CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI

REGIONAL BENCH - COURT NO. 01

Excise Appeal No. 87114 of 2018

(Arising out of Order-in-Appeal No. NA/GST A-lll/MUM/220/17-18 Dated 28.11.2017 passed by Commissioner of GST & CX. Appeals – lll, Mumbai)

V K Metal Works **.....Appellant**
Lane No. 16, Phase II, SIDCO Industrial Complex, Bari Brahamna Jammu, Jammu & Kashmir – 181133.

VERSUS

Commissioner of Central Goods & Service Tax - Palghar **.....Respondent**
Utpad Shulk Bhawan, 5th Floor, Bandra Kurla Complex, Bandra East, Mumbai – 400051.

WITH

Excise Appeal No. 88768 of 2018

(Arising out of Order-in-Appeal No. NA/GST A-lll/MUM/562/17-18 Dated 27.03.2018 passed by Commissioner of GST & CX. Appeals – lll, Mumbai)

Kanpur Kashmir Roadways **.....Appellant**
H.O.CW-226 Sanjay Gandhi Transport Nagar Delhi – 110042.

VERSUS

Commissioner of Central Goods & Service Tax - Palghar **.....Respondent**
Utpad Shulk Bhawan, 5th Floor, Bandra Kurla Complex, Bandra East, Mumbai – 400051.

<u>Appearance:</u>

Shri Hemant Kapadia, Consultant for the Appellant
Shri Sanjay Hasija, Authorized Representative for the Respondent

CORAM:

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

FINAL ORDER NO. A/85108-85109/2022

Date of Hearing : 10.02.2022
Date of Decision: 10.02.2022

PER: S.K. MOHANTY

Both these appeals are directed against the impugned order dated 15.12.2017 passed by learned Commissioner (Appeals-III), Mumbai. Vide the impugned order, the learned appellate authority has upheld imposition of penalty in the adjudication order under Rule 26 of the Central Excise Rules, 2002. The present proceedings were initiated by the department on the alleged ground that the appellant M/s. V.K. Metal Works had availed fraudulent refund under Notification No. 56/2002-CE dated 14.11.2002 on the basis of falsified documents and issuing invoices showing removal of finished goods, namely copper ingots. The department also alleged that no production activity had taken place in the factory premises and only paper transactions were undertaken, without actual involvement of any excisable goods.

2. The learned Consultant appearing for the appellants submitted that in the present case, the goods were actually supplied to one M/s. Omega Rolling Mills Pvt. Ltd. and proceedings initiated against the said buyers were considered favorably by the Tribunal vide Final Order No. A/88426/2018 dated 25.07.2018. Thus, he submitted that since the goods were actually supplied by the present appellant M/s. V. K. Metal Works, the charges leveled against them for imposition of penalty cannot be sustained. With regard to the other appellant M/s. Kanpur Kashmir Roadways, he submitted that the allegation of non-movement of goods cannot be sustained, in view of the order dated 25.07.2018 (supra) and accordingly, imposition of penalty is also uncalled for.

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

upon the judgment dated 25.02.2019 of the Hon'ble Jammu & Kashmir High Court to state that the order dated 23.05.2018 passed by Tribunal in the case of *Hem Chand Gupta And Sons & Others* had already been settled by the Hon'ble High Court and thus, in the absence of the disposal of appeal by the Hon'ble High Court, the present appeals cannot be taken up for hearing for a final decision on merits.

4. Heard both sides and peruse the records.

5. I find that on the similar set of facts and circumstances, the department proceeded against the buyer of the alleged goods M/s. Omega Rolling Mills Pvt. Ltd. On appeal against order dated 28.11.2017 passed by the learned Commissioner (Appeals), Mumbai, this Tribunal vide order dated 25.07.2018 has held as follows:-

> *"6. On perusal of the documents submitted by the learned Consultant, I find that the consignment note issued by the transporter contained the reference of the invoice, quantity, description of goods etc. I also find that the transport documents, evidencing movement of goods from the State of J & K to destination point has also been endorsed with proper certification. Thus, it is not the case of Revenue that the goods in question, during the disputed period were not transported from the factory of M/s VKM to the appellant's manufacturing unit. Further, I also find that based on the investigation conducted by the DGCEI in the premises of M/s VKM, the proceedings were initiated against the appellant, alleging fraudulent availment of Cenvat credit. Since, the order confirming the demands against M/s VKM has already been set aside by the Tribunal vide order on 23.05.2018 on the ground that it had manufactured the impugned goods in its factory, I am of the view that the adjudged demands confirmed against the appellant cannot be sustained for judicial scrutiny."*

From the above observations made by the Tribunal, the issue is cristal clear that in the present case, the goods were in fact supplies by the appellant M/s. V.K. Metal Works to M/s. Omega Rolling Mills Pvt. Ltd. and the transporter M/s. Kanpur Kashmir Roadways was engaged for facilitating transportation of goods from the appellant's factory to the buyers destination. Hence, I am of the considered view that imposition of penalty under Rule 26 *ibid* on both the appellants cannot be sustained for judicial scrutiny.

6. The judgment dated 25.02.2019 relied upon by the learned AR for the Revenue has no relevance to the facts of the present case, inasmuch as the buyers M/s. Omega Rolling Mills Pvt. Ltd. of the subject goods was not a party in the dispute before the Hon'ble High Court. Since the appeal of M/s. Omega Rolling Mills Pvt. Ltd. was allowed by this Tribunal vide order dated 25.07.2018 and that the said order has not been challenged by the Revenue before the higher appellate authorities, the question of non-supply of goods to the said buyers cannot be raised at this juncture.

7. Therefore, by setting aside the impugned order, the appeals filed by the appellants are allowed with regard to imposition of penalty on them.

(Dictated and pronounced in the open Court)

(S. K. Mohanty)
Member (Judicial)

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