IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI
PRINCIPAL BENCH, COURT NO. III

Excise Appeal No. E/3576/2010- EX[SM]
[Arising out of Order-In-Appeal No.422-423/CE/D-II/2010 dated 17.08.2010 passed by Commissioner of Central Excise (Appeals), Delhi-II, New Delhi.]

For approval and signature:
Hon'ble Mr. S.K. Mohanty, Member (Judicial)

M/S. S M Electricals ...Appellant

Vs.

C.C.E.- Delhi- II …Respondent

Appearance:
Sh. Prabhat Kumar, (Advocate) for the Appellant
Sh. M.R. Sharma, AR appeared for the Respondent

CORAM:
Hon'ble Mr. S.K. Mohanty, Member (Judicial)

Date of Hearing/ Decision. 29.12.2016

Final Order No 56473 /2016

Per S. K. Mohanty

This appeal is directed against the impugned order dated 17.08.2010 passed by the Commissioner (Appeals), Central Excise, New Delhi.

2. Brief facts of the case are that the Department initiated show cause proceedings against the appellant alleging that it is engaged in the manufacture and clearances of excisable goods namely, electric fuses

and other electric parts falling under heading 8536.90 and 8548.00 of the Central Excise Tariff Act, 1985 and that the appellant had affixed popular brand names like SIEMENS, L & T, GE etc. thereon which do not belonged to the appellant. Thus, the Department has concluded that without getting itself register with the Central Excise Department and without payment of Central Excise duty, the appellant had cleared the excisable goods from the factory in clandestine manner. Based on the above preliminary observations, the Department conducted search in different premises of the appellant. The show cause notice issued by Department calumniated in the adjudication order dated 29.10.2010, wherein Central Excise duty amounting to Rs. 8 Lakhs was confirmed along with interest and equal amount of penalty was imposed on the appellant. Further, penalty of Rs. 1 lakh was also imposed on Shri. Manoj Kumar Sharma, partner of the appellant company. On appeal, the ld. Commissioner (Appeals) vide impugned order has upheld the duty demand and imposition of penalty on the appellant company. However, the penalty imposed on Shri. Manoj Kumar Sharma was set aside.

3. The ld. Advocate appearing for the appellant submits that the appellant is not a manufacturer, engaged in manufacture of excisable goods and thus, duty demand cannot be fastened against it under Section 11A(1) of the Central Excise Act, 1944. He further submits that there is no evidence available against the appellant regarding alleged manufacture and clearance of excisable goods. To support such stand, the ld. Advocate refers to voluntary statement of panch-witness recorded before the adjudicating authority, stating that he never went to the premises of the appellant. He further submits that the witnesses whose statements were relied on by the Department for confirmation of adjudged demand, were not appeared for the cross examination. Thus, the panchnama drawn by the Department and statement recorded from the witnesses cannot be relied upon for conformation of the alleged demand.

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

5. Heard the ld. Counsel for both sides and perused the records.

6. On perusal of paragraph 3 at page 5 in the adjudication order, I find that in cross examination, Shri Debumukhiya *inter-alia* denied having any knowledge of the panchnama drawn by the Department. Further, Shri Mahesh Sharma, the Manager of the appellant company during the course of cross examination, had also denied the appellant having undertaken manufacturing activity and stated that the appellant simply repaired the goods purchased from the scrap dealers. The fact is not under dispute that all the witnesses, whose statements were relied on in the show cause notice were not available for cross examination by the appellant. Retraction of statement recorded during the course of cross examination, proves the fact that the appellant had never manufactured any excisable goods, on which duty liability is required to be discharged. The department has also not produced any tangible evidence to prove that the appellant had in fact indulged in clandestine manufacture and clearance of goods. Further, I also find from the available records that the appellant was duly registered with the Sales Tax Department for resale of

various goods mentioned in the registration certificate. Since upon proper analysis of the activities undertaken by the appellant, the jurisdictional Sale Tax authorities have issued the registration certificate to the appellant considering it as a trader, in absence of any tangible evidence produced by the Department, it cannot be said that the appellant is a manufacturer of electric fuses and part thereof.

7. In view of above, I do not find any merits in the impugned order. Accordingly, after setting aside the same, I allow the appeal in favour of the appellant.

(Operative Portion pronounced in open court)

(**S. K. Mohanty**)
Member (Judicial)

Sakshi