CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL MUMBAI

WEST ZONAL BENCH

EXCISE APPEAL NO: 88013 OF 2013

[Arising out of Order-in-Appeal No. BC/35/BEL/2013-14 dated 26th April 2013 passed by the Commissioner of Central Excise (Appeals), Mumbai – III.]

Shree Hari Packaging Industries
D-5/5 TTC Industrial Area, MIDC, Turbhe
Navi Mumbai - 400705 … ***Appellant***

versus

Commissioner of Central Excise
Belapur
1st Floor, CGO Complex, CBD Belapur,
Navi Mumbai - 400614 ***…Respondent***

APPEARANCE:

Ms Mansi Patil, Advocate with Mr Kiran Chavan, Advocate for the appellant

Shri P K Acharya, Superintendent (AR) for the respondent

CORAM:

HON'BLE MR C J MATHEW, MEMBER (TECHNICAL)
HON'BLE MR AJAY SHARMA, MEMBER (JUDICIAL)

FINAL ORDER NO: 87203/2023

DATE OF HEARING: 05/07/2023
DATE OF DECISION: 06/12/2023

PER: C J MATHEW

The appellant, M/s Shree Hari Packing Industries Ltd is a manufacturer of 'corrugated boxes, cards rolls and sheets,' and had been supplying the same to 'merchant exporters' in the business of shipping of 'fruits/vegetables' as packing. The appellant was operating under notification no. 8/2003-CE dated 1st March 2003 entitling 'small scale industrial (SSI)' units to exemption on clearances up to limit which was to be computed after exclusion of non-excisable goods, exempted goods and exported goods. The clearances effected by the appellant between April 2008 and March 2010 came under scrutiny in view of the value of clearances of 'corrugated boxes' amounting to ₹ 1,65,63,070.55 and ₹ 1,44,40,860.40 in 2008-09 and 2009-10 out of a total value of ₹ 2,20,33,939.55 and ₹ 2,53,68,305.45 respectively for the two years.

2. The appellant claimed that they were not required to register themselves under Central Excise Act,1944 as their clearances, net of excludable value, was below the prescribed threshold in the notification and that they had submitted 'form H' – used for obtaining exemptions from 'commercial tax' authorities – for the said value of clearances. The original authority, accepting the claims of the appellant herein, dropped proceedings but show cause notice proposing recovery of duty of ₹ 9,16,627/- under section 11A of Central Excise Act, 1944, along with applicable interest under section 11AB of Central Excise Act, 1944, and imposing penalty of like amount under section 11AC of Central Excise Act, 1944 came to be upheld and hence this appeal.

3. We have heard Learned Counsel at length as also the submissions of Learned Authorised Representative.

4. It would appear that the appellant is an unregistered unit and, therefore, had not been following the procedure prescribed under Central Excise Rules,1944 and corresponding notifications in relation to the procedure for export of goods, including packing material through third parties. It would also appear that the first appellate authority was impressed by the submission made on behalf of the appellant-Commissioner therein to the effect that

> *‘9. Chapter 7 of CBEC's Excise Manual of Supplementary instructions 2005 deals with export by SSI units who remain under the exemption limit based on value of clearances for home consumption. When they themselves export the goods or export the goods through merchant exporter, then the value of such exports shall not be taken into account while arriving at the exemption limit of Rs. 150 Lakhs. In the instant case, the respondents sold the product card board boxes to their customer who in turn used those boxes for packing of fruits and vegetable, Here I observe that when the buyer of the respondents uses the card board boxes for packing of fruits and vegetable, the identity of the cardboard boxe is lost and what the buyer exporting is fruits and vegetable and not corrugated boxes. It is also to be noted that when representations were received by the small scale manufacturers the Board vide Circular No. 648/39/2002-CX dated 25.07.02 has clearly stated the simplified export procedure is available only if the manufacturer or the merchant exporter expert the goods from the unit itself. This*

> *clearly brings out the fact that goods Cleared by the manufacturer has to be the same goods as exported by him or by the merchant exporter on his behalf. Hence, the value of clearance of corrugated boxes by the exporter cannot be excluded from the value of Rs. 150 Lakhs.*
>
> *10. Further, the condition for export is the goods should be exported from the factory of production or ware-house or any other premises as may be approved. In the instant case, the corrugated boxes were neither cleared for export from the factory of production or warehouse or from an approved place.'*

From these findings it would appear that the duty liability has been fastened on the importer solely on the ground that no evidence existed to indicate actual exports of 'corrugated boxes' in which fruits/vegetables were claimed to have been shipped.

5. The decision of the Tribunal in *Vadapalani Press v. Commissioner of Central Excise, Chennai [2007 (217) ELT 248 (Tri.-Chennai)]*, which had been cited by the appellant before the original authority and neglected to be considered by him, was distinguishable on the ground that the correlation of the clearances from the factory and the exports had been established.

6. We find the argument of the first appellate authority that the inability to determine, by use of records, that 'corrugated boxes' supplied by the appellant had in fact been part and parcel of the scheme of export consignment, to be specious. It is natural that

fruits/vegetables are exported in suitable containers and it is the reality that the containers themselves are not to be found specifically enumerated in the shipping document. Nonetheless, it is established procedure, in terms of central excise law, to permit such containers to be cleared without payment of duty subject to establishing that the goods did ultimately find use by the merchant-exporter. The appellant herein had submitted 'form H' which was held to suffice for the purpose of the finding of the Tribunal in *re Vadapalani Press*. The rejection of the applicability of that decision was grounded in the absence of registration by the appellant and consequent absence of records. Even if such evidence is not available, the first appellate authority should have taken into account the finding or the adequacy of the finding by the original authority requiring 'form H' which is a statutory document evincing export of those corrugated boxes. The evidentiary value of such statutory documents, even though not related to central excise law, appears to have been mis-construed by the first appellate authority. It is, therefore, necessary, for the first appellate authority to appreciate the context in which that evidence was admissible and to examine the details thereof before interfering with the order of the original authority. Having failed to do so, it is only appropriate that such exercise be undertaken now. To facilitate that, we set aside the impugned order and remand the matter back to the first appellant authority to ascertain the applicability of the evidence of form H and to explicitly detail reasons, if any, for non-acceptance of information contained therein.

7. The appeal is allowed by way of remand. -

(Order pronounced in the open court on 06/12/2023)

(AJAY SHARMA)
Member (Judicial)

(C J MATHEW)
Member (Technical)

**/as*