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

Appeal No. E/75970/2018

(Arising out of Order-in-Appeal No. 384/HWH/CE/2017-18 dated 07/12/2017 passed by the Commissioner of Central Excise (Appeals), Kolkata -II.

M/s. Eastern Regional Foundry.

Appellant (s)

Vs.

Commissioner of Central Excise, Kolkata -II

Respondent (S)

Appearance:
Mr. K.J. Ghoshal, Consultant for the Appellant
Shri S. Mukhopadhayay, Suptd. (A.R.) for the Revenue

CORAM:
HON'BLE SHRI P.K.CHOUDHARY, MEMBER (JUDICIAL)

Date of Hearing: -24.08.2018

Order No. FO/76595/2018

PER SHRI P.K.CHOUDHARY

Briefly stated facts of the case are that the Appellants are engaged in the manufacture of excisable goods i.e. Railway parts classifiable under Chapter No. 86 of the First Schedule to the Central Excise Tariff Act, 1985. The respondent while scrutinizing the records and documents pertaining to financial year 2009-10 and 2010-11 found that the appellant had not paid the duty of the clearance of goods valued at Rs.7,36,918.00/- and Rs.8,24,799/- for the year 2009-10 respectively.

2. Apprehending that the assessee has cleared the goods without payment of duty under the disguised 'Trading Goods' suppressing that

those goods were actually manufactured by them on job-work basis. A show cause notice was issued to the assessee/appellant. After hearing the assessee, the Assistant Commissioner of Central Excise, Kolkata-II has confirmed the demand of Rs. 717815.00 against duty with interest u/s 11AB and also imposed equal amount of penalty of Rs. 717815.00 with an option to reduced penalty @25% of Rs. 179454.00 in terms of Section 11AC on the following grounds:-

a. Reliance was made on Board's circular No. 56/56/94-CX dated 14.09.1994, on the point that the job worker is an independent entity and carries out the manufacturing activities independently and is not an agent, of raw material supplier or a dummy, then the job worker will be treated to be manufacturer.

b. The entire raw materials were supplied by the assessee and on the completion of the job work by M/s Element Compound & Alloys the goods were returned to the assessee's premises and ultimately as specification of Railway the goods were inspected by RDSO and thereafter cleared from the factory of the assessee M/s Eastern Regional Factory.

c. The assessee had availed the SSI exemption under Notification No. 08/2003-CE dated 01.03.2003.

d. The job-worker only realized the jobbing/machining charges only and returned to the assessee and the entire movements of the goods were taken place from the premises of the assessee in terms of Rule 4 of Central

Excise Rules 2002 and Notification No. 214/86 dtd. 25/03/1986 and 83/94 dtd. 11/04/1994, and accordindly the duty liability squarely fall on the assessee.

3. The assessee had filed an appeal before the Commissioner of Central Excise (Appeals), Kolkata-II, which was dismissed vide order-in-appeal No. 384/HWH/CE/2017-18 dated 07/12/2017, upholding the order-in-original and further noting that there was no evidence on record to prove the relation of the assessee and the job-worker.

4. Against such order the assessee has preferred the present appeal before this Tribunal.

5. Heard both sides and perused the appeal records.

6. The authorized representative of the assessee filed the copy of an unregistered agreement between M/s Eastern Regional Foundry and M/s Element Compound & Alloys and computerized register of jobworkers for the year 2009-10 and 2010-11, which cannot be relied upon. It was reiterated by the Ld. counsel that the goods were not manufactured by the assessee, but he admitted that the goods were cleared from the premises of the assessee, which were received from the job-worker after getting job done. He further argued that the liability to pay the duty rests on the job-worker as he is the real manufacturer and not the assessee.

7. I am of the opinion that the job-worker is not the real manufacturer as the raw material was being supplied by the assessee and the job-worker was executing the work assigned to

him by the assessee. As such, assessee's goods cannot be treated as manufactured by the job-worker.

8. Therefore, I do not find any merit in the appeal filed by the appellant assessee. The appeal is hereby rejected.

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

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

Pooja