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

REGIONAL BENCH- COURT NO.3

Excise Appeal No. 10203 of 2019

(Arising out of OIA-AHM-EXCUS-001-APP-102-2018-19 dated 18/12/2018 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-AHMEDABAD)

Jee Pumps Pvt Ltd ....**Appellant**
Block No 407-B & 408-B, Kubadthal-Pasunj Road,
Village-Kubadthal, Tal-Daskroi
Ahmedabad, Gujarat

VERSUS

C.C.E.-Ahmedabad-I ......**Respondent**
C. Ex Bhavan, Nr Panjrapole & Polytechnic, Ambavadi,
Ahmedabad, Gujarat - 380015

APPEARANCE:
Shri P.P Jadeja, Advocate for the Appellant
Shri Dinesh Prithiani, Assistant Commissioner (AR) for the Respondent

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

Final Order No. A/ 10733 /2022

DATE OF HEARING: 14.06.2022
DATE OF DECISION: 24.06.2022

RAMESH NAIR

The brief facts of the case are that the appellant have defaulted the regular payment of duty thereafter the department frozen the bank account of the appellant and recovered the non paid duty, interest and penalty in terms of Rule 8(3A) of Central Excise Rules, 2002. In the present appeal the appellant challenged the imposition of penalty only.

2. Shri P.P Jadeja Learned Counsel appearing on behalf of the appellant submits that the department has not followed the principle of natural justice in as much as no SCN was issued. He submits that there is no malafide on the part of the appellant, non-payment of duty at the relevant time is due to the Financial Crisis. The entire duty were declared in the invoice, ER-1 return therefore, when the case is of only delayed payment of Excise duty, no malafide is attributed to the appellant. He submits that without issuance of SCN, the recovery of the amount is in violation of principle of natural justice. He placed reliance on the following judgments:-

- DHARMAPAL SATYAPAL LTD
-
- VS. DY. COMMISSIONER OF C.EX., GAUHATI – 2015 (320) ELT 3 (SC)

- SIKKIM FERROYS ALLOYS LTD VS. ASSITT. COMMR. OF C.EX., DIV. – EP, MUMBAI-I - 2016 (338) ELT 220 (BOM.)
- FRONTIER ALLOY STEELS LTD VS. UNION OF INDIA - 2017 (354) ELT 54 (ALL.)
- PRINCIPAL COMMISSIONER OF C.EX. DELHI-I VS. SPACE TELELINK LTD – 2017 (355) ELT 189 (DEL.)
- VRAJESHWARI STEEL PVT LTD VS. COMMISSIONER OF C.EX.& ST., VADODARA-LL
- ALOM EXTRUSION LIMITED VS. DEPUTY COMMISSIONER, CENTRAL EXCISE – 2017 (353) ELT 431 (CAL)
- GSP INFRATECH DEVELOPMENT LTD VS. UNION OF INDIA- 2015 (39) STR 945 (KAR.)
- ANARK ALUMINIUM LTD VS. COMMR. OF C.EX. ST & US., VISAKHAPATNAM-II – 2017 (4) GSTL 248 (TRI. HYD)
- LAWSON TOURS AND TRAVESL (INDIA) P LTD. VS. DY. DIRECTOR , DGCRO, ZONAL UNIT, MUMBAI – 2015 (317) ELT 248 (BOM.) – 2015 (317) ELT 248 (BOM)
- INDSUR GLOBAL LTD VS. UNION OF INDIA – 2014 (310) ELT 833(GUJ.)
- BABA VISHWAKARMA ENGINEERING CO.PVT.LTD VS. CCE GHAZIABAD- 2017 (355) ELT 147 (TRI. DEL)
- COMMISIONER OF C. EX., MUMBAI –II VS. CHOPRA ENGINEERING CO. – 2016 (339) ELT 423 (TRI.MUM)
- COMMISIONER OF C. EX.,CHANDIGARH VS. VALLEY IRON & STEEL CO. LTD – 2016 (337) ELT 1678 (H.P)
- PRATIBHA PROCESSRS VS. UNION OF INDIA – 1996 (88) ELT 12 (SC)

3. Shri. Dinesh Prithiani, Learned Assistant Commissioner (AR) appearing on behalf of the Revenue reiterates the finding of the impugned order. He further submits that the penalty in terms of Rule 8 (3A) is mandatory and no discretion is available to authority either to reduce or waive the penalty therefore, appeal may be dismissed.

4. I have carefully considered the submission made by both the sides and perused the records. I find that the only challenge in this appeal is imposition of penalty under Rule 8 (3A) of Central Excise Rules, 2002. I find that though the rule clearly prescribes the penalty however, the Revenue has not followed the principle of natural justice in as much as they have not issued any SCN and no opportunity was given to the appellant to defend or explain their case. It is a settled law that even though there is no explicit

provision for issuance of SCN, as per the Principle of natural justice an assessee should be given sufficient opportunity to explain their case particularly for invocation of penal provision. In the present case admittedly neither SCN was issued to the appellant nor was any opportunity given. Therefore, in my considered view, the penalty is liable to be set aside only on the ground of principle of natural justice. Hence, I set aside the penalty and allow the appeal with consequential relief, if any, in accordance with law.

(Pronounced in the open court on 24.06.2022)

RAMESH NAIR
MEMBER (JUDICIAL)

Geeta