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

Exicse Appeal No. E/416/2009- EX[SM]

[Arising out of Order-In-Appeal No.243(DK)CE/JPR-II/2008 dated 08.12.2008 passed by Commissioner (Appeals-II), Customs & Central Excise Jaipur.]

For approval and signature:
Hon'ble Mr. S.K. Mohanty, Member (Judicial)

C.C.E. Jaipur II ...Appellant

Vs.

M/s. Leela (K) Tex …Respondent

Appearance:
Sh. R.K. Mishra, AR for the Appellant
Sh. Amit Awasthi, (Advocate) appeared for the Respondent

CORAM:
Hon'ble Mr. S.K. Mohanty, Member (Judicial)

Date of Hearing/ Decision. 27.12.2016

Final Order No 56474 /2016

Per S. K. Mohanty

Revenue has filed this appeal against the impugned order dated 08.12.2008 passed by the Commissioner, Central Excise (Appeals), Jaipur-II.

2 Brief facts of the case are that the respondent is engaged in the processing of Cotton and Man Made Fabrics, falling under Chapter 52 and 55 of the Central Excise Tariff Act, 1985. The anti-evasion team of

Central Excise Commissionerate, Jaipur-II paid a surprise visit to the factory premises of the respondent on 01.11.2002. During the course of investigation, the officers found that a quantity of 15,151.75 mtrs. of polyester man made fabrics was short against the recorded balance. Further, on the basis of resumption of private records, it has been alleged that the respondent had removed 363 Thanes of processed Cotton fabrics during the period 02.09.2002 to 05.09.2002. On the basis of investigation, the Department issued the show cause notice, which culminated in the adjudication order dated 31.08.2007, wherein the proposed duty demand of Rs. 22,12,495/- and Rs. 25,455/- were dropped against the respondent. On appeal, the ld. Commissioner (Appeals) vide the impugned order dated 08.02.2008 has also upheld the adjudication order.

4. Heard both sides and perused the case records.

5. On perusal of the impugned order, I find that the ld. Commissioner (Appeals) has extracted the following observations of the ld. adjudicating authority to hold that the charges levelled against the appellant cannot be sustained:

"The learned Additional Commissioner in internal page 12 Para 21 to 27 made his observations after examining the facts and evidence on record. The learned Additional Commissioner had observed that the physical verification pertaining to measurement of thans was done on ocular testimony and the authenticity of the physical verification was subject to question based on fact on record. He observed that the entire exercise of resumption or purported Private records and physical verification was without a panchnama and Learned Additional Commissioner had taken note of cross examination of the investigating officers who had admitted non preparation of panchnama. The learned Additional Commissioner had also taken note of the fact that none of the buyers of private records had accepted any clandestine receipt of goods. He had also noted that there was no iota of evidence to prove the allegation of clandestine removal and /or observation was made that no

documentary proof were produced by the investigating officers with regard to transport of goods. In Para 25 of the order the Learned Additional Commissioner, with regard to the confessional statement of Shri P.K. Jain and Shri Bhairulal Agarwal has observed that it was a settled law that statement at best oral evidence and cannot have independent existence in the absence of any material evidence. The Learned Additional Commissioner after examining the evidence on record and following the law laid down by various court and Tribunal dropped the proceedings initiated against the Show Cause Notice."

7. Since upon appreciation of the facts, based on evidence, the authorities below have held that the entire search proceeding are in-fractuous/ void and the Department has not brought any tangible evidence to prove its case against the Respondent, I am of the fire view that such observations cannot be disturbed at this juncture.

8. Therefore, I do not find any infirmity in the impugned order. Accordingly, the appeal filed by the revenue is dismissed.

(Operative Portion pronounced in open court)

(S. K. Mohanty)
Member(Judicial)

Sakshi