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

APPEAL No.E/70085/2016-EX[SM]

(Arising out of Order-in-Appeal No. 90-CE/APPL-AGRA/LKO/2015 dated 16/03/2015 passed by Commissioner of Customs & Central Excise (Appeals), Lucknow)

M/s Gee Ess Footwears, **Appellant**

Vs.

Commissioner of Central Excise & S.T., Agra **Respondent**

<u>Appearance:</u>

Shri S.S. Kumar, Representative, for Appellant
Shri Mohammad Altaf, Assistant Commissioner (AR), for Respondent

<u>**CORAM:**</u>

Hon'ble Smt. Archana Wadhwa, Member (Judicial)

Date of Hearing : 15/03/2019
Date of Decision : 15/03/2019

FINAL ORDER NO-**70735 / 2019**

Per: Archana Wadhwa

After hearing both the sides duly represented by learned Representative Shri S.S. Kumar for appellant & learned A.R. Shri Mohammad Altaf, Assistant Commissioner for revenue, I find that the appellant is engaged in manufacture of footwear. During the course of audit, it was found that they have cancelled certain invoices which were found stapled in the invoice book itself. On the above basis it was presumed that the appellant have cleared their goods to the customers, without payment of duty. As the appellant have not cancelled the invoices as per chapter-4 para-12 of CBEC Excise Manual of Supplementary Invoices, 2005, the proceedings were initiated against them by demanding duty of Rs.3,36,545/-, which resulted in passing of the present impugned order.

2. I find that the entire case of revenue is based upon the said cancelled invoices without their being any further investigations. Revenue have not bothered to go to the customers mentioned in the said invoices so as to establish that the goods described in the invoices stands received by the customers. There is virtually no evidence on record and Commissioner (Appeals) has also observed that there is no force in the investigation of the department. However, he has proceeded to uphold the Order-in-Original on the ground that the appellant has not been able to give any reasons to interfere in the impugned order of Original Adjudicating Authority.

3. I find that in the absence of any evidence of clandestine removal, allegations cannot be upheld, merely, on the basis of the invoices which stands cancelled by the appellant. As such, I find no reasons to uphold the impugned order and the same are accordingly set aside and appeal is allowed with consequential relief to the appellant.

(Dictated in Court)

(Archana Wadhwa)
Member (Judicial)

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