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

REGIONAL BENCH-COURT NO. 3

Excise Appeal No. 10320 of 2013 – DB

Excise Miscellaneous (ORS) Application No. 10385 of 2022

(Arising out of OIO-96-COMMR-SURAT-II-2012 dated 28/12/2012 passed by Commissioner of Central Excise, Customs and Service Tax-SURAT-II)

Svm Cera Tea Ltd **........Appellant**
4802/b, G.i.d.c.,
Ankleshwar, Bharuch, Gujarat

VERSUS

C.C.E. & S.T.-Surat-ii **......Respondent**
New C.Ex Building...Opp. Gandhi Baug,
Chowk Bazar, Surat, Gujarat-395001

WITH

Excise Appeal No. 10999 of 2013 - DB

(Arising out of OIO-96/COMMR/SURAT-II/2012 dated 08/01/2013 passed Commissioner of Central Excise, Customs and Service Tax-SURAT-II)

C.C.E. & S.T.-Surat-ii **........Appellant**
New C.Ex Building...Opp. Gandhi Baug,
Chowk Bazar, Surat, Gujarat- 395001

VERSUS

Svm Cera Tea Limited **......Respondent**
Plot No. 4802/b,
Gidc, Ankleshwar, Bhavnagar, Gujarat

APPEARANCE:
Shri Hardik Modh & Shri Amit Laddha, Advocate for the Appellant-Assessee
Shri Tara Prakash, Deputy Commissioner (AR) for the Respondent- Revenue

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

Final Order No. 12348-12349/2023

DATE OF HEARING: 26.06.2023
DATE OF DECISION: 25.10.2023

RAMESH NAIR

This appeal is directed against the Order-in-Original No. 96 /COMMR/SURAT-II/2021 dated 08.01.2013 whereby the Excise Duty demand on the goods allegedly manufactured by the appellant was confirmed on the ground of the clandestine removal and also imposed the penalties. The demand was confirmed mainly on the basis of the consumption of gas required for manufacture of the final product. The case is mainly based on statement of various persons.

2. Shri Hardik Modh, Learned Counsel along with Shri Amit Laddha, Advocate appearing on behalf of the appellant made detailed submission on merit as well as on principle of natural justice. It is his submission that the appellant's request for providing the relied upon/ non relied upon documents and cross examination of the various witnesses was rejected by the Adjudicating Authority by not giving any finding thereon despite specific request made by the appellant in the reply to the show cause notice. Therefore, the Adjudicating Authority has grossly violated the principle of natural justice.

3. Shri Tara Prakash, Learned Deputy Commissioner appearing on behalf of the revenue reiterates the finding of the impugned order.

4. On careful consideration of the submission made by both the sides and perusal of record, we find that the appellant in the reply raised specific issue that certain documents relied upon/non relied upon were not provided to the appellant. The appellant also requested for cross examination of the witnesses whose statements were heavily relied upon to confirm the charge of clandestine removal and consequential demand of Excise duty. We find that from the entire adjudication order the Adjudicating Authority has not given any heed to the request of the appellant in as much as they have specifically asked to provided relied upon/ Non relied upon documents and cross examination of the witnesses. We prima facie find that the case is mainly based on statements of various persons. it is statutory mandate in terms of Section 35D of the Central Excise Act, 1944 that the Adjudicating Authority that it is incumbent upon the Adjudicating Authority to examine/cross examine the witnesses before accepting the statements of those witnesses as evidence for adjudication of the case. In the present case even despite retraction by the witnesses the adjudicating authority has not granted the cross examination of the witnesses. In this fact the entire order of the Adjudicating Authority based on mainly statements of the various persons, without allowing cross examination, is not sustainable. Accordingly, we are of the view that the adjudicating authority must allow the cross examination of the witnesses and also provide the documents required by the appellant, if not earlier provided. We find that the adjudicating authority has gravely erred in violating the principles of natural justice. Therefore, the

order without following the principle of natural justice cannot be sustained as held by the Apex Court in number of judgments.

5. We are therefore of the view that entire matter needs to be reconsidered. Hence, we set aside the impugned order and remand the matter to the Adjudicating authority for passing a fresh de-novo order. Since the matter is very old of the period 2004-05 to 2007-08 it is expected from the Adjudicating Authority to pass the de-novo order within a period of three months from date of this order. Needless to say that after making all efforts for providing all documents and allowing the cross examination, the Learned Adjudicating Authority is not precluded from passing a de-novo order on the basis of the records available. The appeals are allowed by way of remand to Adjudicating authority. MA also stands disposed of.

(Pronounced in the open court on 25.10.2023)

RAMESH NAIR
MEMBER (JUDICIAL)

C.L.MAHAR
MEMBER (TECHNICAL)

Raksha