IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, KOLKATA

REGIONAL BENCH – COURT NO.1

Ex. Appeal No. 380-381 of 2009

Arising out of Order-in-Original No.17/COMMISSIONER/CE/KOL-VII/ADJN/2008-09 dated 31/03/2009 passed by the Commissioner of Central Excise, Kolkata-VII.

1. M/s. Century Plyboards India Ltd.
(Kanchowki, D. H. Road, Bishnupur, 24 Pargans South)

2. Shri Nagraj Tater
President (finance) of M/s. Century Plyboard (I) Ltd.
(Kanchowki, D. H. Road, Bishnupur, 24 Pargans South)

Appellant (s)

VERSUS

Commr. of Central Excise, Kol-VII
C. R. Building, 5th Floor, Bamboo Villa, 169,
AJC Bose Road, Kol-700014

Respondent (s)

APPERANCE :

Present for the Appellant: Mr. S. P. Siddhanta, Consultant
Present for the Respondent: Mr. A. Roy, A. R.

CORAM:

HON'BLE MR. P. ANJANI KUMAR, MEMBER (TECHNICAL)
HON'BLE MR. P. DINESHA, MEMBER (JUDICIAL)

ORDER NO.FO/76177-76178/2019
DATE OF HEARING: 28/08/2019
DATE OF DECISION: 28/08/2019

PER BENCH:

Heard both sides and perusal of records of the case, the appellants have been issued a Show Cause Notice dt. 25/08/2008 seeking disallowance of Cenvat Credit for alleged valuation Rules 3(1), 3(5) of Cenvat Credit Rules, 2004 and demanding Central Excise Duty and Cenvat Credit thereof in different issues.

2. Shri S. P. Siddhanta, Ld. Consultant for the appellants submits that the impugned order has been passed with gross valuation of principles of natural justice. He submits that though the Show Cause Notice was issued on 03/09/2008, the relied upon documents therein, were only

handed over on 19/12/2008, after much request and persuasion. Thereafter, the Ld. Commissioner did not give an opportunity of personal hearing in as much as the dates convenient for the appellants were not provided; in one case the notice itself was received after the date of hearing has expired. Under such circumstances, the appellants did not have enough opportunity to represent their case. The Ld. Counsel further submits that it has been brought to the notice of the Adjudicating Authority that the annexures were not prepared taking into all material facts and correct figures. On this account, also the appellants required a longer time to reconcile the figures submitting same to the Adjudicating Authority. He submits that the Ld. Commissioner has not only provided an opportunity to the appellant of being heard but also proceeded to adjudicate the case on the basis of incorrect data and the annexures thereof. Therefore, he submits that the impugned order suffers from infirmity on the principles of natural justice as well as on merits.

3. Ld. AR for the department on the contrary submits that sufficient time has been given, as can be seen from the submission of appellants themselves that the impugned order was issued after a period of six months from the date of Show Cause Notice and more than two personal hearings were fixed. Ld. AR has reiterated the findings of the OIO.

4. Heard both sides and perusal of records of the case.

5. Without going into the merits of the case, we find that prima facie there has been injustice caused to the appellant in providing an opportunity for being heard, therefore we find that the Principle of justice have been violated. Ld. Commissioner has provided 2-3 opportunities, however, we find that such opportunity was provided only in letter and but not in spirit. The request of the appellants to give further time to reply find to place corrected figures was not allowed. This is a clear and gross valuation of the Principle of natural justice. Consequently, we find that in the interest of justice, the matter should however back to the Adjudicating Authority for the first consideration on merits while giving an opportunity to the appellants to be heard to the represent. All issues are kept open. In the result, we allow the appeal by way of remand to the Adjudicating Authority with a direction to

complete the proceedings, as may be practicable within two weeks of the receipt of this order. The appellants are also directed to submit all the evidence they would like to rely upon, within four weeks of receipt of this order. Appeal No. E/381/2009 filed by the Shri Nagraj Tater, President (Finance) against the penalty imposed is also allowed by way of remand.

(Dictated and pronounced in the open court.)

Sd/-
(P. Anjani Kumar)
Member (Technical)

Sd/-
(P. Dinesha)
Member (Judicial)

Pooja