IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.147 of 2018

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M/s Akashdeep Pipes & Fittings Private Ltd., Plot No.22 (Part) Raksha Bandh Road, Kothia, Village - Chimochak, Didarganj, Begumpur, Patna 800009, Bihar through Ambreshwar Kumar (Managing Director).

.... Appellant/s

Versus

The Commissioner of Central Excise, Central Revenue Building, Veer Chand Patel Path, P.S.- Kotwali, Dist- Patna.

.... Respondent/s

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Appearance:

For the Appellant/s : Ms. Nivedita Nirvikar, Advocate.

For the Respondent/s : Mr. Satya PrakashTripathy, Advocate.
Sr. S.C., GST & Central Excise.

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

Date: 02-04-2018

The present appeal under Section 35G of The Central Excise Act, 1944 has been preferred against the order dated 21.09.2017 passed by the learned Judicial Member of the Custom, Excise and Service Tax Appellate Tribunal (hereinafter referred to as the 'Tribunal'), Regional Bench, Kolkata in Excise Appeal No. 76395/16, C.O./75609/17, whereby and whereunder the learned Tribunal has upheld the order of the adjudicating authority to the extent of imposition of penalty of Rs. 8,47,131/- U/S 11AC of the Central Excise Act, 1944 (hereinafter referred to as the 'Act').

2. Learned counsel representing the appellant has moved

this application and submits that there are substantial questions of law arising out of the present appeal. Learned counsel submits that the anomaly in the particulars of GAR-7 as regards payment of duty through PLA is attributable to the concerned staff which was resorted by him with the sole motto of uploading ER-1 returns in time. According to the learned counsel, the facts of the present case, by no stretch of imagination, may be construed as suppression of fact or misstatement with intention to evade payment of duty which is the essential ingredient to deny the benefit of Section 11A(1)(b) read with Section 11A(2) of the Act.

3. Learned counsel submits that immediately after receipt of telephonic message from the department, the appellant had deposited the entire amount of duty along with interest and penalty imposed thereon. It is submitted that the payment of penalty has been made under protest. Referring to the order, as contained in Annexure-9 dated 01.03.2016 passed by the Joint Commissioner, Central Excise and Service Tax, Patna, learned counsel submits that the view taken by the Joint Commissioner that the noticee has declared their duty liability in their ER-1 return, however, misstated that the duty has been paid by entering false Challan nos. looses its significance once it has been found that the appellant assessee has deposited all the duty liabilities amounting to Rs. 16,94,261/- and also paid the interest

thereon before issuance of the notice.

4. The learned Custom, Excise & Service Tax Appellate Tribunal (CESTAT) while considering the Excise Appeal preferred by the Commissioner of Central Excise, Patna against the order passed by the Commissioner (Appeal) setting aside the adjudication order by the Joint Commissioner, took note of the grounds of appeal in Paragraph 3 of its final order dated 21.09.2017 passed in Excise Appeal No. 76395/16, C.O./75609/17. The learned Judicial Member of CESTAT did not accept the contention of the assessee for the reason that burden of providing fake nos. of Challan in the ER-1 return cannot be shifted on the staff; hence it has been taken as a case of willful mis-statement, fraud, etc. and imposition of penalty U/S 11AC has been warranted agreeing with the order of the adjudicating authority. The Tribunal, however, held that as the penalty U/S 11AC was invoked the other penalties are excessive. The order of the adjudicating authority, to the extent of imposition of penalty U/S 11AC, has been upheld.

5. We have heard learned counsel for the appellant as well as learned Standing Counsel representing the Central Excise.

6. The sole contention of the learned counsel for the appellant is that because the appellant assessee had deposited the entire duty with interest even before receipt of show cause notice,

Section 11AC of the Act would not be attracted. Learned counsel has taken us through the provision of Section 11AC of the Act which we have gone through.

7. From the concluded facts up to the stage of CESTAT it is evident that the appellant assessee had entered fake Challan nos. in the ER-1 return which could be noticed by the department and only thereafter when a telephonic message was received by the department assessee, he deposited the entire amount of duty with interest, etc. The Tribunal, which is the apex fact finding body, has recorded this finding, based on the materials which were available on the record, and this is a pure question of fact and we cannot go into the question of facts at this stage in this appeal.

8. We do not find any substantial question of law arising in the facts and circumstances of the present case.

9. The Appeal has no merit. It is accordingly dismissed.

(Rajendra Menon, CJ)

(Rajeev Ranjan Prasad, J)

Dilip, AR

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	05.04.2018
Transmission Date	N/A