IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, REGIONAL BENCH : ALLAHABAD

E/70609/2017-EX[SM], E/70610/2017-EX[SM]

(Arising out of Order-in-Appeal No.GZB-EXCUS-000-APP-0050-0051-17-18 dated 29.05.2017 passed by Commissioner(Appeals), Customs & Central Excise, Appeal-II, Noida.)

M/s. Machino Tech
Vimal Sharma, Proprietor

...APPELLANT(S)

VERSUS

Commr. of Central Excise & Service Tax, Ghaziabad

RESPONDENT (S)

APPEARANCE

Shri Sharad Chandra Tewari (Consultant) for the Appellant (s)
Shri Gyanendra Kumar Tripathi (AC) (A.R.) for the Revenue

CORAM:

SHRI ANIL G. SHAKKARWAR, HON'BLE MEMBER(TECHNICAL)

DATE OF HEARING/DATE OF DECISION : 04.05.2018

FINAL ORDER NO. 71064-71065/2018.

Per ANIL G. SHAKKARWAR :

Present appeals are directed against common impugned Order-in-Appeal No.GZB-EXCUS-000-APP-0050-0051-17-18 dated 29.05.2017 passed by Commissioner(Appeals), Customs & Central Excise, Appeal-II, Noida.

2. Since both appeals are arising out of impugned order-in-appeal, which is a common order, the above stated two appeals are taken together for decision. One appeal is filed by manufacturer appellant and the other appeal is filed by its ex-partner.

3. The manufacturer appellant was engaged in the manufacture of articles of bathroom fittings made up of brass, bearing brand names 'Topson' &

'Topsi'. They were availing the benefit of small scale exemption. The factory premises of the appellant was visited by the officers of Central Excise on 02.03.2012 and they recovered some loose papers and also extracted data from CPU of the computer. On 02.03.2012 statement of Shri Vimal Sharma, ex-partner of the manufacturer appellant and the other appellant in these proceedings was recorded. On 02.03.2012 statement of Shri J.L.Bhatti, Accountant was also recorded. Further statement of Shri Vimal Sharma was also recorded on 09.05.2013. On the basis of above stated statements, a show cause notice dated 12.03.2014 was issued wherein the list of relied upon documents stated to be the description of loose papers and description of papers relating to data extracted from CPU and aforesaid statements. It was alleged in the said show cause notice that on the basis of confessional statement of Shri Vimal Sharma, the said show cause notice was issued and through the said show cause notice Central Excise duty amounting to Rs.16,31,707/- for the period from 2009-10 to 2011-12 was demanded under proviso to sub-section (1) of section 11A of Central Excise Act, 1944. Further there was a proposal that the duty may be appropriated out of the deposit of Rs.25.00 Lakhs made by the manufacturer appellant. The show cause notice was adjudicated through Order-in-Original dated 29.06.2015 and the demand was confirmed and equal penalty was imposed. Aggrieved by the said order both the appellants preferred appeal before Commissioner(Appeals). Ld.Commissioner(Appeals) decided both the appeals through common impugned order-in-appeal wherein he did not interfere with the said Order-in-Original dated 29.06.2015 through which in addition to confirmation of demand, penalty of Rs.5.00 Lakhs was imposed on Shri Vimal Sharma under Rule 26 of Central Excise Rules, 2002. Aggrieved by the impugned Order-in-Appeal appellants are before this Tribunal.

4. Heard the ld.Counsel for the appellant. He has submitted that the loose papers on the basis of which the said show cause notice claims that the records of clandestine removal were maintained are not relied upon documents for issue of show cause notice and that both the original authority and first appellate authority have not taken into consideration any evidence and relied their findings by holding that the duty can be confirmed on the basis of confessional statement dated 02.03.2012 of Shri Vimal Sharma who was the partner of the manufacturer appellant during the relevant period. He has submitted that Revenue has not conducted any investigation either from the alleged suppliers of raw materials or alleged purchasers of the goods nor Revenue has brought out any evidence to establish that the goods on which duty was demanded was actually manufactured by the appellant. He has further submitted that in demand burden is on the Revenue to prove that the goods were manufactured since the duty is on manufacture. He has further relied on the final order of this Tribunal passed in the case of Portland Cement (I) Ltd. v. Commissioner of C.Ex., Lucknow reported at 2015 (326) E.L.T. 304 (Tri.-Del.) wherein at para 15 this Tribunal has held by relying on the ruling by Hon'ble High Court of Bombay in the case of C.C.E. v. Seven Seas Corporation [2010 (259) ELT 652 (Bom.)] that in the absence of any other material to corroborate the confessional statement by the person in-charge of the business, the liability cannot be fastened on the persons. He has submitted that except confessional statement there is no corroboration relied on by original and first appellate authority for fastening duty liability and imposing penalties on both the appellants in the present case.

5. Heard the ld.AR, who has supported the impugned order-in-appeal.

6. Having considered the rival contentions and on perusal of records I find that the original and first appellate authority have relied only on the confessional statement without having any material to corroborate the same.

Therefore in view of the precedent decision of this Tribunal in the above-stated case of Portland Cement (I) Ltd. (supra) I hold that the impugned order is not sustainable. I therefore set aside the impugned Order-in-Appeal and allow both the appeals. The appellants shall be entitled for consequential relief, as per law.

(Dictated and pronounced in the court.)

(ANIL G. SHAKKARWAR)
MEMBER(TECHNICAL)

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