**Customs, Excise & Service Tax Appellate Tribunal**
**West Zonal Bench At Ahmedabad**

REGIONAL BENCH- COURT NO.3

**Excise Appeal No.10672 of 2020**
((Arising out of OIA No. OIA-RAJ-EXCUS-000-APP-187-2018-19 , Dated-17/10/2018 passed by the Commissioner of Central Excise, Customs and Service Tax-RAJKOT.)

**M/s. KELVIN INDUSTRIES** **.........Appellant**
150 Feet Ring Road, Nandanvan-1, Block No. C-3
Rajkot, Rajkot, Gujarat

*VERSUS*

**C.C.E. & S.T.-RAJKOT** **.........Respondent**
Central Excise Bhavan,
Race Course Ring Road...Income Tax Office,
Rajkot, Gujarat-360001

**APPEARANCE:**
Shri. Rahul Gajera, Advocate for the Appellant
Shri. Sanjiv Kinker, Superintendent (AR) for the Respondent

**CORAM: HON'BLE MEMBER (JUDICIAL), MR. RAMESH NAIR**

**Final Order No. A/ 11294 /2020**

DATE OF HEARING: 05.11.2020
DATE OF DECISION:05.11.2020

**RAMESH NAIR**

This appeal is directed against impugned order in appeal No. RAJ/EXCUS/000/APP/187/2018-19 dated 17.10.2018 whereby the matter was remanded by the Commissioner (Appeals) to the adjudicating authority to examine the correctness of entire duty amount of Rs. 11,22,927/- and penalty.

2. Shri. Rahul Gajera, Learned Counsel appearing on behalf of the appellant submits that as per para 6 of the impugned order it is an open remand, however, in para 5 of the impugned order, the Learned Commissioner (Appeals) has recorded that appellant has not disputed clandestine removal of goods. It is this observation of the Commissioner (Appeals) the appellant is aggrieved with, therefore, he seeks necessary modification in the order.

3. Shri. Sanjiv Kinker, Learned Authorised Representative appearing on behalf of the Revenue reiterates the finding of the impugned orders. He also filed the detail submission dated 3rd November, 2020 which was taken on record and considered it carefully.

4. Heard both the sides and perused the records. I find that the adjudicating authority while concluding in the appeal filed by the appellant before the Commissioner (Appeals) pass the following order.

> "6) I find that the impugned order did not examine the correctness of opening balance and confirmed demand of Rs. 11,22,927/- and imposed equal penalty without verifying the documents, which cannot be held sustainable and is required to be set aside to be decided afresh after verifying the facts with documents and then to come to conclusion with justified reasons.
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> 7) In view of above, I set aside the impugned order and remand the matter to be decided afresh, verifying the facts with documents available."

5. On the plain reading of the above para 6 and 7, the Learned Commissioner (Appeals) has remanded the entire matter for re-verification and to examine the correctness of demand amounting to Rs. 11,22,927/-. However, on the other hand Learned Commissioner (Appeals) has recorded in Para 5 as under:-

> 5. On going through the appeal memorandum, I find that the Appellant has not disputed clandestine removal of the goods but their grievance is about confirmation of Central Excise duty on the entry as "opening balance - Rs. 96,77,194" appearing in duty calculation worksheet annexed with Show Cause Notice dated 30.11.2011 and consequent imposition of penalty under Section 11AC of the Act.

6. As per above para 5, Learned Commissioner (Appeals) has recorded that the appellant has not disputed clandestine removal of the goods but their grievance is about confirmation of the Central Excise duty on the entry as "opening balance" of Rs. 96,77,194/- appearing in duty calculation worksheet. I find that since, the Commissioner (Appeals) has clearly held that the correctness of Rs. 11,22,927/- and verification of documents related them to be re-examined, therefore, stating that appellant has not disputed clandestine removal is clear contradictory. Therefore, I am of the view that the Learned Commissioner (Appeals)'s observation that appellant has not disputed the clandestine removal of goods, needs to be expunged and the remand made by the Commissioner (Appeals) has to be considered as open remand in respect of the total duty remand of Rs. 11,22,927/-. Accordingly, I hold so and the appeal is allowed in the above terms. The adjudicating authority should pass denovo adjudication order, as per the direction given by the Commissioner (Appeals) in para 6 and 7 of the impugned order without getting influenced the observation made in para 5 of the impugned order. The appeal is disposed of in the above terms.

7. Shri. Rahul Gajera, Requested that the time frame may be fixed as the matter is very old of year 2005-2006. Considering his request I direct the adjudicating authority to pass a denovo order within a period of 3 months from the date of this order, after observance of principals or natural justice.

(Dictated & Pronounced in the open court)

**(RAMESH NAIR)**
**MEMBER (JUDICIAL)**

Prachi