

**IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE
TRIBUNAL, WEST ZONAL BENCH AT MUMBAI**

COURT No. I

Appeal No. E/85154/13

(Arising out of Order-in-Appeal No. BR/270/Tha-I/2012 dated 30.10.2012 passed by Commissioner of Central Excise (Appeals), Mumbai)

Kagzi Brothers Pvt. Ltd.
Vs.

Appellant

**Commissioner of Central Excise,
Thane I**

Respondent

Appearance:

Shri N.S. Patel, Advocate

for appellant

Shri A.B. Kulgod, Asst. Commr (AR)

for respondent

CORAM:

Hon'ble Mr. M.V. Ravindran, Member (Judicial)

Date of Hearing & Decision: 15.03.2018

FINAL ORDER NO. A/86173/2018

Per: M.V. Ravindran

This appeal is directed against order-in-appeal No. BR/270/Tha-I/2012 dated 30.10.2012.

2. Heard both sides and perused the records.

3. On perusal of records, it transpires that the issue regarding confirmation of demand along with interest and imposition of penalties on the appellant is on the ground that there was clandestine removal of the goods. I find that the issue needs reconsideration by the adjudicating authority. In the first round of litigation, Tribunal upheld the order of the first

appellate authority for setting aside the order-in-original which was in violation of principles of natural justice and remitted the matter back to the adjudicating authority. In the second round of litigation also the adjudicating authority, in order-in-original, in Para 9 and 13, categorically records that the Counsel/advocate for the appellant had sought cross-examination of various persons. The said cross-examination was not extended and the first appellate authority on issue of not extending of cross-examination, it is noticed the same is not addressed. Both the authorities, most specifically the adjudicating authority, has not considered the law which has been settled by the Hon'ble Punjab & Haryana High Court in the case of *Jindal Drugs Pvt. Ltd. v. Union of India – 2016 (340) ELT 67 (P&H)*. In my view the adjudicating authority should consider the law as settled by the Hon'ble Punjab and Haryana High Court in the case of *Jindal Drugs Pvt. Ltd. (supra)* and re-eadjudicate the matter after following principles of natural justice. Since the matter is of 1987, adjudicating authority should try and dispose of the matter at the earliest.

4. Appeal stand disposed of by way of remand to the adjudicating authority.

(Order dictated in Court)

(M.V. Ravindran)
Member (Judicial)