CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
SCO 147-148, SECTOR 17-C, CHANDIGARH-160017

DIVISION BENCH
Court-I

Appeal No.E/1824-1825/2011-Ex

(Arising out of OIA No.27/CE/Chd-II/2011 dt.27.4.2011 and passed by the CCE (Appeals), Chandigarh)

Date of hearing/Decision:21.03.2018

M/s. Godwari Spherocast Ltd. **Appellant**
Shri Sushil Kumar, MD

Vs.
CCE, Punchkula **Respondent**

Present for the Appellant: Shri Bipin Garg/Mayank Garg, Advocates
Present for the Respondent: Shri A.K.Saini, AR

Coram: Hon'ble Mr. Ashok Jindal, Member (Judicial)
Hon'ble Mr.AnilG.Shakkarwar, Member (Technical)

FINAL ORDER NO.62257-62258/2018

PER: ASHOK JINDAL

The appellants are in appeal against the impugned order wherein the demand has been confirmed on the basis of income surrendered before the Income Tax Authorities.

2. The facts of the case are that the appellants surrendered income amount to Rs.60 lakhs before the Income Tax Authorities under Section 133 (a) of Income Tax Act during the survey conducted on 23.2.2007. Consequently, the proceedings were initiated against the appellants to ascertain the reasons for surrender of income before the Income Tax Authorities. In pursuance to the proceedings initiated against the appellants, the appellants replied that they have surrendered the said income to buy peace and the income which was

due to higher GP rate claimed by the appellants in their books of accounts. Therefore, it is the amount surrendered by them before the Income Tax Authorities, the same is income on account of profit earned on the goods cleared clandestinely by the appellants. The proceedings were initiated against the appellants to demand duty on the goods cleared clandestinely by the appellants by way of show cause notice. The matter was adjudicated, demand of duty was confirmed along with interest and the penalties were also imposed on them. Aggrieved from the said order, the appellants are before us.

3. Heard the parties and perused the records.

4. The case of the Revenue is that as the appellants have surrendered income of Rs.60 lakhs before the Income Tax Authorities and the same has been the income earned on the goods cleared clandestinely by the appellants, no iota of evidence produced on record by the Revenue to prove that such income surrendered is on account of clandestine clearance of the goods. Moreover, the appellants have explained that the income was surrendered due to GP rate claimed by the appellants in their books of accounts and further explained by the appellant and they have surrendered the income to buy the peace from the Income Tax Authorities. Admittedly, the Revenue has not come forward with the evidence that the appellants have cleared the goods on which the duty has not been paid. Therefore, in the absence of concrete evidence on record, the duty cannot be demanded on the basis of assumption and presumption. The same view was taken by this Tribunal in the case of CCE s. Zoloto Industries Ltd.-2013 (294) ELT 258 (Tri.) wherein this Tribunal has held that no reason to hold that surrendered income was on account

of clandestine manufacturing activity and no duty can be demanded on surrendered of income to Income Tax Department. Further, in the case of Arisudana Industries Limited vs.CCE, Ludhiana-2016 (339) ELT 258 (Tri.-Chan.), this Tribunal has examined the issue to demand duty on surrendered income to the Income Tax Authorities and held that in the absence of any positive evidence on record, that surrendered income, pertain to clandestine manufacture and removal of excisable goods, duty cannot be demanded from appellant.

5. Admittedly in this case, the Revenue has not come forward with any evidence that income surrendered to the Income Tax authorities pertain to clandestine manufacture and clearance of the goods. In that circumstance, the show cause notice was issued to demand duty on assumptions and presumptions is not sustainable in the eyes of law. Consequently, the impugned order is set aside and the appeals are allowed with consequential relief.

(Dictated and pronounced in the court)

(ANIL G.SHAKKARWAR)
MEMBER (TECHNICAL)

(ASHOK JINDAL)
MEMBER (JUDICIAL)

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