IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH AT MUMBAI
COURT NO.

Appeal No. E/94,95,96/2009

(Arising out of Order-in-Appeal No. YG/13/Th-II/08 dt.22.10.2008, OIA No. YG/16/Th-II/08 dt.21.10.2008, OIA No. YG/14/Th-II/08 dt.21.10.2008, passed by the Commissioner of Central Excise (Appeals) Mumbai-I

Commissioner of Central Excise, Thane-II : **Appellant**

VS

M/s. Asian Industries : **Respondent**
M/s. Ankit Industries
M/s. Asian Enterprises

Appearance

Shri S.V. Nair, Asstt. Commr. (A.R.) for Appellant

None for respondent

CORAM:

Hon'ble Shri Ramesh Nair, Member (Judicial)
Hon'ble Shri Raju, Member (Technical)

Date of hearing : 22/01/2018
Date of pronouncement : 21/05/2018

ORDER NO. A/86455-86457/2018

Per : Ramesh Nair

The issue involved in the present case is that whether the clearances made by the respondent to merchant exporter for export against the Sales Tax Form 14B should be treated as export clearance or otherwise.

2. Shri S.V. Nair, Ld. Assistant Commissioner (A.R.) appearing on behalf of the Revenue reiterates the grounds of appeal. He submits that the respondent have not followed the procedure as prescribed in the CBEC Excise Manual therefore the clearances made by the respondent cannot be considered as clearance for export, hence liable for duty. As regard the clearances made against the Sales Tax Form 14B as per the Board Circular the same is permissible only when the goods are cleared directly from the factory to port for export and not indirectly.

3. None appeared on behalf of the respondent.

4. On careful consideration of the submissions made by the Ld. AR and on perusal of record we find that the limited issue to be decided is that when the clearances of goods made to merchant exporter against Form 14B of Sales Tax department whether the said clearances should be treated as clearance for export. This issue has come up earlier also before this Tribunal as well as Hon'ble High Court of Gujarat in the case of *Commissioner of Central Excise Vs. Amar Packaging Industries* 2016 (344) ELT 187 (Guj.) wherein the Hon'ble High Court has held that Certificate in 'Form-H' issued by merchant-exporter accepted as proof of export. In the present case the Form 14-B is identical to 'Form-H' of the Sales Tax department. In the case of *S.V. Mestry Engg. Works Vs. Commissioner of Central Excise, Mumbai* 2015 (329) E.L.T. 539 (Tri.-Mumbai) this Tribunal held that Form-H provided by buyer can be considered as proof of export as clarified in C.B.E. & C. Circular Nos. 212/46/96-CX, dated

26-5-1996 and 648/39/2002-CX, dated 25-7-2002. In view of these judgement the issue is no longer res-integara, accordingly the impugned order cannot be disturbed, hence the impugned order is upheld. The Revenue's appeals are dismissed.

(Pronounced in court on 21/05/2018)

(Raju)
Member (Technical)

(Ramesh Nair)
Member (Judicial)

SM.