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

Date of Hearing: 27.12.2017

Appeal No. E/2460/2011-SM
(Arising out of Order-in-Appeal No. 158 (DKV) CE/ JPR-I/2011 dated 04.05.2011 passed by the Commissioner (Appeals) Customs & Central Excise-I, Jaipur)

Prayag Polytech Pvt. Ltd. — Appellant

Vs.

CCE Jaipur-I — Respondent

Appearance
Shri Kr. Vikram, Advocate - for the appellant
Shri K. Poddar, DR - for the respondent

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

Final Order No. 58600/2017

Per Ashok Jindal :

1. The appellant is in appeal against the impugned order demanding duty on the shortages of the finished goods to allege that the same has been cleared clandestinely by the appellant.

2. The brief facts of the case are that on 10/01/2001, a search was conducted in the factory premises of the appellant where physical stock verification was done of finished goods i.e. Colour Master Batches, Colour Mater Batch-Black and Filled PP which were found less than the quantity entered in to RG.1 register. Therefore, it was alleged that appellant has cleared goods clandestinely. Consequently, the proceedings were initiated and the demand was confirmed along with interest and equivalent amount of penalty was imposed. The matter was carried up to this Tribunal and this Tribunal, vide its Final Order No. 161/2009 SM dated 23/01/2009 remanded the matter back. In remand proceedings, again the

demand has been confirmed. Aggrieved from the said order the appellant is before me.

3. Heard both sides and considered submissions.

4. I find that this Tribunal on 23/01/2009 remanded the matter back to the Adjudicating Authority with the following directions :-

> *Therefore, to meet the ends of justice, this matter has to go back to the Ld. Adjudicating authority to re-examine whether the opening balance of the respective goods on 10/01/2001 appearing in RG.1 register shall stand reduced by 18.628 MT. The appellant deserves consideration appropriately. It would be necessary to test whether averment of the appellant as to seizure of goods of 18.625 MT was out of stock of RG I Register and whether the goods seized existing in a different location are the same goods and that belongs to the appellant to deal against the opening balance. If the authorities below are satisfied with evidence, the appellant may get relief.*

5. In remand proceedings, instead of verifying the RG.1 register as directed by the Tribunal, the Adjudicating Authority as well as Ld. the Commissioner (Appeal) gave the findings on the basis of the investigation conducted and the statement recorded thereof, but no effort has been done with regard to the directions given by this Tribunal while remanding the matter.

6. In that circumstances, impugned order deserves no merit. Accordingly, the same is set aside and remanded back to the adjudicating authority to pass an order as per the directions of this Tribunal dated 23/01/2009.

7. In view of above analysis, the appeal is disposed of by way of remand.

(Order dictated & pronounced in open Court)

(Ashok Jindal)
Member (Judicial)

Rekha