CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
SOUTH ZONAL BENCH
BANGALORE

Appeal(s) Involved:

E/20117/2019-SM

[Arising out of No. TVM-EXCUS-000-APP-931-2018 dated 29/10/2018 passed by Commissioner of Central Tax, COCHIN(Appeal)]

M/s United Electrical Industries
Pallimukku Kollam
KERALA
KERALA
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Appellant(s)

Versus

Commissioner Of Central Tax And Central Excise, Thiruvanthapuram
P.B.No.13, I.C.E Bhawan, Press Club Road
Thiruvanthapuram
Kerala
695001

Respondent(s)

Appearance:

Mr. Manoj Pillai, Advocate
TAXAIDE T C
26/1747,KALYAN
U R 72,UPPALAM ROAD, TRIVANDRUM
TRIVANDRUM
KERALA
695001

For the Appellant

Mr. Madhup Sharan, Asst. Commissioner, AR

For the Respondent

Date of Hearing: 03/06/2019
Date of Decision:10/06/2019

CORAM:
HON'BLE SHRI S.S GARG, JUDICIAL MEMBER

Final Order No.20460/2019

Per : S.S GARG

The present appeal is directed against the impugned order dated 29.10.2018 passed by the Commissioner (Appeals) whereby the

Commissioner (Appeals) has rejected the appeal of the appellant.

2. Briefly the facts of the present case are that the appellants are engaged in the manufacture of goods falling under Chapter Heading 8536 and 9028 of CETA, 1985. On scrutiny of the ER-1 Returns filed by the appellant for the month of April, 2014 to May, 2014, it was observed that they had shown clearance of 12402 nos. of goods falling under 90289010 valued at Rs.26,45,347/- on payment of duty at the rate of 10% against the actual rate of 12%. During the month of May, 2014, 15155 nos. of goods falling under CETSH 90289010 valued at Rs.34,45,862/- was manufactured and cleared at the rate of 10% against the actual rate of 12%. A demand notice was issued to them for the differential duty by the concerned Range Officer. After due process of law, the lower authority, on finding that the appellant had short paid duty to the tune of 2& ad valorem, confirmed the demand of differential duty of Rs.1,25,479/- under Section 11A(1) of the Central Excise Act, 1944 along with interest under Section 11AA of the Central Excise Act, 1944 and imposed a penalty of Rs.1,25,479/- under Rule 25 of Central Excise Rules, 2002. Aggrieved by the said order, the appellant filed appeal before the Commissioner who rejected the same.

3. Heard both the parties and perused the records.

4. Learned Counsel for the appellants submitted that the impugned order is not sustainable in law as the same has been passed without properly appreciating the facts and the law. He further submitted that the appellant had purchased 32,600 nos. of accessories of SP Static Meters from M/s Adura Meters Pvt. Ltd., Hyderabad in June, 2010 to August, 2010 for the manufacture of Electric Meters on payment of prevailing duty, i.e., 10% ad valorem and took CENVAT credit of the same. He further submitted that a quantity of 28,557 nos. of meters were rejected by the Quality Control/KSEB authorities as unfit and unmarketable and the same were returned by the appellant to the supplier by paying the CENVAT credit availed at 10% ad valorem. He further submitted that the appellant had only removed the inputs as such and, therefore, not liable to pay the then prevailing higher

rate of duty of 12% ad valorem. He further submitted that in the invoices prepared at the time of return of the defective goods to the original supplier of the inputs, appellant had clearly shown that the transaction was NOT A SALE of the goods but "Rejected materials returned to Original Supplier within Guarantee period". He further submitted that both the authorities have wrongly interpreted the return of the goods for replacement as sale of full-fledged electric meters. He also submitted that since the goods were rejected on quality, it does not become manufactured goods because the goods have failed in marketability test. He also submitted that while purchasing the inputs, he availed CENVAT credit of 10% and while returning the goods to the supplier, he pays 10% duty which he availed earlier.

5. On the other hand, learned AR defended the impugned order and submitted that as per the case set up by the appellant, the appellant purchased the inputs from their supplier and assembled them in the electric energy meters and those meters were rejected on quality by KSEB and thereafter, they were sent by the appellant to their supplier for replacement. He further submitted that the appellant failed to prove that after the rectification, those meters were received by them as replacement. He further submitted that as per the grounds of appeal raised by the appellant, they have sent the inputs for replacement of the said material was not proved or recorded by the appellant, rather the appellant says that replacement is irrelevant to be proved. He further submitted that the Commissioner (Appeals) has also held that the appellant have not been able to establish that the goods were returned to the appellant after the rectification.

6. After considering the submissions of both the parties and perusal of the material on record, I find that the case set up by the appellant is that he purchased the various inputs from their supplier i.e. M/s Adura Meters Pvt. Ltd., Hyderabad and they have assembled the same and made meters and also loaded software in those meters but 28,557 nos. of meters were rejected on quality by KSEB and they were sent back to the original supplier for rectification/replacement. Further, I find that while sending the goods for rectification/replacement, the appellant paid 10% duty which was availed

by him at the time of receipt of the inputs. Further, I find that once the appellants have carried out the process of assembling of the inputs and made electric meters which is the finished goods and the same was returned to the original supplier, it would tantamount the selling of finished goods and not the inputs for replacement. Further, I find that the appellants have failed to prove that the same goods which were sent for repair/replacement were received back by the appellant. Further, I find that the Commissioner (Appeals) has rightly observed that the appellant had bought the inputs only and not the finished products i.e. electric meters and cleared from their factory the manufactured goods which were ready for clearance from their factory on payment of applicable duty. Further, I find that at the time of clearance from the factory, the chargeable rate of duty was 12% ad valorem on finished energy meters but the appellant had only paid 10% and therefore, both the authorities have rightly demanded the differential duty of 2%. Further, I do not find any infirmity in the impugned order passed by the Commissioner demanding the differential duty from the appellant because the appellant has failed to prove that after rectification, the appellant got the goods back from the supplier. Further, I find that the imposition of penalty of Rs.1,25,479/- on the appellant under Rule 25 of the Central Excise Rules, 2002 is not justified in the present case because there is no malafide intention of the appellant to evade payment of duty. The appellant was under a bona fide belief that since he has not sold the goods to the original supplier and he has mentioned in the invoices NOT FOR SALE and has reversed the same duty which was availed as CENVAT credit. Therefore, in view of these facts, I set aside the imposition of penalty and confirm the demand along with interest. Consequently, the appeal is dismissed except for dropping the penalty.

(Order was pronounced
in Open Court on **10/06/2019**)

S.S GARG
JUDICIAL MEMBER

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