CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL MUMBAI

REGIONAL BENCH - COURT NO. I

Excise Appeal No. 115 & 579 of 2011

(Arising out of Order-in-Appeal No. GOA/CEX/GSK/113&114/2010 dated 30.11.2010 passed by the Commissioner of Central Excise & Service Tax (Appeals), Goa)

M/s Marpol Pvt. Ltd. **.... Appellant**

Versus

Commissioner of Central Excise, Customs & Service Tax, Goa **.... Respondent**

Appearance:

Shri Mehul Jivani, C.A. for the Appellant

Shri N.N. Prabhudesai, Authorized Representative for the Respondent

CORAM:

HON'BLE DR. D.M. MISRA, MEMBER (JUDICIAL)
HON'BLE MR. P. ANJANI KUMAR, MEMBER (TECHNICAL)

FINAL ORDER NO. A/85665-85666/2019

Date of Hearing: 18.02.2019
Date of Decision: 18.02.2019

Per: Dr. D.M. Misra

This is an appeal filed against Order-in-Appeal No. GOA/CEX/GSK/113&114/2010 dated 30.11.2010 passed by the Commissioner of Central Excise & Service Tax (Appeals), Goa.

2. Briefly stated the facts of the case are that the appellants are engaged in the manufacture of excisable goods namely, powder coating of different varieties of flakes falling under Chapter Heading 3907 9990 of Central Excise Tariff Act, 1985. During the relevant period, they had cleared powder coating flakes, which were semi-

finished in nature, to their sister unit at Baddi, Himachal Pradesh determining the assessable value as per Rule 8 of Central Excise Valuation Rules, 2000. Since the assessable value determined applying cost construction method was incorrect, the value was determined applying CAS-4 method, which resulted short payment of excise duty of Rs.9,55,517/-. Consequently, a show-cause notice was issued to the appellant for recovery of the said differential duty along with interest and penalty. On adjudication, the demand was confirmed with interest and penalty. Aggrieved by the said order, the appellant filed an appeal before the learned Commissioner (Appeals), who in turn, rejected their appeal. Hence, the present appeal.

3. At the outset, learned C.A. Shri Mehul Jivani for the appellant submits that the learned Commissioner (Appeals) without appreciating the argument of the appellant that the goods that were transferred by the appellant since not marketable, hence cannot be considered as excisable goods, upheld confirmation of the differential duty on the stock-transferred goods. It is his contention that even though in his statement Shri Prakash Gajanan Nayak stated that the powder coating flakes could be sold to another manufacturer having similar facility as was available at their Unit No. 3 at Baddi, but, subsequently, he has clarified through an Affidavit dated 18.12.2009 before the adjudicating authority along with the reply to show-cause notice that the flakes cannot be considered as excisable goods as it is incapable of being bought and sold in the market. However, neither the adjudicating authority nor the learned Commissioner (Appeals) took cognizance of the same and wrongly arrived at the conclusion that powder coating flakes cleared on stock transfer basis to their

Baddi unit is an excisable goods, hence, the value arrived at by the appellant is incorrect.

4. Learned AR for the Revenue reiterates the findings of the learned Commissioner (Appeals).

5. Heard both sides and perused the records.

6. We find that even though the appellant has submitted an Affidavit wherein it is categorically stated that the product manufactured by them at the intermediate stage cannot be considered as excisable goods, the same was not considered by the authorities below while confirming the demand on differential value construing that the product cleared by the appellant is excisable goods, hence, chargeable to duty. Non-consideration of the documents/affidavit filed by the appellant resulted into injustice to the appellants, hence, it is appropriate to remand the matter to the adjudicating authority to record finding on the Affidavit filed by the appellant about its applicability to the facts to the present case and consequently arrive at the conclusion on the issue of excisability of the stock transferred goods. All issues are kept open.

7. Appeals are allowed by way of remand.

(Operative portion of the order pronounced in open court)

(Dr. D.M. Misra)
Member (Judicial)

(P. Anjani Kumar)
Member (Technical)

Sinha