CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD

REGIONAL BENCH – COURT NO.I

Excise Miscellaneous Application No.70443 of 2019
(on behalf of the Appellant)
In
Excise Appeal No.70207 of 2018

(Arising out of Order-in-Appeal No.459-460/CE/Alld/2017 dated 11/12/2017 passed by Commissioner (Appeals), CGST & Central Excise, Allahabad)

Shrikant Chaurasia s/o Harbans Chaurasia .....Appellant

(D-57/58, B-32A Kasturba Nagar, Varanasi)

VERSUS

Commissioner, Central Excise

& CGST, Varanasi .....Respondent

(9, Maqbool Alam Road, Varanasi)

APPEARANCE:

Shri Anant Vijay, Advocate for Appellant
Shri Anupam Kumar Tiwari, Authorized Representative for Respondent

CORAM :
Hon'ble Mr. ANIL G. SHAKKARWAR, MEMBER (TECHNICAL)

MISCELLANEOUS APPLICATION NO. 70364 / 2019

FINAL ORDER NO. 71971 / 2019

DATE OF HEARING: 04 December, 2019
DATE OF DECISION: 04 December, 2019

PER: ANIL G. SHAKKARWAR

Heard on miscellaneous application. The miscellaneous application is for taking into consideration the Final Order No.71016-71020/2019 dated 21 May, 2019 for deciding the present appeal.

2. Learned counsel for the appellant has submitted that the present appeal and earlier said final order are arising out of same fact of the investigation and therefore, the

findings of said final order are relevant for deciding the present appeal. It was submitted by Revenue through their learned Authorized Representative Shri Anupam Kumar Tiwari that final order was in respect of demand of duty whereas the present appeal is in respect of seizer of the goods during the search operation. I note that both the sets of appeal i.e. one under present consideration and the one already decided through the said final order are out of same search and investigation proceeding, therefore, it cannot be said that they do not have link with each other. I, therefore, allow the present miscellaneous application.

3. With the consent of both the sides, I take up the present appeal for decision.

4. I have heard learned counsel for the appellant. He has submitted that the goods in question which were seized from the premises on 12 September, 2014 were not marketable and therefore, not manufactured. He has submitted that the seized goods were handed over to him under supurdnama and are still lying with him and the same are of no use and he does not wish to redeem the same. He has further submitted that during the investigation and at the time of search and seizer samples of the goods were drawn. However, the said samples were not sent for chemical examination by CRCL, New Delhi and therefore, it is not established beyond doubt that the same were pouches of chewing tobacco. He has further submitted that once it is not established that the seized goods were pouches of manufactured tobacco, the allegation of manufacture without registration does not get established. He further submits that the learned Commissioner (Appeals) through impugned order has held that the order for confiscation is sustainable on the basis of various statements recorded during the investigation. Learned

counsel further submits that it was held in the said final order that as held by Hon'ble Allahabad High Court in the case of Parmarth Steel Iron Pvt. Ltd. reported as 2010 (26) E.L.T. 541 (All.) that the statements of such persons who has not been offered for cross-examination cannot be considered as evidence and by applying the ratio of said ruling the evidences on the basis of which learned Commissioner (Appeals) has upheld confiscation is not sustainable.

5. Learned A.R. has submitted that though samples were not sent for examination to CRCL, New Delhi, market opinions were obtained.

6. I have carefully gone through the records of the case and submissions made. Through the impugned order, learned Commissioner (Appeals) has upheld confiscation on seized goods worth Rs.80,000/- holding the same to be chewing tobacco packed in pouches. Further, he also upheld imposition of penalty of Rs.40,000/- on the appellant. From the record, I find that though the samples of the seized goods were taken the same were not sent for chemical examination by CRCL, New Delhi and market opinions were obtained. There is no provision in Central Excise law to decide the chemical composition of the goods on the basis of market opinion. The samples should have been sent to CRCL to seek report as to whether the same were chewing tobacco. Further, by applying the ruling by Hon'ble Allahabad High Court in the case of Parmarth Steel Iron Pvt. Ltd (supra) the statements of various persons on the basis of which learned Commissioner (Appeals) has held that the goods were chewing tobacco are not admissible evidence since the said persons were not offered for cross examination. Therefore, I hold that it was not proved that the seized goods were chewing tobacco.

7. I, therefore, set aside the impugned order and allow the appeal.

(Dictated and Pronounced in open Court)

Sd/-

(Anil G. Shakkarwar)
Member (Technical)

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