CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

West Block No.2, R.K.Puram, New Delhi

COURT-I

Date of hearing/decision: 21.12.2016

Appeal No. E/840/2011-EX(DB)

[Arising out of the Order-in-Appeal No. 15(CB)CE/JPR-II/2011 dated 19.01.2011 passed by the Commissioner of Central Excise, Jaipur]

M/s. Shree Rajasthan Syntex Ltd. … Appellant

Vs.

C.C.E. & C.S.T. Jaipur ... Respondent

Appearance:

Present Shri Rahul Tangri, Advocate for the appellant
Present Shri Yogesh Agarwal, A.R. for the respondent

Coram: Hon'ble Mr. Justice (Dr.) Satish Chandra, President
Hon'ble Mr. V. Padmanabhan , Technical Member

FINAL ORDER NO.56374/2016

Per Justice (Dr.) Satish Chandra:

The present appeal is filed against order in original no. 15/2011 dated 19. 01.2011 passed by the Commissioner (A) Jaipur.

2. The brief facts of the case are that the appellant is engaged in clearing yarn from its factory to depots on provisional assessment basis. The period of dispute in the present appeal is January 1998 to August 1998.

3. On 14.09.1998 and 02.12.1998 orders for finalization of provisional assessment were passed. On 16.02.1999 show cause notice were issued for demand of duties. The reply was submitted by the appellant on 25.02.1999 contesting the issue on merit.

4. On 04.09.2002 order in original was passed by the Asstt. Commissioner where the demand was confirmed. Being aggrieved appellant has filed the appeal before the Commissioner (A) who passed the order on 14.09.2004, where the appellant got relief.

5. Being aggrieved, the Revenue filed the appeal before the Tribunal who vide its final order number 136-137/2010 dated 23.03.2010, remanded the matter back to the Commissioner (A).

6. In compliance to the direction of the Tribunal, Commissioner (A) passed fresh order on 19.01.2011, where the claim of the appellant was rejected. Not being satisfied, the appellant has filed the present appeal.

7. With this background we have heard Shri Rahul Tangri, Ld. Counsel for the appellant and Shri Yogesh Agarwal, A.R. for the respondent.

8. After hearing both the parties and on perusal of record, it appears from the impugned order that there is no provision of issuance of show cause notice or granting any opportunity of personal hearing before the finalization of the provisional assessments. We also find that in Rule 9 B there is no provision of issuance of show cause notice or for granting any opportunity of personal hearing before the finalization of provisional assessment.

9. Needless to mention that Rule 9B is pertaining to provisional assessment. But before us the dispute is regarding finalization of the assessment. When it is so, it appears that the principle of natural justice has not been followed as per the doctrine of AUDI ALTERAM PARTEM.

10. In view of the above discussion, and by considering the peculiar facts of the case we set aside the impugned order and remand the

matter to the Commissioner (A) to pass fresh order on merit after providing a reasonable opportunity of hearing to the appellant. Fresh evidence, if need be, may be admitted as per law.

11. In the result, appeal filed by the appellant is allowed by way of remand.

[Dictated and Pronounced in the open court]

(Justice Dr. Satish Chandra)
President

(V. Padmanabhan)
Technical Member

Bhanu