CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No.2, R. K. Puram, New Delhi, Court No. 1

Date of hearing/decision: 27.02.2017

Excise Appeal No. 1102 of 2011
(Arising out of order-in-appeal No. 16(CB)CE/JPR-II/2011 dated 19.01.2011 passed by the Commissioner of Central Excise (Appeals), Jaipur-II).

M/s Shree Rajasthan Syntex Limited Appellant

Vs.

CCE, Jaipur-II Respondent

Appearance:

Sh. B. L. Narasimhan, Advocate for the appellant
Sh. H. C. Saini, AR for the Revenue

Coram:

Hon'ble Mr. M. V. Ravindran, Member (Judicial)
Hon'ble Mr. V. Padmanabhan, Member (Technical)

Final Order No. 51998/ 2017

Per: **M. V. Ravindran**:

This appeal is directed against the order-in-appeal No. 16(CB)CE/JPR-II/2011 dated 19.01.2011 passed by the Commissioner of Central Excise (Appeals), Jaipur-II.

2. Heard both sides and perused the records.

3. On perusal of the records and on consideration of the submissions made by both sides, we find that the issue that arises for consideration is whether the appellant herein was entitled for deduction of amount of freight and insurance

paid by them on actual basis for transportation of the finished goods from the factory premises.

4. It is noted that by final order dated 06.05.2009, this Bench remanded the matter to the adjudicating authority for a specific purpose of determining the eligible deduction of the actual freight and insurance paid by the appellant and determine the differential duty, if any. The said remand direction are reproduced below:

> "6(b) *We reject two appeals E/5875, 5877 of 2004 on merits and hold that the respondents are eligible for deduction of freight and insurance on actual basis. Therefore, we direct the original authority to determine the eligible deduction on actual basis and determine differential duty, if any, payable after giving reasonable opportunity to the respondents. The order shall be passed within a period of six months. We also clarify that no penalty shall be imposable in respect of this period*".

5. Consequent to such remand, the adjudicating authority by order-in-original dated 31.07.2010 has rejected the contention raised by the appellant in their letter dated 20.10.2009 (wherein they had claimed the details of actual freight and insurance charges for the period in question) and held against the assessee after following due process of law. The first appellate authority also concurred with the views of the adjudicating authority.

6. We find that both the lower authorities have not followed our remand order in its letter and spirit. The entire order of the Tribunal was well recorded and it was categorically held that the appellant is eligible for claiming the deduction on actual freight and insurance paid on the goods cleared from the factory premises till the delivery of the same. On a specific query, was the Final Order dated 06.05.2009 was appealed or otherwise, both sides are unable to inform the correct status.

7. In view of the fact that the adjudicating authority has not considered our remand proceedings in its letter and spirit it has to be held that the views expressed by Bench in earlier order needs to be obeyed by lower authorities. Accordingly, we set-aside the impugned order and remand the matter to the adjudicating authority to follow our earlier direction vide final order dated 06.05.2009 in its letter and spirit and recalculate the differential duty, if any, in accordance with law.

8. The appeal is disposed of by way of remand as indicated hereinabove.

(Dictated and pronounced in the open Court).

(V. Padmanabhan) Member (Technical)	(M. V. Ravindran) Member (Judicial)

Pant