CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

NEW DELHI

PRINCIPAL BENCH COURT NO. IV

Excise Appeal No. 52633 of 2016 [SM]

[Arising out of Order-in-Appeal/Original No.BHO-EXCUS-001-APP-042-16-17 dated 03.05.2016 passed by the Commissioner (Appeals), Bhopal

M/s. Quality Agencies, ...Appellant
189 A Sector,
Indrapuri, Bhopal-462022

VERSUS

Commissioner, Central Excise, Bhopal ...Respondent
178 Bhagya Bhavan, Zone-II,
MP Nagar, Bhopal.

APPEARANCE:

Mr. B.S. Rajesh, Mr. Agrajit, Ms.Priya Nagar, Advocates for the Appellant
Ms.Tamanna Alam, Authorised Representative for the Respondent

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

DATE OF HEARING/DECISION:20.05.2022

FINAL ORDER No.50474/2022

DR. RACHNA GUPTA

Present appeal has been filed to assail the Order-in-Appeal No.042-16-17 dated 3rd May, 2017 where the proposed demand has been confirmed due to non-production of original documents by the appellant.

2. The facts in brief giving rise to impugned appeal are that the appellant is a registered dealer of excisable goods and is issuing invoices based whereupon appellant's customers are availing the credit. During the scrutiny of appellant's record, Department observed that they have passed on wrong credit to the customers on various counts including the unspecified documents, without having proper documents and the excess credit/ double incidence of duty has been passed on. Accordingly, vide Show Cause Notice No.1369 dated 2nd May, 2012, an amount of Rs.1,30,243/- allegedly to have been passed by the appellant to their buyers on basis of invalid duty paying documents was proposed to be disallowed and accordingly to be recovered from the appellants alongwith the other amounts of Rs.3,799/-, Rs.7,144/- and Rs.13,453/- appropriate interest and proportionate penalties were also proposed to be recovered from the appellants. The said proposal was confirmed vide Order-in-Original No.32/2014 dated 26.02.2014 vide which rather a demand of Rs.1,54,639/- was confirmed with the imposition of penalty of the same amount. The appeal against the said order has been rejected vide the Order under challenge.

3. I have heard Mr. B.S. Rajesh, ld. Counsel for the Appellant and Ms. Tamanna Alam, ld. D.R. for Revenue.

4. Ld. Counsel for appellant has mentioned that all requisite documents were provided by the appellant to the Department at the initial stage of investigation itself. The documents were supplied pursuant to the Audit Report dated 22.02.2011. Appellant

has duly replied the same vide its letter dated 25.07.2011 and 20.06.2011. Ld. Counsel has impressed upon the enclosures specifically mentioned upon the letter dated 20.06.2011. With respect to copy of invoices, it is submitted that those were also provided and in fact are the part of record of present appeal also. The order under challenge is accordingly prayed to be set aside on this score itself that none of the documents provided by the appellant have been considered by Commissioner (Appeals). Those documents show that the duty liability has properly been discharged. There is no case of wrongly passing over the duty incidence nor of wrong availment of credit. Departments own verification report by Superintendent, Central Excise, Range II, Bhopal dated 16.12.2011 is confirming no alleged fault to be apparent on the part of the appellant. The said report was also very much before Commissioner (Appeals), who has miserably ignored the same. It is emphasized that pursuant to the said verification report and the perusal of all the documents provided by the appellant, the allegations in the impugned Show Cause Notice stands falsified. The order under challenge is liable to be set aside at this count also. It is submitted that in view of the documents specifically the invoices re-calculation and re-consideration is utmost necessary to falsify the impugned demand confirmed. Appropriate order while setting aside the order under challenge is accordingly requested.

5. Ld. DR on the other hand has submitted that all the documents as have been provided by the appellant do not co-relate

to the impugned allegations. Commissioner (Appeals) has been meticulous while discussing all the documents which were produced before him. However, ld. DR has expressed no objection in case the documents on record are allowed to be re-examined and liability, if any, to be re-assessed by the Commissioner (Appeals).

6. After hearing both the parties and perusing the record as well as the order under challenge, it is observed that all the proposed demands have meticulously and separately been dealt with by Commissioner (Appeals). However, the proposal for those demands about recovering those amounts from the appellants has been confirmed solely on the ground that despite assurance, appellant has failed to produce the original documents and in absence of those documents, the adjudicating authority, has expressed inability to accept the appellant's contention.

7. In view of the same and in view of the perusal of those documents as are already on record including Departments' own verification report is also on record. It is held that there are sufficient documents/evidence on record. Thus the findings in the impugned order, that no documents are produced by appellants are hereby held wrong. However, it is still to be appreciated and re considered as to whether those documents and even the verification report pertains to the same invoices which are the subject matter of the Show Cause Notice, as has been mentioned by ld. D.R. It is also to be reconsidered as to whether the documents on record including the invoices are with respect to the amounts mentioned in

the Show Cause Notice and whether those documents are sufficient. to falsify the allegations in the Show Cause Notice. This re assessment and re-consideration is only possible at the end of the adjudicating authority below itself. Matter accordingly is remanded to Commissioner (Appeals) to reconsider the entire matter in the light of the documents produced by the appellant. Liberty to appellant is given to supply any document, in addition, if it is required to Commissioner (Appeals) who is also required to decide the matter within four months of receiving the copy thereof. The findings shall be based on the said documents.

8. Resultantly, appeal stands allowed by way of remand.

[Dictated and pronounced in the open Court]

(DR. RACHNA GUPTA)
MEMBER (JUDICIAL)

Anita