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

REGIONAL BENCH- COURT NO.3

Excise Appeal No.13690 of 2014

(Arising out of OIA-RJT-EXCUS-000-APP-199-14-15 dated 26/09/2014 passed by Commissioner of Central Excise-RAJKOT)

Lamberti India Private Limited ....**Appellant**
Plot No. 1 & 2, Survey No. 161/P,
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 Paresh Sheth, Advocate for the Appellant
Shri J.A. Patel, Superintendent (Authorized Representative) for the Respondent

CORAM: HON'BLE MEMBER (JUDICIAL), MR. RAMESH NAIR
HON'BLE MEMBER (TECHNICAL), MR. RAJU
Final Order No. A/ 12351 /2021

DATE OF HEARING: 08.09.2021
DATE OF DECISION: 08.09.2021

RAMESH NAIR

This appeal was directed against the order of the Commissioner (Appeals) whereby, the appeal of the appellant was disposed of by giving certain observations which is reproduced below:

> *"15. In view of the above facts, discussions and findings, I find that the appeal of the appellant can be entertained to the extent that benefit of cum-duty price should be allowed to the appellant and calculation of duty should be done considering the opening stock of raw-materials and finished goods as claimed by the appellant. Since the same requires verification, the Jurisdictional Range Superintendent and Jurisdictional Assistant Commissioner may allow these benefits after due verification of records.*
>
> *16. Regarding levy of interest, I find that once the duty payment is required to be made by an assessee, the levy of interest on non-payment of duty follows automatically. Regarding imposition of penalty, I find that the lower authority has correctly imposed penalty of Rs.70,000/- upon the appellant in the impugned order. Hence, I don't find any reason to interfere the same and uphold the same.*
>
> *17. In view of above, the appeal is allowed to the extent that benefit of cum-duty price should be extended to the appellant and opening stock of raw-materials and finished goods should be considered for arriving at ratio of consumption of imported/indigenous goods and*

> *duty should be charged accordingly. The remaining part of impugned order is upheld.*
>
> *18. The appeal is disposed of in above terms."*

02. We have heard both the sides. Shri Paresh Sheth, learned counsel submits that the Adjudicating Authority has taken the production as on 25.11.2008 i.e. 14,500 Kgs, considering it is a manufacture out of imported raw material whereas, the same was produced from indigenous raw-material. Therefore, the same should be excluded from the opening balance of the goods manufactured.

2.1 Shri J.A. Patel, learned Superintendent (Authorized Representative) appearing on behalf of the revenue invited our attention to the impugned order passed by the Commissioner (Appeals). He submits that the relief sought by the appellant has already been directed by the Commissioner (Appeals) in the impugned order. Therefore, there should not be any grievance by the appellant.

03. We have considered the submission made by both the sides. We find that the Commissioner (Appeals) has already considered the submission of the appellant in as much as the opening balance of the goods manufactured out of imported indigenous raw material quantity of which was produced on 25.11.2008 should be excluded and the Commissioner (Appeals) also directed to consider the benefit of cum-duty price. In this undisputed fact the relief has already been extended by the Commissioner (Appeals) to the appellant which is sought for before this tribunal.

04. Accordingly, we dispose of the appeal by remanding the matter to the adjudicating authority to reconsider the recomputation of the duty as per the direction given by the Commissioner (Appeals) in his order at Para. 15,16 & 17. Since the matter is very old, the adjudicating authority is directed to pass afresh order within a period of three months from the date of this order.

05. Appeal is disposed of by way of remand to the Adjudicating Authority.

(Dictated & Pronounced in the open court)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)

Mehul