IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

WEST BLOCK NO.2, R.K. PURAM, NEW DELHI-110066

BENCH-SM

COURT –III

Excise Appeal No.E/60601/2013 [SM]

[Arising out of Order-in-Appeal No. 155/CE/D-II/2013 dated 27.08.2013 passed by the Commissioner (Appeals), Central Excise, Delhi-II]

M/s.A.P.S. Enterprises Pvt. Ltd. …Appellant

Vs.

C.C.E., Delhi … Respondent

Present for the Appellant : None
Present for the Respondent: Mr. Dharam Singh, D.R.

Coram: HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)

Date of Hearing/Decision: 11/08/2016

FINAL ORDER NO. 56526/2016

PER: S.K. MOHANTY

This appeal is directed against the impugned order dated 27.08.2013 passed by the Commissioner of Central Excise (Appeals), New Delhi.

2. Brief facts of the case are that the appellant is engaged in the manufacture of Aluminium Wire Rods, falling under Chapter 76 of Central Excise Tariff Act, 1985. The Central Excise Officers visited the factory of the appellant on 11.10.2008 and observed that there was shortage of 15,555 Kgs. of finished goods as compared to the balance

recorded in the statutory records. Accordingly, upon initiation of show cause proceedings, the adjudged demand was confirmed against the appellant vide order dated 31.03.2010. The Commissioner (Appeals) also upheld the adjudged demand vide order dated 12.08.2010. In appeal, this Tribunal vide Final Order No. 55196-55197/2012 dated 30.11.2012 has upheld the findings of the lower authorities with regard to clandestine removal of goods. However, the order dated 12.08.2010 of the Commissioner (Appeals) was set aside and the matter was remanded to the adjudication authority for re-quantification of the demand after extending the benefit of cum-duty price. Pursuant to the order dated 30.11.2012 of this Tribunal, the original authority completed de-novo adjudication and passed the order dated 12.06.2013, in determining the Central Excise duty liability at Rs.2,64,647/-. In appeal against the said order of adjudicating authority, the ld. Commissioner (Appeals) vide the impugned order has rejected the appeal of the appellant. It has been held in the impugned order that the invoice nos. 1 & 2, both dated 10.10.2008 cannot be accepted, since the same had not been issued in respect of the subject goods and that the Department has not verified the genuineness of the said documents.

3. Heard both sides and perused the records.

4. On perusal of the impugned order, I find that the ld. Commissioner (Appeals) has recorded the following findings in support of the submissions of the appellant that Sales Tax/ VAT amount has been paid on sale of the impugned goods:

> *"I further find from the initial adjudication order No.38/Demand/2010 dated 31.03.2010, when the duty liability of the appellants was initially determined, the appellants had in their defence submissions referred to the sales tax /VAT element contained in the impugned goods."*

5. The above findings of the ld. Commissioner (Appeals) prove the facts that the appellant had submitted the documents before the authorities below to show that Sales Tax/VAT amount has been paid on sale of the goods. Since the scope of remand pursuant to the order dated 30.11.2012 of the Tribunal was confined to consideration of cum-duty benefit to the appellant, which has not been properly considered by the authorities below in this case, I am of the view that on the basis of the above observations of the Commissioner (Appeals), the benefit of cum-duty price should be available to the appellant.

6. Therefore, the impugned order is set aside and the appeal is allowed to the extent of grant of cum-duty benefit to the appellant.

[Dictated and pronounced in the Open Court]

(S.K. MOHANTY)
MEMBER (JUDICIAL)

Anita