IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.
Principal Bench, New Delhi

COURT NO. IV

DATE OF HEARING : 05/04/2018.
DATE OF DECISION : 05/04/2018.

Excise Appeals No. 51777, 51857-51858 of 2017 (SM)

[Arising out of the Order-in-Appeal No. 234-236 (SM) CE/JPR/ 2017 dated 25/09/2017 passed by The Commissioner (Appeals), Central Excise & CGST, Jaipur.]

Shri A.K. Gupta, then GM] Appellants
M/s Greenlam Industries Ltd.]

Versus

CCE & ST, Alwar Respondent

Appearance

Shri Arun Goyal, Advocate – for the appellants.

Shri P. Juneja, Authorized Representative (DR) – for the Respondent.

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

Final Order No. 51199-51201/2018 Dated : 05/04/2018

Per. Archana Wadhwa :-

All the three appeals are being disposed of by a common order as they arise out of the same set of facts and circumstances.

2. As per facts on record, the appellant is engaged in the manufacture of "decorative plywood" and "decorative aluminium

sheets”. Their factory was visited by the Anti Evasion team of Headquarters on 07/02/2014, who conducted various checks and verifications. As a result of stock taking of the appellant’s final product, shortages of around 24,000 pieces were found, which led the officers to believe that the said goods have been cleared without payment of duty. Shri A.K. Gupta, then General Manager (Commercial) in his statement recorded on 19/03/2014 deposed that he was satisfied with the proceedings undertaken by the officers. However, he submitted that the stock of the exports section may also be taken into consideration and he categorically deny clandestine clearances. However, the duty involved on the said shortages to the extent of Rs. 18,40,576/- was debited by them from their Cenvat credit account.

3. It is seen that during the pendency of the investigations the appellant applied for refund of the said deposited amount, which stands rejected by the lower authorities in appeal NO. 51857/2017. In respect of the shortages, demands were raised against the appellant resulting in passing of the present impugned orders confirming the demands and imposing penalties on the manufacturing unit as also on Shri A.K. Gupta, employee of the unit.

4. Hence, the present appeals.

5. After hearing both the sides, I find that the entire case of the Revenue is based upon the shortages conducted at the time of visit of the officers. The appellants have not admitted, in their

statements, any clandestine removal of the said shortages and have in fact drawn the attention of the visiting officers to the stock available in the export section. Apart from the shortages, there is virtually no other evidence on record to reflect upon the clandestine activities of the appellant. As per the settled law such shortages, by themselves, cannot lead to the fact of clandestine removals so as to justify confirmation of demands. Reference can be made to the Hon'ble Allahabad High Court decision in the case of **Minakshi Castings** reported as **2011 (274) E.L.T. 180 (Allahabad)** as also the Hon'ble Punjab & Haryana High Court in the case of **CCE, Ludhiana vs. Nexo Products (India)** reported as **2015 (325) E.L.T. 106 (P&H)** and to another decision of the Hon'ble Punjab & Haryana High Court in the case of **CCE & ST, Ludhiana vs. Anand Founders & Engineers** reported as **2016 (331) E.L.T. 340 (P&H)**. Its stand held on the above decisions that the clandestine removal charges based on shortages in stock cannot be upheld in the absence of any other evidence brought on record by the Revenue showing such illegal activities on the part of an assessee. The said decisions stand followed by the Tribunal in many numbers of cases.

In as much as in the present case the entire case of the Revenue is based upon the shortages detected at the time of visit of the officers, without there being any other evidence, I find no reasons to uphold the impugned orders confirming the demands or rejecting the refund claim. Accordingly, the impugned orders are set aside and all the three appeals are allowed with consequential relief to the appellants.

(Order dictated and pronounced in open court)

(Archana Wadhwa)
Member (Judicial)

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