IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH : ALLAHABAD
COURT No. I

APPEAL Nos. E/70079-70082/2017-EX[DB]

(Arising out of Order-in-Original No.23/Pr.Comm./Noida-I/2016-17 dated 07/11/2016 passed by Principal Commissioner of Central Excise, Noida-I)

M/s Pankaj Tobacco Pvt. Ltd.,

M/s Pankaj Kumar Arya, Director,

M/s Deepak Kumar, Accountant &

M/s Neeraj Kumar, Authorized Signatory **Appellants**

Vs.

Commissioner of Central Excise, Noida-I **Respondents**

Appearance:

Shri Deepak Kumar (Authorized Representative) for Appellant
Shri Mohd. Altaf (Asstt. Commr.) AR for Respondent

CORAM:

Hon'ble Mrs. Archana Wadhwa, Member (Judicial)
Hon'ble Mr. Anil G. Shakkarwar, Member (Technical)

Date of Hearing : 21/02/2019
Date of Decision & Pronouncement : 08/03/2019

FINAL ORDER NOs. - **70508-70511/2019**

Per: Archana Wadhwa

All the appeals are being disposed of by a common order as they arise out of the same impugned order passed by Commissioner vide which he has confirmed the demand of duty of Rs.2.28 crores approximately against M/s Pankaj Tobacco Pvt. Ltd. alongwith imposition of penalty on the said appellants as also on the other appellants.

2. Learned advocate Shri Deepak Kumar appearing for the appellants have contested the said confirmation on the ground that the appellants requested for cross examination of the persons, on the basis of whose statements demand was made for establishing the charges of clandestine removal of Chewing Tobacco, but such request was not accepted. He submits that the Revenue raised and confirmed the demand on the basis of records of transporter and railways booking agents. They sought the examination of the said persons but the Adjudicating Authority denied the said request of the appellants and as such the impugned order is in violation of the principle of natural justice. For the above proposition, he relies upon the decision in the case of Kalpena Industries Ltd. vs. Union of India 2018 (361) E.L.T. 271 (Bom.) as also in the case of Sadguru Farwarders (P) Ltd. vs. Commissioner of Custom (Port) Kolkata, 2018 (361) E.L.T. 998 (Kolkata).

3. We find that as the entire case of the Revenue is primarily based upon the recovery of documents from Transporters and Railways as also the statement of their

representatives, the request of cross examination of the witnesses, made by the appellants was justified. The Hon'ble Allahabad High Court in the case of Commissioner of Central Excise, Meerut-I vs. Parmarth Iron Pvt. Ltd. 2010 (260) E.L.T. 514 (All.) has held that the statement can be relied upon only after providing the deponents for cross examination.

4. As such, we find favour in above request of the learned advocate and accordingly set aside the impugned order and allow all the appeals by way of remand to the Original Adjudicating Authority for allowing cross examination of the persons upon whose statements the Revenue intends to rely. All the appeals are accordingly disposed of in above manner.

(Pronounced in Court on – 08/03/2019)

Sd/-	**Sd/-**
(Anil G. Shakkarwar)	**(Archana Wadhwa)**
Member (Technical)	**Member (Judicial)**

Lks