

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

APPEAL NO: E/368/2010

[Arising out of Order-in-Original No: 48/BR-44/Th-I/2009 dated 25th November 2009 passed by the Commissioner of Central Excise, Thane – I.]

Commissioner of Central Excise
Thane – I

... Appellant

versus

Sai Processors

...Respondent

Appearance:

None for appellant

Shri M R Melvin, Assistant Commissioner (AR) for respondent

CORAM:

**Hon'ble Shri C J Mathew, Member (Technical)
Hon'ble Shri Ajay Sharma, Member (Judicial)**

Date of hearing:

27/08/2018

Date of decision:

20/12/2018

ORDER NO: A/88158 / 2018

Per: C J Mathew

This appeal of Revenue, against order-in-original no. 48/BR-44/Th-I/2009 dated 25th November 2009 of Commissioner of Central Excise, Thane – I, contends that the proposals in two show cause

notices dated 28th April 2000 for the period from December 1998 to January 2000 demanding duty of ₹ 52,17,100/- and dated 20th April 1999 for the period from 16th December 1998 to 31st December 1998 demanding duty of ₹ 3,09,677/- should have been confirmed instead of which the impugned order has limited itself to the demand for the latter period without any reference to the show cause notice for the earlier period. Taking note that the corrigendum to the impugned order on 20th January 2010 issued by the adjudicating authority dropping the demand is contrary to circular no. 502/68/99-CX dated 16th December 1999 of Central Board of Excise & Customs which is binding on all lower authorities, this challenge is placed before us.

2. We have heard Learned Authorised Representative. None appeared for respondent.

3. After taking us through the facts of the matter, Learned Authorised Representative drew our attention to the cited circular which, referring to advice of Ministry of Law, has directed that any significant change in an order after issue cannot be termed as 'clerical or arithmetic error' or 'typographical mistake' that is rectifiable by corrigendum.

4. We have examined the findings in the impugned order. It is clear therefrom the impugned order that the adjudicating authority has taken up both the show cause notices for disposal and has rendered a

finding that demand of short-paid duty for the period January 1999 to January 2000 in notice dated 11th May 2000 cannot be upheld. He has also, with reference to overlapping period between 16th and 31st December 1998 covered in the show cause notices, held the demand for that period to be sustained.

5. Consequently, the demand of duty that has been confirmed is limited to the period from 16th December 1998 to 31st December 1998 with the remaining demand not confirmed. All that corrigendum has done is to clarify that conclusion instead of leaving it to inference owing to a specific reference in the operative portion of the impugned order.

6. As the impugned order has rendered a finding on non-leviability of the duty for the period from January 1999 to January 2000 which is the subject-matter of show cause notice dated 28th April 2000, it cannot be said that the corrigendum was anything more than correction of mere clerical mistake. Consequently, the appeal of Revenue is without merit and is dismissed.

(Pronounced in Court on 20/12/2018)

(Ajay Sharma)
Member (Judicial)

(C J Mathew)
Member (Technical)