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

Appeal No.E/76938/2017

(Arising out of Order-in-Appeal No.54/Kol-V/2017 dated 16.06.2017 passed by the Commissioner of Central Excise, (Appeal-I), Kolkata)

M/s Aerocon Corporation

Applicant (s)/Appellant (s)

Vs.

Commissioner of Central Excise, Kolkata-V

Respondent (s)

Appearance:

Shri B.N.Chattopadhyay, Consultant for the Appellant/Applicant (s)
Shri S.S.Chattopadhyay, Suptd.(AR) for the Respondent (s)

CORAM:
Hon'ble Shri P.K.Choudhary, Member (Judicial)

Date of Hearing:- 24.04.2018

Date of Pronouncement : 23.07.2018

ORDER NO.FO/76465/2018

Per Shri P.K.Choudhary

Briefly stated the facts of the case are that the appellant is engaged in the manufacture of industrial fan classifiable under Chapter 84 of the First Schedule to the Central Excise Tariff Act, 1985. A Show Cause Notice dated 08.04.2011 issued alleging discrepancy in the stock of finished goods and Cenvat suffered input. The adjudicating authority confirmed the demand of central excise duty of Rs.8,799/- alongwith interest and also imposed penalty of equal amount and also ordered for recovery of cenvat credit availed for payment of central excise duty of Rs.90,127/- alongwith interest and imposed penalty of equal amount under Section 11 AC. On appeal, the Commissioner (Appeals) upheld the adjudication order and rejected the appeals filed by the assessee. Hence, the present appeal has been filed by the appellant before the Tribunal.

2. Ld. Counsel appearing on behalf of the appellant submits that the appellant company have been paying central excise duty on their manufactured electrical fans and are availing cenvat duty paid on inputs used in the manufacture of such fans. He further submits that there was no short in respect of finished goods as well as cenvatable inputs as alleged in the show cause notice. He also submits that 10 pcs. Of mancoller were kept in their other workshop at 41/1, Roy Bahadur Road, Kolkata-700 053. He contended that the appellant had intimated the department for registration/transfer of inputs to the above address but at a later stage, the application was withdrawn. However, ld. Counsel vehemently argued that there was no contravention of the provisions of the Central Excise Law and due to the shortage of space they had to store inputs in the aforesaid premises for which permission was taken from the Assistant Commissioner subsequently. This was only a technical lapse i.e. for sending such inputs to their processing unit without obtaining permission and accordingly prayed for allowing their appeal.

3. Ld. Counsel also submits that the turnover of the appellant is less than 1.5 crores in a financial year and they did not possess sufficient infrastructure. It is his submission that the finished goods were entered in a book of accounts and they were transferred to their another factory and those were not supplied to their customers. Such finished goods were manufactured according to the Order of their customers and those were supplied to their particular customers and there is no question of clandestine removal of the goods from their factory. The entries were made in their DSA and the goods were available in their other premises. Further, in respect of

inputs which were entered in their RG23A Part-I & Part-II account were not found in the factory at Malakar Para Road but were found at their other unit at 41/1, Roy Bahadur Road, Kolkata 700 053 and were lying for the purpose of assembling of fans and to be returned/received back and subsequently cleared from Malakar Para Road unit under Central Excise Invoices.

4. Ld. Counsel however submits that this being a procedural violation of the process of Central Excise Act and Rules and the Cenvat Credit Rules, the only penalty that can be imposed is under Rule 27 of the Central Excise Rules, 2002.

5. Ld. DR reiterates the orders of the lower authorities.

6. I find that the appellant had stored the cenvatable inputs out of their registered factory premises without the permission of jurisdictional authorities which is a technical lapse, but contended that the violation occurred owing to shortage of space. The demand of Rs.9063/- under Section 11A(1) is set aside. The demand of Rs.90,127/- is also set aside. Accordingly, the penalties of Rs.9063/- and Rs.90,127/- imposed under Section 11AC are also set aside.

7. In view of the above observations the appeal filed by the appellant is allowed.

(Pronounced in the open court on 23.07.2018.)

S/d.
(P.K.Choudhary)
MEMBER (JUDICIAL)

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