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

COURT-II

Date of hearing/decision: 03.08.2017

Appeal No. E/2000-2001/2010-SM

[Arising out of the Order-in-Appeal No.131-132/RPR-I/2010 dated 07/04/2010, passed by the Commissioner (Appeal-I), Central Excise, Raipur)

CCE, Raipur … Appellant

Vs.

Anuvrat Product
& Shri Champalal Jain Prop. … Respondent

Appearance:

Present Shri, G.R. Singh, DR for the appellant
Present Shri, A.K.Prasad, Advocate for the respondent

Coram: Hon'ble Mr.Ashok K. Arya, (Technical Member)

FINAL ORDER No. 55779-55780/2017

Per Ashok K. Arya :

1. These two appeals have been filed by CCE, Raipur against Order in Appeal No. 131-132 dated 07/04/2010 whereunder inter alia duty demand of Rs. 20,48,210/- along with penalties has been dropped.

2. Brief facts are that:

   i. Respondent No. 1 M/s Anuvrat Products & Co. manufactures Pan Masala and Gutkha falling under Chapter Sub Headings 21069020 & 24039920 of Central Excise Tariff.

ii. Respondent No. 1 and 2 (Shri. Chmpalal Jain, Proprietor) were issued show cause notice (SCN) for recovery of demand of Central Exice duty and imposition of penalties alleging clandestine manufacturing and removal of Pan Masala and Gutka by them.

iii. The show cause notice (SCN) was adjudicated by Order in Original No. 46/2009 dated 05.03.2009 inter alia confirming the demand of Central Excise duty of Rs. 29,46,283/- alongwith interest and imposition of penalties.

iv. The assessee went in appeal before the Commissioner (Appeal), who by the impugned order-in- Appeal dated 07/04/2010 inter alia reduced the demand and penalties of Respondent No. 1 to Rs. 9,33,976/-; and dropped the penalty imposed on the Respondent No. 2.

v. Therefore, the Revenue is in appeal before the Tribunal.

3. Both sides represented by Shri G.R. Singh, Ld. DR for the Revenue and Ld. Advocate, Shri A.K. Prasad for the respondents have been heard.

4. The main pleading of the Ld. DR is that the impugned order has not given necessary weightage to the evidence of supplies of raw material meant for packaging the goods being manufactured by the respondents and wrongly reduced /dropped penalties.

4.1 The Ld. Advocate for the respondent vehemently pleads that the impugned order has already confirmed the part demand taking notice of the supplies made of packing material and there is no other evidence with the department to sustain the demand and penalties dropped by the impugned order. The Ld. Advocate also pleads that the penalty imposed on the individual proprietor has rightly been dropped. On the other hand, on the penalty dropped in case of the respondent proprietor namely Shri Champalal Jain, Ld. DR pleads that the proprietor of the firm Shri Champalal Jain has committed different offences which includes concealing etc of the subject activity leading to evasion of duty etc which is an offence, separate from the offences, committed by the Respondent No.1, the manufacturing unit.

5. After having carefully considered the facts of the case and submissions of both sides it appears that the impugned order has given the sweeping statement saying that 'on mathematical calculation actual production cannot be arrived at'. This statement mentioned in the impugned order is only a general remark, and he did not effectively analyze the evidence on record and did not give the reason that for completely ignoring the fact of supplies made of the raw material of packaging which was mentioned in the private records. In case of the respondent Shri Champalal Jain, who is the proprietor of the respondent number 1, the issue 'whether there has been a separate offence committed by him?' has also not been properly examined. When it is so, the impugned order in case of dropping the demand of

Rs. 20,48,210/- and dropping corresponding penalties against both the respondents is set aside.

6. Consequently, the impugned order is modified to above effect and the subject matter is remanded to the Original Adjudicating Authority for fresh examination of all the evidences on record and to decide the matter de novo as early as possible after giving full opportunity of personal hearing and submission of necessary documents, if any, to both the sides.
7. In the result, both the appeals are allowed by way of remand.

[Order dictated and pronounced in the open court]

(Ashok K. Arya)

Member (Technical)

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