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

Appeal No. E/76196/2018

(Arising out of Order-in-Appeal No. 425/HWH/CE/2017-18 dated 18.12.2017 passed by the Commissioner of CGST & Central Excise (Appeals-II), Kolkata.

M/s. Mangal Steel Enterprises Ltd.

Appellant (s)

Vs.

CGST & C. Ex, Howarah

Respondent (S)

Appearance:
Shri S. P. Siddhanta, Consultant for the Appellant (s)
Shri A. Roy, Suptd. (A. R.) for the Revenue

CORAM:
HON'BLE SHRI P.K.CHOUDHARY, MEMBER (JUDICIAL)
Date of Hearing: -24.05.2018
Order No. FO/76562/2018

PER SHRI P.K.CHOUDHARY

The Appellants are engaged in the manufacture of HDG Tension Bar, Galvanized Mild Steel, Full Threaded Rods etc. classifiable under Chapter 73 of the First Schedule to the Central Excise Tariff Act, 1985. The Appellant being a manufacturer exporter submitted a refund claim on 22/04/2013 in terms of Notification No. 52/2011-ST dated 30/12/2011, as amended, for the Service Tax amounting to

Rs.1,16,961/- paid on specified services such as terminal handling charges, fumigation service, clearing and forwarding services and such other services were used for the export of the excisable goods during the period from July 2012 to September 2012. A Show Cause Notice dated 11/09/2013 was issued to establish the doctrine of unjust enrichment is not applicable in the facts and circumstances of the case and also to produce all the relied upon documents in support of their refund claim.

2. The Assistant Commissioner (Appeals) rejected the appeal filed by the assessee.

3. Hence, the present appeal before the Tribunal.

4. Heard both sides and perused the appeal records.

5. On perusal of the impugned order, I find that the Commissioner (Appeals) upheld the Adjudication Order on the ground that the appellant assessee failed to submit the original copy of related documents towards export and specific bills/invoices towards payment of Service Tax. Further, the appellant contended that they have filed the documents along with their refund application and have also produced the evidence regarding the receipt of the exported goods and payments received from the foreign buyers.

I find that the Adjudicating Authority has observed that appellant assessee failed to establish any co-relation between bills/invoices/challans with specific export consignment, ARE-1/Shipping Bill wise.

The Adjudicating Authority has also observed that the appellant failed to submit essential and relevant documents and clarification pertaining to discrepancy pointed out regarding their refund claim.

6. However, the Ld. Consultant, appearing on behalf of the appellant company drew the attention of the Bench to the relevant paragraphs of the impugned orders, wherein it is stated that they have

filed the documents with reference to ARE-1/Shipping Bill along with container numbers and other related documents.

7. I find that the Lower Authority have not considered the documents placed by the appellant.

8. In view of the above discussion, the Impugned Order is set aside.

The matter is remanded to the Adjudicating Authority to decide afresh after considering the submission of the appellant and to pass order in accordance with law.

9. The appeal is allowed by way of remand to the Adjudicating Authority.

(Operative part of the order was pronounced in the open court.)

Sd/-
(P.K. Choudhary)
Member (Judicial)

Pooja