IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, KOLKATA

REGIONAL BENCH – COURT NO.2

Ex.Appeal No.303 of 2009

(Arising out of Order-in-Original No.42/Commissioner/Bol/2009 dated 25.02.2009 passed by Commr. of Central Excise, Bolpur)

M/s Howrah Gases Ltd.
Mangalpur Industrial Estate,
Bakhtarnagar, Raniganj,
Dist.-Burdwan,
West Bengal

Applicant (s)

VERSUS

CCEx., Bolpur
Central Excise Commissionerate,
Nanur Chandi Das Road,
Sian, Bolpur,
Dist.-Birbhum,
West Bengal

Respondent (s)

APPERANCE :

Shri N. K. Chowdhury, Advocate for the Appellant
Shri S. S. Chattopadhyay, Authorized Representative for the Respondent

CORAM:

HON'BLE MR. P.K.CHOUDHARY, MEMBER (JUDICIAL)
HON'BLE MR.V. PADMANABHAN, MEMBER (TECHNICAL)

FINAL ORDER NO.75434/2019

DATE OF HEARING : 12.04.2019
DATE OF DECISION : 12.04.2019

PER V.PADMANABHAN :

The present appeal is directed against the Order-in-Original No.42/Commissioner/Bol/2009 dated 25.02.2009.

2. The appellant is engaged in the manufacture of sponge iron in their Raniganj Unit (Unit I). The other Unit of the Company is situated at Burdwan (Unit II), where M.S.Ingots are manufactured. A part of the sponge iron manufactured in the Raniganj Unit is cleared to Burdwan

Unit on payment of duty for use in further manufacture. The dispute in the present case is regarding valuation to be adopted for payment of duty on stock transfer of sponge iron to Unit II. The period of dispute is 2005-06 to 2006-07. By taking the view that during the above period, the valuation adopted by Raniganj Unit is not proper. Show-cause notice dated 07.02.2008 was issued proposing demand of differential Central Excise duty amounting to Rs.87,29,297/- along with interest. During the course of adjudication, the Adjudicating Authority came to the conclusion that substantial part of the demand is not sustainable for the reason that during the period under dispute, the appellant had made sale of sponge iron to other independent buyers at par with the price adopted for stock transfer. However, for a certain period, he concluded that there were no sale to independent buyers and hence the valuation is required to be adopted in terms of Rule 8 of the Central Excise Valuation Rules, 2000, by computing the value @ 110% of the cost of manufacture of the goods. He went ahead and confirmed the demand of Central Excise duty amounting to Rs.6,13,857/- along with interest. He also imposed penalty of equal amount. This order is under challenge in the present appeal.

3. The ld.Advocate appearing on behalf of the appellant, disputes the findings of the Adjudicating Authority that there were no saleS to independent buyers for a part of the period covered by the show-cause notice. He also submitted that in any case, the differential duty, if paid by Raniganj Unit, will be available to the Burdwan Unit by way of cenvat credit. He further submitted that this led to revenue neutral situation and accordingly, there is no justification for demand of differential duty or imposition of penalty. In this connection, he relied on the decision of the Chennai Bench of the Tribunal in the case of Anglo French Textiles Vs. CCEx., Puducherry reported in 2018 (360) ELT 1016 (Tri.-Chennai), which has been affirmed by the Hon'ble Supreme Court as reported in 2018 (360) ELT A301 (SC).

4. The ld.D.R. for the Revenue, justified the findings of the Adjudicating Authority.

5. Heard both sides and perused the records.

6. The dispute in the present case is regarding valuation of the goods for payment of duty in respect of sponge iron stock transfer from Raniganj Unit to Burdwan Unit. Since there is no sale, the valuation is required to be adopted as per the provisions of Central Excise Valuation Rules, 2000. The Adjudicating Authority concluded that bulk of amount demanded in the show-cause notice, is not sustainable as the valuation has been made on the basis of price of goods cleared to independent buyer. However, for a short period, he concluded that there were no sales to independent buyer and for clearance made during this period, valuation is required to be done on the basis of Rule 8 @ 110% of the cost of production of the goods.

7. After perusal of the case records and case law relied upon by the appellant, we are of the view that the dispute in the present case may be settled on the basis of arguments on the ground of revenue neutrality. It is not in dispute that any differential duty paid by Raniganj Unit will be available as cenvat credit in the receiving unit for Burdwan Unit, this led to revenue neutral situation. In the case of Anglo French Textiles (supra), which has been affirmed by the Hon'ble Supreme Court, the Tribunal has taken the view that in such revenue neutral situation, there can be no allegation of suppression and no demand for differential duty is sustained.

8. By following the above decision, we are of the view that the demand for differential duty does not make it to be sustained.

9. In view of the above, the demand for Central Excise duty is set aside along with penalties.

10. In the result, the impugned order is set aside and the appeal is allowed.

(Dictated and pronounced in the open court)

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

Sd/
(V.Padmanabhan)
Member (Technical)

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