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

APPEAL No. E/70779/2016-EX[DB]

(Arising out of Order-in-Original No. LKO/EXCUS/000/COM/CX/104/2015-16 dated 30/03/2016 passed by Commissioner of Central Excise & Service Tax, Lucknow)

M/s Satya Prakash Gupta **Appellant**

Vs.

Commissioner of Central Excise

& Service Tax, Lucknow **Respondent**

Appearance:

Shri A.P. Mathur (Advocate) for Appellant
Shri Sandeep Kumar Singh (Dy. Commr.) AR for Respondent

CORAM:

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

Date of Hearing : 07/03/2019
Date of Decision : 07/03/2019

FINAL ORDER NO. - **70507/2019**

Per: Archana Wadhwa

After hearing both the sides, we note that the appellant was engaged in the manufacture of Gutkha and was having two machines installed in their premises which were sealed on their request on 29/02/2012. Thereafter, they purchased two more packing machines under the cover of invoice issued by the seller and the same were installed in their premises, in respect of which they were discharging the Central Excise duty liability. The said machines were installed with effect from 07/07/2012 and commercial productions were started on 11/07/2012 but there was no information about the installment of said machines to the Revenue.

2. On investigation Revenue took a view that two machines are registered to discharge their liability with effect from March, 2012 and as such for the said period, proceedings were initiated proposing confirmation of demand of duty of Rs.1,83,28,000/- as also for imposition of penalty.

3. It is seen that during the adjudication appellant approached settlement Commission who did not settle the issue and directed the appellant to approach the Commissioner for adjudication. Thereafter, the matter was taken up before the Hon'ble High Court by way of filing a writ petition.

4. It is seen that for some time the Commissioner waited for the outcome of the Hon'ble High Court's decision on the writ petition, but ultimately he proceeded

to pass the present impugned order vide which he confirmed the demand alongwith imposition of penalty.

5. From the impugned order, it is seen that no reply was filed by the appellant and no hearing was afforded to him. It is also recorded in the impugned order that the matter is being withheld before the Hon'ble High Court and as such he is proceeding to decide the same. While deciding the confirmation of demand against the assessee, he has observed as under:-

> *"VII. In view of the above, I come to a conclusion that the noticee no.1 was involved in the illegal manufacturing and clandestine removal activity by using two undeclared packing machines from his manufacturing premises which was closed since 29/02/2012 as the only machine lying at that time was got sealed by the noticee. The co-noticee no.2 & 3 were in fact hand in glove with noticee no.1 and facilitated him in his illegal activities."*

6. As seen from the above, the Adjudicating Authority has not referred to any of the evidence on record and inasmuch as there was no defence reply, he has simplicitorily observed that the appellant was indulged in illegal manufacturing and clandestine removal.

7. Inasmuch as admittedly the impugned order is an *ex partee* order, we deem it fit to set aside the same and remand the matter to Commissioner for fresh decision. The appellant is directed to file his written submission before the Commissioner within a period of One month from today and the Adjudicating Authority would grant opportunity of hearing to the appellant. Thereafter, he would decide the issue. Appeal is disposed of in above manner.

(Dictated & Pronounced in Court)

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

Sd/-
(Archana Wadhwa)
Member (Judicial)

Lks