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

APPEAL No.E/659/2011-EX[DB]

(Arising out of Order-in-Original No. 13/COMM./M-II/2010 dated 24/11/2010 passed by Commissioner of Central Excise & Customs, Meerut-II)

M/s Rana Sugars Ltd. **Appellant**

Vs.

Commissioner of Central Excise, Meerut-II **Respondent**

<u>Appearance:</u>

Request for Adjournment, for Appellant
Shri Pawan Kumar Singh, Supdt. (AR), for Respondent

<u>CORAM:</u>

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

Date of Hearing : 21/06/2018
Date of Decision : 21/06/2018

FINAL ORDER NO-**71214 / 2018**

Per: Archana Wadhwa

As the matter has come up on record a number of times, we are not inclined to accept the request of adjournment. Accordingly, we have heard the learned A.R. and have gone through the impugned order.

2. The appellant is engaged in the manufacture of sugar and shortage of their final product was detected at the time of visit of officers. Revenue entered a view that such short found goods stands cleared by the appellant in a clandestine manner without payment of duty. Accordingly duty to the tune of around Rs.49.41 lakhs, stands confirmed, along with imposition of penalty.

3. We note that it is a settled law that mere shortages by themselves do not lead to the inevitable conclusion of clearance of goods in a clandestine manner, unless such allegations are corroborated with admissible and positive evidences. Reference in this regard can be made to Hon'ble Allahabad High Court's decision in the case of Commissioner of Central Excise, Kanpur Vs Minakshi Castings reported at 2011 (274) ELT 180 (All.). As such we are of the view that adjudicating authority is required to examine the said aspect again in the light of the law settled by the Hon'ble Allahabad High Court or any other decision, which appellant may choose to refer to and rely upon.

4. Another demand of around Rs.1.50 crores stands confirmed by denying the credit in respect of various steel items like Shape, Section, Angle, Rod, Plates, HR Coil, Channel, Joist, etc. used for fabrication of structure, shades and other civil work. The said denial is based to the declaration of law by the decision of Larger Bench of this

Tribunal in the case of M/s Vandana Global Ltd. Vs Commissioner of Central Excise, Raipur reported at 2010 (253) ELT 0440 (Tri.-LB). Apart from the fact that the appellant has taken a categorical stand that some of the items were used for fabrication of their capital goods, in which case the credit would be admissible even according to the Larger Bench decision of M/s Vandana Global Ltd. (supra), we also note that the said decision does not stands approved by the Hon'ble Gujarat High Court in the case of M/s Mundra Ports and Special Economic Zone Ltd. Vs Commissioner of Central Excise reported at 2015 (39) STR 726 (Guj.). As such for examination of the assessee's claim of use of said item in the fabrication of capital goods as also for examining the applicability of the said decision of Hon'ble Gujarat High Court in the case of M/s Mundra Ports & Special Economic Zone Ltd. (supra), we deem it fit to remand the matter to Original Adjudicating Authority.

5. Inasmuch as, the matter is being remanded on the above two grounds, we leave the other issues open relating to small amounts relating to denial of credit of the service tax on inward transportation of goods as also availing cess etc. to be re-decided by the adjudicating authority in view of the various decisions which the appellant may refer to. Needless to say that the appellant would be given a reasonable chance to put forth their case.

6. In view of the above, the impugned order is set aside and the appeal is allowed by way of remand.

(Dictated in Court)

(Anil G. Shakkarwar)
Member (Technical)

(Archana Wadhwa)
Member (Judicial)

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