CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHANDIGARH

REGIONAL BENCH - COURT NO. I

Appeal No. E/999/2009 -EX[DB]

(Arising out of Order-in-Original No. 01/NS/ADJ/2009 dated 12.01.2009 passed by the Commissioner of C.E, Delhi-IV)

Elofic Industries Ltd. **......Appellant**
(14/4, Mathura Road, Post Box No. 335, Faridabad, Haryana 121003)

VERSUS

Commissioner of C.E., Delhi-IV **......Respondent**
(New CGO Complex, NH-IV, Faridabad, Haryana 121001)

APPEARANCE:

Mr. Amar Pratap Singh, Advocate for the Appellant

Mr. A.K. Saini, Authorised Representative for the Respondent

CORAM: **HON'BLE MR. ASHOK JINDAL, MEMBER (JUDICIAL)**
HON'BLE MR. BIJAY KUMAR, MEMBER (TECHNICAL)

FINAL ORDER NO. 60578/2019

DATE OF HEARING: 19.02.2019
DATE OF DECISION: 19.02.2019

PER BIJAY KUMAR:

This is the second round of litigation before this Tribunal. In the first round, the Tribunal had directed the learned adjudicating authority, while re-adjudicating the case to decide the issue of limitation, after giving opportunity to the appellant of personal hearing. But while adjudicated the case in remand, the learned adjudicating authority has transgressed the directions in remand by this Tribunal. Being aggrieved by the impugned order, the appellant has filed this appeal before us on the following grounds:-

(i) that the show cause notice, which was initially adjudicated, pertained to depot charges collected by the appellant from their buyer, which as per the Revenue were includable in the assessable value of the goods cleared from their factory. The learned Commissioner in the impugned order has held that extended period of limitation has been rightly invoked as the declaration filed under Rule 173C of the Central Excise Rules, 1944 mentioned only Ludhiana depot. This declaration was filed by the appellant on 15.02.1994.

(ii) that the learned adjudicating authority while passing the impugned order has also considered the letter dt. 06.04.2000 from the appellant which stated that the depot in Ludhiana has started in 1997. The reliance was also placed upon the statement of Sh. O.P. Sudan, Factory Manager to the effect.

(iii) that the letter dt. 06.04.2000 was neither a RUD in the show cause notice dt. 13.04.2000 nor that was considered by the Commissioner while adjudicating the case initially i.e. on 20.08.2004.

(iv) that the penalties under Section 11AC of the Central Excise Act, 1944 and Rule 173Q of the Central Excise Rules are not imposable on the appellant.

2. Accordingly, it was prayed by the learned Advocate that the impugned order is not sustainable and required to be set aside.

3. On the other hand, the learned A.R. while supporting the impugned order for the Revenue, reiterated the findings contented in the impugned order.

4. We have considered the rival submissions and also perused the appeal record.

5. We find that the initially remand by this Tribunal was only extended of the submissions made by the appellant regarding filing

the declaration under Rule 173C of the Central Excise Rules, 1944 regarding Ludhiana depot on 15.02.1994. We are in an agreement that the contention of the learned Advocate that the declaration dt. 06.04.2000 was not an issue before the original adjudicating authority as well as before this Tribunal. Accordingly, while adjudicating the case in remand, the learned Commissioner has exceeded the remand direction. Accordingly, we set aside the impugned order and remit the matter back to the adjudicating authority to re-adjudicate the case by considering the letter dt. 15.02.1994 and decide the issue of limitation raised by the appellant.

6. In result, the appeal is allowed by way of remand.

(Operative part pronounced in the open court)

(ASHOK JINDAL)
MEMEBR (JUDICIAL)

(BIJAY KUMAR)
MEMBER (TECHNICAL)

RA_Saifi