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

APPEAL No.E/70913/2016-EX[DB]

(Arising out of Order-in-Original No.LKO/EXCUS/000/COM/CX/103/2015-16 dated 30/03/2016 passed by Commissioner of Central Excise & Service Tax, Lucknow)

M/s Ajay Kumar Chaurasia **Appellant**

Vs.

Commissioner of Central Excise & Service Tax, Lucknow Respondent

Appearance:

Shri Vineet Kumar Singh (Adv) for Appellant
Shri Rajeev Ranjan, Additional Commissioner (AR), for Respondent

CORAM:

Hon'ble Mr. Ashok Jindal, Member (Judicial)
Hon'ble Mr. Anil G. Shakkarwar, Member (Technical)

Date of Hearing : 23/07/2018
Date of Decision : 23/07/2018

FINAL ORDER NO.71801/2018

Per: Ashok Jindal

The appellant is in appeal against the impugned order wherein demand of Rs.1,33,00,372.00/- has been confirmed along with interest and equal amount of penalty was also imposed. Certain goods were also ceased and confiscated.

2. The fact of the case are that the a search in the premises of the appellant was conducted on 3rd December 2013, wherein certain machines, raw materials and finished goods were seized. The appellant was manufacturing 'Nasha Brand Pan Samagri'. It is an admitted fact that no samples of

finished goods were drawn from the premises of the appellant. Thereafter, investigation was continued and as appellant contended that the goods manufactured by them does not contain tobacco, therefore, they are not required to take Central Excise registration. Thereafter, from the open market the sample of the 'Nasha Brand Pan Samagri' was taken and without obtaining any test report it was alleged against the appellant that they are manufacturing 'Nasha Brand Pan Samagri' containing tobacco and were require to take Central Excise Registration. As they are not registered with the Central Excise Department, they have cleared goods clandestinely without payment of duty. Consequently, a Show Cause Notice was issued to demand the duty along with interest and to impose penalty. The matter was adjudicated, demand of duty was confirmed along with interest and penalty was also imposed. Against the said order, the appellant is before us.

3. The learned Counsel for the appellant submits that the appellant is manufacturing 'Nasha Brand Pan Samagri' without containing tobacco and no sample has been drawn, no test report is available on record. In that circumstances, the allegations of the Revenue that this 'Pan Samagri' sold by appellant containing tobacco is not sustainable. He submits that during the course of investigation, samples were drawn from the market but no tests were conducted thereon. Merely on the basis of the statement, it cannot be alleged that the

said goods manufactured by appellant contains tobacco. He also submits that no cross-examination of the person who has filed afidavit has been allowed to the appellant. Therefore, the said statement cannot be relied upon which is in violation of the Section 9D of the Central Excise Act 1944 as held by the Hon'ble Punjab and Haryana High Court in the case of M/s Ambika International V/s Union of India reported at 2016-TIOL-1238-H.C.-P & H-CX.

4. On the other hand Learned A.R. submits that whether the 'Pan Samagri' is having tobacco or not can be examined on physical examination of the goods, therefore, no test is required.

5. Heard the parties and considered the fact that the sole issue in the case is whether the goods manufactured by the appellant contains tobacco or not is to be determine only by the test conducted by chemical examination which is not done in this case. The physical examination by the Revenue officer is not acceptable who is not a chemical examiner. Definitely, if composition of goods is disputed, certainly for chemical composition in particular goods, the test report is required to determine whether the said goods contains the said chemical composition in the said goods or not. In the absence of any test report, the defense taken by the appellant cannot be controverted that the 'Nasha Brand Pan Samagri' manufactured by them does not contains tobacco. Therefore, benefit of doubt goes in favour of appellant. Consequently, we

hold that duty liability cannot be fastened on the appellant on mere assumptions and presumptions. Admittedly, Revenue has failed to prove the case with documentary evidences and no cross-examination of the witness has been granted to the appellant which in gross violation of principles of natural justice in terms of Section 9D of the Central Excise Act 1944, we hold that the allegations of clandestine removal of dutiable goods is not sustainable.

6. Therefore, we set aside the impugned order and allow the appeal filed by the appellant with consequential relief if any.

(Pronounced & Dictated in Court)

Sd/-
(Anil G. Shakkarwar)
Member (Technical)

Sd/-
(Ashok Jindal)
Member (Judicial)

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