CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH AT HYDERABAD

Division Bench
Court - I

Appeal No.	Appellant	Respondent	Impugned Order
E/853/2009	RBD Industries Ltd	CCCE & ST, Visakhapatnam-II	OIO: 06/2009 (PVR) dt.16.3.09 passed by CCCE & ST, Visakhapatnam-II
E/852/2009	S.L. Durar		

Appearance
Shri C.R. Sridharan & Shri Salloori Ramesh, Advocates for the Appellant.
Shri Mir Anwar Mohiuddin, Asst. Commissioner/AR for the Respondent.

Coram:
Hon'ble Mr. M.V. RAVINDRAN, MEMBER (JUDICIAL)
Hon'ble Mr. P.V. SUBBA RAO, MEMBER (TECHNICAL)

Date of Hearing: 29.01.2019
Date of Decision: 29.01.2019

FINAL ORDER No. A/30151-30152/2019

[Order per: M.V. Ravindran]

1. These appeals are directed against Order-in-Original No. 06/2009 dated 16.03.2009.

2. Heard both sides and perused the records.

3. On perusal of records, it transpires that the issue is regarding the confirmation of the demand of duty liability on the appellant M/s New Tobacco Company Ltd and imposition of penalty on appellant Shri S.L. Durar.

4. Demand of the duty on the appellant has arisen on the ground that they had cleared shells, slides and gay wrappers manufactured for packing of cigarettes from factory premises. It is seen from the records that the demand in the case in hand is for the period September, 1994 to October, 1995. The entire allegation in the show cause notice which is issued by the office of the Commissioner of Visakhapatnam is relying upon various

statements and also the investigation undertaken by DGCEI for which a separate show cause notice dated 12.12.1996 was issued. The adjudicating authority in the case in hand, confirmed the demands raised and also imposed penalties on the main appellant as well as on the individual.

5. It is the submission of the learned counsel that the issue is now settled by the decision of this bench in the case of RBD Industries Ltd (self same appellant) as reported at 2011 (272) ELT 65 and submits that in that case show cause notice was issued for the period September, 1994 to 09.10.1995 for clandestine removal of cigarettes shells etc., and submits that the demand in the case in hand is already covered in that demand of show cause notice issued by DGCEI authorities. He would submit that the bench disposed of the said appeals filed by the appellant by Final Order No.253-255/2011 dated 05.04.2011 as reported at 2011 (272) ELT 65 holding that demands are not sustainable. He would submit that this case is offshoot of the same case and the period involved is already overlapping in the earlier judgments.

6. Learned departmental representative reiterates the findings of the lower authorities.

7. On careful consideration of the submissions made, we do find strong force in the contentions raised by the learned counsel. In the appellant's self same case, as cited herein above, the bench (wherein, one of us, Shri M.V. Ravindran was a member) has held that there is no clandestine activity in respect of the goods manufactured and cleared from the appellant's factory. On a specific query from the bench, it was informed by both sides that appellant has only one factory and both the show cause notices are pertaining to the same factory. If that be so, in the earlier case, period

involved in the allegation of clandestine removal is the same and in this case also the period involved is already subsumed in the earlier order which is held in the appellant's favour. Nothing survives in the allegation of the revenue in this matter.

8. Respectfully following the said orders, we hold that the impugned order is unsustainable and liable to be set aside and we do so.

9. The impugned order is set aside and the appeals are allowed.

(Operative Part of this order was pronounced in the Open Court
On conclusion of hearing)

(P.VENKATA SUBBA RAO)
MEMBER (TECHNICAL)

(M.V. RAVINDRAN)
MEMBER (JUDICIAL)

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