IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI
PRINCIPAL BENCH, COURT NO. IV

Appeal No. E/477/2011-EX(SM)

[Arising out of Order-in-Appeal No. 526/CE/D-II/10 dated 16.09.2010, by the Commissioner of Customs, Central Excise & Service Tax (Appeals), New Delhi].

M/s. Ashok Electronics ....Applicants

Vs.

C.C.E. Delhi-II ....Respondent

Appearance:

Shri Naveen Mullick, Advocate for the Appellants
Shri R.K. Mishra, DR for the Respondent

CORAM:
Hon'ble Ms. Archana Wadhwa, Member (Judicial)

Date of Hearing: 31.01.2017

FINAL ORDER NO. 50562/2017-EX(SM)

Per Archana Wadhwa:

After hearing both the sides, I find that the appellant is engaged in the manufacture of stereo cassettes players / recorders under their own brand name 'Royal' as also under the brand name of 'York' which belongs to another person. The appellant is clearing the 'York' brand goods on payment of duty.

2. The factory was visited by Central Excise officers on 01.10.2002 who conducted various search and verifications. Statements were recorded and based upon the facts, proceedings were initiated against the appellant alleging clandestine removal of the goods and demanding duty to the tune of around Rs.34 lakhs.

3. The said duty was confirmed by the original adjudicating authority and the appeal was filed there against before the Commissioner (A). The Appellate Authority observed that 'Royal' belongs to the appellant and they are entitled to the benefit of small scale exemption notification in respect of the same. However, the matter was remanded to the original adjudicating authority for recalculation of the duty demand based upon the number of transformers used by the appellant in the manufacture of their final product cleared under their brand name 'Royal'. The said order of Commissioner (A) attained finality as neither side filed any appeal there against.

4. During the re-adjudication, the appellant produced the chart before the adjudicating authority according to which, their duty liability would come to around Rs.70,000/-. However, the Original Adjudicating Authority based upon the report of the Assistant Commissioner confirmed the demand to the extent of around Rs.14 lakhs. The appellant made a grievance to the effect that the said report of the Assistant Commissioner was never provided to them and the benefit of small scale exemption was not extended before Commissioner (A), who upheld the impugned order by observing as under:

"Coming to the issue of quantification of demands on the basis of computation made by the Deputy Commissioner, central Excise Division-V, I find that in this regard, the appellant's main argument is that they were not supplied the report of the Assistant Commissioner, Div-V as to quantification and t hat the

transformer is an essential components and the difference in quantity is significant which has not been explained. I observe from the report submitted by the Assistant Commissioner, that he after taking all the relevant factors into consideration has taken the cum-duty price as Rs.366/-. As such, I do not find any infirmity in the said calculation and uphold the Order-in-Original to that extent."

5. Hence the present appeal.

6. The appellant's grievance is that the report of the Assistant Commissioner upon which the lower authorities relied was never provided to them and secondly there is no discussion about the chart prepared by them. The appellant's contention is that the benefit of small scale exemption which was already available to them in respect of their own brand name was not extended. If that be so, the duty demand would come down to around Rs. 70,000/- which they have calculated.

7. After hearing the Ld. DR, I find that admittedly the appellant's grievances about the non availability of AC's report, about non extension of small scale exemption notification and non discussion of the chart prepared by them and submitted to the original adjudicating authority is appreciable in as much as the same do not stand addressed by any of the authorities below. As such I am once again compelled to set aside the impugned order and remand the matter to the original adjudicating authority for fresh calculation of demands.

8. Needless to say that the appellant's grievances as discussed above, would be properly addressed by the adjudicating authority. Appeal is thus allowed by way of remand.

[Dictated and pronounced in the open Court]

(Archana Wadhwa)
Member (Judicial)

Bhanu