IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH AT MUMBAI
COURT NO.I

APPEAL NO.E/211/2011

(Arising out of Order-in-Appeal No.PI/RSK/229/2010 dated 12/11/2010 passed by the Commissioner of Central Excise (Appeals), Pune)

Shrihari Enterprises : **Appellant**

VS

Commissioner of Central Excise : **Respondent**
Pune

Appearance

Shri.TC Nair, Advocate for Appellant
Shri.Ajay Kumar, Addl. Comm. (A.R) for respondent

CORAM:

Hon'ble Dr. D.M. Misra, Member (Judicial)
Hon'ble Shri P Anjani Kumar, Member (Technical)

Date of hearing : 07/02/2019
Date of decision : 07/02/2019

ORDER NO. A/85648 / 2019

Per : Dr. D.M. Misra

1. This is an appeal filed against Order-in-Appeal No.PI/RSK/229/2010 dated 12/11/2010 passed by the Commissioner of Central Excise (Appeals), Pune.

2. Briefly stated the facts of the case are that the appellants are engaged in the manufacture of green houses and also providing services of erection, commissioning and installation of the said green

houses at site. Alleging that the appellant had not discharged appropriate Central Excise duty for the period from April 2006 to March 2008 on the green houses/poly houses assembled at the factory and thereafter cleared in knocked down condition for assembly at site, show-cause notice was issued to them for recovery of total duty of Rs.8,57,680/- for the period from 28/02/2005 to 31/03/2009. On adjudication, the demand was confirmed with interest and penalty. Aggrieved by the said order, they filed appeal before the learned Commissioner (Appeals), who in turn rejected their appeal. Hence the present appeal.

3. At the outset learned Advocate for the appellant submits that the process carried out by them at the factory cannot be considered to have been resulted into manufacture of ‘green houses’/poly houses, unless the same is assembled at site. It is his contention that the basic raw materials for the said green houses/poly houses are GI pipes, which are simply cut to the standard length and thereafter holes are drilled on the pipes and further process is carried out, so as to make it suitable to be used for assembly of green house/poly house at site. It is his contention that there is no excise duty payable for the same. He has further submitted that in any case, since the issue relates to interpretation of law, i.e., whether the process of assembly of GI pipes which are cut to different length, drilled with holes, etc. on assembly resulting into poly house/green house at site be called as process of manufacture or otherwise, hence, invoking of extended period and imposition of penalty is unwarranted and uncalled for.

4. Learned AR for the Revenue reiterates the findings of the learned Commissioner (Appeals). He has submitted that this Tribunal has held in appellant's own case vide order No.A/87817-87818/2018 dated 29/10/2018 has observed that the process of assembling of raw materials at their factory and thereafter on clearance of the same in knocked down condition to site resulted into manufacture of green house/poly houses falling under Chapter sub-heading 94060019 of CETA, 1985. He has further submitted that the appellant had artificially split the invoices even though issued at the same time into two, indicating the value of the material in one and the value for services for erection, commissioning and installation in the second, so as to evade payment of excise duty. Hence, invoking a larger period of limitation and penalty is justified.

5. Heard both sides and perused the records.

6. We find that there is no dispute on the fact that the appellant received GI Pipes after undertaking the process of cutting, drilling, bending, etc., made it suitable and assembled it into the poly houses/green houses in their factory premises and cleared the same to the site for installation in knocked down condition. For the same period, the appellant in their earlier case had claimed that since service tax was paid by them for erection, commissioning and installation of the poly houses/green houses at site, therefore, payment of excise duty again on such activity for installation at site was incorrect. Consequently, this Tribunal by order dated 29/10/2018 remanded the matter to the adjudicating authority to ascertain the

said fact. This Tribunal in the said case has observed that the appellant had cleared the goods from their factory in knocked down condition to assemble the same at site. Thus, the green house/poly house was first manufactured and then cleared in knocked down condition for assembly at site. In these circumstances, excise duty is leviable for the clearances affected by the appellants. Further, it is noticed that the appellant had artificially split the price of the green house/poly house, as value of raw material and service charges relating to assembly at site. In such scenario invoking of extended period and imposition of penalty under Section 11AC of Central Excise Act, 1944 is clearly justified. However, we find that while imposing penalty under Section 11AC of Central Excise Act, 1944, the appellant was not extended the benefit to discharge 25% of the penalty imposed subject to compliance of provisions of Section 11AC of Central Excise Act, 1944. Accordingly, the appellant be allowed to discharge 25% of the penalty imposed under Section 11AC of the Central Excise Act, 1944 subject to fulfillment of condition laid down there under. The impugned order is modified to the extent of allowing discharging 25% of the penalty imposed under Section 11AC of the Central Excise Act, 1944 and the appeal is allowed to that extent.

(Pronounced in court)

(P Anjani Kumar)
Member (Technical)

(D.M. Misra)
Member (Judicial)

PJ