CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

REGINAL BENCH AT CHANDIGARH

Court NO.I

Appeal No. E/60455/2019

(Arising out of OIA No.CHD-EXUS-001-APP-280-18-19 dt.23.1.2019 passed by the Commissioner (Appeals), Central Goods and Service Tax, C.R.Building, Plot No.19, Sector 17C, Chandigarh)

M/s. Synergy Telecommunication Ltd. **Appellant**
(Village Dherowal, P.O.Nalagarh, Distt.Solan (H.P.)
Vs.
Commissioner of CGST, Shimla **Respondent**
(1st Floor, Commercial Parking Complex, Chhota Shimla,
Shimla, Himachal Pradesh- 171002)

Present for the Appellant: Shri Vikrant Kackria, Advocate
Present for the Respondent: Shri G.M.Sharma, AR

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

FINAL ORDER NO.60630/2019

Date of hearing/Decision: 22.05.2019

PER: ASHOK JINDAL

The appellant is in appeal against the impugned order wherein the demand of duty of Rs.63,38,455/- has been confirmed along with interest and equivalent amount of penalty also imposed on them account clandestine removal of the goods.

2. The brief facts of the case are that the appellant is a manufacturer of prefabricated cabinets shelters and phase channel material. On 4.12.2009, an audit team was visited the factory premise of the appellant and during the course of audit, one production slip dt.24.11.2008 was recovered on which it is mentioned that they have produced 1221 No. of "ACCESS "which were not taken into account/ accounted for by them in their daily stock register by the appellant. Therefore, it was alleged that they have cleared the goods mentioned in the production slip have been

cleared by the appellant clandestinely. On the basis of that, a show cause notice dt.2.12.2013 was issued to the appellant by invoking the extended period of limitation to demand duty alleging that the goods mentioned in production slip has been cleared clandestinely by the appellant. The said show cause notice was adjudicated, the demand of duty along with interest confirmed and equivalent amount of penalty was also imposed. On appeal, the Commissioner (Appeals) has affirmed the order of the adjudicating authority. Against the said order, the appellant is before us.

3. Ld. Counsel appeared on behalf of the appellant submits after issuance of show cause notice, the appellant asked to provide copy of production slip from the department, which has been relied upon but the same are not supplied to them. During the course of adjudication and in reply to the show cause notice, the appellant has specifically asked for supply of relied upon documents i.e. production slip which has been relied upon by the Revenue to allege clandestine removal of the goods but the same was not supplied to them and the adjudicating authority has passed the impugned order on the basis of production slip. Therefore, the said order is not sustainable in the eyes of law. To support this contention, he has relied upon the decision of the Hon'ble Gujarat High Court in the case of Chandan Steel Limited-2009 (238) ELT 716 (Guj.).

4. He further submits that as the relied upon documents have not been provided to them by the Revenue for alleging clandestine removal of the goods against the appellant, therefore, the demand is not sustainable. On merits, he submits that to allege clandestine removal of the goods, no investigation was conducted

by the Revenue to allege clandestine removal of the goods. No statement of any person recorded to allege clandestine removal of the goods, therefore, the demand is not sustainable.

5. On the other hand, Ld.AR supported the impugned order.

6. Heard the parties and considered the submissions.

7. On perusal of the records, we find that after issuance of show cause notice, the appellant has asked to supply of relied upon documents i.e. production slip on the basis of which it is alleged by the Revenue that the appellant has cleared the goods clandestinely. The said production slip was not supplied to the appellant till date, despite their request. Moreover, in the adjudication order, it has been recorded that the appellant has asked for supply of documents after 5 years of their resumption, the said request cannot be acceded. Non supply of the relied upon documents shows the conduct of the adjudicating authority, therefore, it concluded that the adjudicating authority is not having the said production slip in their record to allege clandestine removal of the goods. In these circumstances, if the matter is remanded back to the adjudicating authority for re-adjudication, the same will not serve any purpose as the production slip was resumed in 2009 and we are running in 2019 in terms of the decision of the decision of this Tribunal in the case of Manish Vinyls vide Final Order No.60359-60360/2019 dt.4.4.2019, wherein this Tribunal has held that the gap of almost 19 years will not serve the purpose to remand back the matter to the adjudicating authority.

8. In view of above observations, we hold that as the relied upon document has not been provided to the appellant, therefore,

there is gross violation of principles of natural justice and remanding the matter will not serve the purpose.

9. In view of the above, we set aside the impugned order and allow the appeal with consequential relief, if any.

(dictated and pronounced in the court)

(ASHOK JINDAL)
MEMBER (JUDICIAL)

(BIJAY KUMAR)
MEMBER (TECHNICAL)

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