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

Excise Appeal No. 51816 of 2017 SM

[Arising out of Order-In-Appeal No. DLI /EXCUS/001-APP 186/2017 dated 13.9.2017 passed by Commissioner (Appeals), Central Excise, Delhi I]

M/s. D S Engineering Works. **Appellant**

Vs.

Commissioner of Central Excise **Respondent**
Delhi

Appearance:

Shri R K Philips & Shri Ankit Daniel, Advocates for the Appellants
Shri G R Singh, AR for the Respondent

CORAM:

Hon'ble Ms. Archana Wadhwa, Member (Judicial)

Date of Hearing /Decision: 22.02.2018

FINAL ORDER NO .50755/2018-(SM)

Per Ms. Archana Wadhwa :

After hearing both the sides, I find that the appellant is engaged in manufacture of various automobile parts. His factory was visited by the officers on 25.11.2010 who found various goods lying in their premises. The appellant clarified that they were receiving various articles from manufacturers of motor vehicle parts and were doing the job work for them. However, he admitted that raw material in question were not being received by them under the cover of any documentary evidence or after following the notification procedure for the purpose of job work. He further deposed that after the job work, goods were sent back to the principal manufacture.

2. In the above background, proceedings were initiated against the appellant resulting in confiscation of the goods with an option to the appellant to redeem the same on payment of redemption fine of Rs.90,000/-. Penalty of Rs.90,000/- also stand imposed upon him under Rule 25. The said order was upheld by the Commissioner (Appeals) and hence the present appeal.

3. Learned advocate appearing for the appellant draws my attention to panchnama as also to the subsequent application for provisional release of the goods and their reply to the notice for showing that the goods in question were raw material or semi-processed goods which could not have been confiscated for their non-entry. He submits that in any case and in any view of the matter, appellant is a small scale manufacturer and even if he is considered to have manufactured the goods, he is entitled to the benefit of SSI notification. For the above proposition, he relied upon the Hon'ble Punjab and Haryana High Court decision in the case of ***CCE vs. Annapurna Impex P Ltd.[2009 (244) ELT 35 (P&H)] .***

4**.** On going through the record, I note that panchnama itself reveals that goods were in the shape of castings which means the same was raw materials. In terms of the above mentioned decision of the Hon'ble Punjab & Haryana High Court, the raw material cannot be seized. Accordingly, I set aside the confiscation of the goods in question.

5. As regards the penalty of Rs.90,000/-, I find that the facts on record reveal that the appellant was doing the job work for the other principal manufacturer without following the due procedure for the same. The goods manufactured by them on job work basis were being sent to the principal manufacture, without the cover of any invoice. This act on the part of the assessee, amounts to aiding and abetting the principal manufacturer for their clandestine activity, in which scenario, a token penalty is required to be imposed on them. As such, I uphold the imposition of penalty but reduce the same to Rs.15,000/- (Rupees Fifteen thousand only). But for the above modification in the quantum of penalty, the appeal is allowed.

(dictated and pronounced in the open court)

(Archana Wadhwa)
Member(Judicial)

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