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

REGIONAL BENCH – COURT NO.2

Excise Appeal No. 79229 of 2018

(Arising out of Order-In-Appeal No.86/Kol-V/2018 dated 26/06/2018 passed by Commissioner of CGST & CX (Appeal-I), Kolkata.)

M/s. Rene Impex Pvt. Ltd.
(Plot No. S-59, Phase-III, Kasba Industrial Estate, Kolkata-700107)

Appellant

VERSUS

Commr. of CGST & CX, Kolkata South
(GST Bhawan, 180, Shantipally, Rajdanga Main Road, Kolkata-700107)

Respondent

APPEARANCE :
Mr. N. K. Chowdhury, Advocate for the Appellant
Mr. P. Das, Authorized Representative for the Respondent

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

FINAL ORDER NO.75504/2025

Date of Hearing : 27 February 2025
Date of Decision : 27 February 2025

PER R. MURALIDHAR:

The appellant is manufacture of Readymade Garments which are covered under Section 4A of Valuation. They also manufacture leather goods which are subjected to Section 4 Valuation. During the period April 2014 and May 2014, thinking that their turnover has exceeded Rs. 4 crores, the Appellants have paid Excise Duty on the leather goods which are liable for assessment under transaction value in terms of Section 4 of CEA, 1944. They come to know that they have paid the duty of Rs. 3,41,889/- which was not required to be paid since their turnover their was within Rs. 4 crores threshold set for the SSI units. Accordingly, they filed their refund claim on 31/07/2014 submitting that they have paid excess Excise Duty of Rs. 3,41,889/- by mistake which was not required to be paid at all. They also submitted that this amount was not passed on to any of the customers nor the same was realized from them. After due process, the Adjudicating Authority has held that they are eligible for the refund and granted the same. Being aggrieved, the Revenue has filed the appeal before the Commissioner (Appeals). The Commissioner (Appeals) has not considered the Chartered Accountant’s Certificate filed by the appellant wherein, it is certified that the appellants have borne the Excise duty element and have not passed on the burden to any third party. Accordingly, he set aside the OIO granting refund to the appellant. Being aggrieved, the appellant is before the Tribunal.

2. The Learned Advocate appearing on behalf of the appellant takes me through the Chartered Accountant’s Certificate at Page 142 of today’s submission, wherein the CA has certified that the basic price has not changed during April-May 2014 as well as for the subsequent period. Accordingly, he has concluded that the Excise Duty is borne by the appellant for the period April and May 2014 and has not been passed on to the buyers.

3. I have gone through some of the invoice copies enclosed in today’s submissions. I find that the appellant is indicating one retail price (MRP) and giving certain discount to the customer and realizes the discounted value. The Excise Duty element is not shown in such invoices.

4. The Learned Advocate submits that the Excise Duty is paid by way of separate document by the appellant. He submits that during the entire period April-May 2014 as well as the subsequent period, the MRP remained the same.

5. On going through these invoices, I find that their claim is correct. However, it is seen that they are giving the discount in the invoice which is different from month to month and from party to party and is not constant/consistent. What is important to be checked is not the fact that the MRP has remained constant but what is required to be proved is that the discount during the period April-May 2014 has remained same for the subsequent period also. This would show as to whether or not the Excise Duty was being borne by the appellant during the period April-May 2014. This verification is required to be taken at the adjudication level.

6. Therefore, with the consent of both sides, I remand the matter to the Adjudicating Authority. He should give proper weightage to the Chartered Accountant’s Certificate and should verify the invoices during the period

under consideration and come to a conclusion as to whether the appellant was indeed bearing Excise Duty by themselves. After this, a considered order is required to be passed by him following the principles of natural justice.

7. Since the issue pertains to the year 2014-15 and the appellant has produced photocopies of all these documents before the Tribunal. I direct the Adjudicating Authority to complete the proceedings within three months from the date of communication of this order.

8. The appeal is disposed off thus.

(Dictated and pronounced in the open court.)

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

Pooja