CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL ALLAHABAD

REGIONAL BENCH - COURT No. I

Excise Appeal No.70704 of 2018-Single Member

(Arising out of Order-in-Appeal No. NOI-EXCUS-001-APPL-1981-17-18 dated 28/03/2018 passed by Commissioner (Appeals) Central Tax, Noida)

M/s Dipty Lal Judge Mal Pvt. Ltd. .....Appellant

(F-55, Hosiery Complex, Phase-II, Noida)

VERSUS

Commissioner of Central GST &

Central Excise, Noida ....Respondent

(C-56/42, Renu Tower, Sector-62, Noida)

APPEARANCE:

Shri Jatin Mahajan, Advocate for the Appellant
Shri Sandeep Kumar Singh, Authorised Representative for the Respondent

CORAM:

HON'BLE SMT. ARCHANA WADHWA, MEMBER (JUDICIAL)

FINAL ORDER NO.- 71260 / 2019

Date of Hearing : 28 June, 2019
Date of Decision : 28 June, 2019

PER: ARCHANA WADHWA

Though the appellant had filed a request for adjournment but learned advocate Shri Jatin Mahajan appears for the appellant whose Vakalatnama is already on record and submits that the adjournment request made by them to be treated as withdrawn.

2. Arguing on the appeal, learned advocate submits that the appellant is engaged in the manufacture of Motor Vehicle Parts, Washing Machine Parts & Refrigerator Parts and were availing the benefit of Cenvat credit of duty paid on various inputs and input services etc. One of the inputs used by them is Plastic

Dana which he is procuring from indigenous market as also from the importers. Accordingly they had availed Cenvat credit of duty paid on the said plastic dana. He clarifies that in case of imported plastic dana as Specified Special Additional Duty of Customs (SAD) was also paid and they took credit on SAD also.

3. Subsequently, the appellant had cleared plastic dana on which they had availed the credit to other manufacturers and the credit availed was reversed by them. The said facts were duly reflected by them in their monthly or quarterly returns in terms of the provisions of the Central Excise Act.

4. An audit was conducted in their factory on 25/07/2012 and it was noticed that though the appellant had reversed the excise duty, the SAD credit availed in respect of imported plastic dana was not reversed by them. Based upon the said audit objection proceedings were initiated against them by way of issuance of a show cause notice dated 27/03/2015 proposing reversal of Cenvat credit of Rs.9,99,544/-. As appellant had reversed amount of Rs.65,678/- alongwith interest of Rs.19,704/- attributable to reversal of SAD the duty of Rs.9,33,806/- was confirmed against them by the impugned order alongwith confirmation of interest and imposition of penalties. The order of Original Adjudicating Authority stands upheld by Commissioner (Appeals) and hence the present appeal.

5. My attention stand draws to the report of the appellant's jurisdictional Range Superintendent which is to the effect that the assessee had not availed SAD in respect of the entire inputs inasmuch as most of the plastic dana was procured by them from local manufacturers. Similarly report says that the plastic dana cleared by them, as such, is not necessarily out of the stock of imported goods. As such, it was concluded in the report that the entire plastic dana sold such were not out of the quantity on which SAD stands availed by the appellant.

6. Commissioner (Appeals) by referring to the said report has not discussed the same but simplicitor observed that the same is not in favour of the assessee as appellant had availed the SAD credit and the said inputs were subsequently sold, the demand stands confirmed against them. It is clarified by the learned advocate that the said SAD is on the total quantity cleared by them irrespective of the fact that some of the clearances were out of the locally procured material.

7. The demand also stands assailed on the point of limitation by submitting that the audit was conducted on 25/07/2012 whereas the show cause notice stands issued on 27/03/2015 for the period 2010-11. They were filing the requisite returns with the Revenue and all the information was reflected in the said statutory records. Otherwise also, I find that in terms of the Hon'ble Allahabad High Court in the case of Commissioner of Central Excise & Service Tax vs. Triveni Engineering & Industries Ltd. 2015 (317) E.L.T. 408 (All.), the show cause notice issued after a gap of twenty two months from the date of audit is barred by limitation.

8. As such, I find that the notice issued on 27/03/2015 is clearly barred by limitation in terms of the law declared by the Hon'ble Allahabad High Court in the above referred decision of Triveni Engineering & Industries Ltd. As such, without going into the detailed merits of the case, I set aside the impugned order on point of time bar itself and allow the appeal with consequential relief to the appellant.

(Dictated and pronounced in open court)

Sd/-
(Archana Wadhwa)
Member (Judicial)

Lks