CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL ALLAHABAD

REGIONAL BENCH – COURT NO.I

Excise Appeal No. 70870 of 2018

(Arising out of Order-in-Appeal No. NOI/EXCUS/001/APP/1837/2017-18 dated 16/03/2018 passed by Commissioner (Appeals), Goods & Central Tax, Noida)

M/s Radha Madhav Industries .....Appellant

(H-9, Phase-I UPSIDC Industrial Area, M. G. Road, Hapur)

VERSUS

Commissioner of Central Goods

& Service Tax, Noida .....Respondent

(Renu Tower, Sector 62, Noida, Disst.- Gautam Nagar, U.P.)

WITH

Excise Appeal No. 70871 of 2018

(Arising out of Order-in-Appeal No.NOI/EXCUS/001/APP/1837/2017-18 dated 16/03/2018 passed by Commissioner (Appeals), Goods & Central Tax, Noida)

M/s Radha Madhav Industries .....Appellant

(H-9, Phase-I UPSIDC Industrial Area, M. G. Road, Hapur)

VERSUS

Commissioner of Central Goods

& Service Tax, Noida .....Respondent

(Renu Tower, Sector 62, Noida, Disst.- Gautam Nagar, U.P.)

AND

Excise Tax Appeal No. 70896 of 2018

(Arising out of Order-in-Appeal No. NOI/EXCUS/001/APP/1869/2017-18 dated 21/03/2018 passed by Commissioner (Appeals), Goods & Central Tax, Noida)

Shri Sanjay Gupta, Prop.

M/s Radha Madhav Industries .....Appellant

(H-9, Phase-I UPSIDC Industrial Area, M. G. Road, Hapur)

VERSUS

Commissioner of Central Goods

& Service Tax, Noida .....Respondent

(Renu Tower, Sector 62, Noida, Disst.- Gautam Nagar, U.P.)

APPEARANCE:

Shri Harbir Singh, Advocate for the Appellant
Shri Pawan Kumar Singh, Authorized Representative for Respondent

CORAM :
Hon'ble Mrs. ARCHANA WADHWA, MEMBER (JUDICIAL)
Hon'ble Mr. ANIL G. SHAKKARWAR, MEMBER (TECHNICAL)

FINAL ORDER NO. 71749-71751 / 2019

DATE OF HEARING: 29 August, 2019
DATE OF DECISION: 29 August, 2019

ARCHANA WADHWA

All the three appeals are being disposed of by a common order as they arise out of the same set of facts and circumstances. We have heard learned advocate Shri Harbir Singh appearing on behalf of the appellant and learned Authorized Representative Shri Pawan Kumar Singh appearing for the Revenue.

2. As per facts on record, M/s Radha Mandhav Industries is engaged in the manufacture of 'HDPE Woven Fabric', 'HDPE Woven Fabric Laminated with paper', 'Laminated Bags' & 'Laminated Jute Bags' falling under Chapter 39, 59 & 63 of the First Schedule of the Central Excise Tariff Act, 1985. During the period in question, they were availing the benefit of SSI Exemption Notification No.08/2003-CE dated 01 March, 2003.

3. There factory was visited by the central excise officers on 26 September, 2014, who conducted various checks and verifications. As a result, raw material, semi-finished goods and finished goods not entered in the records were seized by the officers on the ground that the same were intended to be removed clandestinely. Subsequently, a show cause notice dated 23 March, 2015 was issued to them proposing confiscation of the said goods along with imposition of penalty. On adjudication, the seizer of raw material was vacated. However, finished goods were confiscated with an

option to the appellant to redeem the same on payment of redemption fine of Rs.1,10,000/-. Further, penalty of Rs.66,877/- was imposed upon the appellants.

4. Another show cause notice was issued on 07 April, 2016 raising demand of duty of Rs.22,97,389/- for the period 2011-12 to 2015-16 on the allegations that during the period in question, the appellant's final product's clearance value has exceeded the exemption limit provided under the Notification No.08/2003-CE and as such the benefit of the SSI exemption was not available to the appellant. The said allegation was based upon the figures as reflected in the balance sheet of the appellants.

5. During the course of adjudication, the appellant took a categorical stand that they were also doing trading of the goods and the balance-sheet figures include such trading value. They contended that during all these years the aggregate value of the clearance of their manufactured goods was well below the exemption limit and as such raising of demand against them is neither justified nor warranted. Similarly, the appellant also contested imposition of penalty upon Shri Sanjay Gupta, proprietor of the unit on the ground that proprietor and proprietary firm are one and the same and no separate penalty can be imposed upon the proprietor.

The said contentions of the appellants were not accepted by the Original Adjudicating Authority, who confirmed the demand along with imposition of equal penalty on the manufacturing unit. Further, penalty of Rs.1,00,000/- was imposed upon Shri Sanjay Gupta, Proprietor. The said order of the Original Adjudicating Authority stands upheld by Commissioner (Appeals) and hence the present appeal.

6. After hearing both the sides and after going through the impugned order, we find that the demand of Rs.22,97,389/- stands confirmed against the manufacturing unit on the sole ground that as per the their balance sheet figures they have crossed the threshold exemption limit of Rs.1.50 Crores. Though the appellant have taken a categorical stand before the Lower Authorities that as they were also doing trading of various goods, the balance sheet figures cannot be adopted for the purpose of holding that the same are only in respect of manufactured goods.

7. We find that Revenue's basic findings are that the appellant's have manufactured the goods more than the value as reflected in their statutory records. Such allegations are based upon the sale figures reflected in the balance sheet. Apart from such figures in the balance sheet, Revenue has not produced any evidences of clandestine manufacture and clearance of the goods, so as to conclude that the clearance of the manufactured goods is more than the exemption limit as provided in the small scale exemption notification. There is virtually no evidence relatable to procurement of excess found goods, conversion of the same into final product in the appellant's factory, clearance of the same and identification of the buyers with the evidence of flow back of consideration to them. It is well settled law that the onus to prove the clandestine activity is upon the Revenue and is required to be discharged by way of positive evidences. In the present case, the sole evidence of the Revenue is as regards the balance sheet figures which also include the trading activities. It is not a thumb rule that the figures in the balance sheet necessarily relates to manufactured goods.

8. In the absence of any evidence to reflect upon the clandestine manufacture and clearance, we find no reasons

to uphold the demand, which in any case is also barred by limitation. As such, we set aside the confirmation of demand and imposition of penalty upon the manufacturing units as also the sole proprietor.

9. As we have already hold that the clearance of the appellants were below the exemption limit, the seizer of the goods in their factory and the consequent confiscation of the same along with penalty, cannot be upheld. Accordingly, the said appeal of the appellant against the seizer portion is also allowed.

10. In a nut shell the impugned orders are set aside and all the three appeals are allowed with consequential relief.

(Dictated and Pronounced in open Court)

Sd/-
(Archana Wadhwa)
Member (Judicial)

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

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