CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, ALLAHABAD

REGIONAL BENCH : COURT NO.I

Excise Appeal No.71273 of 2018

(Arising out of Order-in-Appeal No.15-CE/APPL-KNP/LKO/2081 dated 11.01.2018 passed by Commr.(Appeals) of Customs, GST & Central Excise, Lucknow.)

M/s. Sarjoo Sahkari Chini Mills Ltd.
(Belrayan, Distt. Lakhimpur, U.P.)

...Appellant

VERSUS

Commr. of Customs, GST & Central Excise, Lucknow

.....Respondent

(Kendriya Bhawan, Sector-H Aliganj, Lucknow)

APPEARANCE

Absent on Call for the Appellant (s)
Shri Anupam Kr. Tiwari, Authorized Representative for the Respondent

CORAM: HON'BLE MRS. ARCHANA WADHWA, MEMBER(JUDICIAL)

FINAL ORDER NO. 71504/2019

DATE OF HEARING : 5 August 2019
DATE OF DECISION : 5 August 2019

MRS. ARCHANA WADHWA :

Nobody appeared. Accordingly I have heard learned Authorized Representative for the respondent and have gone through the impugned order.

2. As per facts on record, the appellant is engaged in the manufacture of cane sugar and molasses. The dispute in the present appeal relates to 1631 MT of molasses which were stored by the appellant in kacha pit tanks during the period August 2012. The said molasses were being reflected in their ER-1 returns till October 2014, as having not been cleared.

3. The appellant's factory was visited by the Central Excise officers and on physical verification, the molasses were found to be not in good condition, but in the shape of black muddy watering material. The appellant explained that on account of storage in kacha pit and on account of heavy rains resulting in flood in June 2013, the molasses got spoiled and mixed with mud. As such they contended that they were destroyed by natural calamity and not by any negligence on the part of the appellant. Further they have been contending that they have been intimating the Revenue by filing ER-1 returns.

4. In the above backdrop proceedings were initiated against them proposing confirmation of demand of duty of Rs.12,60,720/-. The same culminated into an order passed by the original adjudicating authority as also confirmed by the Commissioner(Appeals). Hence the present appeal.

5. The sole reason for confirmation of the above demand is that the appellant, as per the State Excise Commissioner's order, should have given priority to the clearance of molasses from kacha pits instead of clearing the same first from the steel tanks. Secondly the lower authorities have observed that the appellant did not file any application for remission of duty in terms of rule 21 of the Central Excise Rules.

6. As regards the directive of the State Commissionerate, I find that the same, if at all, amounts to violation of the State Commissioner's order, for which the Central Excise authorities would not have any jurisdiction to confirm duty or to impose penalty. As regards the remission application, the appellants have been showing the storage of the molasses in their ER-1 returns and the exact date of destruction of the molasses by mixing with the mud is not available. As such the remission application could have been filed by the appellant at any point of time and the mere fact that the same was not filed till the visit of the officers, would not call for any confirmation of duty.

It is the Revenue's own case that the molasses were not cleared from the appellant's factory, thus making them liable to pay any duty on the same. In the absence of the clearance of the molasses, I am of the view, that confirmation of demand or imposition of penalty upon them is not justified. Accordingly the impugned orders are set aside and appeal is allowed with consequential relief to the appellant.

(Dictated and pronounced in the open Court.)

SD/
(ARCHANA WADHWA)
MEMBER (JUDICIAL)

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