CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
<u>ALLAHABAD</u>

REGIONAL BENCH – COURT NO.I

Excise Appeal No.70776 of 2018

(Arising out of Order-in-Appeal No.98/CE/Appeal/Audit LKO/2018 dated 16/03/2018 passed by Commissioner (Audit), Central Goods & Service Tax & Central Excise, Lucknow)

M/s Bineet Auto Industries **.....Appellant**

D-29, Udyog Kunj, Site-V, Panki, Kanpur-208022

VERSUS

Commissioner (Audit), CGST & Central Excise

.....Respondent

7, Havluck Road, Lucknow-226001

<u>APPEARANCE:</u>

Shri Tanmay Sadh, Advocate for Appellant
Shri Anupam Kumar Tripathi, Authorized Representative for Respondent

CORAM :
Hon'ble Mrs. ARCHANA WADHWA, MEMBER (JUDICIAL)

FINAL ORDER NO. 71579 / 2019

DATE OF HEARING : 07 August, 2019
DATE OF DECISION : 07 August, 2019

ARCHANA WADHWA

After hearing both the sides duly represented by learned advocate Shri Tanmay Sadh appearing on behalf of the appellant and Shri Anupam Kumar Tripathi appearing on behalf of the Revenue, I find that the appellant is engaged in the manufacture of 'Leaf Spring Assembly, Leaf Sprig Assorted & Steel Bush'. Their factory premises were visited by the Central Excise Officers on 04 August, 2015, who conducted various checks and verifications. As a result of stock taking, stock of leaf spring to the extent of 44,571 Kg. total valued at Rs.52,74,361/- was detected in excess than the recorded balance. The same was seized vide panchnama drawn on the spot.

2. On the above basis proceedings were initiated against the appellant proposing confiscation of the excess found goods and as also for imposition of penalty. The investigation culminated into an order passed by Original Adjudicating Authority and upheld by the Commissioner (Appeal) vide which goods were confiscated with an option to the appellant to redeem the same on payment of redemption fine of 15 Lakhs. Further, penalty of Rs.3 lakhs was imposed on the appellant.

3. It is seen that the appellant in their defence reply had contested the manner of stock taking of the goods by submitting that the visiting officers had also considered the quantities of assorted leaf spring in process as finished goods and by comparing the same with RG1 quantity the stock verification was done on eye estimation. Each variety of leaf is different and in the absence of any inventories, the stock taking conducted by the appellant cannot be held to be correct.

4. I find that apart from drawing the panchnama there is no documentary inventories to show as to how the stock taking was under taken by the visiting officers. Apart from that I also note that there is no evidence on record indicating that such excess found goods were not entered in the statutory records with an intention to remove the same clandestinely. Goods were still found in the factory premises and were very much available. As such, I am of the view

that confiscation of the said goods and imposition of penalty on the appellant is not justified. Accordingly, the impugned order is set aside and appeal is allowed with consequential relief.

(Dictated and Pronounced in open Court)

Sd/-
(Archana Wadhwa)
Member (Judicial)

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