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

Appeal No. E/75083/2018

(Arising out of Order-in-Appeal No.141/HWH/CE/2017-18 dated 27.09.2017 passed by the Commissioner of CGST & Central Excise, (Appeal-II), Kolkata)

M/s. UIC Udyog Ltd.

Applicant (s)/Appellant (s)

Vs.

Commissioner of CGST & C.Ex, Howrah Commissionerate

Respondent (s)

Appearance:

Shri B.N.Chattopadhyay, Consultant for the Appellant (s)
Shri A.Roy, Suptd.(AR) for the Respondent (s)

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

Date of Hearing/Decision: 29.05.2018

ORDER NO.FO/76607/2018

Per Shri P.K.Choudhary

Briefly stated the facts of the case are that the appellants are engaged in the manufacture of Card Clothing Pins classifiable under Chapter 84 of the First Schedule to the Central Excise tariff Act, 1985. Show Cause Notice dated 07.11.2013 was issued alleging non-payment of central excise duty during the financial year 2011-2012. Show Cause Notice mentions that the ER-I Return shows sales of Rs.2,61,98,299/- whereas the Balance Sheet shows figure of Rs.2,80,54,503/-. In response to the show cause notice the assessee submitted that ER-I figure is Rs.2,77,27,245/- and not Rs.2,61,98,299/- as mentioned in the show cause notice. The Adjudicating Authority confirmed the demand alongwith interest and imposed penalty of equal amount. On appeal ld. Commissioner (Appeals) upheld the adjudication order and rejected the assesses's appeal. Hence, the present appeal before this Tribunal.

2. Ld. Consultant appearing on behalf of the appellant company submits that their manufactured products, Card Clothing Pins were under the category of exempted as well as dutiable. When they cleared Card Clothing Pins to the Jute Mills for their use in the manufacture of Jute Textiles, the appellant assessee availed exemption under Notification No.06/2006-CE dated 01.03.2006. For further clearance they paid the duty and maintains separate records for both the categories. Further regarding the discrepancy in the figures of the sale value of Rs.2,80,54,503/- shown in their Balance Sheet and Rs.2,77,27,245/- as reflected in the ER-I Returns, the ld. Consultant submitted that some value of the rejected goods returned to the factory from the customers end, time to time, have been duly accounted for in the Daily Stock Register, but inadvertently was not communicated to their head office for the purposes of financial accounting. It is his submission that there was no rejection of any excisable goods during the relevant period and all the sales returns were of the exempted category goods, without any duty implication therein. Ld. Consultant has filed Certificate from their Statutory Auditor's showing assessable value of goods cleared during the financial year 2011-2012 as per ER-I Returns at Rs.2,77,27,245/-. He further submits that there is no suppression of facts with an intent to evade payment of Central Excise Duty, hence the demand of duty alongwith interest and penalty is fit to be set aside.

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

4. Heard both sides and perused the appeal records.

5. I find that the proceedings against appellant assessee has originated on the basis of the sale figures shown in the Balance Sheet being higher than

the sale figure shown in the ER-I Returns. I observed that there is no corroborative evidence to suggest that the asessee has manufactured that quantity (which is alleged to have been cleared without payment of duty). To hold the assessee accountable for payment of duty on this account further evidences are essential in nature. For example, the finished products require to be co-related with the consumption of raw materials. In my considered view the charge of clandestine removal and clearance is a serious charge against the manufacturer which is required to be discharged by the Revenue by production of sufficient and tangible evidence. I do not agree with the Revenue's stand taken by them that standard of proof in such cases has to be necessarily on the basis of preponderance of probabilities and not on the basis of absolute proof. Apart from the above I also do not find any evidence on record except the difference in figures of sale as per ER-I Returns and balance sheet. There is neither any cogent nor any credible evidence on record to prove any surreptitious removal of the finished products. The appellants have satisfactorily explained the difference between the figures as reflected in the Annual Financial Account and those entered in ER-I Returns. As such I hold that confirmation of duty against the appellant is not justified. Accordingly, the impugned order is set aside and the appeal is allowed with consequential relief, if any to the appellant.

(Operative portion of the order have already been pronounced in the open court)

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

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