IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, CHENNAI

REGIONAL BENCH - COURT NO. – III

Excise Appeal No. 421 of 2012

(Arising out of Order-in-Original No. 93/2012 dated 24.5.2012 passed by the Commissioner of Central Excise (Appeals), Trichy)

M/s. Tyco Sanmar Ltd. Appellant
88/1B, Vadugapatti Village
Viralimalai
Trichy – 621 316

Vs.

Commissioner of GST & Central Excise Respondent
No. 1, Williams Road
Trichy – 620 001.

APPEARANCE:

Shri V.S. Manoj, Advocate for the Appellant
Shri L. Nandakumar, AC (AR) for the Respondent

CORAM

Hon'ble Ms. Sulekha Beevi C.S., Member (Judicial)
Hon'ble Shri Madhu Mohan Damodhar, Member (Technical)

Final Order No. **40611 / 2019**

Date of Hearing: 27.03.2019
Date of Decision: 27.03.2019

PER BENCH

The appellants are manufacturers of industrial valves, spares for valves etc. Pursuant to scrutiny of records by departmental officers, it emerged that some customers had paid excess amount than the actual purchase value; that such excess payment was not adjusted in subsequent years; that in the trial balance, the appellant had shown excess amount of Rs.10,57,446/- under the Heading 'Misc. Income' for 2009 – 10. The department took the view that in terms of Section 4(3)(d) of the Central Excise Act, 1944, the transaction value means the price actually paid or payable for the goods whether payable at the time of the sale or at any time was required to be included in the calculation of transaction value. Hence the excess amount collected from the customers has to be treated as additional consideration and that appellants were required to pay excise duty on such addition collection. Accordingly, Show Cause Notice dated 10.1.2011 was issued to the appellant inter alia proposing to demand short-paid duty liability of Rs.87,134/- along with interest and for imposing penalties. After due process of law, the original authority upheld the demand along with interest and imposed equal penalty under Rule 25 read with Section 11AC of the Central Excise Act, 1944. In appeal, Commissioner (Appeals) upheld the same. Hence this appeal.

2. Today, when the matter came up for hearing, on behalf of the appellant, ld. counsel V.S. Manoj submitted that

(i) in the event of supply of the goods beyond the agreed delivery date, the customers are entitled to deduct a nominal penal charges namely Liquidated damages from the bill amount.

(ii) however, the appellant had paid excise duty on the entire amount at the time of removal

(iii) if however, the delay is not due to the fault of the appellant and the customer is convinced, in such circumstances of the delay, the latter would pay the amount so retained by them and the same would be booked under the head Miscellaneous Income if exact correlation of invoice is not made available to customer. This being so, the demand of duty liability on such amount paid by the customers is incorrect.

(iv) The ld. counsel submits sample transaction involving invoice dated 31.5.2005 wherein on assessable value of Rs.1,69,435/-, the excise duty and central sales tax etc. have been discharges bringing the total billed amount to Rs.2,10,000.27. However, the customer had paid them only Rs.1,88,478/- initially which entered into the books of accounts and subsequently at the end of November 2005, doubtful payment of Rs. 21,530.27 was made. Subsequently, the customer paid part amount of Rs.17,776/- on 31.3.2010 and which was shown in the Miscellaneous Income.

3. On the other hand, ld. AR Shri L. Nandakumar supports the findings in the impugned order.

4. After hearing both sides, it is not in dispute that the appellant had discharged the central excise duty liability on the entire assessable value shown in the invoice. There is no dispute concerning such assessable value also. It is also not an allegation that appellant had received monies over and above the assessable value on negotiation as escalation cost or otherwise subsequent to the clearance of the goods. Thus, we find that the appellants have discharged duty liability on the entire assessable value. However, the customers on the course of delay in dispatch of the goods have held back certain amounts as Liquidated damages. On negotiation, such held back amounts were paid to the appellant. There cannot be any allegation that the appellants have not discharged the total duty liability that was required to be paid at the time of clearance of the

goods. In the circumstances, we find that the allegation of short-payment of duty is unjustified. This being so, the impugned order cannot sustain and requires to be set aside, which we hereby do. The appeal is allowed with consequential relief, if any, as per law.

(Dictated and pronounced in open court)

(**SULEKHA BEEVI C.S.**)
Member (Judicial)

(**MADHU MOHAN DAMODHAR**)
Member (Technical)

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