(2013) 07 AHC CK 0061

In the Allahabad High Court

Case No : Central Excise Appeal No. 20 of 2013

Sukalp Agencies APPELLANT

Vs

Commissioner of Central Excise RESPONDENT

Date of Decision : 19-07-2013

Acts Referred:

Citation : (2013) 298 ELT 38 : (2013) 23 GSTR 79

Hon'ble Judges : Sibghat Ullah Khan, J;Satish Chandra, J

Bench : Division Bench

Advocate : Ratnesh Chandra, for the Appellant; Rajesh Singh Chauhan, for the Respondent

Judgement

Satish Chandra, J.—Present appeal u/s 35G of the Central Excise Act, 1944 has been preferred against the judgment and order dated 19-3-2013 passed by Customs, Excise and Service Tax Appellate Tribunal, New Delhi in Appeal No. E/2498/2008; Sukalp Agencies v. Commissioner of Central Excise, Lucknow. The brief facts of the case are that the appellant M/s. Sukalp Agencies, Lucknow is engaged in the manufacturing of D.G. Sets. On 30-7-2002, a team of Central Excise Officers visited the factory premises, where various discrepancies in the stocks and records were found. So, various additions/penalties were made, which were partly upheld by the Tribunal. Being aggrieved, the appellant has filed the present appeal.

2. With this background, Sri Ratnesh Chandra, learned counsel for the appellant submits that in the appeal, entire judgment has been challenged but he will confine his argument to the forth allegations mentioned in the impugned order, which relates to the duty demand of Rs. 19,58,726/- as well as penalty of equal amount.

3. Learned counsel has drawn attention to para 7 of the impugned order, where it was observed that installation and testing charges, as per balance-sheet figures for the years 2000-01 and 2001-02, did not form part of assessable value when

goods cleared were installed and tested by appellant. He also submits that the installation and commissioning is a different activity and shall not form part of assessable value. He also submits that the unit is under small scale industries. Learned counsel also submits that a prayer was made on 19-3-2013 with respect to summoning of documents from the respondent, but no heed was paid by the Tribunal, rather it was presumed to be an abuse of the process of the law and a specific finding was recorded that in the absence of the material to show separability of contract of excisable goods from installation and testing charge activity claim is not acceptable.

4. It is also a submission of the learned counsel for the appellant that department wrongly alleged that installation and testing charges should form part of assessable value. So, the demand of Rs. 19,58,726/- is not sustainable in the eye of law. According to him, supply of the D.G. sets to the Bharat Sanchar Nigam Limited in fact is an indivisible contract i.e. composite in nature relating to post manufacturing activities.

5. Learned counsel also submits that the installation and testing charges do not fall within the purview of the excisable items. Learned counsel further submits that as per C.P.W.D. Guidelines, 75% on total costs is presumed to be manufacturing cost; and 25% cost is presumed as installation and testing charges. So, the Tribunal has wrongly included the installation and testing charges in the total value as both the activities are exempted from the clutches of the Tax. Lastly, he made a request to set aside/modify the impugned order.

6. On the other hand, Sri Rajesh Singh Chauhan, learned counsel for the Department has relied on the impugned order. He submits that no request was made at any stage for getting the papers from the appellant. He admits that appellant is entitled to get the copies of the seized documents as per rules. He further submits that the appellant is the dealer of Kirloskar but it also manufactured and sole D.G. Sets.

7. After hearing both the parties and on perusal of record, it appears that appellant is a manufacturer of D.G. Sets. A D.G. Set of 30 KVA was cleared to M/s. U.P. Samaj Kalyan Ltd., Lucknow vide Invoice No. 85, dated 26-7-2002 but without entering the same in RG-1 register. No Central Excise duty was paid on it by both S/Shri Sandeep Kumar Agarwal, Proprietor M/s. Sukalp Agencies, Lucknow and Stayavan Singh, authorized representative of the assessee in their written statement, as confessed before the authority below. Similarly, another D.G. Set was sold to Sri Ajay Kumar Jain Barabanki without issuing any Central Excise invoice and without payment of Central Excise duty. Further, two D.G. Sets were cleared to La Martenies Boy''s Inter College, Lucknow; and Bank of India, Barabanki respectively. But the said sales were willfully suppressed.

8. Moreover, it appears that the appellant is enjoying the benefit of SSI exemption, where prescribed limit is one Crore, but assessee has sold final product value of Rs. 1,11,30,381/-, which is exceeding the prescribed limit. The

D.G. Sets sold were not reflected in the daily stock register RG-1 on 26-7-2002, which shows nil balance. No explanation was given by the learned counsel during the course of argument.

9. In view of above, demand of duty amounting to Rs. 19,58,726/- involved on excess amount of Rs. 1,22,42,040/- collecting during 2000-01 and 2001-02 is sustainable for the reason that the installation and testing charges were not shown separately in their tenders. It includes in the total value. No bifurcation was mentioned as per Section 4 of the Central Excise Act, 1944. The installation and testing charges are not shown separately by the appellant in the tenders, while they have paid duty on the invoices after deducting the same from the price which is not as per provisions of the Central Excise law, then there is no reason to grant any relief to the appellant. Further, the claim of the assessee that installation and testing charges are not part of their manufacturing activities is not acceptable for the reason that in the agreements dated 18-3-2001 with M/s. Kirloskar Oil Engines, Pune, it was shown tender price inclusive of commissioning and testing charges on D.G. Sets manufactured by them, but they have not paid duty on the full amount as per their invoice. It is a case to evade payment of duty, due on the sale which was suppressed (supra).

10. Hence, we find no reason to interfere with the impugned order passed by the Tribunal, which is hereby sustained along with the reasons mentioned therein. In the result, the appeal being devoid of merits, is dismissed at the admission stage.