ivCUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi- 110066
Excise Appeal Branch

DIVISION BENCH
COURT NO.1
Appeal No. E/60776,60777,60778/2013

[Arising out of the Order-in-Appeal No. DEL-EXCUS-001-42-2013 dated 11.09.2013 passed by the CCE (Appeals), Delhi-I]

Date of Hearing/Decision: 02.12.2016

For Approval & signature:
Hon'ble Mr. Ashok Jindal, Member (Judicial)
Hon'ble Mr. Ashok K. Arya, Member (Technical)

M/s Vir Electricals, Delhi
Sh. Sandeep Gupta, Partner, M/s Vir Electricals
Shri. Naveen Kumar Gupta, Prop, M/s Naveen Electricals

Appellants

Vs.

CCE, Delhi-I **Respondent**

Appearance:

Sh. K.K Anand, Advocate- for the appellant
Sh. G.R. Singh, AR- for the respondent

Coram:

Hon'ble Mr. Ashok Jindal, Member (Judicial)
Hon'ble Mr. Ashok K. Arya, Member (Technical)

Final Order No-56414-56416/2016

Per Ashok Jindal:

The appellant is in appeal against the impugned order.

2. The brief facts of the case are that the appellants are manufacturing PVC insulated wires armoured/unarmoured cables without obtaining Central Excise registration and removing the same

on private challans to their own trading firm M/s Navin Electricals. A Search was conducted on 03.06.2003 on various premises of the appellants and the statements of the appellants were recorded. After conducted through investigation and resuming various records, it was concluded that the appellants were clearing the goods more than the permissible SSI Exemption, therefore, they are liable to pay duty on their clearance. In these set of facts, the show cause notices were issued and the matter was adjudicated.

3. The appellant also approached the Settlement Commissioner who rejected the declaration, thereafter, the appellant approached the Hon'ble High Court and writ petition was dismissed by the Hon'ble High Court. Thereafter, the adjudication took place, the appellants sought time to file reply but without considering the same, the order was passed and demand of duty was confirmed along with interest and various penalties were imposed on all the appellants. The said order was challenged before this Tribunal and this Tribunal remanded matter back vide Final Order No. 959-961/2011-EX-DB dated 03.11.2011. In remand proceedings, after considering the statement made by the appellants, the impugned order has been passed. Aggrieved from the said order, the appellants are before us.

4. The Ld. Counsel for the appellant submits that the demand pertains to the period December, 1998 to 02.06.2003. In remand proceedings, the Ld. Commissioner has treated the value determined as cum duty or inclusive duty payable by the appellant by reducing the value. It is his submissions that while re-

determining duty, the commissioner has not accepted the plea of the appellant that the duty demand against them could only be demanded on the quantities mentioned in the challans on the basis of which the goods were cleared to M/s Naveen Electricals (a proprietary firm which was owned by Shri Naveen Kumar Gupta). The department has erroneously demanded duty on kachha records which were seized from the premised of M/s Naveen Electricals. It was on record that Shri Naveen Kumar Gupta was also purchasing the wires and cables from other manufactures as admitted by him in his statement dated 05.06.2003. The ld. Commissioner may be directed to calculate the duty demand on the quantities mentioned in the challans.

5. He further submits that the statement of Shri. Sandeep Gupta dated 10.06.2003, has stated that ratio of clandestine removal was 60%-40%. Though the statement was retracted but assuming for argument sake that the statement was correct, the appellant would be liable to pay very small amount of duty.

6. He further submits that the Commissioner has committed an erred in including recorded sale in the total value of clearance as all the goods were cleared on the basis of challans. He also submits that the Commissioner has not considered the capacity of manufacture of the appellant and duty has been demanded on the quantity which is much beyond their production capacity. He also relied on the certificate issued by Sh. Shashi Bhushan, Chartered Engineer dated 19.09.2012, who certified that they were manufacturing 25000-27000 Meters of wires and cables per day.

7. He also submits that the duty was demanded and confirmed on the basis of price list prevalent on 01.04.2003 even for the past period starting from December, 1998. It is his submissions that while determining of the assessable value the price list of previous years has not been considered. Therefore, while calculating the duty demand up to the year 2000, the discounts of 60% was allowed. However, for the subsequent period the discount is allowed of 50%. Whereas, in his initial statement, it is categorically stated that from the year, 2001 onwards they were giving 55% to 65% discount. He also submits that sometimes they used to give discount of 65% to 75% also. In that circumstances, the discount is to be granted for whole of the period uniformly.

8. He further submits that during the course of adjudication, the appellant produced different charts pointed out various mistakes in calculating the duty demand and the same has not been considered, therefore, impugned order is to be set aside and the matter remanded back to the adjudicating authority for fresh adjudication.

9. On the other hand, the ld. AR reiterated the finding in the impugned order.

10. Heard the parties and considered the submissions.

11. We find that it is the contention of the appellant that during the course of adjudication they produced various charts for calculation of demand duty and the same has not been considered by the adjudicating authority. In fact, those calculations given by the appellant are required to be considered by the adjudicating authority. Moreover, the defences raised by the appellant are to be

considered by the adjudicating authority in true spirits and after considering the explanations and chart given by the appellant. As, the adjudicating authority was required to give due consideration of the records produced by the appellant but the same has not been given, in that circumstances, the impugned order deserves de-merits, therefore, the same is to be set aside.

12. We find that the various contentions raised by the appellants were not considered by the adjudicating authority, therefore, the matter is remanded back to the adjudicating authority for consideration the grievance raised by the appellant before us and the various charts produced by the appellant before us.

13. After considering the contention of the ld. Counsel, various documentary evidence produced by the appellant before us, the Adjudicating Authority shall pass an appropriate order in accordance with law.

The appeals are disposed off by way of remand in the above terms.

(Dictated and pronounced in the open court)

Ashok K. Arya
Member (Technical)

Ashok Jindal
Member (Judicial)

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