CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI

REGIONAL BENCH - COURT NO. I

Excise Appeal No. 1402 of 2011

(Arising out of Order-in-Appeal No. US/17/RGD/2011 dated 14.06.2011 passed by the Commissioner of Central Excise (Appeals), Mumbai-II)

M/s Ram Ratna Infrastructure P. Ltd. .... Appellant
Survey No. 8/1, A2, 11 & 12, Takai Adoshi Road,
Vill – Honad, Taluka - Khalapur, Raigad

Versus

Commissioner of Central Excise, Raigad .... Respondent
Utpad Shulk Bhavan, Plot No. 1, Navi Mumbai- 410206

Appearance:

Ms. Shamita Patel, Advocate for the Appellant

Shri Anil Choudhary, DC, Authorized Representative for the Respondent

CORAM:

HON'BLE DR. D.M. MISRA, MEMBER (JUDICIAL)
HON'BLE MR. S. SRIVASTAVA, MEMBER (TECHNICAL)

FINAL ORDER NO. A/86399 / 2019

Date of Hearing: 05.08.2019

Date of Decision: 05.08.2019

Per: Dr. D.M. Misra

This is an appeal filed against Order-in-Appeal No. US/17/RGD/2011 dated 14.06.2011 passed by the Commissioner of Central Excise (Appeals), Mumbai-II.

2. Briefly stated the facts of the case are that the appellants are engaged in the activity of erection and commissioning of multi level car parking system. For the said

purpose, they manufactured components for car parking system at their factory and cleared all the components to their Head Office located at Worli, Mumbai. While clearing the components, they paid duty by determining the assessable value of the goods taking into consideration the cost of production of the components + 15-21% margin of profit. During the course of EA-2000 Audit, it was objected by the Department that the method of valuation adopted by the appellant is incorrect and value should have been determined in accordance with Rule 9 read with Rule 8 of the Central Excise Valuation Rules, 2000 i.e. they were required to discharge duty on 110% of the cost of production and the production cost is required to be determined as per CAS-4 method. Consequently, complying with CAS-4 method, the value was arrived. The duty thus short paid was around Rs.21,82,206/- and on being pointed out by the Revenue, they paid the differential duty along with interest. Show-cause notice dated 18.1.2010 was issued to them proposing appropriation of the amount paid and imposition of penalty. On adjudication, the amount paid was appropriated with interest and penalty equal to the amount of duty has been imposed. Aggrieved by the said order, they filed an appeal before the learned Commissioner (Appeals), who in turn, rejected their appeal. Hence, the present appeal.

3. At the outset, learned Advocate Ms. Shamita Patel for the appellant submits that imposition of penalty in the present circumstances of the case alleging suppression of facts is unwarranted. It is their contention that the manufactured

components were cleared by them by adopting the value which comprised cost of the production plus 15 to 21% margin of profit. In their monthly returns, they had been reflecting the value of the said components and payment of duty. Further, she has submitted that since the entire amount of differential duty with interest applying CAS-4 method of valuation paid by the appellant before issuance of show-cause notice, therefore, their case is covered under Section 11A(2B) of the Central Excise Act, 1944.

4. Per contra, the learned AR for the Revenue reiterates the findings of the learned Commissioner (Appeals).

5. Heard both sides and perused the records.

6. We find that the short issue involved in the present appeal is whether penalty equivalent to differential duty paid subsequent to the clearance of the goods on re-determination of the assessable value applying CAS-4 method is imposable or otherwise. Undisputedly, the appellant manufactured and cleared components of multi level car parking system during the relevant period to their Head Office discharging duty on the value arrived at by taking into account the cost of the production and margin of profit ranging 15 - 21%. Later, on objection by the Revenue, application of CAS-4 method in determining the cost of production resulted into liability of differential duty amounting to Rs.21,82,206/-, which the appellant immediately paid with interest. In these circumstances, there is not an iota of evidences on record to

show that the duty was short paid by suppressing facts and mis-declaration of the value of the goods, therefore, in our opinion imposition of penalty equivalent to duty, in absence of suppression of facts and mis-declaration etc., cannot be sustained. Accordingly, the impugned order confirming imposition of penalty is set aside and the appeal is allowed.

(Dictated and pronounced in open court)

(Dr. D.M. Misra)
Member (Judicial)

(S. Srivastava)
Member (Technical)

Sinha