

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

Date of Hearing/Order: 25.1.2018

**Appeal No. E/1872/2009-SM
E/2101-2102/2009-SM**

(Arising out of Order-in-Appeal No. 61-63/CE/DLH/2009 dated 26.3.2009 passed by the Commissioner (Appeals), Central Excise, Delhi-II)

M/s Bulbul Dilshad David, Prop.
Eskay Polymers Pvt. Ltd.
Shri Suresh Sagar

Appellant

Vs.

CCE, Delhi-II

Respondent

Appearance

Shri Naveen Mullick, Advocate

- for the appellant

Shri G.R. Singh , D.R.

- for the respondent

CORAM: **Hon'ble Mr. S.K. Mohanty, Member (Judicial)**

Final Order No. 50395-50397/2018

Per S.K. Mohanty :

These appeals are directed against the impugned order dated 26.3.2009 passed by the Commissioner (Appeals), Central Excise, Delhi.

2. The ld. Advocate appearing for the appellants, at the outset, submits that without affording due opportunity to the appellant, the matter was adjudicated behind the back of the appellant, which is in gross violation of the principles of natural justice. Accordingly, he prayed for remanding the matter to the adjudicating authority for proper fact finding.

3. The ld. DR appearing for Revenue reiterated the findings recorded in the impugned order.

4. Heard both sides.

5. The issue involved in this case relates to clandestine removal of the goods. Since the issue is entirely fact based, opportunity of personal hearing to present the case should have been given to the appellant. In this case, since the adjudication order was passed without affording adequate opportunity to the appellant, I am of the view that the principles of natural justice has been violated in this case. Thus, the matter is required to be remanded to the adjudicating authority for fresh decision on merits.

6. Therefore, after setting aside the impugned order, I remand the matter to the original authority for deciding the issue afresh on the basis of the submissions to be made by the appellants. Needless to say that opportunity of personal hearing should be given before deciding the issue afresh.

7. In the result, appeals are allowed by way of remand to the original authority.

(Dictated & pronounced in open Court)

(S.K. Mohanty)
Member (Judicial)

RM