IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.

Date of Hearing/Decision: 31.8.2017

Appeal No. E/52773/2016-SM

(Arising out of Order-in-Appeal No. BHO-EXCUS-002-APP-028-16-17 dated 18.5.2016 passed by the Commissioner, Customs, Central Excise & Service Tax, Raipur)

CCE & ST, Raipur — Appellant

Vs.

N.R. Wires Pvt. Ltd. — Respondent

Appearance

Ms. K.V. Kumar, A.R. - for the appellant

Ms. Rinky Arora, Advocate - for the respondent

CORAM: **Hon'ble Mr. Ashok Jindal, Member (Judicial)**

Final Order No. 56759/2017

Per Ashok Jindal :

The Revenue is in appeal against the impugned order wherein the ld. Commissioner (Appeals) allowed to redeem the seized cash on payment of redemption fine of Rs. 5 lakhs. The Revenue has filed this appeal on two grounds:

(a) The case law which has been relied by the ld. Commissioner (Appeals) in the impugned order in the case of ***Bhagwan R. Daswani Vs. CCE, Mumbai*** – 2010 (262) ELT 822 (Tri.-Mum) has been in challenged before the Hon'ble High

Court. Therefore, the said decision cannot be relied upon and

(b) It is further stated that as the contentions recorded by the ld. Commissioner in para 7.1 of the impugned order were not placed before the adjudicating authority. Therefore, the impugned order is to be set aside and the matter be remanded back to the adjudicating authority

2. On the other hand, ld. Counsel for the respondent submits that the respondents have also filed cross objection to the appeal filed by the Revenue before the ld. Commissioner (Appeals). But ld. Commissioner has not considered their cross objections and in alternate has not considered the issue of quantum of redemption fine, In that circumstances they need time to file cross objection .

3. Heard both the parties considered the submissions.

4. I find that this appeal was filed by the Revenue on 8.9.2016 and copy of the same was served on the respondent. Respondents were required to file cross objection, if any, within 45 days of the receipt of the appeal memo. Admittedly, till date, no cross objections have been filed by the respondents. Moreover, on 15.11.2016, the application for condonation of delay filed by the Revenue was considered by this Tribunal and on the said day Ms. Rinky Arora,

Advocate appeared on behalf of the respondent and attended the proceedings. In that circumstances, it cannot be said that the appeal papers have not been received by the respondent and they were de-barred the opportunity of filing of the cross-objections. Therefore, at this stage, again time is sought to file cross objection which is not permissible.

5. With regard to appeal filed appeal by the Revenue, I find that the impugned order has been challenged on two grounds.

(a) Recordings made by the ld. Commissioner (Appeals) in para 7.1 which is reproduced hereunder :

> "7.1 Further, as regards seizure of 21,35,000/-, the contention of the respondent that out of this amount Rs.5,00,000/- represents the cash withdrawn from bank account of N.R. Steels, in HDFC Bank, Bhilai, and the same is carried by its staff Mr. Kailash) had attached copy of bank statement) and remaining Rs.16,35,000/- is amount received from Moon Metals, Delhi, to purchase material from Prakash Industries Ltd. (copy of ledger received from the party attached). The respondent has furnished the above details vide its letter dated 29.3.2014 and 8.10.2014, that is during the investigation of case and well before the issuance of the impugned SCN dated 25.7.2014 / adjudication of the case."

were not before the adjudicating authority, therefore, the impugned order is to be set aside.

6. I have gone through the impugned order, the ld. Commissioner (Appeals) has not considered the submissions made by the respondent which has been recorded in para 7.1, therefore, on that said ground impugned order cannot be set aside.

7. The second ground taken by the Revenue that the case law in the case of ***Bhagwan R. Daswani*** (surpa) which has been relied by the ld. Commissioner (Appeals) has been challenged before the Hon'ble Bombay High Court as no stay order has been granted by the Hon'ble High Court against the order of this Tribunal in the case of ***Bhagwan R. Daswani*** (supra). Therefore, the same cannot be the reason that as the appeal is pending before the Hon'ble High Court against the order of this Tribunal to set aside the impugned order.

8. In that circumstances, I do not find any merit in the arguments advanced by the ld. A.R. Therefore, the impugned order is upheld. Consequently, the appeal filed by the Revenue is dismissed.

(Dictated & pronounced in open Court)

(Ashok Jindal)
Member (Judicial)

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