IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI, PRINCIPAL BENCH NEW DELHI
COURT-I

Date of Hearing/ Decision : **28.02.2017**

Appeal Nos. E/1116,1191/2012 - (DB)

[Arising out of the Order in Appeal No. OIA-IND/CEX/000/APP/30&31/2012 dated 31.01.2012 passed by Commissioner (Appeals), Central Excise, Indore]

Shri Suresh Jangid … Appellants
M/s. Hightech Butterfly Valves India Limited

vs.

Commissioner of Central Excise, Indore … Respondent

Appearance:

Rep. by Shri Manish Saharan, Advocate for the Appellants
Rep. by Shri H.C. Saini, DR for the respondent

Coram: Hon'ble Mr. M.V. Ravindran, Member (Judicial)
Hon'ble Mr. V. Padmanabhan, Member (Technical)

Final Order No. 52056-52057/2017 –EX (DB)

Per Mr. M.V. Ravindran

These appeals are directed against Order in Appeal No. OIA-IND/CEX/000/APP/30&31/2012 dated 31.01.2012.

2. Heard both sides and perused the record.

3. The issue in these cases is regarding the demand of duty liability in respect of the goods which were clandestinely removed by the main appellant herein, who was manufacturer of industrial valves. It is the findings of the lower authorities that, during the financial year 2004-05, main appellant had cleared

finished goods clandestinely without payment of duty. The adjudicating authority, after following the due process of law, came to the conclusion that there was clandestine removal. Accordingly, confirmed the demands raised and also re-computed the duty liability for the subsequent years, imposed penalties on both the appellants. Appeals before the first appellate authority also were disposed of upholding the adjudicating authority's order.

4. Ld. Counsel submits that as regards the findings of clandestine removal, they have nothing much to say but submits that the total value which has been computed by the lower authorities, is based upon the commercial invoices raised and they had claimed that the computation needs to be re-worked out considering the invoice value as cum-duty-price. It is his submission that both the lower authorities have not accepted this proposition of law. He would submit that if re-computation of duty liability takes place, considering the value arrived at as cum-duty-price, then appellant's duty liability would reduce. He draws our attention to the findings recorded by the first appellate authority.

5. Ld. Departmental Representative brings to our attention the findings recorded by the first appellate authority on the computation of cum-duty-price.

6. On careful consideration of the submissions made by both sides, we find that the main appellant is not seriously contesting the charge of clandestine removal of inputs. To that extent, the charges of clandestine removal is upheld. The only challenge of the appellant is for re-computation of the duty liability, considering the value arrived at by the department as cum-duty-price. On careful consideration of the findings recorded by the first appellate authority, we find that first appellate authority has not considered the law settled by the Apex Court on this point, wherein the Apex Court has settled that the benefit of cum-duty-price needs to be extended to the appellant even in the case of clandestine removal. This is settled by the Apex Court in the case of Hindustan Sugar Mills – 1978 (4) SCC 271.

7. The reliance placed by the first appellate authority on the judgment in the case of *Amrit Agro Industries Limited vs. CCE, Ghaziabad – 2007 (210) ELT 183 (SC)*, may not carry the case of Revenue any further as in this case the issue was different. In view of the foregoing, while upholding the charge of clandestine removal, we remand the back to the adjudicating authority to reconsider the computation of duty liability considering the value of clandestine removal as cum-duty-price. If such duty liability is recomputed, consequent benefits for the subsequent periods as to the eligibility to avail SSI exemption notification will also needs to be extended to the main appellant.

8. As regards the penalties imposed, the adjudicating authority shall impose the statutory penalties based upon the re-computed duty liability. Needless to state that interest liability will also arise.

9. The appeals are disposed of as indicated hereinabove.

[Order dictated and pronounced in the open court]

(**V. Padmanabhan**)
Member (Technical)

(**M.V. Ravindran**)
Member (Judicial)

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