CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH – COURT NO. – IV

Excise Appeal No. 53628 of 2018 [SM]

[Arising out of Order-in-Appeal No. 60/CE/DLH/2018 dated 30.07.2018 passed by the Commissioner, CGST & CE, New Delhi]

M/s All True Components
Khasra No. 1068, Village Bhalsawa
Opposite J 1950, Jahangirpuri
Delhi – 110 033. **...Appellant**

Vs.

The Principal Commissioner
Central GST
North Delhi, C.R. Building,
I.P. Estate
New Delhi – 110 109. **...Respondent**

APPEARANCE:

Shri S.S. Dabas, Advocate for the Appellant
Shri Pradeep Gupta, Authorised Representative (DR) for the Respondent

Coram: HON'BLE MRS. RACHNA GUPTA, MEMBER (JUDICIAL)

DATE OF HEARING : 08.11.2019
DATE OF DECISION : 10.06.2020

FINAL ORDER No.50691/2020

RACHNA GUPTA

The Appellant in the present case has assailed the Order-in-Appeal No. 60/CE/DLH/2018 dated 30.07.2018 vide which the confiscation of goods inside the factory premises and the shop premises of the appellant has been confirmed alongwith the confirmation of imposition of redemption fine and penalty, though the amounts thereof have been reduced. Being aggrieved the appellant is before this Tribunal.

2. The facts succinctly as relevant for the purpose are as follows :

On the basis of information about the appellants and its associate companies/firms to have been engaged in manufacture and clandestine removal of LED Lights, LED Bulbs and Panels etc., the department searched the factory as well as the shop premises of the appellants on 29.10.2015, the officers found unaccounted finished goods amounting to Rs. 2,25,90,105/- in the factory premises along with the raw material/packing material whose value could not be ascertained. In the shop premises the unaccounted goods for an amount of Rs. 40,77,334/- were found in respect of which the appellant could not produce any valid document. Accordingly, the goods from both the places were detained.

2.1 On the basis of facts and evidences, department alleged that the appellant had full knowledge regarding the manufacture of excisable goods in the factory premises and subsequent removal without following the due process of law and without payment of Central Excise Duty, as such a show-cause-notice bearing No. 209 on 28.04.2016 was served upon the appellants alleging the contravention of the provisions of Section-6 of Central Excise Act, 1944 and also of Rules 4,5,6,8,9,10,11 and 16 of Central Excise Rules, 2002. Accordingly, the goods ceased at factory as well as the shop premises were proposed to be confiscated in terms of Central Excise Rules, 2002. The penalty was also proposed to be imposed. However, no duty was demanded with the mention that a separate show-cause-notice to be issued after conclusion of the investigation. The proposal about confiscation of said goods and imposition of penalty upon appellant was confirmed vide Order-in-Original No. 03/2018 dated 28.02.2018. The appeal thereof has been dismissed vide Order No. 60/CE/DLH/2018 dated 30.07.2018. It has been disposed of by reducing the value of goods confiscated from both the premises, value of redemption fine on these goods and the amount of penalty. Being aggrieved appellant is before this Tribunal.

3. I have heard Mr. S.S. Dabas, Advocate for the appellant and Mr. Pradeep Gupta, Authorized Representative of the Respondent, it is submitted on behalf of appellant that all confiscated goods have duly been acknowledged in the records of the appellants. The entire documents in this respect were given to the raiding team and were even produced before the Adjudicating Authority below, but the same were not taken into consideration. Hence, no confiscation and imposition of redemption fine and penalty was at all warranted. The order is, therefore, liable to be set aside on this account itself. Also there was no intent to remove those goods without payment of duty. Rule 25, therefore, has wrongly been invoked. Also due to the reason that the said Rule is subjected to the provisions of Section 11AC of the Excise Act. With respect to imposition of penalty it is submitted that there is no allegation of non-levy or short levy or non-payment or short payment or erroneous refund of duty. Hence, no penalty is imposable under Excise Rules. It is also submitted, without prejudice, that no penalty is otherwise imposable which is subject to provisions of Section 11AC of the Excise Act, when there is no demand of duty. Order-under-challenged is prayed to be set aside and appeal is prayed to be allowed.

4. Learned DR while butting these arguments has impressed upon that the appellant has knowingly & intentionally committed the act of clandestine removal of excisable goods, hence, there is no error in the order-under-challenge while confiscating goods & imposing penalty.

5. After hearing both the parties and perusing the record of this appeal, I observe and hold as follows :

The appellant has been alleged of not taking the Central Excise Registration despite manufacturing the excisable goods. The appellant is also alleged to have clandestinely provoked the said excisable goods. From the record, it is apparent that the raid of appellant premises was conducted on 29.10.2015 and the appellant had obtained Central Excise Registration on 24.11.2015 that is subsequent to the allegation leveled by the department against the appellant. Appellants, admittedly, are manufacturing various types of LED Lights, including LED Tubes, Track Lights, LED Panels of different specifications and different watts in the brand name of "ATC Lumen", "ATCOM Lumen" and "ATCOM LED". These products, undisputedly, are excisable Products being covered in Chapter 85 of Central Excise Tariff. This observation itself is sufficient to hold that the appellants were manufacturing excisable goods and had not obtained the Central Excise Registration. Nothing else need to be proved to hold that the appellants have intention to not to pay excise duty on the goods manufactured by them despite that those were excisable. Thus, it is clear that appellant has violated Rules 4,5,6,8,9,10,11 and 16.

6. As far as the applicability of Section 11AC of Central Excise Act concerned, the only element for the applicability thereof, no doubt, is mensrea that is the intent to avoid the tax liability either in full or in half. The above observation that appellant knew about his goods to be excisable not only this he was also aware about the concept of SSI exemptions but failed to prove that his entire stock is covered under said SSI exemption. The absence of Central Excise Registration in the given scenario is nothing but the intent of the appellant to avoid his tax liability. The case law as impressed upon by the appellant is, therefore, not applicable to the appellant's case. It has been settled that for imposition of penalty mensrea has to be there. As already discussed upon the appellant had said mensrea.

7. Further, admittedly, appellant has paid the duty as was demanded vide the subsequent show-cause-notice. The prosecution of the said subsequent show-cause-notice met the fate of deemed conclusion on the payment of duty demanded therein by the appellant. I am not at all convinced with the argument that the said deemed conclusion is applicable to the impugned show-cause-notice. The present show-cause-notice is with respect to violation of mandatory duty to obtain the Central Excise Registration before manufacturing and clearing the excisable goods. The said show-cause-notice is about confiscating such goods which have been, clandestinely, removed on account of the said violation. Thus, I am of the considerd opinion that the subject matter of said show-cause-notice is altogether different than the show-cause-notice demanding duty. Question of double jeopardy does not at all arise for cause of action of both SCNs to be different. No doubt duty demand cannot be made for the same goods after entire duty liability has been discharged. However, liability

towards confiscation remains, I observe that Commissioner (Appeals) has been thoroughly judicial while confirming the proposal of the impugned show-cause-notice however, reducing the amounts of redemption fine, confiscated goods and the penalty after extending the abatement on the MRP value of the impugned goods.

8. As a result, I do not find any reason to interfere with the impugned order. The order is hereby upheld and appeal stands dismissed.

[Pronounced in the open Court on 10.06.2020]

(RACHNA GUPTA)
MEMBER (JUDICIAL)

Babita