CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL CHENNAI

REGIONAL BENCH – COURT NO. III

EXCISE APPEAL No.40644 of 2019

(Arising out of Order-in-Appeal No.665/2018 (CTA-II) dt. 28.12.2018 passed by Commissioner of GST & Central Excise (Appeals-II), Chennai]

M/s.Dalmia Laminators Ltd. **Appellant**
Unit-I, No.89-93 & 94,
SIPCOT Industrial Complex,
Gummidipoondi 601 201.

VERSUS

The Commissioner of GST & Central Excise **Respondent**
Chennai Outer Commissionerate,
No2054, I Block, II Avenue,
12th Main Road, Newry Towers,
Anna Nagar,
Chennai 600 040.

APPEARANCE :

Ms. J. Vamini, Advocate
For the Appellant

Ms. Sridevi Taritla, Additional Commissioner (AR)
For the Respondent

CORAM: HON'BLE MS. SULEKHA BEEVI C.S., MEMBER (JUDICIAL)

DATE OF HEARING : 24.03.2022
DATE OF PRONOUNCEMENT: 25.03.2022

FINAL ORDER No. 40125 / 2022

Brief facts of the case are that the appellant is engaged in the manufacture of PP/HDPE/Sac fabrics falling under Chapter 39 of the CETA, 1985 and they hold Central Excise registration. The appellant had filed refund claim on 18.07.2016 under Section 11B of the Central Excise

Act, 1944 for refund of Rs.5,75,519/- being the excess payment of duty paid on account of wrong adoption of assessable value on the goods supplied to the Directorate General of Supplies and Disposals (DGS & D, in short). It appeared that the appellant is not eligible to claim the refund amount and a show cause notice dated 01.11l2017 was issued to the appellant. After adjudication, the original authority rejected the refund claim on the ground that the appellant has not been able to prove that there is excess payment of Excise Duty. Being aggrieved by such order, the appellant filed appeal before the Commissioner (Appeals) who upheld the same. Hence this appeal.

2. On behalf of appellant, Ld. Counsel Ms. J. Vamini appeared and argued the matter. She submitted that appellant had received an order from the DGS&D for supply of High Density Polytheylene (HDPE) / Polypropylene (PP) Woven Sacks for packing food grains vide Rate Contract dated 24.09.2015. As per the rate contract, the rate per bale is fixed at Rs.11,560/- which is stipulated in clause (5) under the head 'Description of Item, Specification, Unit, Rate' in Schedule A of the contract. As per clause 24 (c) of Schedule A to the Rate Contract, this value is inclusive of taxes. However, inadvertently, while raising the invoice, the appellant charged Excise Duty on the sale price. In fact, the duty should have been calculated on cum-duty basis. The buyer refused to pay excise duty charged in the invoice. Appellant had thus paid the excise duty from their own pocket to the Government. Thereafter, the application for refund was filed on 18.07.2016 claiming refund to the extent of Rs.5,75,519/-. The refund claim has been rejected stating that the appellant has not been able to give clarity on how the basic price has

been arrived at when compared to the original rate contract or supply order. The appellant was not able to furnish sufficient documents at the time of adjudication. However, at present they have received all the documents and have been submitted before the Tribunal. She prayed that the appeal may be allowed.

3. Ld. A.R Ms. Sridevi Taritla appeared and argued for the Department. She submitted that appellant has furnished fresh documents before the Tribunal. These documents have not been produced before the authorities below and requires verification scrutiny by the department. She prayed that the matter may be remanded to the adjudicating authority for fresh consideration on the basis of those documents produced by the appellant.

4. Heard both sides.

5. The appellant is aggrieved by the rejection of refund claim which was filed on the ground that they have paid excess Excise Duty. On perusal of the impugned order as well as the order passed by the adjudicating authority, it is seen that the refund claim has been rejected for the reason that the appellant has not furnished sufficient documentary proof to establish how they are eligible for the refund. Ld. Counsel for appellant has submitted that they have furnished necessary documents in the nature of invoices and certificate from the Chartered Accountant to show that there has been excess payment of excise duty. These invoices have to be verified by the department. On such score, I deem it fit to remand the matter to the adjudicating authority who shall reconsider the

matter afresh after giving an opportunity to the appellant for personal hearing. In the result, the impugned order is set aside. The appeal is allowed way of remand to the adjudicating authority in the above terms.

(Pronounced in court on 25.03.2022)

(SULEKHA BEEVI C.S.)
MEMBER (JUDICIAL)

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