CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
SCO 147-148, SECTOR 17-C, CHANDIGARH – 160 017

COURT NO. I
APPEAL NO. E/50770-50775/2014

[Arising out of Order-in-Appeal No. JKN-EXCUS-000-APP-280-285-13-14 dated 09.10.2013 passed by the Commissioner of Central Excise (Appeals), Chandigarh]

Date of hearing/decision: 06.12.2018

M/s J K Card Board Industry	**:**	**Appellant(s)**
VS		
C.C.E. & S.T. Jammu & Kashmir	**:**	**Respondent(s)**

Appearance:
Present for the Appellant(s): Shri Vikrant Kackria (Advocate)
Present for the Respondent(s): Shri Bhasha Ram (AR)

CORAM:

Hon'ble Mr. Ashok Jindal, Member (Judicial)
Hon'ble Mr. Bijay Kumar, Member (Technical)

FINAL ORDER NO. 60439-60444/2019 dt. 15.04.2019

***Per :* Bijay Kumar**

The present appeal filed against the impugned order by which the Ld. Commissioner(Appeal), has set aside the order passed the Ld. Lower adjudicating authority on appeal, filed by the Revenue. Being aggrieved, the appellant is in appeal before this Tribunal.

2. Brief facts of the case, for the disposal of the appeal are that the appellant in engaged in the manufacture of media paper falling under chapter heading no. 48043900 of the First Schedule to Central Excise Tariff Act, 1985. The appellant is also availing Area Based Notification 56/2002-CE dated 14.11.2002 as amended. The notification provides exemption to the goods specified in the First and

Second schedule of Central Excise Tariff Act, 1985 (5 of 1986), other than the goods specified in Annexure-I to the notification and cleared the units located in the State of Jammu & Kashmir within the industrial areas specified in annexure-II of the notification. Thus, the exemption is available only for the goods which are cleared from the units located in the industrial area as specified in annexure-II to the notification. The appellant filed for the refund for the month of April to September, 2007, which was sanctioned under the provisions of notification, on the basis of certificate No. 2673/OQ dated 28.03.2005 of the Techsildar Jaummu, certifying that the appellant's unit is situated in Khasra No. 267 at Muthi Dharmal, Tehsil and District Jammu and which was accepted to be eligible for exemption under the Area Based Exemption notification by the Assistant Commissioner Central Excise division. (hereinafter referred to as the adjudicating authority). The adjudicating authority, sanctioned the refund claim filed by the respondent as per the Order-In-Original. The Ld. Commissioner (Appeal), in the impugned order, has held that in view of another certificate issued by the district Revenue authority, the respondent was not need to ask held to be eligible for refund as the units of the appellant therein the annexure of the Notification. Against that order the appellant approached this Hon'ble Tribunal, wherein the impugned order was set aside and remanded to the Commissioner (Appeal), for the verification of the fact regarding the actual Khasra No. from the tehsildar in Muthi Dharmal which finds it is placed in the notification.

3. It is a submission of Ld. Advocate, on behalf of the appellant that in the impugned order the Ld. Commissioner (Appeal) has

decided the matter without following the Hon'ble CESTAT direction vide its final order dt. 10.10.2012 to the effect that no verification was conducted by him from district industries centre and he has decided the case only on the basis of report of district revenue authority.

4. It was further submitted that the report so relied by Ld. Commissioner (Appeal) no where speaks about as to whether the appellant unit is located in village Barnai fall falling police station Domana and post office (Mufti) and whether the Khasra No on which the unit is located is 267, hence the impugned order is bad in law and needs to be set aside.

5. It is also submitted that the ld. Commissioner (Appeal) has not under taken any verification from district industries centre on point as to whether the appellant unit is located in village Barnai whether police Station Domana and post office (Muthi) and whether the Khasra No. on which the unit is located in 267. Further Commissioner (Appeal) also mentioned that the Tehsildar Jammu vide its certificate dated 08.01.2008. It is categorically stated that the appellant's unit is located in Khasra No. 267 Dharmal (Muthi) and village Dharmal is situated adjoining to Muthi and Barnai village. Both the villages fall under the jurisdiction of police station Domana and the post office of village Dharmal, Muthi and Barnai is the same. He therefore prayed for setting aside the impugned order by restoring the order which is placed on the certificate.

6. The ld. advocate states the impugned order passed in complete disregard to direction passed by the Hon'ble Tribunal and therefore not sustainable.

7. We have heard the parties and considered the facts on record.

8. The issue before us is decided as to whether the appellant as falling under Khasra No 267 of Muthi Dharmal and the 267 Barnai (Muthi) are the same or the two different names, the Ld. Commissioner (Appeal) has not followed the direction of the Hon'ble Tribunal regarding verification to be done regarding the applicability of notification in annexure II thereafter for the claim of benefit of notification. We also find that lot of force in the submissions made by the Ld. advocate on behalf of the appellant to the effect that the ld. Commissioner (Appeal) has not taken any verification report from the district industry centre on the point regarding the location of village Barnai Police Station Domana and Post Office Muthi and whether the unit is located in Khasra No. 267. On the other hand appellant has produced the evidence that their unit is located at Khasra No. 267 of Village Muthi Dharmal and Barnai village. We also find that the Ld. Commissioner (Appeal) has also completely disregarded the direction of the Tribunal by not conducting independent verification. We, therefore, hold that the order is bad in law and liable for being set aside.

9. Accordingly, we allow the appeals with consequential benefit as per law.

(Operative part of the order pronounced in the open court)

Bijay Kumar
Member (Technical)

Ashok Jindal
Member (Judicial)

Kailash