IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
SOUTH ZONAL BENCH, CHENNAI

Appeal No. E/41095/2018

(Arising out of Order-in-Appeal No. 13/2017-18 (Audit – I) dated 31.1.2018 passed by the Commissioner of GST & Central Excise (Appeals – II), Chennai)

M/s. Concrete Udyog Ltd. Appellant

Vs.

Commissioner of GST & Central Excise
Chennai Outer Commissionerate Respondent

Appearance

Shri M.N.Bharathi, Advocate for the Appellant
Shri A. Cletus, Addl. Commissioner (AR) for the Respondent

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Hon'ble Ms. Sulekha Beevi C.S., Member (Judicial)

Date of Hearing / Decision: **07.11.2018**

Final Order No. **42784 / 2018**

Brief facts are that the appellants are engaged in manufacture of concrete electricity poles. On the basis of a reference from the audit officers, the department was of the view that the appellants have short paid the duty for the reason that the agreement entered between the appellant and TNEB included the central excise duty and therefore the appellants are liable to pay the duty at the point of agreement itself and not at the time of clearance. Therefore, show cause notice was issued proposing to demand interest on the delayed payment of duty. After due process of law, the original authority confirmed the demand of interest. Aggrieved, the appellant filed appeal before Commissioner (Appeals) who upheld the same. Hence this appeal.

2. On behalf of the appellant, ld. counsel Shri M.N. Bharathi submitted that the taxable event in the case of central excise duty is the clearance of goods. In the present case, the appellant has paid central excise duty whenever the goods have been cleared. The case of the department is that the appellant has to pay central excise duty at the point of agreement as well as when the TNEB has issued certificate for the poles indicating the central excise duty. It is submitted by him that when the goods have been cleared by the appellant, they had discharged the central excise duty and therefore there is no delay in payment of duty. That the demand of interest is without any legal basis.

3. The ld. AR Shri A. Cletus supported the findings in the impugned order. He submitted that as per the agreement as well as the certificates issued by the TNEB indicating the central excise duty, the appellants are duty bound to discharge the central excise duty at the point of agreement itself as well as the issuance of the certificate and not at the time of clearance of the goods / poles. Therefore, there is delay in payment of duty and the demand of interest is legal and proper.

4. Heard both sides.

5. After hearing both sides, I find that the only issue that arises for consideration is whether the appellant is liable to pay interest on the central excise duty paid by them for the goods cleared for the period July 2013 to October 2015. The demand of interest is made by the department alleging that there is delay in payment of duty for the reason that the agreement as well as the certificates issued by the TNEB for the clearance of poles, agreed upon by both sides, indicates the central excise duty. As rightly argued by ld. counsel for the appellant, the taxable event in the case of central excise duty is the clearance of goods. Therefore, even though the agreement or TNEB certificate included the central excise duty, the liability to pay the duty arises only at the time of clearance of goods / poles. For this reason, I find that the demand of interest is unsustainable and requires to be set aside, which I hereby do. The impugned order is set aside and the appeal is allowed with consequential relief, if any.

(Dictated and pronounced in open court)

(**Sulekha Beevi C.S.**)
Member (Judicial)

Rex