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

REGIONAL BENCH – COURT NO.2

Excise Appeal Nos.526 0f 2009

(Arising out of Order-in-Appeal Nos.59-61/CE/B-I/2009 dated 30.06.2009 passed by Commr. (Appeals) of Central Excise, Bhubaneswar I)

Mr.Manoj Kumar Sahu, C/o Arjuna Sahu & Sons
Kathamentu Square, Haridakhandi Road, Berhampur, Dist.-Ganjam, Pin-760006
Appellant

VERSUS

CCEx. & S.Tax, Bhubaneswar I
C.R.Building, Rajaswa Vihar, Bhubaneswar-751007
Respondent

WITH

Excise Appeal Nos.527 0f 2009

(Arising out of Order-in-Appeal Nos.59-61/CE/B-I/2009 dated 30.06.2009 passed by Commr. (Appeals) of Central Excise, Bhubaneswar I)

Mr.Brindaban Sahu, Proprietor of C/o Arjuna Sahu & Sons
Kathamentu Square, Haridakhandi Road, Berhampur, Dist.-Ganjam, Pin-760006
Appellant

VERSUS

CCEx. & S.Tax, Bhubaneswar I
C.R.Building, Rajaswa Vihar, Bhubaneswar-751007
Respondent

AND

Excise Appeal Nos.528 0f 2009

(Arising out of Order-in-Appeal Nos.59-61/CE/B-I/2009 dated 30.06.2009 passed by Commr. (Appeals) of Central Excise, Bhubaneswar I)

M/s Arjuna Sahu & Sons
Kathamentu Square, Haridakhandi Road, Berhampur, Dist.-Ganjam, Pin-760006
Appellant

VERSUS

CCEx. & S.Tax, Bhubaneswar I
C.R.Building, Rajaswa Vihar, Bhubaneswar-751007
Respondent

Appearance:

None for the Appellants
Shri D.Halder, Authorized Representative for the Respondent

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

FINAL ORDER NO.75336-75338/2020

DATE OF HEARING : 11.03.2020
DATE OF DECISION : 11.03.2020

PER P.K.CHOUDHARY :

None appeared on behalf of the appellants. However, the appellants have filed a written note, which states as under :

> *"1. As would be apparent from the impugned order dated 30.06.2009, the demand has been confirmed against the Proprietorship Firm (M/s Arjuna Sahu & Son) in violation of the principle of natural justice, inasmuch as the Appellant was never provided with the unrelied upon documents, notwithstanding repeated request to that effect. The aforesaid position of facts on record was brought to the notice of the Ld.Commissioner (Appeals), who, without denying or disputing the said facts, passed the impugned Order with a cursory finding that by way of seeking copies of the unrelied upon documents, the "Appellants are delaying the process of finalization and recovery." On this count alone, the impugned Order is liable to be set aside and the matter deserves to be remitted back to the Ld.Commissioner (Appeals), Bhubaneswar for disposal of the appeals after due compliance with the principle of natural justice.*
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> *2. Further, as would be observed from the Order-in-Original dated 27.08.2008, in addition to the penalty of Rs.1,05,464/- imposed on the Proprietorship Firm M/s Arjuna Sahu & Son under Section 11AC of the Central Excise Act, 1944 read with Rule 25 of the Central Excise Rules, 2002, a penalty of Rs.20,000/- has been separately imposed on the Proprietor of the*

said Firm, Sri Brindaban Sahu (the Appellants in Appeal No.527/09) under Rule 26 of the Central Excise Rules, 2002. It is respectfully stated that when penalty under Section 11AC of the Act has been imposed on the Proprietorship Firm, imposition of separate penalty on the Proprietor under Rule 26 of the Rules, is bad in law. This aspect of infirmity in the Order-in-Original was conveniently overlooked by the Ld.Commissioner (Appeals) while passing the impugned order.

PRAYER

The appellants respectfully pray that, by taking into account the aforesaid infirmities in the impugned order, the subject appeals may kindly be allowed by way of remand to the Ld.Commissioner (Appeals), Bhubaneswar for de novo adjudication upon compliance of the principle of natural justice."

2. Heard the Ld.D.R. for the Revenue and perused the appeal records.

3. On perusal of the appeal records and written note, I find that the only ground taken by the appellant, is that they have not been provided with the documents, which were not relied upon. It is their plea that the impugned order should be set aside since there has been a violation of principles of natural justice. On perusal of appeal records, I find that the appellants were intimated time and again to collect un-relied upon documents, but the appellants instead of collecting the documents kept insisting on that the Department should deliver the documents at their premises and at the cost of the Department.

4. I find no violation of principles of natural justice as claimed by the appellant. Further, on merits, the appellants have not denied the allegation made against them and have admitted the offence and have paid the entire amount of demand along with interest and all the penalties imposed on the Firm and also on the individual persons.

5. In view of the above discussions, I do not find any justification in interfering with the impugned order.

6. Appeals filed by the appellants are dismissed.

Dictated and pronounced in the open Court.

Sd/

(P.K.Choudhary)
Member (Judicial)

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