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

Excise Appeal No. 78192 of 2018

Arising out of Order-in-Appeal No. 64/Kol-I/2018 dated 09.04.2018 passed by the Commissioner of CGST & Central Excise, Haldia.

M/s Khaitan Electricals
46 C J L Nehru Road, Everesr House
18th Floor, Kolkata
West Bengal-700071.

….Appellant (s)

Vs.

Commissioner of Central Excise, Haldia.
GST Bhavan (2nd Floor), 180,
Shantipally, Rajdanga Main Road,
Kolkata-700013.

….Respondent (s)

Appearance:
Shri N. K. Chowdhury, Advocate for the Appellant (s)
Shri D. Haldar, A. C. (AR) for the Respondent(s)

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

Date of Hearing/Decision: - 20.06.2019

Order No……FO/A/76201/2019

PER SHRI P.K.CHOUDHARY:

Briefly stated the facts of the case are that the Appellant is engaged in the manufacture of Electrical fans and motors. During 2008-09, the Appellant had imported Enamelled Copper Wire and had availed Cenvat credit of the duty paid on the basis of the Bill of Entry. The Appellant inadvertently did not discharge the additional duty payable on the import. Pursuant to the CERA Audit, the Appellant debited an amount of Rs.1,06,147/- from its PLA, being the additional duty along with interest of Rs.17,311/-. Show Cause Notice dated 20th July, 2010 was issued to the Appellant proposing appropriation of the reversed amount with interest and imposition of penalty. The Adjudicating Authority confirmed the demand proposed in the notice and imposed equal amount of penalty under Rule 15 of the Cenvat Credit Rules, 2004. The Commissioner (Appeals) upheld the Adjudication Order. Hence, the present appeal.

2. The Ld. Advocate for the Appellant submitted that the payment of additional duty along with interest had been made and duly intimated to the Department vide letter dated 19th January, 2010, which was much before the issuance of Show Cause Notice. He also submitted that the payment of additional duty was inadvertently missed and there was no intention on the part of the Appellant to evade payment of duty. Therefore, the penalty imposed on the Appellant is unsustainable.

3. The Ld. DR reiterated the findings of the lower authorities.

4. Heard both sides and perused the appeal records.

5. I find that the Appellant had not paid the additional duty, which was legally payable at the time of import. However, the Appellant subsequently made the payment of duty alongwith interest. On perusal of records, I do not find any ingredient of misstatement, concealment etc. with an intent to evade payment of duty.

6. I find that the Hon'ble High courts in the following cases, in Similar circumstances, have held that the assessee is not liable to penalty.

(i) Commissioner of Central Excise, Bangalore-II Vs. Pushpadeep Enterprises 2012 (279) ELT 503 (Kar).

(ii) Commissioner of Central Excise, Chennai-III Vs. Supreme Ind. Ltd. 2014 (303) ELT 513 (Mad.

(iii)).

7. By respectfully following the decisions of the Hon'ble High Court as cited above, the penalty is set aside. The appeal filed by the appellant is allowed with consequential relief, if any.

(Dictated and pronounced in the open court.)

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

T.K.