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

APPEAL NO: E/1494/2010

[Arising out of Order-in-Appeal No: SB(44)44/M-V/2010 dated 13th May 2010 passed by the Commissioner of Central Excise (Appeals), Mumbai Zone – I.]

Prabhat Dyeing & Printing Works …***Appellant***

versus

Commissioner of Central Excise
Mumbai – V …***Respondent***

<u>*Appearance*</u>*:*

Shri Raman Khann, Partner

Shri SV Nair, Assistant Commissioner (AR) for respondent

CORAM:

Hon'ble Shri C J Mathew, Member (Technical)

Date of hearing:	**28/07/2017**
Date of decision:	**28/07/2017**

ORDER NO: A/ 92339 / 2017

This appeal of M/s Prabhat Dyeing & Printing Works against order-in-appeal no: SB(44)44/M-V/2010 dated 13th May 2010 of Commissioner of Central Excise(Appeals), Mumbai Zone – I pertains to demand of duty of ₹ 3,98,830.61 for the period from 1st August

1976 to 3rd November 1976 for illicit removal of 1611680 mts of art silk fabric. The demand was confirmed by the then Collector of Central Excise, Bombay who also imposed a penalty of ₹ 40,000. In appeal preferred against that order, the Central Board of Excise & Customs (the appellate authority before the constitution of the Tribunal) upheld the penalty but directed the adjudicating authority to re-examine the duty liability after placing the assessee on notice with the basis of valuation. Against imposition of penalty, the appellant filed a revision application with the Government of India which was subsequently transferred to the Tribunal upon its constitution. In the meanwhile, the adjudicating authority, at the request of the appellant, kept the *denovo* proceedings pending to await the disposal of the matter pending before Government of India/Tribunal.

2. There being no further communication from the appellant, Dy. Commissioner of Central Excise, Malad Division, Mumbai – V, the adjudicating authority, confirmed the demand on the basis of available facts thus

> '*I find that as per Order No. 62/82 dtd 12.03.1982 passed by the Board of Central Excise and Customs, as far as the duty demand is concerned the Board directed that the basis for calculation of duty be re-examined after explaining the basis of the valuation to the appellants and after giving them adequate opportunity, for oral and written representation, to make their submissions about the nature of fabrics processed and the value for the purposes of duty involved. However,*

> *after giving ample opportunity to the said assessee for making their oral and written submissions, no person appeared nor has this office received any written representation in the matter from the said assessee and as such I am left with no option but to pass the following order.'*

3. Aggrieved by the order of the original authority, appeal was preferred to the first appellate authority who affirmed the order of the lower authority by placing reliance on rule 5 of Central Excise (Appeals) Rules, 2001 and the terms of the order of remand of the Central Board of Excise and Customs, which, while upholding the duty liability, intended that further opportunity be afforded to the appellant to furnish particulars for re-determination of the duty liability.

4. Heard Shri Raman Khanna, partner, M/s Prabhat Dyeing & Printing Works and Learned Authorised Representative.

5. According to appellant, the only active partner during the relevant time, Shri Vijay Khanna, expired in 1978, that the business had since been closed with licence surrendered by letter dated 1st July 1983 and that the notices purportedly issued by the adjudicating authority had not been received by them leading to *ex parte* order that was contrary to the terms of the remand direction of the Central Board of Excise and Customs.

6. It is his further submission that the re-determination had been

ordered by the Central Board of Excise and Customs owing to plea that some of the fabrics were already subject to another proceedings in which the duty liability was held to be non-sustainable.

7. It is also brought on record by him that, *vide* order dated 6th January 1992, the Tribunal had set aside the penalty while remanding the matter back to the original authority for consideration along with the duty liability.

8. The impugned order has merely affirmed the order of the lower authority on the ground of failure of appellant to participate in the proceedings. Consequently, the order merely reiterates that was set aside by the erstwhile appellate authority without reconsidering the aspects directed by that authority. Moreover, the remand direction of the Tribunal has also been ignored.

9. From the factual matrix as placed before the Tribunal, it would appear the impugned order is not consistent with the directions issued at the time of remand.

10. In view of the above, it is appropriate to set aside the impugned order and allow the appeal.

(Pronounced in Court)

(C J Mathew)
Member (Technical)

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