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

Appeal No. E/17,19,20/2011

(Arising out Order-in-Original No. 68/MI/2010 dated 28.09.2010 passed by the Commissioner of Central Excise, Mumbai I)

M/s. Vikram International — Appellant
M/s. Sheetal Exports
M/s. Karishma Overseas

Vs.

CCE Mumbai I — Respondent

Appearance:

Shri Raj Vyas, Advocate for the appellant
Ms. A.S. Parab, AC(AR) for the respondent

CORAM:
Hon'ble Mrs. Archana Wadhwa, Member (Judicial)
Hon'ble Mr. Sanjiv Srivastava, Member (Technical)

Date of hearing : 09-10-2018
Date of decision : 09-10-2018

O R D E R No: A/**87610-87612/2018**

Per: Sanjiv Srivastava

The issue in all three appeals is with regards to the denial of natural justice to the three appellants by not affording the opportunity of representing the case before the adjudicating authority either in writing or in the hearing. Arguing for the appellant ld. Counsel referred to the para 61 of the order-in-original wherein specifically it has been recorded "None of them filed any reply nor did they attend personal hearing. As such, from the facts stated in the show-cause notice, I hold that the charges against them are proved and they are liable to penalty under rule 26 of the Central Excise Rules, 2002."

2. Heard the ld. AR for the revenue. He tried to emphasise that appellants were summoned number of times but they did not cooperate with the investigation proceeding hence the denial of natural justice cannot be a ground for relief to them.

3. We have considered the submission made by both sides. From the facts as narrated in the order-in-original, it is abundantly clear that the Commissioner has afforded only one opportunity of hearing to all the parties about 14 in number on 29.06.2010 and has proceeded to adjudicate the matter only on the basis of submission made by the party or persons appear during that time. He has not cared to give second opportunity to the persons who were not represented at the time of hearing on 29.06.2010. In terms of Section 33A of the Central Excise Act, it is statutory requirement that Commissioner should have afforded at least three opportunities to the concerned person. Such approach of Commissioner cannot be justified in view of specific provision under Section 33A. By not affording such opportunity a prejudice has been caused to the appellant and they have not been able to place their case before the

adjudicating authority. Accordingly, with reference to the appellants before us, we set aside the order of Commissioner and remand made back the matter to adjudicating authority for determination of the issues concerning three of them after taking of account their submissions. We wish to say the matter being old one should be decided within a period of three months from the receipt of the order.

(Dictated in Court)

(Archana Wadhwa)
Member (Judicial)

(Sanjiv Srivastava)
Member (Technical)

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