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

Date of hearing/decision: 26.12.2017

Excise Appeal Nos. 448 - 450 of 2010-SM

(Arising out of order-in-appeal No. 42/2009(CE) Commissioner dated 25.11.2009 passed by the Commissioner of Central Excise, Jaipur-I).

M/s Arham Spinning Mills Appellant
V. K. Kad, Vice President (Marketing)
Sh. D.S. Virdi, General Manager

Vs.

CCE, Jaipur-I Respondent

Appearance:

Sh. Rupinder Singh, Advocate for the appellant
Sh. K. Poddar, AR for the Respondent

Coram:

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

Final Order Nos. 58610 – 58612/2017

Per: **Ashok Jindal**:

The appellants are in appeal against the impugned order confirming the demand of duty alleging clandestine removal of goods.

2. The facts of the case are that the appellant is manufacturer of polyester and cotton yarn. The case of the Revenue is that the appellant is clearing the polyester / blended yarns in the guise of cotton yarn and clearing the goods at lower rate of duty therefore, the duty was demanded higher than the cotton

yarn. During the course of search by the department, documents were recovered and the same was seized. On the basis of the document, the case was made against the appellant and duty was demanded alleging clandestine removal of goods. The matter was adjudicated by demanding duty alongwith interest and penalty. The said order was changed before the Tribunal and the Tribunal vide order dated 04.10.2007 remanded the matter to the adjudicating authority with direction to supply RUDs to the appellant and thereafter to pass an appropriate order. In remand proceedings, the adjudicating authority observed that the appellant has failed to submit Lot card or packing slip maintained at the factory at the time of manufacture which is the crucial evidence depicting allotment of particular lot No. to the goods in question covered under the invoices and passed the impugned order confirming demand of duty against the appellant.

3. Heard the parties considered the submissions.

4. I have gone through the record placed before me and the panchnama which was prepared at the time of search. In the panchnama, the documents which was relied upon have been seized which comprise of lot information register. Therefore, the observation made by the authorities below is contrary to the facts of the case wherein it has been observed that appellant failed to provide lot card or packing slip maintained at the factory at the time of manufacture which is the crucial evidence, the same was with the adjudicating authority itself as per the Annexure to the panchnama but the same has not been considered by the adjudicating authority. In these terms the impugned

order is contrary to the facts of the case. In that circumstances, the impugned order is set aside and the matter is remanded back to the adjudicating authority to consider RUDs and the panchnama with Annexure and thereafter to pass an appropriate order after affording an opportunity of being heard to the appellants to present their case. The Revenue shall also provide all the RUDs to the appellant before adjudication.

5. Appeals are allowed by way of remand.

(Dictated and pronounced in the open Court).

Ashok Jindal
Member (Judicial)

Pant