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

COURT NO. I

DATE OF HEARING/DECISION : 17/10/2017.

Excise Appeals No. 262-264 of 2007

[Arising out of the Order-in-Original No. 45/COMMR/CEX/IND/ 2006 dated 31/08/2016 passed by The Commissioner, Central Excise & Customs, Indore.]

M/s Devendra Industries	]	
Shri Rajendra Sisodiya, Partner	]	Appellants
Shri M.S. Sisodiya	]	

Versus

CCE, Indore Respondent

Appearance

Shri Manish Saharan, Advocate – for the appellants.

Shri S.K. Bansal, Authorized Representative (DR) – for the Respondent.

CORAM :**Hon'ble Shri Justice Dr. Satish Chandra, President**
Hon'ble Shri B. Ravichandran, Member (Technical)

Final Order No. 57258-57260/2017 Dated : 17/10/2017

Per. Justice (Dr.) Satish Chandra :-

The present appeal is filed against the order-in-original No. 45/COMMR/CEX/IND/ 2006 dated 31/08/2016. The contention of the learned Counsel for the appellant is that before the Commissioner, there were 5 issues and Commissioner had not considered the 4 issues on the ground that in the remand order passed by the Tribunal, he was not directed to consider those issues. Therefore, demand in the earlier order was confirmed. The goods manufactured by the appellant were also exported and that aspect has not been considered by the Adjudicating Authority and the impugned order did not deal with all disputes.

2. On the other hand, Shri Bansal, the learned AR for the Revenue has supported the impugned order. He submits that this is the second round of litigation. On earlier occasion, the Tribunal has considered all the aspects and remanded the matter for re-quantification and penalty only.

3. After hearing both the sides and upon perusal of the appeal record, we note that the impugned order examined the re-quantification of duty and allowed the benefit of cum duty valuation by the appellants. Other than this, the other requests regarding possible duplication of invoices in calculation and dealer's margin etc. were not considered for re-quantification as it was held that these issues have been dealt with elaborately in the original order and without any specific direction in remand against such findings, the impugned order did not make any detailed observation on the same.

4. The learned Counsel for the appellant submits that there are specific instances of double calculation by taking the same invoice twice. He relied on the chart comparing Annexure C-I and C-II. In certain instances of the parameters like quantity date, lorry number, amount are identical. Based on these, the learned

Counsel submitted that the duty calculation should have been re-quantified. We note that these data and submissions were available with the Original Authority in the first round of adjudication itself. Against the said order, the Tribunal decided the case on merit and directed the lower authority to re-quantify the amount. Admittedly, no finding or specific direction regarding manner of re-quantification was made by the Tribunal. In such circumstances, the re-quantification of duty in the second round of adjudication was restricted to the aspects which were not considered in the original adjudication in the first round. In the present appeal, we could not go beyond the remand direction of the Tribunal, which did not give a finding regarding the rejection by the Original Authority in the first adjudication about possible double calculation of the invoice etc. As the Tribunal gave specific finding only on merit and no adverse finding regarding method of re-quantification the present impugned order has re-quantified the duty only on the aspect which was not considered in the first round of adjudication. Such being the case we could not interfere with the said finding in this second round of appeals. Accordingly, we find no merit in these appeals. The same are dismissed.

(Order dictated and pronounced in the open court.)

(Justice Dr. Satish Chandra)
President

(B. Ravichandran)
Member (Technical)

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