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

REGIONAL BENCH – COURT NO.2

Excise Appeal No. 76570 of 2019

(Arising out of Order-in-Appeal No.55/Kol-North/Kol/19 Dated 20/02/2019 passed by Commissioner of CGST & CX (Appeal-I), Kolkata)

M/s. TIL Ltd.
(517, B. T. Road, Kamarhati, Kolkata-700058)

Appellant

VERSUS

Commissioner of CGST & Central Excise, Kolkata North Commissionerate
(180, Shantipally, Rajdanga Main Road, Kolata-700107)

Respondent

APPEARANCE :

None for the Appellant
Mr. S. S. Chattopadhyay, Authorized Representative for the Respondent

CORAM:
HON'BLE MR. R. MURALIDHAR, MEMBER (JUDICIAL)

FINAL ORDER NO.76111/2023

Date of Hearing : 13 July 2023
Date of Decision : 13 July 2023

PER R. MURALIDHAR

No one is present on behalf of the Appellant inspite of notice. Since the issue is within a short compass, with the consent of Learned AR, the Appeal is itself taken up for disposal. The Appellant is a manufacturer of Mobile Cranes & Reach- Stackers Machines. On 30th December 2012, they have cleared one number TIL Hyster Model RS-4 27-CH Reachstacker Machine to M/s Prem Chand & Company, Haryana. The serial No. of this machine is given as A289FO15581. The buyer of this Machine, M/s Prem Chand & company found that there were some defects in the machine and have returned the machine to Appellant through RP Transport on 07/01/2013 along with their covering letter and Invoice originally issued by TIL Ltd. The Appellant after receiving the machinery at their end, have taken the Cenvat Credit for the initially paid Excise Duty of Rs.22,49,520/-. Subsequently, they have carried out the rectification by repairing this unit. They have dispatched the same machinery serial No. A289FO15581 on 10/02/2013, to M/s Prem Chand & Company under proper Invoice. Under this Invoice, they have paid the Excise Duty of Rs. 22,49,520/- in February 2013. In December 2013, the Anti-Evasion Unit of the Central Excise, Kolkata visited their unit and pointed out that the Appellant has taken the Credit based on their own Invoice No. 373 dated 30/12/2012, which is not permissible. Based on their insistence, the Appellant has reversed the Cenvat Credit of Rs.22,49,520/- along with interest of Rs. 3,05,000/-. Subsequently, the Department issued a Show Cause Notice on 13/2/2014. After due process, the Adjudicating Authority confirmed the demand and appropriated the amount of Rs.22,49,520/- of Excise Duty and interest of Rs.3,05,000/- paid by the Appellant. He imposed penalty of Rs.22,49,520/- in terms of Rule 15 (2) of CCR, 2004 read with Section 11 AC of CEA, 1944. Being aggrieved by the same, the Appellant filed an Appeal before the Commissioner (Appeals), who dismissed the Appeal. Being aggrieved, the Appellant is before the Tribunal.

2. On going through the documentary evidence placed in the Appeal Papers Books, it is seen that the Appellant has originally cleared the machine vide Excise Invoice No 373 dated 30/12/2012. There is no dispute that the same machine was returned by the buyer for rectification of certain defects. The buyer has returned the machine along with the Appellant's Invoice and covering letter through R. P. Transport on 07/01/2013. There is no dispute that this machine was not received at the end of the Appellant. The Appellant thereafter carried out the necessary repair works and dispatched the same machine vide Excise Invoice No. 388 on 10/01/2013 by fully discharging the Excise Duty liability of Rs.22,49,520/-. When the Machine Serial Number is checked, it is seen that under both earlier Excise Invoice No. 373 and the in next Invoice No. 388, the same serial number is found to be given in the Invoices. Therefore, there is absolutely no dispute that the originally cleared machine only was received back by the Appellant and after due rectification, the Appellant has sent back the machine to the buyer. He has taken the Cenvat Credit on the basis of the earlier Invoice raised by him and while clearing the machine after rectification, he has paid the full Excise Duty. The Cenvat Credit taken and the Excise Duty paid are same. Rule 9 of CCR, 2004 specifies the documents which

are eligible for taking the Cenvat Credit. Rule 9 (1)(a)(i), specifies that the Invoice issued by the manufacturer is eligible for taking of the Cenvat Credit. In this case, even the Invoice issued by the Appellant himself, who is the manufacturer, is an eligible document for taking of Cenvat Credit. So far as the Department's presumption that the machine might not have been received by the Appellant in the factory premises is concerned, the letter issued by the buyer on 07/01/2013, specifies that the machine is being sent for carrying out the necessary required work and is clearly specifying the machine model and serial number. The copy of consignment note issued by the R. P. Transport dated 7/01/2013 also specifies the machine model and serial number. The details of rectification completed by the Appellant in their factory along with Invoice No. 388 dated 10/1/2013 prepared by the Appellant for dispatch of the machine after rectification, specifies the same machine Serial Number. The payment of Excise Duty while clearing the rectified machinery clarifies beyond doubt that the transaction is a genuine transaction and there is no scope to have any doubt about the same. The Appellant has produced all the documentary evidence in support of their submissions. The Department has not come out with any corroborative evidence whatsoever to point out that the goods might not have been received. No enquiries have been made by the Department officials either from buyer or from the transporter of the goods. Therefore, it is very clear that the Department has proceeded only on the basis of assumptions and presumptions.

3. The Tribunal notes that when the facts are so clear, the Anti-Evasion officials have pressurize the Appellant to once again to pay the entire duty of Rs.22,49,520/- along with interest of Rs.3,05,000/- which was uncalled for. The Adjudicating Authority without even undertaking any proper verification has simply confirmed the demand and appropriated the amounts paid and has gone ahead with imposing penalty of Rs.22,49,520/- under Section 11AC, which is imposable only when suppression is involved. The facts of the case prove otherwise. The actions of the Departmental officials in the entire proceedings shows their highhandedness.

4. In view of the factual matrix discussed in detail above, I set aside the impugned OIA and allow the Appeal with consequential relief, if any, as per law.

5. The Appellant would be eligible to get full refund of the excess amount of Excise Duty of Rs.22,49,520/- and interest of Rs. 3,05,000/- paid by them prior to issue of SCN along with interest for this entire amount from the time the reversal was made till the refund is granted to the Appellant.

6. Appeal is disposed of thus.

(Dictated and pronounced in the open court.)

Sd/-

(R. Muralidhar)
Member (Judicial)

Pooja