IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, KOLKATA
EASTERN ZONAL BENCH: KOLKATA

Appeal No.E/125/2009

(Arising out of Order-in-Appeal No.24/Kol-IV/2008 dated 19.12.2008 passed by the Commissioner of Central Excise (Appeals), Kolkata-IV)

M/s Gillanders Arbuthnot & Co. Ltd

Applicant (s)/Appellant (s)

Vs.

Commissioner of Central Excise, Kolkata-IV

Respondent (s)

Appearance:
Shri S.Bhowmik, Advocate for the Appellant (s)
Shri A.Roy, Suptd.(AR) for the Respondent (s)

CORAM:
Hon'ble SHRI P.K.CHOUDHARY, Member (Judicial)
Hon'ble SHRI C.L.Mahar, Member (Technical)

Date of Hearing/Decision:- 22.06.2018

ORDER NO.FO/76367/2018

Per Shri P.K.Choudhary

The appellant is a manufacturer of cotton and synthetic yarn classifiable under Chapter 52 and 55 of the Central Excise Tariff Act, 1975. The fact of the case in brief is that during the period January 2001 to October 2004 the appellant was operating through consignments agents and as such they transferred the excisable goods from their factory to the depot or premises of the consignment agents and sold the goods from there. It is the case of the appellant that after sale from the depot they reimbursed the freight or hamali charges (delivery of goods by rickshaws and manual labourers) incurred by the purchaser for the delivery of excisable goods to the premises of the purchaser and accounted those expenses under the head of 'other charges'. Pursuant to audit by Central Excise Officers the spot memo dated 20.01.2005 was served on the appellant for alleged non inclusion of 'other charges' in the assessable value for the period from April 2002 to October 2004. Show Cause Notice dated 07.03.2006 was issued to demand and recovery of central excise duty alongwith interest and for imposition of penalty for non-inclusion of other charges in the assessable value. The adjudicating authority confirmed the demand amounting to Rs.19,505/-, additional excise duty of Rs.2,803/- alongwith interest and also appropriated the amount paid by the appellant and also imposed penalty. On appeal the Commissioner (Appeals) upheld the adjudication order and dismissed the appeal. Hence, the present appeal before this tribunal.

2. Heard both sides and perused the appeal records.

3. Ld. Advocate appearing on behalf of the appellant submits that the Hamali charges is universal practice of 'Salem depot' i.e. reimbursement of expenses by the customer for delivery of excisable goods from the depot to their premises. This was also mentioned in the appellant's depot invoices. Ld. Advocate strongly contended that the freight or Hamali charges incurred by the purchaser for the delivery of excisable goods, to the premises of the purchaser and have been termed as 'other charges' and were not included in the assessable value or transaction value as it was an after sale charges. These charges were regularly realized by Salem sale depot of the appellant and the fact of such realization was never suppressed from the department and the same is evident from statutory returns and documents regularly filed.

4. Ld. D.R. for the Revenue reiterates the grounds of appeal.

5. We find that the Hon'ble Supreme Court in the case of **Prabhat Zarda Factory Ltd. vs. Commissioner of Central Excise & Anr.** [2003(130) STC (96)] have held that freight charges are to be included in the assessable

value up to the sale depot for the purposes of excise duty but where the sale are made from the depot, the freight charges for the purpose of delivery to the customers from the depot, would not be so includable.

6. In view of the above discussions, the impugned order is set aside and the appeal filed by the appellant is allowed.

(Operative Portion of the Order already pronounced in the Open Court)

S/d.
(P.K.Choudhary)
Member (Judicial)

S/d.
(C.L.Mahar)
Member (Technical)

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