CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, WEST ZONAL BENCH AT MUMBAI

REGIONAL BENCH - COURT NO. 02

Excise Appeal No. 89680 of 2013

(Arising out of Order-in-Appeal No. SDK/153/M-III/2013-14 dated 04.09.2013 passed by Commissioner of Central Excise (Appeals), Navi Mumbai)

M/s. KEC International Limited **.....Appellant**
RPG House, 5th Floor, 463,
Dr. Annie Besant Road,
Worli, Mumbai-400030

VERSUS

Commissioner of Central Excise, Mumbai-III **.....Respondent**
4th Floor, Vardan Trade Complex,
MIDC Wagle Industrial Estate,
Thane-400604

Appearance:

Shri Sanjay Desai, General Manager (Taxation) for the Appellant
Shri Anil Choudhary, Authorized Representative for the Respondent

CORAM:
HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)

FINAL ORDER NO. A/86869 / 2019

Date of Hearing: 18.09.2019
Date of Decision: 18.09.2019

Per: S.K. MOHANTY

Briefly stated, the facts of the case are that the appellant is *inter alia*, engaged in the manufacture of power cables, falling under Chapter 85 of the Central Excise Tariff Act, 1985. During the disputed period, the appellant had removed the excisable goods to M/s NDPL pursuant to the purchase order dated 05.12.2011 issued by them. The said purchase order provided the rate for supply of the goods by the appellant, which was inclusive of all taxes and duties. However, while issuing the relevant excise invoices, the appellant had separately claimed the central excise duty element on ad valorem basis. Subsequently, the appellant had filed the refund application before the jurisdictional central excise authorities, claiming refund of excess duty paid by it. The refund application filed by the appellant was favourably considered by the Deputy Commissioner of Central Excise, Mumbai vide order dated 08.11.2012, wherein an amount of Rs.3,12,720/- was sanctioned in favour of the appellant. However, the said original order was appealed against by the department before the learned Commissioner (Appeals). The appeal was disposed of vide the impugned order dated 04.09.2013, wherein the learned Commissioner (Appeals) has set aside the adjudication order passed in favour of the appellant and consequently, allowed the appeal in favour of Revenue. Feeling aggrieved with the impugned order, the appellant has preferred the present appeal before the Tribunal.

2. Shri Sanjay Desai, General Manager (Taxation) for the appellant appeared for personal hearing and submitted that due to inadvertence, the appellant had claimed Central Excise duty separately, which was not payable as per the purchase order issued by the buyer of the goods. To substantiate the fact that the appellant had paid excise duty and the incidence of such duty element had not been passed on to the buyer of the goods, Shri Desai submits the certificate dated 12.07.2019 issued by M/s Dinesh Jain & Co., Chartered Accountants along with calculation sheet before the Tribunal. Further, he has also submitted the credit note dated 30.03.2012 issued by the appellant to the buyer of the goods M/s NDPL, showing the difference of rate in supply of the goods to them. Thus, Shri Desai submits that Since the appellant had paid excess excise duty and the incidence of such duty had not been passed on to the buyer or any other person and had been borne by the appellant itself, the benefit of refund should be available.

3. On the other hand, the learned AR, Shri Anil Choudhary, appearing for the Revenue reiterates the findings recorded in the impugned order. He further submitted that since the appellant had not submitted any proper documents before the first appellate authority, rejection of the refund application is in conformity with the statutory provisions.

4. Heard both sides and perused the records.

5. I find that the buyer of goods M/s NDPL had issued the purchase order dated 05.12.2011, mentioning the cost of material and other aspects. In the Annexure-5 to the said purchase order, it has been specifically mentioned that unit rate or circuit meter will be inclusive of all taxes and duties. The conditions contained in the purchase order clearly show that the price indicated therein is all inclusive and no separate amount shall be charged or claimed by the supplier in respect of the taxes and duties attributable to the goods supplied by it. However, on perusal of the central excise invoices issued by the appellant, I find that it had separately mentioned the central excise duty amount on ad valorem basis therein. I also find that for accounting purpose, the appellant had issued the credit note dated 30.03.2012 to the buyer of goods M/s NDPL, showing the differential amount claimed in the invoices vis-à-vis the price indicated in the purchase order. I also find that M/s Dinesh Jain & Co., Chartered Accountants in their certificate dated 12.07.2019 had enclosed a detailed calculation sheet, showing the excess amount claimed by the appellant in the invoices issued by it. Since, the excess amount claimed in the invoices was inclusive of central excise duty, I am of the view that the excess paid duty amount should be available as refund to the appellant inasmuch as such incidence of duty has been borne by the appellant itself and had not been passed to the buyers or any other person. Hence, I am of the considered view that the impugned order passed by the learned Commissioner (Appeals) in allowing the appeal filed by Revenue cannot be sustained.

6. Therefore, after setting aside the impugned order, I allow the appeal in favour of the appellant, with consequential benefit of refund.

(Dictated and pronounced in the open court)

(S.K.Mohanty)
Member (Judicial)

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