IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL
SOUTH ZONAL BENCH AT CHENNAI

E/42382/2016

(Arising out of Order-in-Appeal No. 105/2016 dated 23.09.2016 passed by the Commissioner of Central Excise (Appeals-I), Madurai)

M/s. T.V. Sundaram Iyengar & Sons Pvt. Ltd. Appellant

CCE, Madurai Respondent

Appearance

Ms. V. Ubayabharathi, Advocate,
for the appellants

Shri A. Cletus, ADC (AR)
for the Respondent.

CORAM :

Hon'ble Shri Madhu Mohan Damodhar, Member (Technical)

Date of Hearing/Decision: 28.06.2017

FINAL ORDER Nos. 41104 / **2017**

The issue in appeal pertains to dispute of non-reversal of cenvat credit by the appellants with regard to the provisions for non-moving inventory amounting to Rs. 34,58,060/-, the original authority confirmed the demand of Rs. 22,94,624/- along with interest thereon and also imposed equal penalty under various provisions of Central Excise Act and Rules. In appeal, the

Commissioner (Appeals) vide impugned order dated 23.09.2016 upheld the order of the original authority. Hence the appellant before this forum.

2. Today when the matter came up for hearing, Ld. Advocate Ms. Ubayabharathi, submits that appellants have not been accorded sufficient opportunity to present their case before the original authority. She takes me to para-11 of the impugned order where the Commissioner (Appeals) herself has found merit in the contention of the appellant that the adjudicating authority "has not followed the principles of natural justice by issuing a letter, informing them of the personal hearing on any of three dates mentioned thereon". Ld. Advocate submits that notwithstanding of such information their appeal was rejected.

3. On the other hand, Ld. AR supports the impugned order and points out that the original authority has recorded in para-13 that sufficient chances have already been given to the assesse.

4. Heard both sides and gone through the facts of the case.

5.1 It is seen that at the stage of original adjudication show cause notice was issued on 13.02.2014. It is seen from para-12 of the order of the original authority, that appellant had requested time to file the reply vide their letter dated 13.03.2014 and 28.04.2014. It is not known whether the said requests were acted upon and any additional time in fact was granted to them. However, as found by the Commissioner (Appeals) the original

authority has not followed the principles of natural justice. In fact the Commissioner (Appeals) in para-11 of her order has advised the lower authority to follow the principles set out in the case of *Imtiyaz Ahamed Vs. CC, Mangalore*, reported in 2014 (308) ELT 625 (Tri.-Ban.).

5.2 In spite of such findings and observations, I am unable to fathom why the matter could not be remanded to the original authority by the Commissioner (Appeals) for non-adherence to principles of natural justice.

5.3 In view thereof, the impugned order cannot sustain. Without going further into the merits of the matter, the appeal is disposed of by way of remand to the original adjudicating authority for denovo consideration and decision after giving sufficient opportunities to the appellant to present their case both written and in personal hearing.

5.3 Appeal allowed by way of remand.

(Order dictated and pronounced in the open Court)

28/06/2017

(MADHU MOHAN DAMODHAR)
MEMBER (TECHNICAL)

BB

Customs, Excise & Service Tax Appellate Tribunal

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