CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH – COURT NO. – III

Excise Appeal No. 55701 of 2023 [DB]

[Arising out of Order-in-Appeal No. 26(RLM) CE/JPR/2023 dated 31.05.2023 passed by the Commissioner of Central Excise & CGST (Appeals), Jaipur]

M/s. Chandak Marble Private Limited **...Appellant**
E-47, Harmada Road, RIICO Industrial Area,
Madanganj, Kishangarh,
Ajmer, Rajasthan - 305801

VERSUS

Commissioner of Central Excise & CGST – Jaipur **...Respondent**
NCR Building, Statue Circle,
Jaipur, Rajasthan - 302005

APPEARANCE:
Shri Rahul Lakhwani, Advocate for the Appellant
Shri M.K. Chawda, Authorized Representative for the Respondent

CORAM:
HON'BLE MR. SOMESH ARORA, MEMBER (JUDICIAL)
HON'BLE MRS. HEMAMBIKA R. PRIYA, MEMBER (TECHNICAL)

DATE OF HEARING: 14.08.2024
DATE OF DECISION: 14.08.2024

FINAL ORDER No. 58086/2024

SOMESH ARORA

The matter pertains to the demand of duty on the basis of AGCR Audit by the department purportedly on the basis of discrepancy noted by the audit team in the quantity found as per ER-1 returns filed by the appellants during the Financial Year 2016-17 and VAT annual returns. The appellants had admitted in initial stages that the figures given in the annual returns to the VAT department were incorrect and since there was no provision to rectify such discrepancy in annual returns of VAT so quarterly returns filed by them were taken as the basis for assessment of the relevant year by the VAT Authorities and accordingly an assessment order was passed. This is placed before us on page No. 4 to 19 of the paper book compilation. The assessment order is apparently more conclusive proof than mere filing of returns. This Bench also notes that the learned Commissioner (Appeals) had indicated that there was no proof furnished by way of underlying detailed invoices, which is the most authentic document to resolve the conflict between department and the appellants.

2. The learned Advocate for the appellants takes us to his paper book filed and indicates to us that immediately after the conclusion of hearing on 17.05.2023, through a letter duly receipted they have filed bunch of invoices as was required on 18.05.2023 and though the order was passed on 26.05.2023, but still somehow it skipped notice of the appellate authority and therefore no findings in relation to such submission of invoices appears in the order but to the contrary, finding has been given that the same has not been filed. Since, there is factual discrepancy to be resolved and also as an assessment order (which has been produced before us on the basis of quarterly returns filed by the appellants), same deserves to be taken cognizance of. Therefore this Bench considers it proper to remand the matter with direction to take note of documents submitted by the appellants before the appellate authority, including detailed invoices as well as assessment order which has been produced before us and which is considered relevant by this Bench and is duly taken on record.

3. The matter is accordingly remanded to Commissioner (Appeals), with freedom being given to the appellants to taken up any fresh ground found relevant. Appeal allowed by way of remand.

[Dictated and pronounced in the open Court]

(SOMESH ARORA)
MEMBER (JUDICIAL)

(HEMAMBIKA R. PRIYA)
MEMBER (TECHNICAL)

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