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

REGIONAL BENCH – COURT NO. 2

Excise Appeal No. 851 of 2011
(Arising out of Order-in-Appeal No. 83-84/Kol-VII/2011 dated: 07.07.2011 passed by Commissioner of (Appeals-I), Central Excise, Kolkata.)

M/s Carbac Holding Ltd.
(Bhasa, Diamond Harbour Road, P.O.- Bishnupur, Dist-24 Parganas (South))

...Appellant

VERSUS

Commr. of CGST & CX, Kolkata-VII
(169, A.J.C. Bose Road, Kolkata.)

...Respondent

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

CORAM:
HON'BLE MR. R. MURALIDHAR MEMBER (JUDICIAL)
HON'BLE MR. K. ANPAZHAKAN MEMBER (TECHNICAL)

FINAL ORDER No. 77485/2023

DATE OF HEARING : 03.11.2023
DATE OF DECISION : 03.11.2023

PER: R. MURALIDHAR :

No one appeared on behalf of the Appellant. As the Appeal is pertaining to 2011, in the interest of justice, we have taken up the Appeal for disposal. We have gone through the Appeal papers, the OIO and OIA. In the OIO the Adjudicating Authority has confirmed Rs.83,306/- on account of Excise Duty payable on excess freight charges collected by the Appellant. On account of under valuation he has confirmed the demand of Rs. 1,24,539/-. He has also dropped duty demands on clearance of brass scrap except for Rs.2,04,768/-.

2. Being Aggrieved, both the Appellants and Revenue have filed their Appeals before the Commissioner (Appeals). The Commissioner (Appeals), after going through for the documentary orders held that the demand of Rs.83,306/- on account of Excise Duty of paid is required to be confirmed. He has also held that the demand on account of under valuation is sustainable to the extent of Rs.69,069/-. He held that in respect of shortage of 11,716 kgs of brass scrap in respect of the goods sent to the job workers, the Appellant is required to pay Rs.2,08,033/-.

3. After going through the Appeal papers, we find that the issue of Excise Duty on freight charges already stands settled by the Supreme Court in the case of Baroda Electric refers case 1997 (94) E.L.T. 13 (SC) and by Tribunal in the case of Mercedes Bench Pvt. Ltd. case-2010 (260) E.L.T. 149. Therefore, we set aside the confirmed demand of Rs.83,306/-.

4. In case of the demand confirmed towards under valuation, we find that since the job worker has taken Cenvat Credit for the brass scrap and has paid Excise Duty on the job worked finished goods sent back to the appellant, the issue is clearly Revenue neutral. Therefore, the confirmed demand of Rs.64,069/- is not legally sustainable. We set aside the same.

5. So far as the amount of Rs.2,08,033/- confirmed by the Commissioner (Appeals), on account of alleged shortage of brass/scarp is concerned, as pointed out by the Appellant in their grounds of Appeal, this issue was not raised in the show-cause notice nor was it discussed in the OIO nor was it part of the Appeal filed by the Revenue before the Commissioner (Appeals). Therefore, the confirmation of this demand by the Commissioner (Appeals), amounts to traversing beyond the scope of the show-cause notice. The Appellant was not put to notice on this issue by way of SCN. Therefore, the Commissioner (Appeals), is in gross error in confirming this demand by traversing beyond the scope of the Show-Cause-Notice. Therefore, we set aside the confirmed demand of Rs.2,08,033/-.

6. As a result, we hold that the impugned Order is legally not sustainable and we dismiss the same.

7. The Appeal is allowed in full, with consequential relief, if any, as per law.

Sd/-
(R. Muralidhar)
Member (Judicial)

Sd/-
(K. Anpazhakan)
Member (Technical)

Pinaki