IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI
PRINCIPAL BENCH, COURT NO. II

Excise Appeal No. 1393, 2689, 2690 & 2973 of 2010- SM
Excise Appeal No. 3248 & 3677 of 2010

[Arising out of Order-in-Original No. 21/2009 dated 26.02.2010 passed by the Commissioner of Central Excise, New Delhi.]

M/s. Pioneer **Appellants**
Mod Packers
Virendra Pahuja
Neelam Electronics
MM Enterprises
Pradeep Nanda

Vs.

Commissioner of Central Excise **Respondent**
Delhi II

Appearance:

Ms. Priyanaka Goel, Shri S K Pahawa, Ms. Nisha Binish for the Appellants
Shri K Poddar, DR for the Respondent

CORAM:

Hon'ble Shri Ashok Jindal, Member (Judicial)

Date of Hearing /decision: 08.02.2018

FINAL ORDER NO. 50557 -50562 /2018

Per Ashok Jindal:

The appellants are in appeal against the impugned order wherein various penalties have been imposed under Rule 26 of Central Excise Rules, 2002.

2. Heard the parties. Considered the submissions.

3. As the main party against whom allegation of clandestine removal of goods have been made, have gone in BIFR and not before me, but in case of Mr. Mod Packers, Virendra Pahuja, and MM Enterprises, learned counsels have stated that they have not received the show cause notice, therefore, they could not contest their case before the adjudicating authority. Therefore, matter needs examination at the end of adjudicating authority. However, in the case of Pradeep Nanda, the appellants asked for supply of relied upon documents which were not supplied to the appellants. In the case of Pioneer and Neelam Electronics, they are buyers of the goods. In fact, Neelam Electronics case, none has appeared but in the case of Pioneer, learned Counsel appeared and produced certain invoices but failed to show that the goods which were confiscated were purchased by them against the invoices were produced before this Tribunal. That fact is required to be examined at the end of adjudicating authority.

4. As in this case, contention of most of the appellant is that they have neither received show cause notice or not received Relied upon documents, matter needs to be remanded back to the adjudicating authority. Therefore, setting aside the impugned order qua imposing penalty on the appellants and redemption fine, matter is remanded back to the adjudicated authority to verify the service of show cause notice and thereafter, providing an opportunity to the appellants to reply the

show cause notice and also supply relied upon documents, and thereafter, give an opportunity to the appellants to defend their case. It is pertinent to mention here that the learned counsel for the appellants, in case of Pioneer who shall produce the evidence of receipt of goods against the invoices in their case, thereafter the adjudicating authority shall pass an order in accordance with law.

5. In view of the above analysis, the appeals are allowed by way of remand.

(dictated and pronounced in the open court)

(Ashok Jindal)
Member(Judicial)

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