CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI.

PRINCIPAL BENCH, COURT NO. II

Excise Appeal No.50314 of 2015

[Arising out of Order-in-Appeal No.BPL-EXCUS-000-MISC-154-144-14-15 dated 14.10.2014 passed by the Commissioner (Appeals), Customs & Central Excise, Bhopal (M.P.)]

M/s. Balaji Engineers & Galvanizers, **Appellant**
67, Industrial Area, Richhai,
Jabalpur (M.P.), PIN-482 010.

VERSUS

Commissioner of Customs, Central Excise and Service Tax, **Respondent**
48, Administrative Area, Arera Hills,
Hoshangabad Road,
Bhopal (M.P.)

APPEARANCE:

Sh. A. Jaju, Advocate for the appellant
Sh. R.K.Mishra & V.B.Jain, Authorised Representative for the respondent

CORAM:

Hon'ble Mr. Anil Choudhary, Member (Judicial)
Hon'ble Mr. Bijay Kumar, Member (Technical)

Final Order No.50858/2019

DATE OF HEARING:05.04.2019
DATE OF DECISION: 05.04.2019

ANIL CHOUDHARY:

Heard the parties.

2. The issue in this appeal is whether the show cause notice has been rightly issued invoking the extended period of limitation.

3. The admitted facts are that the appellant does galvanization work in their factory. They received Black Metal Components either under job work challans as per the prescribed procedure under Rule 3 (4A) of the Cenvat Credit Rules read with Notification No.214/2008-

CE, the appellant also received Black Metal Components from some of their customers for galvanization work on challans without following the prescribed job work procedure. The appellant after completing the job work, charged galvanization charges in their bills and also paid the excise duty on such galvanization charges. Further, the appellant has filed ER-I Return regularly with the Department.

4. Show cause notice dated 13.12.2012 was issued for the period December, 2007 to March, 2012, pursuant to inquiry and investigation both at the end of the appellant and their customers, all of which were registered with the Central Excise Department. It appeared to Revenue that the appellant has not paid duty on proper transaction value by not including the cost of metal components received for galvanization. Accordingly, invoking extended period of limitation, the show cause notice demanded duty of Rs.17,56,609/- along with penalty.

5. Show cause notice was adjudicated on contest and the proposed demand was confirmed with equal amount of penalty.

6. Being aggrieved, the appellant preferred appeal before the ld. Commissioner (Appeals), who was pleased to dismiss the appeal.

7. Being aggrieved, the appellant is before this Tribunal.

8. Ld. Counsel for the appellant states that in view of the admitted facts no case of any suppression or mis-representation or contravention of the provisions on the part of the appellant is made out. The appellant has maintained proper records of their transactions and also paid the excise duty on galvanization charges as per their invoices. The show cause notice has been issued only by way of

change of opinion, invoking the extended period of limitation. The only allegation in the show cause notice is that the appellant in their monthly ER-I returns has mis-declared the assessable value of the tower components cleared by them inasmuch as they have shown the galvanization charges as the value of the goods cleared by them, and they have not declared that the value represents only galvanization charges and is not inclusive of the cost of metal components supplied free by the customers.

9. Ld. Counsel also relies on the rulings of this Tribunal in the case of **Accurate Chemicals Industries Vs. CCE, Noida – 2014 (300) ELT 451(Tribunal-Delhi,** wherein under similar circumstances, where the assessee were transferring the goods to their parent unit and Revenue found that the same was transferred at lower than the cost as per Rule 8 of the Central Excise Valuation (Determination of Price of Excisable Goods).This Tribunal held that there was no case of any suppression, mis-representation and in view of the fact that the appellant filed proper return with the Department and further, whatever duty was payable by the assessee was available to the parent unit as the cenvat credit, thus situation being revenue neutral, held that extended period of limitation is not invokable. This order was upheld by the Hon'ble Allahabad High Court in the case of **Accurate Chemical Industries – 2014 (310) ELt 441 (Allahabad).**

10. Ld. AR for the Revenue relied upon the impugned order. He further states that the appellant has failed to discharge duty properly and determine the transaction value properly. It is the onus of the assessee to make proper valuation as per procedure.

11. Considering the rival contentions, we find that under the facts and circumstances, there is no case of any mis-representation or deliberate suppression or contravention of the provisions on the part of the appellant. Further, we find that the appellant has cleared their goods to Registered manufacturer with the Department. Whatever duty the appellant would have paid additional would have been available as cenvat credit to those manufacturers. Thus, situation is also revenue neutral in the facts and circumstances. Accordingly, we find that the extended period of limitation is not available to the Revenue. Accordingly, we set aside the impugned order and allow the appeal with consequential benefit.

(Dictated and pronounced in open Court).

(Anil Choudhary)
Member (Judicial)

(Bijay Kumar)
Member (Technical)

ckp