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

REGIONAL BENCH - COURT NO. 02

Excise Appeal No. 85304 of 2018

(Arising out of Order-in-Appeal No. 646-650/2017-18 dated 08.11.2017 passed by Commissioner of Central Tax (Appeals-I), Pune)

M/s. DTL Ancillaries Ltd. …..**Appellant**
Plant-I, Gat No. 366,
Ambethan Road, Chakan,
Pune-410501

VERSUS

Commissioner of Central Excise & Service Tax, Pune - I …..**Respondent**
41-A, ICE House,
Sasson Road, Opp. Wadia College,
Pune-411001

WITH

(i) Excise Appeal No. 85354/2018 (M/s. Viraj Impex Pvt. Ltd.) (Arising out of Order-in-Appeal No. 646-650/2017-18 dated 08.11.2017 passed by Commissioner of Central Tax (Appeals-I), Pune)**; (ii) Excise Appeal No. 85356/2018 (M/s. Vinayaga Marine Petro Ltd.)** (Arising out of Order-in-Appeal No. 646-650/2017-18 dated 08.11.2017 passed by Commissioner of Central Tax (Appeals-I), Pune)**; (iii) Excise Appeal No. 85377/2018 (M/s. Mauli Fabricators)** (Arising out of Order-in-Appeal No. 646-650/2017-18 dated 08.11.2017 passed by Commissioner of Central Tax (Appeals-I), Pune)**; (iv) Excise Appeal No. 86114/2018 (M/s. Siddhi Enterprises)** (Arising out of Order-in-Appeal No. 646-650/2017-18 dated 08.11.2017 passed by Commissioner of Central Tax (Appeals-I), Pune)**;**

Appearance:
Shri Stebin Mathew, Shri Suresh Singh and Shri J.C. Patel, Advocates for the Appellants
Shri H.M. Dixit, Shri S.J. Sahu and Shri Sanjay Hasija Authorized Representatives for the Respondent

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

FINAL ORDER NO. A/87698-87702/2019

Date of Hearing: 28.06.2018
Date of Decision: 14.01.2019

Per: S.K. MOHANTY

Brief facts of the case are that M/s. Mauli Fabricators (Appellant No.1) is engaged in the manufacture of motor vehicle parts, falling under Chapter 87 of the First Schedule to the Central Excise Tariff Act, 1985 and is clearing the said goods to M/s. DTL Ancillaries Ltd. (Appellant No.2) for manufacture of load body parts. Both the appellants are registered with the Central Excise Department as manufacturer of excisable goods. The other appellants namely, M/s. Viraj Impex Pvt. Ltd., M/s. Vinayaga Marine Petro Ltd. and M/s. Siddhi Enterprises are inter alia, engaged in carrying on business as importers and wholesale traders/dealers in iron & steel materials. The said materials were sold through a broker M/s. Pushti Marketing, Mumbai. Based on information, the officers of DGCEI, Pune initiated enquiry against the Appellant No.1. After investigation, it was found that the said Appellant had availed Cenvat credit without actually receiving the material with regard to certain invoices. The allegation of non-receipt of the material was based on the fact that the appellant had not procured the lorry receipts and the vehicle numbers mentioned in the invoices were not capable of transporting the goods. On the basis of detailed investigation, show cause proceedings were initiated against the appellants. The matter was adjudicated vide order dated 31.03.2017, in confirming the proposals made in the show cause notice. Appeals filed against the adjudication order were upheld and the appeals were rejected by the learned Commissioner (Appeals) vide the impugned order dated 08.11.2017. Feeling aggrieved with the impugned order, the appellants have filed these appeals before the Tribunal.

2. The learned Advocates appearing for the appellants submitted that the disputed goods covered under the proper and valid invoices were received in the factory for manufacture of final products and thus, the charges of non-receipt of material cannot be levelled against the appellant for confirmation of the adjudged demands. They further submitted that the department had not produced any documentary evidences to substantiate

the charges of non-supply/receipt of the goods in question. The learned Advocates further submitted that issuance of lorry receipts are not mandatory in case of the transporters, who owned the vehicles. With regard to wrong mention of the vehicle numbers, they submitted that the registration numbers of the same as per the certificates issued by the RTO were almost the same, excepting the middle numbers in some cases. They also submitted that no statement of the transporters or their drivers had been recorded by the department and hence, the other documents available with the appellant and the records maintained, clearly demonstrated that the disputed goods were actually transported and received in the factory for manufacture of the ultimate goods. Further, they also submitted that the details of payments made to the transporter and suppliers were furnished before the authorities below, but no findings to such effect were recorded either in the adjudication or in the impugned order. Thus, they pleaded that the adjudged demands should not be confirmed on the appellants.

3. On the other hand, the learned AR appearing for the Revenue reiterated the findings recorded in the impugned order.

4. Heard both sides and perused the records.

5. I find that the department had basically proceeded against the appellants on the ground that the goods were not actually received in the factory premises of the Appellant No.1. However, on perusal of the case records and the submissions made by the appellants, I find the charges made in the show cause notice cannot be sustained. The department in this case, had not verified the records maintained by the appellants properly to establish the charges of non-receipt and use of the disputed goods for the intended purpose. Further, no documentary evidences were adduced by the department to show that the payments in respect of supply of the goods were not actually made by the appellants. I find that though the

department had specifically alleged that the goods in question were not transported, but no statements either from the transporters or the drivers were recorded to substantiate such allegation. I have perused the synopsis submitted by the learned Advocate for the appellant No.1, mentioning the mis-match in the vehicle numbers. I find that the last four digits in the said numbers are the same. For example, in case of vehicle No.'MH06K7434' used for transportation, the RTO certificate showed the number as 'MH06AQ7434', which the appellants had explained that the same is a typographical mistake. I am accepting such submissions of the appellant, in absence of any corroborative evidence submitted by Revenue that the goods were not physically received by the appellant and not recorded in the books of accounts. Hence, I am of the view that the charges levelled against the appellants cannot be sustained in support of confirmation of the adjudged demands.

6. In view of above, I do not find any merits in the impugned order, insofar as it has upheld the adjudication order. Accordingly, by setting aside the impugned order, the appeals are allowed in favour of the appellants.

(Order pronounced in the open court on 14.01.2019)

(S.K.Mohanty)
Member (Judicial)

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