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

APPEAL NO: E/1080/2012

[Arising out of Order-in-Appeal No: Th-I/RKS/44/2012 dated 10th April 2012 passed by the Commissioner of Central Excise (Appeals), Mumbai – I.]

Kulbhushan Aneja …***Appellant***

versus

Commissioner of Central Excise
Thane – I …***Respondent***

Appearance:

Shri HG Dharmadhikari, Advocate for appellant

Shri S Hasija, Superintendent (AR) for respondent

CORAM:

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

Date of hearing: 16/04/2018
Date of decision: 16/04/2018

ORDER NO: A/86935 / 2018

The dispute pertains to the confirmation of duty liability along with interest thereon, the imposition of penalty and fine in *lieu* of confiscation of goods that were alleged to have been removed clandestinely by M/s Adarsh Silk Mills, a proprietary concern of Shri

Kulbushan Aneja. Order-in-appeal no Th-I/RKS/44/2012 dated 10th April 2012 of Commissioner of Central Excise (Appeals), Mumbai – I upheld the order of the lower authority save for quashing of penalty of ₹ 10,000/- imposed under rule 25 of Central Excise Rules, 2004 in the adjudication order.

2. Learned Counsel for appellant drew attention to circular no. 703/19/2003-CX dated 25th March 2003 of Central Board of Excise and Customs prescribing certain procedures for textiles and textile articles which were brought within the tax net then. According to him, considering the practice peculiar to the trade, assessees were allowed to clear goods with final adjustment for goods returned having to be made within five days thereof.

3. He also submits that the dispute pertains to clearances between 5th February 2004 and 9th February 2004, arising from an inspection visit by Central Excise authorities who found excess stock of finished goods which were seized; in follow-up action, the goods covered by packing slips recovered from their possession were detained and subject to seizure.

4. He contends that the particulars in the packing slips sufficed for compliance with the said circular and that only in one instance were they unable to furnish any documentary evidence of an invoice having been issued with the whole duty particulars therein. It is -his

submission that the duty liability had been discharged in full within five days from the date of packing slip.

5. He relies upon the decision of the Hon'ble High Court of Patna in *Rara Brothers v. ML Dey. [2000 (126) ELT 425 (Pat.)]* which held that consequent of duty detriment must follow from a reasonable belief which requires a judicial application of mind to facts. Also placing reliance on decision of the Tribunal in *Mitexco v. Commissioner of Customs (EP), Mumbai [2003 (155) ELT 69 (Tri.Mumbai)],* which followed the decision of the Hon'ble High Court of Patna, he questions the validity of the entire proceedings.

6. Learned Authorised Representative placed reliance on the decision of the Tribunal in *SM Steel Ropes v. Commissioner of Central Excise (Adj.), Mumbai [2014 (304) ELT 591 (Tri. Mumbai)]* as well as the judgment of the Hon'ble Supreme Court in *Commissioner of Central Excise, Mumbai v. Kalvert Foods India Pvt Ltd [2011 (270) ELT 643 (SC)]* and contends that the goods had been removed clandestinely against packing slips which in no way contains material particulars corresponding to invoices and that the appellant had not furnished any documents in their defence before the adjudicating authority or sought for production of any evidence.

7. On a perusal of the order-in-original it would appear that there is no order for recovery of duty under section 11A of Central Excise

Act, 1944 nor any finding to conclude that duty liability did arise. In the absence of any adjudication of duty liability, confiscation cannot arise nor does any penal consequence.

8. The impugned order is set aside and appeal is allowed.

(Dictated in Court)

(C J Mathew)
Member (Technical)

**/as25041207*