IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, KOLKATA
EASTERN ZONAL BENCH: KOLKATA

Excise Appeal No. 274/2009

(Arising out of Order on Remission Petition issued under C.No. IV (16) 32-CE/PRO/KOL-II/02/Pt.I/4 dated 24.02.2009 passed by the Commissioner of Central Excise, Kolkata-II)

M/s. Vijay Shree Ltd.

Applicant (s)/Appellant (s)

Vs.
Commr. of Central Excise, Kolkata-II

Respondent (s)

Appearance:

Shri Anjan Dasgupta, Advocate . for the Appellant (s)
Shri S. Chattopadhyay, Supdt.(AR) for the Respondent (s)

CORAM:
SHRI P.K. CHOUDHARY, HON'BLE JUDICIAL MEMBER
SHRI V. PADMANABHAN, HON'BLE TECHNICAL MEMBER

Date of Hearing/Decision :- 06.03.2019

ORDER NO. : FO/A/75414/2018

PER SHRI V. PADMANABHAN

The present appeal is directed against the order dated 24/02/2009 passed by the Commissioner of Central Excise, Kolkata-II in which he rejected the claim made by the appellant in terms of Rule 147 (for remission of duty) of the erstwhile Central Excise Rules, 1944.

2. The appellant's factory is situated at Howrah in which they manufacture jute and jute products . There were fire accidents in their factory on 8/2/1994, 23/9/1995, 27/12/1995 and 8/6/1996 in which the appellants lost goods which were in the factory at the time of the fire accidents. The application for remission of duty dated 11/2/1999/ 16/4/1999 were received in the office of the Commissioner on 27/4/1999. The appellant separately faced a show cause notice from the Assistant Commissioner, Central Excise, proposing demand of duty on

the goods allegedly lost in the fire accidents. This demand was confirmed by the Assistant Commissioner by his order dated 17/08/1998. The appellant agitated the matter further before the Commissioner (Appeal) who remanded the matter back to the Assistant Commissioner and directed him to decide the question of demand of duty after the Remission Application filed by the appellant is disposed off by the Jurisdictional Commissioner.

3. In the de novo proceedings, the Assistant Commissioner, vide his order dated 15/12/2006 observed that the Jurisdictional Commissioner had rejected the remand application vide his order dated 1/6/1999 and hence proceeded to confirm the demand of duty. In the second round of litigation before the Commissioner (Appeals), the appellant did not meet with any success. The appellant approached the Tribunal challenging the order passed by the Commissioner (Appeals). The Tribunal, vide final order No. 1255/KOL/08 dated-15/12/2008, set aside the order passed by Commissioner (Appeals) and directed that the question of demand of duty is to be decided after the Jurisdictional Commissioner passes a speaking order after hearing the appellant in relation to the request for remission of duty. Complying with the order of CESTAT, the Commissioner passed the impugned order dated-24/02/2009 rejecting the Remission Application which is challenged in the present appeal.

4. Heard Shri Anjan Dasgupta, Ld. Advocate for the appellant as well as Shri S. Chattopadhyay, Ld. D.R. for the Revenue.

5. The Ld. Advocate submitted that the Jurisdictional Commissioner, while rejecting the application for remission of duty has passed the order mechanically without taking into consideration the various applications made by the appellant. He has referred to the Remission Application dated 11/2/1999 filed by the appellant and also referred to the additional submissions dated-2/4/2004

made in relation to such claim which was submitted to the Additional Commissioner (Technical). Ld. Advocate submitted that all supporting documents such as the FIR filed before the Police Station in respect of the fire accident, claim of insurance as well as Fire Brigade Report and also the claims submitted before the Insurance Authorities giving details of goods lost/ damaged in the fire accident were enclosed with their letter dated 2.04.2004. He submitted that without considering the relevant documents, the Commissioner has rejected the claim which is in violation of the Principles of Natural Justice.

6. With reference to a query from the Bench regarding copies of the documents submitted before the Additional Director (Tech.), he submitted that he was not in a position to submit copies of the documents again what were already filed before the Departmental Authorities. As such, he submitted that the Commissioner may be directed to examine all the documents already available with the Department and pass a fair speaking order after considering all the evidences.

7. The Ld. D.R. justified the order passed by the Commissioner. He referred to the order in which the Ld. Commissioner has recorded that the appellant has failed to produce corroborative documents in support of their claim for loss of goods in fire accident. He further pointed out that there is nothing on record to indicate that the letter dated 2/4/2004, addressed to the Additional Commissioner, has in fact been received by the Departmental officers.

8. We have heard both sides at length and perused the record.

9. The dispute involve fire accidents which are said to have taken place at the appellant's factory on 8/2/1994, 23/9/1995, 27/12/1995 and 8/6/1996. The appellant claimed loss of goods in such fire accidents and have prayed for remission of duty payable on such goods. Inspite of two rounds of litigation before the various lower authorities , no clear findings have been recorded

by the lower authorities as to why remission application has been rejected. Even though it is claimed that the appellant has submitted copies of all supporting documents to the claim such as FIR made before the police authorities regarding the fire incidents; the report of the insurance company indicating the loss of goods in the factory as well as insurance claim paid and settled by the insurance company. There is no reference to such documents in the order dated 24/2/ 2009 passed by the Commissioner. The Ld. Counsel for the appellant has also expressed his inability to submit copies of such documents for the perusal of the Bench. His claim is that such documents are already with the Departmental Authorities.

10. In view of the above, we have no option but to remand the matter yet one more time to the Jurisdictional Commissioner for de novo adjudication taking into consideration all the supporting documents submitted by the appellant. Considering this as a very old matter, he will urgently trace out the copies of the documents claimed to have been submitted in his office alongwith the letter dated 2/4/2004. The appellant is at liberty to pursue this case with all the copies of such documents.

11. The Ld. Commissioner will decide the matter in de novo proceedings after giving an effective hearing to the appellant. This is a very old matter and hence he is directed to decide the matter expeditiously in any case within a period of two months from date of receipt of this order.

(Dictated and pronounced in the open court)

P.K. CHOUDHARY (JUDICIAL MEMBER)	V. PADMANABHAN (TECHNICAL MEMBER)

k.b/-