CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
SCO 147-148, SECTOR 17-C, CHANDIGARH – 160 017

SINGLE MEMBER BENCH
COURT NO. II

APPEAL NO. E/60672/2018-EX[SM]

[Arising out of Order-in-Appeal No. LUD-EXCUS-01-APP-353-18 dated 23.02.2018 passed by the Commissioner (Appeals), Ludhiana]

Date of hearing/decision: 31.08.2018

M/s Amrit Engg and Foundary Works	:	**Appellant(s)**
VS		
C.C.E., Ludhiana	:	**Respondent(s)**

Appearance:
Present for the Appellant(s): Sh. Mohinder Singh, Advocate
Present for the Respondent(s): Sh. Bhasha Ram, A.R.

CORAM:

Hon'ble Mr. Devender Singh, Member (Technical)

FINAL ORDER NO. 62884/2018

Per : Devender Singh

The appellants are in appeal against the impugned order dt. 23.02.2018 passed by the Commissioner (Appeals).

2. Brief facts of the case are that the appellants are engaged in the manufacture of tractor parts. An audit was conducted by the Department and on scrutiny of Profit and Loss account for the year ending 31st March, 2007, it was observed that the appellants had shown an amount of Rs. 5.75 lacs as cash surrender and Rs. 39.25 lacs as stock surrender. The appellants informed the audit party that the cash and stock were surrendered to the Income Tax authorities during the course of survey dt. 01.09.2006 done by the Income Tax

authorities. The Department issued a show cause notice dt. 22.04.2013 alleging that the appellants had acquired possession of excisable goods liable to confiscation and therefore they were liable to penal action under Rule 25 and Rule 26 of the Central Excise Rules, 2002. The matter was adjudicated and penalty of Rs.93,840/- was imposed on the appellants under Rule 25 and penalty of Rs.2000/- was also imposed on the appellants under Rule 26 ibid. The appellants filed the appeal before the Commissioner (Appeals), however, their appeal was rejected. Aggrieved from the same, the appellants have filed this appeal.

3. Ld. Advocate for the appellants submits that the Income Tax survey was done on 01.09.2006, wherein the surrender of the cash as well as the stock was made. He points out that the show cause notice has been issued on 22.04.2013 after a gap of six and half years and the same is therefore time barred. In this regard, he relied upon the judgment of Hon'ble Supreme Court in the case of *Nagpur Alloys Castings Ltd. vs. CCE – 2002 (142) ELT 515 (SC)*. He also pleaded that the Department had raised the show cause notice having penal action without raising a demand. He also contended that the show cause notice is based on assumptions and presumptions and was not sustainable. In this regard, he relied on the judgment of Hon'ble Punjab & Haryana High Court in the case of *CCE, Ludhiana vs. Mayfair Resorts – 2011 (22) STR 263 (P&H)*. He also relied on the decision of this Tribunal in the case of *Ravi Foods Pvt Ltd vs. CCE, Hyderabad – 2011 (266) ELT 399 (Tri. Bang.)*.

4. Ld. A.R. reiterated the findings in the order of Commissioner (Appeals).

5. Heard the parties and examined the record.

6. I find that the entire case started with the surrender of cash and stock, which was made during the course of Income Tax survey on 01.09.2006. This was reflected in the Profit and Loss account of the appellants for the year ending 31st March, 2007. Department's case is built on the information which was disclosed to the Income Tax Authorities and no further investigation to corroborate clandestine removal or any suppression of production was done at any stage except for seeking clarification from the appellants. Even though the Department has alleged clandestine removal, it has not raised any demand of duty and simply proposed penal action under Rule 25 and Rule 26 ibid. It is evident that the demand in this case is badly time barred, whichever of the tow dates is taken i.e. 01.09.2006, the date of the Income Tax survey or the date 31.03.2007, the ending of the relevant financial year. I also find that the appellants have raised the plea of limitation before the adjudicating authority by relying on the judgment of *Nagpur Alloys Castings Ltd. (supra)*. However the adjudicating authority has given no finding on this important aspect. Since the show cause notice has been issued more than five years after the detection, the same is completely time barred and no penalty is imposable in such circumstances in the absence of demand. In this regard, the judgment of Hon'ble Supreme Court in the case of *Nagpur Alloys Castings Ltd. (supra)* reproduced below is directly applicable to the facts of this case:

> *"The Tribunal has, by the impugned order, upheld the imposition of penalty, though it has reduced it, after holding*

> *that the extended period of limitation was not available to the Revenue, quashing the demand for duty and holding that the appellant had nothing to gain by evading the payment of duty. The imposition of penalty, under these circumstances, is illogical."*

On merit too, I find that the Department has not done any investigation to corroborate its charge of clandestine removal and has proposed the penalties without any corroborative evidence of clandestine removal. I also find that the entire demand is based on assumptions and presumptions bereft of any evidence. The show cause notice for the penalties solely on the basis of declaration of cash and stock six and half years back without furnishing any corroborative evidence of clandestine removal is clearly not sustainable. The same is therefore liable to be set aside as has been held by this Tribunal in the case of *Ravi Foods Pvt Ltd (supra)*.

7. In view of the foregoing, the impugned order is liable to be set aside on limitation as well as on merit and is accordingly set aside.

8. In the result, the appeal is allowed.

(Operative part pronounced in the court)

(Devender Singh)
Member (Technical)

RAS'