CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
EAST REGIONAL BENCH : KOLKATA

Excise Appeal No. 75978/2016

(Arising out of the Order-in-Appeal No. 14/DIB/CE(A)/GHY/16 Dated-08/03/2016 passed by the Commissioner, Customs & Central Excise (Appeals), Guwahati)

M/s. Dessoie Tea Estate

...APPELLANT(S)

VERSUS

Commr.of Central Excise, Dibrugarh

...RESPONDENT(S)

APPEARANCE

Sri Arijit Chakraborty, Advocate

FOR APPELLANT(S)

Sri S. Mukhopadhyay, Supdt. (A.R.)

FOR THE RESPONDENT(S)

CORAM:

SHRI P.K. CHOUDHARY, HON'BLE JUDICIAL MEMBER

DATE OF HEARING: 18/01/2018 **Date of Pronouncement:18/01/2018**

FINAL ORDER NO.:F/O 75773/18

Per SHRI P.K. CHOUDHARY

Briefly stated the facts of the case are that the appellant is engaged in the manufacture of various grades of bulk tea which are exempted from Central Excise Duty.

During the period from 2010-11 to 2012-13, the appellant had purchased raw coal from different suppliers who were local dealers of coal. The invoices issued by such dealers were tax invoices that did not reflect the duty amount.

2. During an inspection by the departmental officers, they seized 300MT of coal lying as stock in the factory premises. The goods were then provisionally released on payment of security deposit of Rs.1,80,000/- and on execution of bond. Thereafter, a Show Cause Notice dated-29.07.13 was issued proposing to confiscate the seized coal and recover Central Excise Duty, Service Tax and clean energy cess alongwith interest and penalties. The Adjudicating Authority confirmed the demand vide order dated-14.03.2014.The Commissioner (Appeal) vide order dated-16.09.2014, remanded the matter to the Adjudicating Authority for de novo adjudication. Thereafter, the adjudicating authority passed a fresh order dated-08.09.2015. The Commissioner (Appeal) upheld the adjudication order only to the extent of confiscation of seized coal and the penalty and also upheld the demand of service tax alongwith interest and penalty. Further, he held that the appellant is liable for penalty of Rs.5,000/- under Rule 27 of the Central Excise Rules, 2002.

3. Heard both sides and perused the records.

4. The Ld. Counsel for the appellant submitted that they have purchased the coal and they have no knowledge of alleged irregularity and therefore, confiscation of goods from the buyer cannot be sustained. He relied upon the decision of the Tribunal in the case of G.N. Altech Vs. CCE, Goa [2007 (213) ELT 521 (Tri.-Mumbai).

5. The Learned D.R. re-iterates the findings of the lower authorities.

6. I find that the Commissioner (Appeal) in the impugned order observed that the Department instead of bringing the actual producer/manufacturer in the picture, forcefully imposed the burden of paying duty on the buyers, which is not legally tenable, and set aside the demand of duty. Thus, it is clear from the findings of the Commissioner (Appeal) that the Department failed to make any inquiry of actual payment of duty by the manufacturer/producer. Hence, the confiscation of goods and imposition of fine and penalty is not justified. Further, the demand of Service Tax is without examining the records and documents. The Tribunal in the case of G.N. Altech (supra) held as under:

> ***2.*** *. . . . Reliance has been placed upon the Tribunal's decision in the case of Nucor Wires Ltd. v. Commissioner of Central Excise - 2001 (138) E.L.T. 646 (Tri.-Bang.) wherein in para 4(e), it was held as under :-*
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> *"Examining the liability for confiscation under Rule 173Q(1)(a) for its contravention, we find this liability is an action in rem, arising due to the activities on part of a manufacturer of the goods. The rule makers have not fixed such a liability of confiscation, on goods 'Removed' or have defined the terms 'Removes' used in the rule. The terms 'Removes' used is present continuous tense. It will not cover past acts of goods 'removed' and the action of 'removes' will come to an end, when the act is complete. The act of 'Removes' under Rule 173Q(1)(a) begins, when goods are shifted from the place of manufacture and shall necessarily cease on reaching another place of delivery, after its leaving the factory gate and any change of ownership, as buyer is not covered by Rule 173Q(1). Therefore, liability of confiscation under Rule 173Q(1)(a) on a manufacturer is a continuous liability, till, 'removes' is completed and does not lie after completion i.e. after receipt and any change of ownership from the manufacturer to an independent buyer on payment of full consideration towards duty and or sale price of goods. If the goods are still handled, after such change of ownership or removal in any manner, then the liability of confiscation shall shift to under Rule 209 and not remain under 173Q(1)(a) along with penalty liability under Rule 209A on persons, other than those mentioned in Rule 173Q(1) e.g. a buyer. There is no confiscation liability arrived at under Rule 209, liability to penalty found on the buyer under Rule 209A. This order of confiscation therefore, can not be uphold".*
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> ***3.*** *In view of the above decision and inasmuch as, there is neither any allegation nor any evidence on record as regards the appellant's knowledge about the non-duty paid character goods. I do not find any justifiable reason to confiscate the same. Accordingly confiscation of the goods is set aside and the appeal is allowed in above terms."*

7. The Ld. Representative for the Department relied upon the decision of the Tribunal in the case of M/s. Boishabi Tea Estate & others Vs. CCE&ST, Dibrugarh, vide order No. F.O. 75954 TO 75956/2017 DATED-29-05-2017. In that case, the C.E. officers collected the information that the producer of Raw-Coal had been supplying non-duty paid raw-coal to the purchasers and therefore, the said case law is not applicable to the facts of the present case. Accordingly, the appeal filed by the appellant is allowed.

(Operative part of the order already pronounced in the open Court).

Sd/-

(P.K. CHOUDHARY)
JUDICIAL MEMBER

k.b/-

(Operative part of the order already pronounced in the open Court)

Sd/- 26/3/18

(P.K. CHOUDHARY)
JUDICIAL MEMBER

k.b/-