appearance:

Shri RD Waglay with Ms Anagha Gavade, Advocates for appellant

Shri N N Prabhudesai, Superintendent (AR) for respondent

CORAM:

Hon'ble Shri C J Mathew, Member (Technical)

Date of hearing:	**12/06/2017**
Date of decision:	**01/05/2018**

ORDER NO: A/ 86278 / 2018

M/s Paratex (India) challenges the fine of ₹1,00,000 for redemption of confiscated goods and imposition of penalty under rule 25 of Central Excise Rules, 2002 which were upheld in impugned order-in-appeal no. Th-I/RKS/55/2011 dated 13th December 2011 by Commissioner of Central Excise (Appeals), Mumbai – I. Appellant, a manufacturer of ‘processed fabric’, was found to be in possession of 8550 linear meters of ‘gray fabric’ and 20367 linear meters of ‘semi-finished fabric’ that were not accounted for in their registers.

2. According to the appellant, there is no provision for confiscation of goods save when removed clandestinely and that the allegation of non-accountal is baseless as only finished products are required to be detailed in the appropriate register. It is also contended that the original authority had confiscated the goods and imposed penalty without placing them on notice or hearing them.

3. Heard Learned Counsel for appellant and Learned Authorized Representative. Learned Counsel drew attention to the provisions of Central Excise Rules, 2002 mandating maintenance of records and the circumstances in which confiscation and penalty are liable to be invoked. Reliance is placed in the decision of the Tribunal *in Camex International Ltd v. Commissioner of Central Excise, Surat-II [2008 (221) ELT 588 (Tri-Ahmd)]* which has held that

> *‘5. Apart from the above, I find that the authorities below have also confiscated the excess found raw materials along with confirmation of demand of duty of excise in respect of the same under the provision of Section 11A of the Central Excise Act, 1944. These raw materials are not manufactured by the appellants. I fail to understand as to how their non-entry in the statutory records made the appellant liable to pay duty of excise in respect of the same. Even the confiscation of*

> *the same under the provisions of Rule 25 of the Central Excise Rules, 2002 is not warranted inasmuch as the said provisions provides for the finished goods and not the raw material as held by the Tribunal in the case of C.C.E.& Cus., Surat v. Dincotex Private Ltd. - 1999 (107) E.L.T. 326 (Tri.). I find no justification for confiscation of grey fabrics or demand of duty in respect of the same from the appellants. In view of the above, I set aside the confiscation of the finished product and the raw materials and confirmation of the demand of duty in respect of the raw material. Duty in respect of finished goods, on the finding as already observed, would be paid by the appellants at the time of clearance of the goods. As regards the penalty, I find that admittedly, the appellants had not maintained the records properly though there may not be any intention on their part to clear the same clandestinely. For non-maintenance of record, penalty under the provision of Rule 25 is imposable. I, accordingly, reduce the penalty under the said provision on M/s. Camex Intermediates Ltd. to Rs. 2,000/- (Rupees two thousand only). Penalty on the Director is, however, set aside.'*

and in *Unimark Remedies Ltd v. Commissioner of Central Excise, Vapi [2006 (204) ELT 49 (Tri-Mumbai)]* holding that

> *'5. In respect of excess found finished goods, the appellant have contended that the goods being chemical, were to undergo a test and were to be entered in RG-1 register only thereafter. I note that there is no evidence on record to show that the said excess found goods where meant for clearance without payment of duty or were in the process of being cleared. Authorities have rejected the above plea of the appellant on the ground that test of the chemical is only the in house procedure and cannot take place of the Central Excise*

Law. However, there is no evidence that the goods are to be considered as complete even without such chemical test. If such test is part and parcel of the manufacture of the final product, the same is to be entered in RG-1 register after undergoing the testing. As such, I do not find any justification for confiscation of the finished goods or to demand duty in respect of the same, in as much as the same were still in the factory premises and would discharge the burden of duty at the time of their clearance, after being entered in RG-1 register.

7. Similarly in respect of the raw material which were not found entered in the records, I am of the view that there is no provision under Central Excise Law for confiscation of the raw material. Only penalty for non-maintenance of record can be imposed upon the appellant. In view of the explanation of the appellant that the said raw material was yet to be entered in the records and there is no time limit for doing so, I set aside the confiscation of the raw material but impose penalty of Rs. 2,000/- upon the appellant M/s. Unimark Remedies Ltd. for non-maintenance of the records.

4. According to Learned Authorized Representative, chapter 6 of the Manual of Supplementary Instructions of Central Board of Excise & Customs requires that

'2.2 Records shall mean all the records prepared or maintained by the assessee for accounting of transactions in regard to receipt, purchase, manufacture, storage, sales or delivery of the goods including inputs and capital goods. All accounts, agreements, invoice, price-list, return, statement or any other source document, whether in writing or in any other form shall be treated as records. Source documents are

> *those documents which form the basis of accounting of transactions and include sales invoice, purchase invoice, journal voucher, delivery challan and debit or credit note.'*

of which there has been breached leading to the imposition of penalty. Furthermore, reliance is placed in the decision of the Hon'ble Supreme Court in *Collector of Central Excise, Calcutta v. Pradyumna Steel Ltd [1996 (82) ELT 441 (SC)], Roche Products Limited v. Collector of Customs [1989 (44) ELT 194 (SC)]* and *JK Steel Ltd v. Union of India [1978 (2) ELT J 355 (SC)]* to contend that citing of a provision incorrectly does not vitiate the proceedings.

5. There is no allegation that the goods had been clandestinely removed. The sole issue in question is whether goods that admittedly, are not finished products were required to be recorded in the registers that are statutorily prescribed. This has been appropriately decided upon by the Tribunal as observed *supra*. The instructions of the Central Board of Excise & Customs are intended to ensure that the accounts should be of sufficient scope as to monitor, to deter and to enforce recovery in the event of any illicit clearance. While the goods and semi-finished products of the appellant may not have been so recorded, in the absence of any allegation that such non-accountal was with intent to remove goods clandestinely, there is no scope for confiscation and imposition of penalty under rule 25 of Central Excise Rules, 2002.

6. For the above reason, the fine and penalty confirmed in the impugned order a set aside and appeal allowed.

(Pronounced in Court on 01/05/2018)

(C J Mathew)
Member (Technical)

**/as*