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

REGIONAL BENCH – COURT NO.1

Excise Appeal No.76336 of 2019
(On behalf of Appellant)

(Arising out of Order-in-Appeal No.652/HWH/CE/2018-19 dated 11.01.2019 passed by Commissioner (Appeals) of CGST & Excise, Kolkata)

M/s Saboo Udyog
(247/3, G.T.Road (North), Salkia, Howrah-711106)

Appellant

VERSUS

Commissioner of CGST & Excise, Howrah
15/1, Strand Road, Kolkata-700001

Respondent

APPERANCE :

Shri Aditya Dutta, Advocate for the Appellant
Shri P.K.Ghosh, Authorized Representative for the Respondent

CORAM:
HON'BLE MR.ASHOK JINDAL, MEMBER (JUDICIAL)

FINAL ORDER NO.75332/2024

DATE OF HEARING : 23 .02.2024
DATE OF DECISION : 23 .02.2024

Per Ashok Jindal :

The appellants are in appeals against the impugned demand of Central Excise duty and imposing penalties by alleging that the appellants have cleared the goods without issuance of invoices, therefore, evaded payment of Central Excise duty on their clearances.

2. The facts of the case are that a search was conducted on the premises of one Shri Parasnath Rolling Mills Limited (SPRML) by DGCEI on 27.12.2012 and recovered certain documents for the transaction during the period from 01.12.2012 to 25.12.2012 along with certain computer records, which were accepted by C.F.O. and other officials of the said Firm (SPRML). On the basis of the documents, i.e ledger records during the course of investigation from SPRML, an investigation

was conducted at the end of the appellant and the appellant stated that they have not sent any goods to SPRML during the impugned period and no transaction was conducted between them, but a show-cause notice was issued to the appellant demanding duty on the entries made by SPRML in their records.

2.1 The matter was adjudicated. The demand of duty was confirmed along with interest and equivalent amount of penalty was also imposed on them.

2.2 The said order was affirmed by the ld.Commissioner (Appeals).

2.3 Against the said order, the appellants are before me.

3. The ld.Counsel for the appellants submits that the sole allegation against the appellants was of clandestine removal of goods on the basis of Books of Accounts of SPRML and they have not made the party to the show-cause notice for imposing penalty. Further, the whole of the case of the Revenue is on the basis of third party evidence, which is not acceptable. To support his contention, he relies on the decisions of this Tribunal in the case of Commissioner of Central Excise, Indore Vs. Prag Pentachem Private Limited reported in 2018 (360) ELT 1025 (Tri.-Del.) & Forward Resources Private Limited Vs. Commissioner of Central Excise & Service Tax, Surat I reported in 2023 (69) GSTL 76 (Tri.-Ahmd.).

4. On the other hand, the ld.A.R. for the Revenue supported the impugned order.

5. Heard both the parties and perused the case records.

6. On perusal of records, I find in this case that the whole of the case has been made against the appellant on the basis of ledger

account maintained by SPRML, which shows that the goods were supplied by the appellants, but the appellant has refused the same and no further enquiry has been made out against the appellant. The whole of the case has been made on the basis of third party evidence and SPRML has not made to the party to this show-cause notice for imposition of penalty under Rule 26 of Central Excise Rules, 2002.

7. In that circumstances, I hold that the demand is not sustainable on the basis of third party evidence. The same view has been taken by this Tribunal in the case of Prag Pentachem Private Limited (supra). In view of this, the impugned demand is not sustainable against the appellants. Penalties are also not imposable on the appellants.

8. In view of the above observations, I set aside the impugned order and allow the appeals with consequential relief, if any, as per law,

(Dictated and Pronounced in the open court)

(Ashok Jindal)
Member (Judicial)

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