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

Appeal No. E/451/2009

(Arising out of Order-in-Original No. Belapur/55/ Bel II Dn./COMMR /WLH/2008-09(de-novo) dated: 31.01.2009 passed by the Commissioner of Central Excise, Belapur).

M/s Akasaka Electronics Ltd.	Appellant

Vs.

Commissioner of Central Excise	Respondent

Appearance:

Shri T.C. Nair, Advocate	for Appellant
Shri D.S. Chauhan, Superintendent (AR)	for Respondent

CORAM:

HON'BLE SHRI C.J. MATHEW, MEMBER (TECHNICAL)
HON'BLE SHRI AJAY SHARMA, MEMBER (JUDICIAL)

Date of Hearing: 04.04.2018

Date of Decision: 10.07.2018

FINAL ORDER NO. **A/86860 / 2018**

Per: Ajay Sharma

This appeal has been filed against the Order–in-original dated 31.01.2009 passed by the Commissioner of Central Excise, Belapur. We have heard learned counsel for the appellant and learned Authorised Representative for the respondent and perused the papers.

2. In the earlier round of litigation, this tribunal vide order dated 19.04.2006 in Appeal No. E/451/2009 allowed the appeal filed by the appellant by way of remand and passed the following order:-

" xxx xxx xxx

2. We find that against the demand which was earlier confirmed against the appellants, they had filed Appeal No. E/1493/96 which was disposed of vide order No. C-I/137/WZB/2001 dated 19.01.2001 by directing the appellants to produce evidence of use by their customers of the extend punches for making further sets of circuit boards so as to arrive at the correct amount of duty payable by the appellants herein as a result of including cost of amortisation of the punches. The appellants had written to the department seeking return of old records in order to substantiate their case that the customers may have used the extend punches for further manufacture of circuit boards, but copies of such records were not furnished to the appellants. We note, as pointed out by the learned SDR, that the Commissioner recorded in his order that the records seized do not include records pertaining to the use of tools and dies in question by the customers and the appellants. However, since this is a finding which can be arrived at only after the requirement of observation of the principles of natural justice, viz. supply of the records as sought for by the appellants is fulfilled, we set aside the impugned order and remand the case to the jurisdictional Commissioner for first supplying them copies of seized records as requested by the appellants and then extending a reasonable opportunity of hearing to the appellants before passing fresh orders.

3. The appeal is thus allowed by remand."

3. We noticed that the learned Commissioner while passing the impugned order did not follow the clear directions passed by this tribunal rather he interpreted the order dated 19.04.2006 in his own way and the same is clear from the following abstract of the impugned order:-

"In the remand order itself, the Hon'ble CESTAT have highlighted the Commissioner's recording that the record seized do not include records pertaining to the use of tools and dies in question and further noted that his finding was to be arrived at after observation of principle of natural justice. In this regard, the noticee have in the course of 2 hearings granted to them, been unable to show that the Commissioners recorded observation as above were incorrect. They are now maintaining that all the records were seized by the department, whereas the seizure memos, panchnamas and other facts indicate otherwise. It has also been shown as above that the noticee could have very well obtained the necessary documents from their own sources such as their clients. Since in the first place, it was the noticee who had raised the issue of incorrect calculation of demand amount, the onus of proving the incorrectness is on them. In this regard they have not only failed to fulfill their own onus but

are rather playing an evasive game to delay the discharge of their fliabilities."

4. Therefore, inspite of clear directions by this Tribunal for supplying the copies of seized records as requested by the Appellant, the Commissioner did not supply the documents and rather recorded that the Appellant could have very well obtained the necessary documents from their own sources such as their clients.

5. The order of this Tribunal dated 19.04.2006 is clear and unambiguous, and the non-compliance of the directions in the said remand order is a pre-requisite for de novo adjudication. The department was duty bound to supply the documents to the appellant as per the directions of this Tribunal. But, the Commissioner appears proceeded on premise that it was upto the appellants to produce the documents. From the manner in which the directions have been breached, it would appear that the department is unable to produce the documents. No purpose will be served by a further remand of this old matter. This show cause notice has not made a valid case for invoking of the extended period. Therefore, elements of suppression or misdeclaration cannot be invoked.

6. The demand in access of normal period of limitation is set aside. Penalties are also set aside.

(Pronounced in Court on 10.07.2018)

(C.J.MATHEW) **(AJAY SHARMA)**
Member (Technical) **Member (Judicial)**

Arch