IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, KOLKATA
EASTERN ZONAL BENCH : KOLKATA
REGIONAL BENCH - COURT NO.2

Excise Appeal No.791 of 2011
(Arising out of Order-in-AppealNo.196/Kol-III/2011 dated07.06.2011 passed by Commissioner of Central Excise, (Appeals), Appeal-I, Kolkata.)

M/s.Amar Traders Private Limited
(Mouza-Khamar, P.O. Rajarhat, Bishnupur, Kolkata-700135.)
...Appellant

VERSUS

Commissioner of Central Excise, Kolkata-III
.....Respondent
(GST Bhawan, 180, Shantipally, Rajdanga Main Road, Kolkata.)

APPEARANCE

NONE for the Appellant (s)
Shri S.Mukhopadhyay, Authorized Representative for the Revenue

CORAM:HON'BLE SHRI P.K.CHOUDHARY, MEMBER(JUDICIAL)
HON'BLE SHRI K. ANPAZHAKAN, MEMBER(TECHNICAL)
FINAL ORDER NO. 75253/2023

DATE OF HEARING : 24 April 2023
DATE OF DECISION :24 April 2023

Per :K. ANPAZHAKAN :

When the matter was called, none appeared on behalf of the Appellant. No adjournment request has also been submitted by them. However, as it is an old Appeal pertaining to the year 2011, we take up the Appeal for hearing with the consent of Ld. Authorized Representative for the Department, for final decision.

2. The facts of the case are that the Appellant has removed their goods from the factory to the depot. The duty will be payable on the price prevailing at the depot on the date of removal from the factory. For the goods cleared to the Depot,the Department demanded duty as per Rule 7 of the Central Excise (Determination of Price of Excisable Goods) Rules, 2000. The assessee has accepted the demand of duty raised by the Department and voluntarily paid the duty along with interest before issue of the Show Cause Notice. The issue before us is whether intention to evade payment of duty is involved in this case and

penalty under Rule 25 of the Central Excise Rules 2002 read with Section 11AC of the Central Excise Act, 1944 is imposable on the Appellant or not.

3. We find that the issue is regarding valuation of the goods cleared from the factory to the depot of the Appellant. The value adopted by the Appellant for the purpose of payment of duty was known to the Department at the time of clearance. The issue of adoption of Rule 7 of the Valuation Rules, 2000 is of technical in nature and no suppression of value can be alleged on the part of the Appellant. We also find that there is no material evidence available in the Show Cause Notice to substantiate the claim of the Department that the Appellant has suppressed the valuation of the goods cleared to the depot with an intention to evade payment of duty. In fact when the short payment of duty was demanded from the Appellant, they have come forward and paid the entire duty along with interest ,on their own before issue of Show Cause Notice. Thus, we find that there is no suppression of fact involved in this case. Since, intention to evade payment of duty has not been established in this case, penalty under Rule 25 of the Central Excise Rules 2002 read with Section 11AC of the Central Excise Act, 1944 is not imposable on the Appellant.

In view of the above, the Appeal is allowed to the extent of setting aside of the penalty imposed under Rule 25 of the Central Excise Rules, 2002 read with Section 11AC of the Central Excise Act, 1944.

(Dictated and pronounced in the open Court.)

Sd/
(P.K.CHOUDHARY)
MEMBER (JUDICIAL)

Sd/

(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

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