CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH - COURT NO. 1

Excise Appeal No. 50303 of 2014

(Arising out of Order-in-Appeal No. 67-69/DII/APPL/2013 dated 01.04.2013 passed by the Commissioner (Appeals), Central Excise & Service Tax, New Delhi)

DATE OF HEARING : 29.01.2018
DATE OF DECISION : 29.01.2018

M/s Aaa Enterprises ….. **Appellants**
(Rep. by Sh. R.K. Verma, Adv.)

VERSUS

CCE, Delhi-II ….. **Respondent**
(Rep by Sh. R.K. Mishra, DR)

CORAM : **HON'BLE MR. JUSTICE (DR.) SATISH CHANDRA, PRESIDENT**
HON'BLE MR. V. PADMANABHAN, MEMBER (TECHNICAL)

FINAL ORDER NO. 50526/2018

PER JUSTICE (Dr.) SATISH CHANDRA :

The present appeal is filed by the assessee-Appellants against the Order-in-Appeal No. 67-69/DII/APPL/2013 dated 01.04.2013 passed by the Commissioner (Appeals), Central Excise & Service Tax, New Delhi. The period in dispute is 2009-10 to 13.04.2011.

2. The brief facts of the case are that, during the period under consideration, the assessee-Appellants were engaged in the

manufacture of FM Radio with speakers. The radio sets were cleared under the 'Branded Item' and 'Unbranded Item'. The assessee-Appellants were not registered with the Central Excise Department and availed the SSI Exemption. On 13.04.2011, a search was conducted at the business premises of the assessee-Appellants and on the basis of the material available, a case of clandestine removal was made out pertaining to the branded items. The adjudicating authority has confirmed the duty demand on the branded items and dropped the demand pertaining to the unbranded items. But, in appeal by the Department, the Commissioner (Appeals) has confirmed the total demand. Being aggrieved, the assessee-Appellants have filed the present appeal.

3. With this background, we have heard Shri R.K. Verma, learned counsel for the assessee-Appellants and Shri R.K. Mishra, learned DR for the Department.

4. The learned counsel for the assessee-Appellants submits that he is not pressing the question of classification. He submits that the main grievance of the assessee-Appellants is pertaining to the restoration of demand by the Commissioner (Appeals) on unbranded items which amounts to about Rs. 13,00,000/-. He also submits that the original authority has already confirmed the demand of Rs. 6,08,634/- and the same was paid along with equal amount of penalty. Other penalties were also paid by the assessee-Appellants.

5. On the other hand, the learned DR for the Department justified the impugned order.

6. After hearing both sides and on perusal of the material available on record, it appears that the adjudicating authority has accepted the summary of the partywise sales made by the assessee-Appellants during the period under consideration where parties' names were given and branded/unbranded items were also mentioned. On the basis of this information/vouchers, the adjudicating authority has upheld the demand for the branded items and dropped the demand for the unbranded items. But the Commissioner (Appeals) without having any material in hand has restored the total demand. This act of the Commissioner (Appeals) has no legal sanctity in the eyes of law and the same cannot be accepted in the absence of any material in hand. In the instant case, the order passed by the adjudicating authority appears to be based on the information/vouchers supplied by the assessee-Appellants for the unbranded items. The same appears reasonable. Hence, we set aside the impugned order and restore the order passed by the original authority.

7. In the result, the appeal filed by the assessee-Appellants is allowed.

(Dictated & pronounced in the open court)

(JUSTICE DR. SATISH CHANDRA)
PRESIDENT

(V. PADMANABHAN)
MEMBER (TECHNICAL)

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