

ORDER-31-APPEAL-11

M/s. Arden Polymer Pvt. Ltd., Flat No. 227, C/13, 11, Subhan, Mangalgi (industrial estate no. 11, the appellant) filed present two appeals No. (i) 52/149/2017 and (ii) 52/150/2017 against Orders in Original No. (i) 201/ND/19/2017 dated 15.03.2017 and (ii) 201/ND/20/2017 dated 15.03.2017 respectively (hereinafter referred to as "the impugned orders") issued by the Assistant Commissioner, Central Excise, Jaipur (the officer referred to as "the lower adjudicating authority").

2. The Show Cause cum Demand Notice No. (i) 52/310/2014-15 dated 05.01.2015 for the period from Aug., 2013 to March, 2014 for recovery of Rs. 1,29,333/- and (ii) 52/311/2015 to order 14.12.2014 for the period from Aug. 2014 to March, 2015 for recovery of Rs. 4,95,487/- and appointment of Rs. 1,17,462/- already paid by the appellant were issued.

3. The lead facts of the case are that the appellant has manufactured and/or sold items like General Term and Service Pipes and diameters said goods without payment of central excise duty, treating the said goods as goods of appliances for this irrigation systems used in agriculture in terms of entry 49 of the Notification No. 12/2012-CE dated 27.03.2012. The appellant had also manufactured Rigid PVC Pipes and sold without payment of central excise duty on the basis of exemption certificate no. of serial no. 742 of the Notification No. 12/2012-CE dated 27.03.2012 as well as on payment of central excise duty in open market after availing exemption upto a maximum value of Rs. 150 lakh in terms of Notification No. 6/2011-CE dated 01.03.2011 and availed central credit on inputs used in manufacturing of Rigid PVC Pipes. However, they did not avail central credit on inputs used in the manufacture of other pipes (other than Rigid PVC Pipes). Since the appellant had availed central credit on common inputs used in manufacture of Rigid PVC Pipes, flexible as well as unstated, the appellant was required to maintain separate accounts in regard to have availed central credit only on those inputs, which were used in the manufacture of dutiable goods. However, appellant did not maintain separate accounts for Rule 5(2) of Central Credit Rules, 2004 (hereinafter referred to as "CCR, 2004") and also to debit amount as determined under Rule 6(3)(a) of CCR, 2004. The department alleged that the appellant was required to pay an amount of 6% of the value of input in cash system as per Rule 6(3)(b) of CCR, 2004, as they neither complied with provision of Rule 6(3) of CCR, 2004 by not maintaining separate accounts nor followed procedure prescribed under Rule 5(5) of CCR,

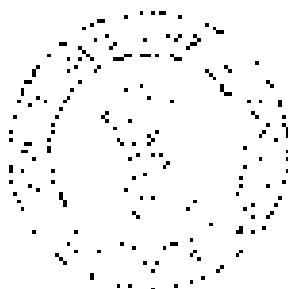
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2004. The appellant was also found using more than one set of invoices and two separate series of invoices bearing prefix 'D' for clearance of a crooked form issued for drip irrigation system to look exactly like and obtaining permission to use more than one set of invoices back from the jurisdictional Assistant Commissioner in terms of sub-rule 3 of Central Excise Rules, 2004 (hereinafter referred to as the Rules). The appellant had manufactured Rigid PVC Pipes, Flexible Pipes, Non-Lateral Pipes and Sprinkler Pipes but did not intend production and clearance of Rigid Lateral Pipes and Sprinkler Pipes in CR-3 relation during the period from April, 2014 to March, 2015. The appellant had the reputation and had obtained manufacturing of drip irrigation systems in CR-3 relation during the period from April, 2014 to March, 2015 and had also manufactured the provision of front corner tubes. It also stated that appellant did not mention the production and clearance of Rigid PVC Pipes used for manufacture of drip irrigation systems in CR-3 returns for financial year 2013-14 and first half of financial year 2014-15 and thereby contravened provisions of Rule 12 of the Rules.

2.2 The Jurisdictional authority vide impugned orders confirmed demand of Rs. 1,79,273/- and Rs. 4,54,703/- respectively under Rule 11 of CGR, 2004 read with Section 11A(1)(i) of the Central Excise Act, 1944 (hereinafter referred to as the Act) being a Fictitious under Rule 11 of CGR, 2004 read with Section 11A of the Act and appropriated Rs. 1,17,000/- as CDE paid by the appellant during the period from April, 2014 to March, 2015. It issued penalty of Rs. 1,79,273/- and Rs. 4,54,703/- respectively under Rule 12(2) of CGR, 2004 read with Section 11A of the Act in respect of Rs. 13,000/- (Rs. 5,000/- under both the impugned orders) under Rule 27 of Rules for contravention of Rule 11(i) of CGR, 2004 imposed penalty of Rs. 4,000/- (Rs. 2,000/- under each impugned order) under Rule 27 of Rules for contravention of Rule 12(i) of Rules for non-mentioning of production and clearance of drip irrigation system and imposed penalty of Rs. 4,000/- (Rs. 2,000/- under both the impugned orders) under Rule 27 of Rules for contravention of Rule 12(ii) of Rules.

3. It is contended by the appellant under the appeal that the present orders, which are void and inoperative, are:-

(i) The appellant supplied large number of sets of drip irrigation system which are brought from open market and directly supplied by respective suppliers to the buyers' place without even bringing them to factory of the appellant and supplied only legal PVC pipes by the appellant. The appellant had issued invoices



2004 and inclusion of penalty under Rule 5 of the CB, 2004 in case of non?

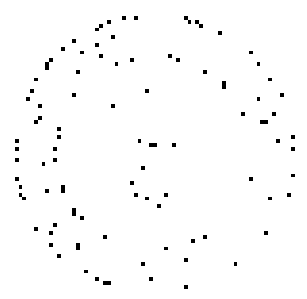
2.1. The fact that the appellant availed credit on commodities used to manufacture High Voltage used in trip mitigation system for various purposes and hence exempted under rule 2 of Notification No. 12/2012-CE dated 14.03.2012 and High Voltage cables covered for other than engineering purposes or payment of CE duty. The department initiated proceedings for recovery of amount on value of trip mitigation system under Rule 6(2) of CB, 2004 even though the appellant has manufactured and cleared POC Files without payment of CE duty and trip mitigation system which was being installed in the field after availing of various services and the appellant has paid service tax on the installation charges of trip mitigation system. The proposed order was filed to provide evidence that how the appellant is asked to pay amount value of trip mitigation system as manufactured trip mitigation system, which is not manufactured by the appellant but installed by availing various other parts from other market and service tax has been paid by the appellant in all cases on installation charges of trip mitigation system as submitted therein.

2.1. It is the Rule 5(a) of CB, 2004, which exempts goods that are manufactured in such quantity of inputs and input services, which are used towards exemplified finished goods, except in the circumstances mentioned in Rule 6(2), when the manufacturer of input services or inputs intend for use in manufacture of dutiable final products and to take eventual profit only on that quantity of inputs, which are intended for use in manufacture of dutiable final products. As per Rule 5(a) of CB, 2004, the manufacturer has the option not to follow the above procedure and follow the procedure to pay an amount equivalent to the credit input attributable to the inputs used for provision of exempted products subject to the conditions and procedure specified in sub-rule (2A). Thus, it is clear that in cases where common inputs are used for manufacture of final products, which are dutiable as well as exemplified products, the proportionate credit attributable to the exempted goods is required to be recovered. On failure to comply with Rule 6(2) and Rule 5(2A) of CB, 2004, the manufacturer is required to pay an amount equal to 6% of the value of exempted goods in terms of Rule 6(3) of CB, 2004.

2.2. The appellant maintained that they had never manufactured trip mitigation system and hence demand of amount as per Rule 6(3) of CB, 2004 on value of

that their % cost were not reported by the appellant in their respective ER-3 returns and also did not pay amount under Rule 15(a) of CGR, 2004. I find that the appellant is liable to pay amount @ 1% of the value of Right PVC Pipes cleared without payment of central excise duty for use in drainage system and also amount @3% of the value of drainage system which has not been manufactured by the appellant in the factory but installed in the houses with the help of mainly local labourers for drainage system etc. The appellant has notified that they have said excise duty on the installation charges of drainage system in the factory, super's place. To be fair to the appellant, I have noted that the appellant during various hearings, accepted to pay amount @ 1% on the value of Right PVC Pipes cleared by them, including exemption. The appellant had not crossed the value of clearance of Right PVC Pipes without payment of central excise duty in their ER-3 returns and hence, they are liable to pay interest under Rule 11 of CGR, 2004 and are also liable to penalise under Rule 15 of CGR, 2004 read with Section 115C of the Act. I also find that the appellant did used to e-file their returns back at same time and therefore, they violated Rule 11(b) of Rules and hence, imposition of penalty of Rs. 5000/- by the original order is justified. Appellant had not cleared quantity of Right PVC Pipes cleared for use in drainage system and hence, they are liable to pay penalty of Rs. 2000/- imposed in the original order under Rule 27 of Rules for violation of Rule 12(a) of the Rules.

6.1 For the period from April, 2014 to March, 2015, I find that the appellant reflected the aggregate value Rs. 2,53,07,009/- of clearance of various products viz. Right PVC Pipes in ER-3 returns for the preceding financial year 2014-15 which is not exceeding Rs. 10 Crores and also reported from central excise clearance of Rs. 1,16,00,000/- in form of Sub-section No. 3B(a)(1)(b) dated 15.03.2015. Therefore, the appellant was eligible for benefit of exemption or reduction of Rs. 1,16,00,000/- dated 01.01.2015 for the next financial year 2014-15 and they had used this amount for the said purpose. I find that the appellant availed the exemption sum of Rs. 1,16,00,000/- and reflected resultant of central excise from October, 2014 to March, 2015 in their ER-3 returns and also paid Rs. 1,16,00,000/- @ 1% of the value of exempted Right PVC Pipes valued at Rs. 16,07,00,000/- during the period and declared taxable and due in respect of Rs. 1,16,00,000/- Hence, I find that the appellant has paid amount @ 1% of value of Right PVC Pipes prior to the issuance of impugned order of Rs. 11,62,000/- and therefore, imposition of penalty of interest under Rule 11 of CGR, 2004 and imposition of penalise under Rule 15 of CGR, 2004 read with Section 115C of the Act would not arise. I find



find that the applicant has correctly declared production of 3000 Kg. PWT Pipes on payment of certain amount of duty as well as to avail the benefit of preferential system for the frame of year 2013-14. Accordingly, the main facts are taken for recovery of amount under Rule 60 of CGR, 2004 and under Section 11A of the Act of the value of duty is based on the value of duty in preferential system. However, penalty imposed under Rule 15 of CGR, 2004 (read with Section 11A) of the Act for F.Y. 2013-14 as well as penalty imposed under Rule 27 of Rules, 1975 (read with penalty of Rs. 2,000/- imposed under Rule 27 of Rules for contravention of Rule 114) of Rules is applied for every more than one invoice found.

3.2 The value of Right PWT Pipes used for duty requires payment of 6% ad valorem duty in accordance with a new tariff offer. Hence, this applicant has either not in a position to identify the amount payable by the applicant under Rule 60 of the Rules in question, the matter is required to be referred back to the jurisdictional appellate authority to determine the amount required to be recovered of 6% of value of 3000 PWT Pipes cleared under exemption during 2013-14 & 2014-15.

3.3 In view of above, I set aside the the impugned order and allow appeals to the extent of award of refund and rebate 26% of value of Right PWT Pipes along with interest. The jurisdictional appellate authority shall pass orders within 4 months of the receipt of this order. In the event of any decision made under Para 3 & 3.1 and the submissions made as the appellant within 7 months from the receipt of this order in decision accordingly.

3.4 अपीलकर्ता द्वारा दर्ज की गई शीटों का निम्नलिखित तालिका के अनुसार देना बचावे।

3.5 The appeals filed by the appellant stand disposed of in above terms.

(Signature)
अधीक्षक, अपीलें, सी.बी.ई.
अहमदाबाद

By Regd. Agent

To
M/s. Arpan Logistics Pvt. Ltd. (Appellant)
No. 327, SDC-II, Saraspur,
Ahmedabad

1. 2014-15-17
2. 2014-15-17
3. 2014-15-17

Copy to authorities, as necessary, as follows:

1. The Chief Commissioner, GST & Central Excise, Ahmedabad Zone, Ahmedabad for favour of the Appellant.
 2. The Commissioner, GST & Central Excise, Ahmedabad, Ahmedabad.
 3. The Assistant Commissioner, GST & Central Excise Division Jorandi, Ahmedabad.
- CC-1
1. L. No. 2718-10715/2014