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

Appeal No. E/76920/2017

(Arising out of Order-in-Appeal No. 19/Pat/C.Ex./Appeal/2017-18 dated 25.08.2017 passed by the Commissioner of CGST & Central Excise, Patna.

Shri Santosh Kumar Jodhwani,
Prop. M/s S.S.D. & Co., Jhulelal
Square, Near Hotel B. N. Palace,
Naharpara, Raipur (CG)

....Appellant (s)

Vs.

Commissioner of Central Excise & Service Tax, Patna
Commissioner (Appeals), Central Excise & S. Tax,
2nd Floor, C. R. Building (Annexe), Birchand Patel Path,
Patna (Bihar)

....Respondent (s)

Appearance:
Shri P. G. Sane, Consultant for the Appellant (s)
Shri H.S. Abedin, AC (A.R.) for the Respondent (s)

CORAM:
HON'BLE SHRI P.K.CHOUDHARY, MEMBER (JUDICIAL)

Date of Hearing:- 05.02.2019

Date of Pronouncement: 20.06.2019

Order No.FO/A/75610/2019

Shri P. K. Choudhary:

The appellant is the trader of Chaman Bahar, Rose Powder and cigarettes etc. at Raipur (Chhatishgarh). A Search was conducted at the shop and godown premises of the appellant on 13.12.2013 and 24,25,000 Nos. filtered and unfiltered cigarettes of various brands valued at Rs. 38,15,800/- was seized along with some loose papers. The seized cigarettes were kept at the appellant's premises under supurdnama. Statement of the appellant was recorded and a Show Cause Notice dated 12/6/2014 was issued by the Additional Director, DGCEI, New Delhi. The Joint Commissioner, Central Excise, Patna vide Adjudication Order dated 03/03/2016 passed the following orders:-

"(i) *I order for confiscation of stock of 7,13,000 filter cigarettes (MRP of Rs. 14,19,000/-) seized on 13.12.2013 under Rule 25 of the Central Excise Rules, 2002.*

(ii) I order for confiscation of stock of 17,12,000 non-filter cigarettes (MRP of Rs. 23,96,800/-) seized on 13.12.2013 under Rule 25 of the Central Excise Rules, 2002.

(iii) I impose penalty of 22,14,442/- under Rule 25 of the Central Excise Rules, 2002.

(iv) I impose penalty of 22,14,442/- under Rule 26 of the Central Excise Rules, 2002."

2. On appeal, the Learned Commissioner (Appeals) upheld the impugned Order. He, however, set aside the penalty imposed under Rule 25 of the Central Excise Rules, 2002. Hence, the present appeal before the Tribunal.

3. The Learned Consultant appearing on behalf of the appellant submits that he is contesting the appeal both on merits as well as on the aspect of jurisdiction. It is his submission that the appellant's place of business and residence for all practical purposes is Raipur (Chhatishgarh) whereas the Adjudication Order has been passed by The Joint Commissioner, Central Excise, Patna who is not having jurisdiction over the appellant and accordingly the Adjudication Order itself should be set aside on account of improper jurisdiction. In

support of his submission he relied upon the following decisions of the Tribunal.

(i) Commissioner of Central Excise & Customs, Surat-I Vs. Imtiyaz Traders 2012 (26) S.T.R. 74 (Guj.).

(ii) Philips Electronics India Ltd. Vs. Commissioner of Central Excise, Kolkata-I, 2010 (17) S.T.R. 606 (Tri.-Kolkata).

(iii) Commissioner of Central Excise, Kolkata-III Vs. Naffar Chandra Jute Mills Ltd. 2008 (230) E.L.T. 244 (Tri.-Kolkata).

(iv) Trade & Industries Ltd. Vs. Collector of Central Excise, Calcutta-I, 2001 (136) E.L.T. 767 (Tri.-Kolkata).

(v) Ram Nath Jayant Vs. Commissioner of Customs, New Delhi 2000 (119) E.L.T. 312 (Tribunal).

4. The Learned Consultant made the Bench go through their grounds of appeal and further contends that there has been violation of Notification No. 29/88-CE(NT) dated 21.10.1988 as amended by Notification No. 14/89-CE(NT) dated 3.03.1989 wherein CBEC has included Cigarettes, Biri and other tobacco product within the purview of Section 110(1A) of the Customs Act, 1962 and as made applicable to the Central Excise. He prays for setting aside the confiscation of cigarettes valued at Rs. 38,15,800/- and penalty imposed under Rule 26 of the Central Excise Rules, 2002. The main contention of the Ld. Consultant is that as per Section 110 (2) of the Customs Act, 1962 read with Section 12 of the Central Excise Act, 1944, Show Cause Notice is required to be served within 6 months from the date of seizure which, in the instant case, expired on 12.06.2014. It is contended that the Show Cause Notice was served twice, on 13.06.2014 and 14.06.2014. Hence the notice is barred by limitation. It is further submitted that the mere confessional statement of the

appellant is not sufficient for concluding non-duty paid character of the goods.

5. It is also prayed in the grounds of appeal that the value of seized cigarettes be compensated as it is no more fit for human consumption and have been eaten away by the white ants etc. and the DGCEI Officers failed to comply with the provisions regarding the disposal of perishable goods by the Department. The Ld. Consultant has relied upon the following decisions.

(i) Grosons Marketing (P) Ltd. Vs. Joint Director, D.G.C.E.I., Ludhiana 2007 (218) E.L.T. 325 (P&H).

(ii) Ratan Kumar Saha Vs. Commissioner of Customs (P), W.B., Calcutta, 2001 (130) E.L.T. 115 (Tri.-Kolkata).

(iii) Samsuddin Shekikh Vs. Collector of Customs (Preventive), 1992 (62) E.L.T. 218 (Tribunal).

6. The Learned D.R. appearing on behalf of the Department strongly objects on the aspect of jurisdiction. In support of his submissions, he filed the copy of Section 21 of the Code of Civil Procedure, 1908 which prescribes that no objection as to the place of jurisdiction shall be allowed by any Appellate or Revisional Court unless such objection was taken before the Court of first instance at the earliest possible opportunity. Having not done so, the appellant cannot raise the issue of jurisdiction before the Tribunal.

7. Heard both sides and perused the appeal records.

8. I find that the preliminary objection of the Ld. Consultant is that the Show Cause Notice dated 12.06.2014 was served after 6 months from the date of seizure and therefore, the goods are to be returned to the appellant in terms of Section 110 (2) of the Customs Act, 1962. On

this context, I find from the Adjudication order that only one notice was issued and the legible copy of the same was served on the appellant on 12.06.2014 under dated acknowledgement. It is observed by the Adjudicating Authority that the acknowledgement receipt sent by DGCEI proves that the notice was served on 12.06.2014, hence the notice is not barred by time. But the appellant disputed the above fact before the Commissioner (Appeals) as well as the Tribunal. In my considered view, the appellant should be given an opportunity to examine the records in respect of receipt of Show Cause Notice as on 12.06.2014 as revealed from the adjudication order.

9. The other ground which has been vehemently argued by the Learned Counsel regarding non-disposal of the perishable goods by the Department, I find that 24,25,000 Nos. of filtered and unfiltered cigarettes of various brands were seized on 13.12.2013, valued at Rs. 38,15,800/- on the reasonable principle that the above mentioned stock of cigarettes has not suffered Central Excise duty.

10. The other aspect of this matter is that the appellant is contesting the jurisdiction of the adjudicating authority. The Tribunal and the High Courts observed in various decisions that the plea of jurisdiction can be raised even at the Appellate stage. It appears that the Revenue proceeded on the basis that the seized goods are manufactured by the manufacturer M/s Ankit Tobbacco Pvt. Ltd, Patna. The issue of jurisdiction is to be decided on the basis of clear facts of the case, which is not available on record. Hence, this issue is required to be examined by the lower authorities.

11. In view of the above discussions, I set aside the impugned order and remand the matter to the adjudicating authority to decide afresh after considering the submissions of the appellant and pass a reasoned order in accordance with law. Needless to say that the adjudicating authority shall give proper opportunity of hearing. All the issues are kept open. The appeal is allowed by way of remand.

(Pronounced in the open court on.20.06.2019.)

Sd/-
(P.K. Choudhary)
Member (Judicial)

T.K.