IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH AT MUMBAI

APPEAL NO: E/87502/2017

[Arising out of Order-in-Appeal No: PUN-EXCUS-001-APP-200/17-18 dated 20/07/2017 passed by the Commissioner of Central Excise (Appeals), Pune – I.]

Apex Ecotech Pvt Ltd …***Appellant***

versus

Commissioner of Central Excise & Service Tax
Pune - I ***…Respondent***

Appearance:

Shri Shankargouda S Patil, Advocate for appellant

Shri S.J. Sahu, Assistant Commissioner (AR) for the respondent

CORAM:

Hon'ble Shri M V Ravindran, Member (Judicial)

Date of hearing: 14/03/2018
Date of decision: 14/03/2018

ORDER NO: A/85669 / 2018

This appeal is directed against Order-in-Appeal No: PUN-EXCUS-001-APP-200/17-18 dated 20/07/2017 passed by the Commissioner of Central Excise (Appeals), Pune – I.

2. Heard both the sides and perused the records.

3. The issue for consideration is whether the appellant is entitled for refund of an amount of ₹ 1,17,420/- on the ground that they have inadvertently paid this amount as Central Excise duty for the clearances not effected by them under invoice No. APUNEEXP/13-14/29 dated 03/03/2014. Both the lower authorities rejected the refund claim on the ground that the appellant having been not able to produce satisfactory document to show that the amount has not been collected from their purchasers while it is the case of the appellant that they have prepared the invoice dated 03/03/2014 but had cancelled the same and inadvertently paid the duty liability at the end of the month. I find that the appellant had produced a certificate from Chartered Accountant which reads as under:

> "This is to certify that, M/s Apex Ecotech Private Limited having registered office at S-72/1, MIDC, Bhosari, Pune – 411026 had incorrectly paid the excise duty amounting to Rs. 1,17,420/- (Rupees One lac seventeen thousand four hundred and twenty only) against excise invoice number "APUNEEXP/13-14/29 dated 03/03/2014" in the month of March 2014. The said invoice was inadvertently included in monthly working and excise returns filed for the Month of Mach – 2014.
>
> In this regard, this is certified that the said invoice was not issued or accounted for and was cancelled. Therefore, the company is eligible to claim refund of Rs. 1,17,420/- from the Central Excise Department."

4. Subsequently, on filing of the refund claim, before the lower

authorities appellant produced further certificates from the Chartered Accountant which indicated that these amount of ₹ 1,17,420/- was reflected in the balance sheet as receivable and the said certificate also states that this amount was not collected by the appellant from their clients. In my considered view, both the lower authorities have not appreciated this evidence, which is indicative of the fact that there was no recovery of the said amount from the purchasers. The only finding recorded by the lower authorities is that the appellant had not cancelled invoice as per the provisions.

5. I find no specific provision mandate as to how an invoice (duty paying document) has to be cancelled. I find overwhelming evidence in the form of Chartered Accountant's certificate that the invoice is cancelled and appellant has not collected the amount from the customers. In view of the above, I hold that the impugned order is not sustainable and liable to be set aside, I do so.

6. Appeal is allowed with consequential relief.

(Dictated in Court)

(M V Ravindran)
Member (Judicial)

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