CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD

REGIONAL BENCH – COURT NO.I

Excise Appeal No.70067 of 2019

(Arising out of Order-in-Appeal No.490/CE/Alld/2017 dated 18/12/2017 passed by Commissioner (Appeals), CGST & Central Excise, Allahabad)

M/s Saraya Sugar Mills **.....Appellant**

(Sardar Nagar Distt.-Gorakhpur, U.P.)

VERSUS

Commissioner, CGST

& Central Excise, Varanasi **.....Respondent**

(Varanasi)

APPEARANCE:

Absent for Appellant
Shri Santosh Kumar Agarwal, Authorized Representative for Respondent

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

FINAL ORDER NO.70070 / 2020

DATE OF HEARING: 29 October, 2019
DATE OF PRONOUNCEMENT: 01 January, 2020

ARCHANA WADHWA

On matter being called nobody appeared nor is there any adjournment request. Accordingly, I have heard learned A.R. Shri Santosh Kumar Agarwal appearing for the Revenue and have gone through the impugned orders.

2. As per facts on record, the appellant's factory, which is engaged in the manufacture of sugar was visited by the officers on 22 September, 2012, who conducted various checks and verifications. As a result shortage of 6,084 bags/Qtls of sugar

was detected and a proper panchnama was recorded. Shri Anil Chandra Pandey, Authorized Signatory of the appellants in his statement recorded on the said date admitted the shortages in the stock of sugar and agreed to deposit the central excise duty. Subsequently, the same was deposited by the appellant to the extent of Rs.5,95,319/- along with interest of Rs.5,578/- by adjusting the same against the refund available to them.

3. On the above basis proceedings were initiated against them by issuance of show cause notice dated 10 April, 2014 proposing to confirm the demand and to impose penalty. The notice culminated into an order passed by Original Adjudicating Authority confirming the demand along with interest and imposition of penalty of identical amount. The said order of the Original Adjudicating Authority was upheld by Commissioner (Appeals). Hence the present appeal.

4. On going through the impugned order it is seen that the Revenue has alleged clandestine removal of the sugar on the basis of the shortages detected by the officers. On the other hand, the appellant had taken a categorical stand that the stock of sugar got damaged due to seepage from the roof which plea stands rejected by the Lower Authorities as an afterthought.

Apart from the shortages, I find that there is no evidence of removal of the goods in a clandestine manner. The clandestine allegations are required to be established by the Revenue by production of sufficient evidences. The discrepancies in the stock cannot be taken as a ground for upholding the allegations of clandestine removal. The Hon'ble Allahabad High Court in the case of Commissioner of Central Excise V/s Minakshi Castings reported at 2011 (274) E.L.T. 180 (All.) has held that that mere shortages do not lead to the conclusion of activity of clandestine removal. To the same effect are the decisions of the Hon'ble Punjab & Haryana High Court in the case of Commissioner of C.EX. & S.T., Ludhiana V/s Anand Founders & Engineers reported at 2016 (331) E.L.T. 340 (P & H) laying down that charges of clandestine removal based upon the alleged shortages of stock are not enough to uphold the charges of clandestine removal. Further, Tribunal in the case of Shree Hanuman Loha Pvt. Ltd. V/s Commissioner of C.EX. & S.T., Raipur reported at 2016 (337) E.L.T. 311 (Tri.Del.) has observed that the authorized officer of the assessee has merely agreed the shortages but nowhere admitted that such short found goods have been removed clandestinely. As the Department had not further investigated into the matter for arriving at the conclusion that the discrepancies has resulted in removal of goods in a clandestine manner, the confirmation of duty, confiscation of goods and imposition of penalty was set aside.

5. In the present case, I find that there is no admission of any clandestine removal by the appellant. Further, there is no evidence of transportation of the goods, receipt of the goods by the customers or receipt of the consideration by the appellant. In such a scenario, the confirmation of demand of duty cannot be upheld. Accordingly, I set aside the impugned order and allow the appeal with consequential relief to the appellant.

(Order Pronounced in the open Court on 08/01/2020)

Sd/-
(Archana Wadhwa)
Member (Judicial)

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