IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH AT MUMBAI
COURT No. I

APPEAL No. C/543/2010

(Arising out of Order-in-Appeal No. AKP/137/NSK/2010 dated 29.4.2010 passed by Commissioner of Central Excise & Customs (Appeals), Nasik)

Rishabh Instruments Pvt. Ltd. **Appellant**

Vs.

Commissioner of Central Excise, Nashik **Respondent**

Appearance:

Shri T. Viswanathan, Advocate, for appellant
Shri M.K. Mall, Assistant Commissioner (AR), for respondent

CORAM:

Hon'ble Mr. Ramesh Nair, Member (Judicial)
Hon'ble Mr. Raju, Member (Technical)

Date of Hearing: 10.5.2018
Date of Decision: 28.6.2018

ORDER No. **A/86855/2018**

Per: Ramesh Nair

The present appeal has been filed against Order-in-Appeal dt. 29.04.2010 passed by the Commissioner of Central Excise (Appeals) Nashik. Brief facts of the case are that the Appellant is an 100% EOU Unit engaged in manufacture of Panel meters, multimeters, transducers etc. They had imported Mavowatt meters availing exemption under Notification No. 53/97 –

Custom dt. 03.06.97 and subsequent analogous notifications. They were issued show cause notice alleging that the imported meters have been cleared on payment of appropriate duty without undertaking any manufacturing operation. It was observed that the goods were imported duty free but were cleared on concessional rate of duty by charging duty @ 50% of the aggregate duty of customs which has resulted into short payment of duty. The Appellant thereafter paid the differential customs duty which was not paid by them along with interest. The demand of Rs. 5,36,648/- was subsequently confirmed against the Appellant along with interest and the duty paid by them was appropriated against the same. A penalty of equivalent amount was also imposed in terms of Section 112 (a) of the Act. The Appellant thereafter approached the Commissioner (Appeals) contending that the goods were tested, calibarated in their factory and were cleared thereafter which means that process was undertaken in respect of such goods. The process of clearance of goods after testing, calibaration amounts to manufacture in terms of Para 9.37 of the Foreign trade Policy and hence the demand is not sustainable. The Commissioner (Appeals) held that the Appellant neither at the time of investigation nor in their reply had ever contended that they have undertaken any process of testing, caliberating the imported goods. That Senior functionaries in their statement have stated that the goods were cleared as such. Shri Manoj Naigaonkar, DGM (operations) in his statement dt. 06.07.2006 and Shri Badrinarayan Sr. Executive in his statement dt. 26.07.2006 had admitted that the goods were cleared in domestic market without any manufacturing activity and the said goods were meant for sale in local market only. That the M.D of company Shri Narendra Goliya had appeared in personal hearing before the adjudicating authority and did not contest the case on merit but contested only for non imposition of penalty. He thus held that the Appellants had removed the goods as such and there is no merit in their appeal. He rejected the appeal filed by the Appellants. Hence the present appeal by the Appellant.

2. Shri T. Viswanathan, ld. Counsel appearing for the Appellant submits that the goods had undergone the process of testing and caliberation and hence the said activity has to be considered as manufacturing activity and differential duty is not demandable. He also submits that since there was no suppression and malafide intention, hence no penalty is imposable.

3. Shri M.K. Mall, ld. AC (AR) reiterates the findings of the impugned order and submits that the duty demand has been rightly made and penalty is imposable.

4. Heard both the sides and perused the records of the case. We find that there is no dispute about the fact that the goods were cleared in local market. The Appellant has contended that the imported goods has undergone the process of testing, caliberation etc. which amounts to manufacture. However we are convinced with the findings of the Appellate Authority as regard factual aspects of the case that no activity was undertaken in respect of imported items. He found that the adjudicating has also relied upon the records of input maintained by the Appellant who found that the inputs were accounted for in numerical codes in their system called Kardex system of keeping accounts. The access of their computer data revealed that some of the imported items have been recorded under 'group code 87' and the same have not been issued to shop floor for production purpose but the same has been cleared as such. Shri Badrinarayan in his statement stated that the said code has been specifically assigned for their traded item for which no further manufacturing activity was conducted and the same were sold in as-it-is

condition and remaining code indicate raw material. We thus find that the contention of the Appellant that they undertook activity of calibaration and testing is absolutely incorrect. The Commissioner (Appeal) also found that the statement of senior functionaries clearly indicated that the goods did not underwent any processing/ testing/ caliberating activity. We thus do not find any infirmity with the impugned order as far as demand is concerned. As regard penalty, we find that the appellant tried to mislead by making story of activities carried out on the imported goods which was found contrary to the statements of various persons recorded. Thus appellant did not come with their defence with clean hands. Therefore in view of the malafide conduct of the appellant, they do not deserve leniency. Hence we uphold the penalty also. The impugned order is thus upheld. The Appeal is dismissed.

(Pronounced in court on 28.6.2018)

(Raju)
Member (Technical)

(Ramesh Nair)
Member (Judicial)

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