CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL ALLAHABAD

REGIONAL BENCH - COURT No. I

Excise Appeal No.70798 of 2018-Division Bench

(Arising out of Order-in-Appeal No. NOI-EXCUS-001-APPL-1607-17-18 dated 11/01/2018 passed by Commissioner (Appeals) Central Goods & Service Tax, Noida)

Commissioner of Customs

& Central Excise, Noida-I **.....Appellant**

(Noida)

VERSUS

Merino Industries Ltd. **....Respondent**

(Village-Achheja, Delhi Road Distt. Hapur)

APPEARANCE:

Shri Pawan Kumar Singh, Authorised Representative for the Appellant
Absent on Call for the Respondent

CORAM:

HON'BLE SMT. ARCHANA WADHWA, MEMBER (JUDICIAL)
HON'BLE MR. ANIL G. SHAKKARWAR, MEMBER (TECHNICAL)

FINAL ORDER NO. 70989 / 2019

Date of Hearing : 14 May, 2019
Date of Decision : 14 May, 2019

PER: ARCHANA WADHWA

Being aggrieved with the order passed by Commissioner (Appeals) Revenue has filed the present appeal. We have heard learned A.R. Shri Pawan Kumar Singh appearing for the Revenue. Nobody appeared for the respondents.

2. On going through the records, we note that the respondents are engaged in the manufacture of "Potato Flakes". The dispute in the present appeal relates to the classification of the same. Whereas the assessee has claimed the classification

under Chapter 20, Revenue seeks to classify the same under Chapter 11 of the Central Excise Tariff Act.

3. Proceedings were initiated against the assessee culminating into an order passed by the Original Adjudicating Authority classifying the said 'Potato Flakes' under Sub-heading No.1105 20 00, as against the assessee's claim of Chapter Heading No.20 04 10 00 and confirming the demand of duty of Rs.1.40 crores approximately.

4. Commissioner (Appeals) vide his impugned order set aside the order by relying upon the earlier order of the Tribunal in the case of same assessee, accepting the assessee's stands of classification under Chapter No.20. Revenue is not disputing the fact that the issue stands decided in the same assessee's case by Final Order No.A/70806-70807/2017-EX[DB] dated 09/08/2017. Their only contention is that the said order of the Tribunal does not stand accepted by the Revenue and an appeal their against stand filed before the Hon'ble Supreme Court which has been admitted on 18/05/2018. Further on being asked, learned A.R. fairly agrees that there is no stay of operation of the Tribunal order.

5. In such a scenario, the Tribunal's order is required to be followed. As such, we find no justifiable reasons to interfere in the impugned order of Commissioner (Appeals). Revenue's appeal is accordingly rejected.

(Dictated and pronounced in open court)

Sd/-
(Archana Wadhwa)
Member (Judicial)

Sd/-
(Anil G. Shakkarwar)
Member (Technical)

Lks