IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, KOLKATA
EASTERN ZONAL BENCH : KOLKATA
REGIONAL BENCH - COURT NO.1

Excise Appeal No.77019 of 2019

(Arising out of Order-in-Original No.28/COMMR/CGST&CE/HWH/Adjn/2017-18 dated 26.12.2017 passed by Commissioner of Central Tax (GST & C.EX.), Howrah Commissionerate.)

M/s. Steel Products Limited
(Unit-II, NH-6, Kona, Chamurail, Howrah-711114.)

...Appellant

VERSUS

Commissioner of CGST & CX, Howrah Commissionerate

.....Respondent

(15/1, Strand Road, Custom House, M.S. Building, Kolkata-700001.)

APPEARANCE

Shri N.K.Chowdhury, Advocate for the Appellant (s)

Shri S.S.Chattopadhyay, Authorized Representative for the Revenue

CORAM: HON'BLE SHRI ASHOK JINDAL, MEMBER(JUDICIAL)
HON'BLE SHRI RAJEEV TANDON, MEMBER(TECHNICAL)

FINAL ORDER NO. 77604/2023

DATE OF HEARING : 5 December 2023
DATE OF DECISION : 5 December 2023

Per : ASHOK JINDAL :

The appellant is in appeal against the impugned order, wherein the demand of Central Excise duty has been confirmed against the appellant on the presumption that the Service Tax activity undertaken by the appellant amounts to manufacture, therefore, they are liable to pay excise duty.

2. Briefly stated the facts of the case are that the appellant is engaged in three types of activity:-

(A) Acquiring inputs in their account and manufacturing certain structural items/towers and clearing the same on payment of duty.

(B) The appellant undertook the activity of job-work of galvanizing the goods provided by the principal manufacturer falling under chapter 73 in terms of Notification No.214/86 dated 25.03.1986 and after doing job-work, the goods were returned to the principal manufacturer, who paid duty on the said goods.

(C) The appellant has also undertaken the work of galvanizing of the goods falling under chapter 72 of the CETA and not paying duty on them, but paid Service Tax on job charges.

3. Apart from that, the appellant is also undertaking the activity of erection, commissioning and installation of towers and on that activity the appellant is paying Service Tax.

4. An investigation was conducted against the appellant for the period 2006-07 to 2011-2012 (upto December 2010) and on the basis of the investigation it was revealed that the activity of galvanizing by the appellant amounts to manufacture and they are not paying duty thereon and they are paying Service Tax. As the appellant is liable to pay duty on their manufactured goods by the act of galvanizing the same. In these set of facts, a show cause notice dated 21.04.2011 was issued to the appellant to demand duty on the activity of galvanizing.

5. The appellant contested the demand of duty by providing necessary documents and praying that the appellant is not required to pay duty on galvanizing the activity for the goods falling under chapter 72 of the CETA, as the same does not amount to manufacture during the impugned period, but the adjudicating authority did not consider the same and confirmed the demand proposed in the show cause notice. Against the said order, the appellant is before us.

6. The Ld.Counsel for the appellant appeared and submits that in this case, the demand against the appellant is not sustainable as the facts which are not in dispute that the appellant is manufacturing structural items and paying duty thereon on their manufacture and for goods falling under chapter 73 the appellant has undertaken job-work under Notification No.214/86 dated 25.03.1986 and cleared the same to principal manufacturer, who paid duty thereon. Further, the appellant undertook the activity of galvanizing the goods falling under chapter 72, and the appellant is paying Service Tax thereon. The appellant is also undertaking the activity of erection, commissioning and installation of towers etc. and paying Service Tax thereon.

7. The case of the revenue is that the appellant is liable to pay duty instead of paying Service Tax for the activity of galvanizing for goods falling under Chapter 72 of CETA, therefore, the impugned proceedings were initiated.

8. After going through the records placed before us and the activity undertaken by the appellant, we find that only dispute remains with regard to the galvanizing activity of the goods falling under chapter 72 of the CETA on which appellant is paying Service Tax.

9. The short issue is to be decided that during the impugned period, the activity of galvanizing falling under chapter 72 amounts to manufacture or not and the appellant is liable to pay duty thereon or not?

10. We find that the activity of galvanizing of the items falling under chapter 72 amounts to manufacture was introduced w.e.f. 08.04.2011 through Chapter (V) of the Finance Act, 2011.

11. As during the impugned period, galvanization of the items falling under chapter 72 of the CETA did not amount to manufacture, in that circumstances, the appellant is not liable to pay duty on galvanizing activity of the goods falling under chapter 72 of the Tariff Act during the impugned period.

12. In view of that, we hold that the demand of excise duty is not sustainable against the appellant.

13. Therefore, we set aside the impugned order and allow the appeal with consequential relief, if any.

Appeal is disposed of as above.

(Dictated and pronounced in the open Court.)

Sd/
(ASHOK JINDAL)
MEMBER (JUDICIAL)

Sd/
(RAJEEV TANDON)
MEMBER (TECHNICAL)

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