Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench At Ahmedabad
REGIONAL BENCH- COURT NO.3

Service Tax Appeal No.13479 of 2013

(Arising out of OIA-26/CEX/DEM/ANUPAM/COMMR-I/2013 dated 24/07/2013 passed by Commissioner of Central Excise, Customs and Service Tax-VADODARA-I)

C.C.E. & S.T.-Vadodara-I **........Appellant**
1st Floor...Central Excise Building,
Race Course Circle,
Vadodara, Gujarat-390007

VERSUS

Anupam Industries Ltd **.......Respondent**
138 & 139, G.I.D.C. Vithal
Udyognagar, ANAND, GUJARAT

APPEARANCE:
Shri Tara Prakash, Deputy Commissioner (AR) for the Appellant
Shri Saurabh Dixit, Advocate for the Respondent

CORAM: **HON'BLE MEMBER (JUDICIAL), MR. RAMESH NAIR**
HON'BLE MEMBER (TECHNICAL), MR. C.L. MAHAR

Final Order No. A/ 11081 /2023

DATE OF HEARING: 13.03.2023
DATE OF DECISION: 02.05.2023

RAMESH NAIR

This revenue's appeal is directed against Order-In Original No. 26/CEX/DEM/ANUPAM/COMMR-I/2013 dated 24.07.2013 passed by Commissioner of Central Excise, Customs and Service Tax-VADODARA-I whereby, the learned Commissioner dropped the proceeding initiated vide show cause notice F.No.V.Ch.84(4)9/Dem/Commr.-I/2012 dated 01.03.2013. The case of the department in the show cause notice is that the appellant had issued ARE-1 No. 27 to 48 dated 31.03.2012 however, no proof of export against the said ARE-1 was submitted within stipulated time therefore, the demand of excise duty in respect of the goods for which ARE-1 were issued was raised in the show cause notice. The adjudicating authority relying on the documents produced by the respondent held that under the subject ARE1s excisable goods were not cleared by the appellant from their factory therefore, the demand is not sustainable. Being aggrieved by impugned order, the revenue filed the present appeal.

02. Shri Tara Prakash, learned Deputy Commissioner (AR) appearing on behalf of the revenue appellant submits that the commissioner has gravely

erred in dropping the demand on the basis of his own belief that the respondent belatedly filed letter dated 20.06.2012 regarding cancellation of the subject ARE 1. The learned Commissioner without verifying the outcome of such letter, concluded that the goods were not cleared from the factory of the respondent. He submits that whatever documents were submitted by the respondent before the Commissioner, the learned Commissioner should have got it verified from the Divisional/Range Office to ascertain the factual position which he failed to do so therefore, the order is not legal and correct, the same needs to be set aside and appeal be allowed.

03. Shri Saurabh Dixit, learned counsel appearing on behalf of the respondent takes support of the finding of the impugned order. He submits that from the record submitted by the respondent to the adjudicating authority, after going through the same and satisfying about the authenticity of the documents, dropped the demand therefore, the order deserves to be sustained. He also referred to the provisions under CBEC Excise Manual regarding the procedure for cancellation of export documents. It is his submission that since the goods were not cleared from the factory, no duty demand sustains.

04. We have carefully considered the submissions made by both the sides and perused the records. We find that the respondent though issued the ARE 1 in respect of the proposed export but after issuance of the ARE-1 if the goods were not cleared, they should have informed the same immediately to the jurisdictional officer for cancellation of their ARE-1 however, in the present case the relevant ARE-1s were issued on 31.03.2012 but the intimation regarding non clearance of the goods under the said ARE-1 was filed on 20.06.2012 i.e. almost after more than two months. It is beyond understanding that when the ARE-1s were issued on 31.03.2012 and the goods were not cleared why the respondent have not intimated the same to department well in time. In this situation whatever documents were submitted by the respondent to the adjudicating authority ought to have verified by the field officer. The learned Commissioner without obtaining any report from the field formation and without calling the outcome of the letter dated 20.06.2012 submitted by the respondent came to conclusion that the goods have not been cleared from the factory of the respondent. Though from the records considered by the learned Commissioner prima facie shows that the goods have not been cleared from the respondent’s factory under the subject ARE-1, but since the conduct of the respondent is not clear as against the procedure laid down in the CBEC manual, the records submitted

by the respondent ought to have been verified or a verification report was necessary from the field formation. In this situation, we are of the clear view that matter needs to be remitted back to the adjudicating authority for passing a fresh order.

05. Accordingly, the impugned order is set aside. Appeal is allowed by way of remand to the adjudicating authority

(Pronounced in the open court on 02.05.2023)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(C.L. MAHAR)
MEMBER (TECHNICAL)

Mehul