IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH : ALLAHABAD
COURT No. I

APPEAL Nos. E/70106 & 70105/2016-EX[SM]

(Arising out of Order-in-Appeal No.114-115/CE/ALLD/2015 dated 28/10/2015 passed by Commissioner (Appeals), Customs, Central Excise & Service Tax, Allahabad)

M/s Hi-Tech Medicare Devices Pvt. Ltd. Appellants
Vs.
Commissioner of Central Excise & Service Tax, Allahabad Respondents

Appearance:
Shri S. A. Khan (Consultant)
for Appellant
Shri Pawan Kumar Singh (Supdt.) AR for Respondent

CORAM:
Hon'ble Mr. Anil Choudhary, Member (Judicial)

Date of Hearing : 28/03/2018
Date of Decision : 28/03/2018

FINAL ORDER NOs. – 70715-70716/2018

Per: Anil Choudhary

The issue in these appeals is whether the appellants are liable to pay Excise duty on certain items of traded goods.

2. Heard the parties.

3. I find that the dispute arose as the appellants have traded, but have used 'Common Invoice Book' for supply of traded goods as well as manufactured goods. I find that the issue is no longer res integra. In the subsequent period vide Order-in-Appeal No.330–336/CE/ALLD/2017 dated 07/11/2017, the Commissioner (appeals) after appreciating the facts and circumstances in the appellants' own case have held as follows: –

"4.1 It is observed that in the present appeals, the Department had issued recurring demands covering the period October, 2012 to March, 2016 on the grounds that the appellant had carried out clandestine manufacture of surgical goods and subsequently supplied such production in the guise of trading bills, without payment of Central Excise duty. On going through the records of the case, I find that the appellant had submitted before the Adjudicating Authority, all the records/register including purchase invoices/bills of traded goods, ledger account of suppliers of the traded goods, stock register for the traded goods, balance sheets showing income from trading etc.. However, the Adjudicating Authority has not even discussed these documents, the defence submissions of the appellant and also the various case laws relied upon the appellant in their defence.

4.1.1 I also find that the appellant vide their letter dated 17/01/2012, had informed the jurisdictional Assistant Commissioner that they had made their trading division separately and maintain its proper and separate records. Again on 14/02/2014, they informed the jurisdictional Commissioner about this fact and about the inspection carried out by the then Assistant Commissioner, on 17/01/2012.

4.1.2 Thus, I find that the Adjudicating Authority, ignoring all these documents and the judicial pronouncements relied upon by the appellant has confirmed the demands of Central Excise duty and imposed equal penalties, after concluding that the appellant had clandestinely manufactured & removed goods without payment of Central Excise duty in the guise of trading.

4.2 Further, I find that it has been consistently held in plethora of judicial pronouncements, that the charge of clandestine manufactured & removed is required to be proved by sufficient cogent & credible evidences. Some of these judicial pronouncements are, as under:-

(i) Mahavir Metals Industries vs. CCE, Daman, Vapi 2014 (313) E.L.T. 581 (Tri.-Ahmd.)
(ii) Pan Parag India Ltd. vs. CCE, Kanpur 2013 (291) E.L.T. 81 (Tri.-Del.)
(iii) CCE, Ahmedabad-I vs. Gopi Synthetics Pvt. Ltd. 2014 (302) E.L.T. (Tri.-Ahmd.)
(iv) CCE, Ludhiana vs. Moonlight Auto (P) Ltd. 2014 (305) E.L.T. 135 (Tri.-Del.)
(v) Resha Wires Pvt. Ltd. vs. CCE, Bangalore 2006 (202) E.L.T. 332 (Tri.-Bang.)
(vi) CCE, Kolkata-II vs. Abhisek Enterprise 2007 (217) E.L.T. 142 (Tri.-Kolkata)
(vi) CCE, Daman vs. Nissan Thermoware Pvt. Ltd. 2011 (266) E.L.T. 45 (Guj.)

4.3 However, I find that for the periods covered under these appeals, there is not an iota of evidence of clandestine manufactured & clandestine removal of goods under the cover of trading bills. It cannot be the case that on the basis of evidences showing clearances of manufactured goods in the guise of trading, which are relevant for a particular period, the person is required to pay Central Excise duty on trading activity in perpetuity.

4.4 Thus, in the absence of any cogent & positive evidences in the Show Cause Notices as well as in the impugned Orders showing clandestine manufactured & clandestine removal of goods in the guise of trading, the demands of Central Excise duty confirmed by the Adjudicating Authority on the basis of evidences for the earlier period, is not sustainable.

5. In view of the above, I set aside the impugned Orders-in-Original No.37/AC/Div.I/2016 dated 31/03/2016 and 06/Dem/2016 dated 28/02/2017 passed by the Assistant/Deputy Commissioner, Central Excise & Service Tax Division-I, Allahabad and allow the appeals of the appellant."

4. This Tribunal hold on the previous date, that is 19/03/2018, put a query to learned D.R., whether the said Order-in-Appeal dated 7th November, 2017 have been accepted by the Department. The learned D.R. have stated after making inquiries that the said Order-in-Appeal dated 07/11/2017 have been accepted by the Department. In this view of the matter, these appeals are allowed, setting aside the impugned order, as fact herein are squarely covered by the Order-in-Appeal dated 7th November, 2017.

(Dictated & Pronounced in Court)

Sd/-
(Anil Choudhary)
Member (Judicial)Lks