CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL ALLAHABAD

REGIONAL BENCH - COURT No. I

Excise Appeal No.70170 of 2017-Division Bench

(Arising out of Order-in-Appeal No. NOI-EXCUS-002-APP-0931-16-17 dated 25/11/2016 passed by Commissioner (Appeals) Central Excise & Customs, Noida)

M/s C.S. Concrete Pvt. Ltd. **.....Appellant**

(80/1, Ecotech-I Extension, Greater Noida)

VERSUS

Commissioner (Appeals) Customs, Central Excise

Service Tax, Noida **....Respondent**

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

WITH

Excise Appeal No.70171 of 2017-Division Bench

(Arising out of Order-in-Appeal No. NOI-EXCUS-002-APP-0932-16-17 dated 25/11/2016 passed by Commissioner (Appeals) Central Excise & Customs, Noida)

Shri Chatar Singh Tanwar, Director **.....Appellant**

(80/1, Ecotech-I Extension, Greater Noida)

VERSUS

Commissioner (Appeals) Customs, Central Excise

Service Tax, Noida **....Respondent**

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

APPEARANCE:

Shri S.K. Mathur, Advocate for the Appellant
Shri Sandeep Kumar Singh, Authorised Representative for the Respondent

CORAM:

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

FINAL ORDER NOS. - 71394-71395 / 2019

Date of Hearing : 11 July, 2019
Date of Decision : 11 July, 2019

PER: ARCHANA WADHWA

After hearing both the sides duly represented by Shri S.K. Mathur learned advocate appearing for the appellant and Shri Sandeep Kumar Singh learned A.R. appearing for the Revenue, we find that demand of duty of excise to the extent of around Rs.38,40,928/- stand confirmed against the appellant alongwith imposition of penalty on the ground during the period relevant for the purposes of present appeal, they have manufactured readymade concrete (hereinafter referred as RMC) and cleared the same without payment of duty.

2. The appellants have not contested the said allegation and have submitted that they were not aware of the fact that RMC would attract duty of excise. However their entire endeavour is to challenge the quantification done by the Revenue. As per learned advocate, Revenue has picked up figures from the balance sheet and has considered the entire receipts as sale of RMC. Further the Revenue has also taken into consideration the other documents recovered and seized from their premises like weighment slips, challans etc. for arriving at findings of total figures of clearance of RMC.

3. The grievance of the appellant is that apart from the clearing the RMC, they were also trading in bricks and consideration for such trading are part of their balance sheet and there was no justification on the part of the Revenue to include the same by treating them as clearance of RMC. He submits that the said facts were disclosed by the director in their very first statement itself.

On being questioned as to whether the said documentary facts were produced by them before the Original Adjudicating Authority, he submits that Revenue during visit of their factory had resumed all the documents and same were not available with the assessee so as to prepare a statement to that effect. However learned advocate fairly agrees that there was no request by the assessee to the Adjudicating Authority for supply of such documents but submits that if given a chance, they will be able to satisfy the Adjudicating Authority with the above said facts.

4. Learned A.R. appearing for the Revenue does not object to the above suggestion made by learned advocate.

5. Admittedly the appellant's records were seized and in the absence of the same it was not possible for the appellant to effectively contest their case. Adjudicating Authority has also rejected the said stands of the assessee on the sole ground that no documentary evidences stands placed before him. As such, we are of the view that the impugned order is required to be set aside and the matter is required to be remanded to the Original Adjudicating Authority with directions to supply all the seized relied upon as also non-relied upon documents to the appellants, who would then be given a proper opportunity to put forth their case. Both the appeals are allowed by way of remand.

(Dictated and pronounced in open court)

Sd/-
(Archana Wadhwa)
Member (Judicial)

Sd/-5
(Anil G. Shakkarwar)
Member (Technical)

Lks