CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL REGIONAL BENCH AT HYDERABAD

Division Bench

Court – I

Excise Appeal No. 25023 of 2013

(Arising out of Order-in-Appeal No.68/2012 (H-III) CE dt.20.10.2012 passed by Commissioner of Customs, Central Excise & Service Tax (Appeals-III), Hyderabad)

Bactolac Formulations Pvt Ltd
D.No.2-73/2, Chaitanyapuri,
Hyderabad, Telangana – 500 060
......Appellant

VERSUS

Commissioner of Central Tax
Hyderabad - III
LB Stadium Road, Basheerbagh,
Hyderabad, Telangana – 500 004
......Respondent

Appearance
None for the Appellant.
Shri V. Srikant Rao, AR for the Respondent.

Coram:
HON'BLE MR. ANIL CHOUDHARY (JUDICIAL)
HON'BLE MR. A.K. JYOTISHI, MEMBER (TECHNICAL)

FINAL ORDER No. A/30001/2024

Date of Hearing: 01.01.2024
Date of Decision: 01.01.2024

[Order per: ANIL CHOUDHARY]

This is the second round of litigation. Appellant is absent on call. However, from the service report, we find that notice sent by Speed Post has been returned with remark "insufficient address".

2. From perusal of the records, we find that the Adjudicating Authority had confirmed the demand of Rs.47,113/- including demand for extended period and also imposed equal amount of penalty under Sec 11AC of the Act.

3. In the first Appeal, the Commissioner (Appeals), appreciating the facts, held that this being a periodical SCN for the same issue, demand for extended period is not invokable and accordingly, set aside the demand for the month of April 2010, as the SCN was issued in June 2011. It is further observed that the issue involved is of quantification of discount and the same was not by way of

suppression or misstatement, etc. Accordingly, Commissioner (Appeals) set aside the penalty under Sec 11AC of the Act. However, observing that Appellant is liable under Rule 25 of CER, he imposed penalty of Rs.2,000/-.

4. We have perused the records and heard learned AR for Revenue.

5. We find from the facts on record that penalty under Rule 25 of CER is not sustainable in the facts and circumstances and accordingly, we set aside the same.

6. With the aforesaid modification, the Impugned Order is confirmed. We confirm the duty for the period May 2010 to March 2011 (normal period), which is to be re-quantified by the Adjudicating Authority.

7. Appeal is allowed in part.

(Dictated and pronounced in the Open Court)

(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

(A.K. JYOTISHI)
MEMBER (TECHNICAL)

Veda