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

REGIONAL BENCH-COURT NO. 3

EXCISE Appeal No. 10716 of 2016 - DB

(Arising out of OIO-BHR-EXCUS-000-COM-064-15-16 dated 29/02/2016 passed by Commissioner of Central Excise, Customs and Service Tax-Bharuch)

Premier Polyspin Pvt Ltd **........Appellant**
C/o Aanchal Creations, 47-48,
Soma Kanji Ki Wadi, Khatodara,
Surat, Gujarat

VERSUS

C.C.E-Bharuch **......Respondent**
Vadodara-II,GST Bhavan,
Subhanpura,Vadodara
Vadodara, Gujarat- 390023

APPEARANCE:
None (On merit) appeared for the Appellant
Shri Tara Praksah, Deputy Commissioner (AR) for the Respondent

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

Final Order No. 10338 /2024

DATE OF HEARING: 02.02.2024
DATE OF DECISION: 02.02.2024

RAMESH NAIR

This appeal is directed against Order-in-original dated 29.02.2016 passed by Commissioner, Customs, Central Excise and Service Tax, Bharuch. The case of the department is that the appellant, 100% EOU has clandestinely removed finished goods in the guise of (a) Physical Exports (b) Deemed exports against advance licenses and (c) DTA sale to another 100% EOU.

2. The Learned Counsel Shri Willingdon Christian submitted a Synopsis dated 22nd November, 2023 whereby he submits that the Adjudicating Authority has passed ex-parte order by violating principles of natural justice in as much as :-

A) The impugned Order is passed without granting any personal hearing.

B) The impugned Order is passed by Commissioner of Bharuch Commissionerate whereas the SCN was made answerable to the commissioner of Surat-II Commissionerate.

C) The recorded statements are relied upon without conducting examination-in-chief and then without offering the witnesses for cross examination as per Section 9D of the Central Excise Act, 1944.

2.1 He also raised the dispute about granting of personal hearing by the department and seeking adjournment by appellant. He further submits that after the first hearing on 13.06.2014, the order was passed almost after two years i.e. on 29.02.2006 which is bad in law. He placed reliance on the following judgments:-

- Shantilal Jain Vs. UOI - 2011 (21) STR 682 (Bom.)
- Excel Production Audio Visuals Pvt. Ltd. Vs. UOI- 2016 (332) ELT 254 (Bom.)

2.2 He further submitted that the Adjudicating Authority was lacking a jurisdiction in as much as SCN was made answerable to the Surat-II Commissionerate whereas the impugned order was passed by the Commissioner of Bharuch Commissionerate and no valid corrigendum was issued for this change. Therefore, the impugned order is without jurisdiction. He placed reliance on this Tribunal's judgment in the case of Consolidated Enterprises Vs. CC reported in 2001 (137) ELT 1223 (T).

2.3 He also submits that the Adjudicating Authority has relied upon the recorded statements without first conducting examination-in-chief and then offering the witnesses for cross examination by the appellant as per Section 9D of the Central Excise Act, 1944. He takes support of Hon'ble High Court of Punjab & Haryana in case of G-Tech Industries Vs. UOI reported in 2016 (339) ELT 209 (P&H). With the above submission, Learned Counsel prays for necessary direction to the Adjudicating Authority by remanding the case.

3. Shri Tara Praksah, Learned Deputy Commissioner (AR) 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 there is a force in the submission of the Learned Counsel made on behalf of the appellant in his synopsis dated 22.11.2023 that there is gross violation of principles of natural justice, in as

much as the appellant has not been granted the effective hearing in the matter particularly, when the order was passed after almost two years from the date of hearing. It is also admitted that no examination-in-chief and subsequent cross-examination has been conducted by the learned Adjudicating authority, which is mandatory under section 9D of Central Excise Act, 1944. The issue of lack of jurisdiction also needs to be considered.

5. Accordingly, we are of the view that on all the points raised by the appellant the matter needs to be re-considered. Therefore, the impugned order is set aside. Appeal is allowed by way of remand to the Adjudicating authority for passing de-novo order within a period of three months from the date of this order.

(Operative part of the order pronounced in the open court)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(C L MAHAR)
MEMBER (TECHNICAL)

Raksha