

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

APPEAL No.E/56165/2013-EX[DB]

(Arising out of Order-in-Appeal No. 67/CE/ALLD/2012 dated 26/11/2012 passed by Commissioner of Customs, Central Excise & Service Tax (Appeals), Allahabad)

Commissioner of Central Excise, Allahabad

Appellant

Vs.

M/s Allahabad Bank,

Respondent

Appearance:

Shri Mohammad Altaf, Assistant Commissioner (AR),
Shri Kartikeya Narain, Advocate

for Appellant
for Respondent

CORAM:

Hon'ble Smt. Archana Wadhwa, Member (Judicial)

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

Date of Hearing : 14/11/2018
Date of Pronouncement : 11 /12/2018

FINAL ORDER NO-72843 / 2018

Per: Anil G. Shakkarwar

After hearing both the sides duly represented by Shri Mohammad Altaf learned A.R. on behalf of revenue and Shri Kartikeya Narain learned Advocate on behalf of respondent, we note that the issue involved herein is whether penalty was imposable on the respondent under Rule 26 of Central Excise Rules, 2002, or not.

2. We have carefully gone through the submissions made by both the sides and perused the records. For sake of

appreciation, finding of the impugned order by learned Commissioner (Appeals) is reproduced below:-

“4.4 So far the last issue is concerned, the whole proceedings are based on production/ clandestine removal of the sugar pledged in the godown and inflated figures were shown/submitted to the bank of which the enquiry was conducted by the CBI as per orders of the Hon’ble High Court is very much related with the proceedings. I fail to understand that when the case was remanded back by the former Commissioner (Appeals) only on this basis, then how the adjudicating authority had observed that the proceedings before the High Court were not at all related to the alleged clandestine production and removal of sugar which is the subject matter of the proceedings. Thus, findings of the adjudicating authority in this regard are totally baseless and incorrect.

5. In view of the above observations and findings, the imposition of penalty on the appellants to the tune of Rs.41,07,880/- under Rule 26 of CER, 2002 is based on assumption & presumption as the department has failed to prove that 48328 sugar bags were removed clandestinely with connivance of the appellants. Hence, I drop the penalty of Rs.41,07,880/- under Rule 26 of CER, 2002.

6. In view of the above, I set aside the impugned Order-in-Original No.MOP(Dem-51/2010) 22 of 2012 dated 26.03.2012 and allow the appeal.”

3. We have also gone through the grounds of appeal raised by revenue but we do not find any grounds of appeal raised

by revenue contradicting the above reproduced findings by learned Commissioner (Appeals). We, therefore, do not find any reason to interfere with the impugned order.

4. As a result, appeal filed by revenue is dismissed.

(Pronounced in Court on-11/12/2018)

(Anil G. Shakkarwar)
Member (Technical)

(Archana Wadhwa)
Member (Judicial)

akp