CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI

WEST ZONAL BENCH

Excise Appeal No. 89320 of 2018

(Arising out of Order-in-Appeal No. NA/GST-A-II/MUM/420/17-18 dated 27.02.2018 passed by the Commissioner (Appeals-III), CGST & Central Excise, Mumbai)

M/s. Kandi Engg. Pvt. Ltd. .....**Appellant**
F-301, Remi Bizcourt,
Shah Indl. Estate, Off Veera Desai Rd,
Andheri (W), Mumbai

VERSUS

Commissioner of GST, Palghar .....**Respondent**
Utpad Shulk Bhawan,
5th Floor, BKC, Bandra East,
Mumbai

APPEARANCE:

Shri J.N. Tiwari, Advocate for the appellant
Shri Sanjay Hasija, Supdt.(AR) for the respondent

CORAM:

Hon'ble Ms. Archana Wadhwa, Member (Judicial)

FINAL ORDER No: A/86616 / 2019

DATE OF HEARING : 16.09.2019
DATE OF DECISION : 16.09.2019

After hearing both sides, I find that the appellant is engaged in the manufacture of engineering goods and were required to file the ER-3 returns electronically. Proceedings were initiated against them for imposition of penalty, in terms of the provisions of Rule 12(6) of Central Excise Rules, 2002 read with Rule 27 on the ground that the said electronic return did not stand filed in time. On adjudication, it was found that the appellant had filed the hard copy of the return in time and being a remote area and on account of poor electronic link, returns could not be filed electronically. Accordingly, the show cause notice was vacated.

2. The said order was challenged by the Revenue by way of filing of appeal before the Commissioner (Appeals), who imposed penalty of ₹1.14 lakhs approx. in terms of Rule 12.

3. On going through the impugned order, I note the only reason for imposition of penalty was non-filing of ER-3 returns electronically, thus invoking the said rule in mechanical manner. There is no dispute to the finding of the original adjudicating authority that ER-3 returns were filed by hand well within the time and the duty liability was discharged accordingly. Further, as explained by the appellant, such electronic returns could not be filed on account of poor connection and non-availability of the link. In such a scenario, the imposition of penalty on the appellant cannot be appreciated. Accordingly, the impugned order of Commissioner (Appeals) is set aside and the order of the original adjudicating authority is upheld.

4. Appeal is disposed of in above terms.

(Dictated and pronounced in open court)

(ARCHANA WADHWA)
MEMBER (JUDICIAL)

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