CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL ALLAHABAD

REGIONAL BENCH - COURT No. I

Excise Appeal No.70031 of 2017-Division Bench

(Arising out of Order-in-Original No.22-36/COMMR/HPR/2016-17 dated 14/09/2016 passed by Commissioner of Customs, Central Excise & Service Tax, Hapur)

M/s Vishal Trading Co. .....Appellant

(M-2-3, Hakikat Nagar,Saharanpur, U.P.)

VERSUS

Commissioner of Central Excise, Hapur ....Respondent

(Shaheed Smarak, Delhi Road, Meerut)

APPEARANCE:

Aalok Arora, Advocate for the Appellant
Shri Gyanendra Kumar Tripathi, Authorised Representative for the Respondent

WITH

Excise Appeal No.70024 of 2017-Division Bench

(Arising out of Order-in-Original No.22-36/COMMR/HPR/2016-17 dated 14/09/2016 passed by Commissioner of Customs, Central Excise & Service Tax, Hapur)

M/s Maneesh Bansiwal .....Appellant

(R/o House No.928, Block 17, Lodhi Colony, Lodhi Road
New Delhi-110003)

VERSUS

Commissioner of Customs, Central Excise & Service Tax, Hapur ....Respondent

(Opposite Shaheed Smarak, Delhi Road, Meerut)

APPEARANCE:

Absent on Call for the Appellant
Shri Gyanendra Kumar Tripathi, Authorised Representative for the Respondent

AND

Excise Appeal No.70123 of 2017-Division Bench

(Arising out of Order-in-Original No.22-36/COMMR/HPR/2016-17 dated 14/09/2016 passed by Commissioner of Customs, Central Excise & Service Tax, Hapur)

M/s Simplex Packaging Ltd. **.....Appellant**

(B.37-39, Sector-6, Noida-201304)

VERSUS

Commissioner of Central Excise

& Service Tax, Hapur **....Respondent**

(Shaheed Smarak, Delhi Road, Meerut)

APPEARANCE:

Absent on Call for the Appellant
Shri Gyanendra Kumar Tripathi, Authorised Representative for the Respondent

CORAM:

HON'BLE SMT. ARCHANA WADHWA, MEMBER (JUDICIAL)
HON'BLE MR. ANIL G. SHAKKARWAR, MEMBER (TECHNICAL)

FINAL ORDER NOS. - 71677-71679 / 2019

Date of Hearing : 30 August, 2019
Date of Decision : 30 August, 2019

PER: ARCHANA WADHWA

All the three appeals are being disposed of by a common order as they arise out of the same impugned order vide which duty of more than Rs.3.99 crores stands confirmed against one M/s Rashi Trading, manufacturer of Gutkha whereas penalty stands imposed upon them as also on other appellants. As per the report of the Registry M/s Rashi Trading or other noticees, apart from the present one have not filed appeal against the said order. As such, we proceed to decide the appeals of the present appellants on the basis of the records.

2. Nobody appeared for M/s Maneesh Bansiwal and M/s Simplex Packaging Ltd. However Shri Aalok Arora appearing for Vishal Trading Company submits that the challenge in the present appeal is the imposition of penalty of Rs.50 lakhs imposed in terms of the provisions of Rule 26 of the Central Excise Rules on the allegation and findings that they have dealt with illegal manufactured and cleared Gutkha from M/s Rashi Trading. He submits that the said M/s Rashi Trading was manufacturing Shekh Bahar Gutka, the trade mark of which was owned by one Shri Bharat Rana. Shri Bharat Rana also have factory by the name of M/s Jahan Enterprises and the Gutkha found from the appellant's premises were one which was manufactured by M/s Jahan Enterprises. He further submits that though they have taken all the pleas before the Adjudicating Authority and have produced their accounts to show that Gutkha was being received by them from M/s Jahan Enterprises, the Adjudicating Authority by referring to certain statements recorded during the course of investigation as also one document No.2 has held against them.

3. On being questioned as to what is document No.2, Shri Aalok Arora submits that they have neither been given or shown the said document in spite of their request made to that effect. He further submits that the statements, as relied upon, have also not been provided to them and as such, it is his contention that there has been a gross violation of principles of natural justice.

4. On going through the relevant paragraphs from the impugned order, we find that there is strong reliance by the Adjudicating Authority on the statement as also the document No.2. The said document is not available on the file. As per the learned advocate, the same has never been supplied to the appellant. As such, we are of the view that the impugned order imposing penalties is not justified. The same is accordingly set aside and matter remanded with direction to the Revenue to

supply the copy of the all the documents to the appellant and to re-decide the issue again, after giving an opportunity to the appellant to put forth their case.

5. Inasmuch as the appeal of M/s Vishal Trading Company stands remanded, we remand the other two appeals to be re-adjudicated by the Commissioner alongwith the remanded matter of M/s Vishal Trading Company. Needless to say that all the appellants would be given an opportunity to put forth their case. All the appeals are allowed by way of remand.

(Dictated and pronounced in open court)

Sd/-
(Archana Wadhwa)
Member (Judicial)

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

Lks