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

REGIONAL BENCH - COURT NO.2

Excise Appeal No.77018 of 2018

(Arising out of Order-in-Appeal No.65/DGP-IV/CT(Audit-II)/2017-18 dated 6 March 2018 passed by Commissioner(Appeals) of Central Excise, Kolkata-II Commissionerate, Kolkata.)

M/s. Tulip Fabrics Private Limited
(Barjora (Plasto Steel Park), P.O.Ghutgoria,
Dist.Bankura, Pin-722168, W.B.)

...Appellant

VERSUS

Commr. of CGST & CX, Bolpur

.....Respondent

(Sian Nanoor Chandidas Road,
Bolpur, Birbhum, W.B.)

APPEARANCE

Shri Aditya Dutta (Advocate) for the Appellant (s)
Shri A.Roy, Authorized Representative for the Respondent

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

FINAL ORDER NO. 76195/2019

DATE OF HEARING : 14 August 2019
DATE OF DECISION : 14 August 2019

P.K.CHOUDHARY :

The matter is listed for non-compliance of pre-deposit. The learned Advocate appearing on behalf of the appellant submits that against the confirmed demand of Rs.73,899/-, they have already deposited an amount of Rs.95,674/- along with interest of Rs.27,303/- as under:-

Sl. No.	Financial Year	Paid towards CENVAT (Rs.)	Challan No. & date/Debit Entry Sl.No. & date	Paid towards Interest	Challan No. & Date
1.	2008-09 to 2010-11	39,662	Sl.No.863 of RG 23A P-II dated 29.02.2012	10,946	00159 dated 13.06.2012

2.	2011-12	32,816	01803 dated 06.12.2013	12,535	02236 dated 06.12.2013
3.	2012-13	23,196	01956 dated 06.12.2013	3,822	02284 dated 06.12.2013
Total		**95,674**	**Total**	**27,303**	

2. It is his submission that now they are only contesting the imposition of penalty of Rs.36,950/- in terms of Rule 25 of the Central Excise Rules, 2002 read with Section 11AC of the Central Excise Act, 1944. Accordingly the appellants are required to make a pre-deposit in respect of the penalty amount only. Learned Advocate further submits that against the confirmed demand of Rs.73,899/- since they have already deposited Rs.95,674/- which is in excess and is refundable amount, it would take care of the requirement of mandatory pre-deposit before the Tribunal in respect of penalty amount. Hence the requirement of pre-deposit stands duly complied with. With the consent of both the sides, the appeal itself is taken up for disposal.

3. The learned Advocate submits that they paid differential amount of Central Excise duty with interest prior to the issuance and receipt of the show cause notice. The amount of differential Central Excise duty paid by them is Rs.95,674/- and the amount of interest paid is Rs.27,303/-. It is his submission that due intimation to the concerned range Superintendent was given and the same has been verified and found to be in order. The adjudicating authority observed that since the payment was not done after self-auditing, which is expected of the assessee in the current scenario of self-assessment, the imposition of penalty is justified.

4. Learned Advocate further submits that there is no provision for submission of separate intimation to the department for removal of goods to related persons to consume the goods captively. All the transactions were duly recorded in the books of the accounts of the appellant assessee including the balance sheets and there was no deliberate suppression of facts. Further the goods were cleared to related persons to consume the goods for goods for further manufacture of dutiable goods.

5. Learned Authorized Representative, appearing on behalf of the Revenue justifies the impugned order.

6. Heard both sides and perused the appeal records.

7. I find that the appellants have paid the entire demand along with applicable interest before issuance of the show cause notice and due intimation was given to the ranger officers and accordingly there was no occasion for issuance of the show cause notice as held by the Tribunal in various decisions. On perusal of the appeal records I do not find any ingredient of suppression, willful misstatement etc. with intent to evade Central Excise duty. Accordingly, the impugned order is set aside and the Appeal filed by the Appellant is allowed.

(Dictated and pronounced in the open Court.)

SD/

(P.K.CHOUDHARY)
MEMBER (JUDICIAL)

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