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

Date of Hearing/Decision: 8.2.2017

Excise Appeal No.55661/2013

[Arising out of Order-in-Original No.114/COMMR/IND/CEX/2012 dated 5.11.2012 passed by the Commissioner, Customs, Central Excise and Service Tax, Indore (M.P.)]

Man Trucks India Pvt. Ltd. Appellants

Vs.

CCE, Indore Respondent

**<u>Appearance</u>**:

Rep by Shri B.L. Narsimhan, Advocate for the appellant.
Rep. by Shri H.C. Saini, DR for the respondent.

**Coram:** **Hon'ble Shri S.K. Mohanty, Member (Judicial)**
**Hon'ble Shri B. Ravichandran, Member (Technical)**

**Final Order No.52331/2017**

**<u>Per S.K. Mohanty:</u>**

The brief facts of the case are that the appellant is engaged in manufacture of Heavy Commercial Vehicle and Chassis of Vehicles falling under Chapter sub-heading 8704 and 8706 respectively, of the first schedule to Central Excise Tariff Act, 1985. During the disputed period, 2008 to 2011, the appellant had cleared 86 nos. of vehicles to EPCG licence holder, on the basis of invalidation letters issued in terms of Foreign Trade Policy (FTP) 2009-14. According to para 8.2.3 of the said Policy, a certificate from EPCG authorization holder, evidencing receipt of capital goods was also submitted to the excise authorities. Clearance of the vehicles under FTP without payment of duty was objected to by the Department on the ground that the supplies were not effected against International Competitive

Bidding (ICB). According to the Department, the appellant ought to have first discharged the Terminal Excise Duty (TED) and should have claimed the refund. On pointing out the mistake by the Department, the appellant deposited the duty liability alongwith interest on 28.04.2011 and 30.04.2011 respectively. Thereafter, the department issued a show cause notice dated 28.06.2011 seeking recovery of the central excise duty alongwith interest and for imposition of penalty. The show cause notice resulted in the adjudication order dated 5.11.2010. The ld. Commissioner of Central Excise has confirmed the central excise duty demand of Rs.2,44,77,849 along with interest and also imposed equivalent amount of penalty on the appellant. Feeling aggrieved with the adjudication order, the appellant has preferred this appeal before the Tribunal.

2. Ld. Counsel for the appellant submits that there is no element of fraud, collusion, suppression, etc. in this case with intent to evade payment of central excise duty and, therefore, the show cause notice should have been issued within the normal period of one year. It is his submission that since the show cause notice was issued by invoking extended period of limitation, the same is barred by limitation of time and the demand cannot be sustained for recovery. He further submits that since there is no element of *mens rea*, no penalty can be imposed on the appellant even for the normal period of demand.

3. The ld. Counsel has relied on the following decisions of the Tribunal and ARE-3 certificate :-

(1) Rimtex Industries Vs. CCE, Bhavnagar-2010(254) ELT 116 (T-Ahmd.)

(2) IFGL Refractories Ltd. Vs. CCE &Cus, Bhubaneswar – 2006 (206) ELT 728 (Tribunal-Kolkata)

(3) Reliance Industries Ltd. Vs. CC(Exports) – 2013 (293) ELT 679 (T-M)

(4) Copies of ARE-3 for the year 2008.

4. On the other hand, ld. AR appearing for the Revenue reiterates the findings recorded in the impugned order.

5. Heard both the sides and perused the records.

6. We find that the disputed goods were cleared by the appellant under ARE-3 procedures as laid down in Rule 20 of the Central Excise Rules, 2002. We find that the appellant in ARE-3 form had categorically mentioned that supplies of the disputed goods are to the holder of EPCG licence. Further, the appellant had enclosed the re-warehousing certificate before the jurisdictional Central Excise Authorities in respect of the goods supplied against the EPCG licence. On submission of the EPCG certificate, the Department had initiated proceedings after a period of one year seeking recovery of central excise duty by invoking extended period of limitation. Since the appellant had categorically informed the department regarding supply of goods under EPCG licence and filed the re-warehousing certificate, the allegation of suppression, fraud, etc. cannot be leveled against the appellant justifying the issuance of show cause notice by invoking the extended period of limitation. We find that the decisions cited by the ld. Advocate squarely deal with issuance of show cause notice within the normal period, there is no element of fraud, suppression, etc with intent to evade payment of duty. The Department has been informed of the non-duty paid clearance along with reason. The error of non-payment is attributable to appellant. However, it cannot be said that the Department is not party to such error and had no knowledge at the relevant time.

7. In view of the above, we are of the opinion that the demand should be confined to the normal period. However, since there is no suppression with intent to evade payment of duty, the penalty cannot be imposed on the appellant, in these circumstances of the case. The appeal is disposed of accordingly.

[Order dictated & pronounced in open court]

(S.K. Mohanty)
Member (Judicial)

( B. Ravichandran )
Member (Technical)

Ckp.