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

Appeal No. E/949/2010

(Arising out of Order-in-Original No. 13/BR/Th-I/2010 dated 03.03.2010 passed by the Commissioner of Central Excise, Thane-I).

M/s Suhas Textile Corporation	Appellant

Vs.

Commissioner of Central Excise, Thane-I	Respondent

Appearance:

Shri S.M. Vaidya, Consultant	for Appellant
Shri Ajay Kumar, Addl. Commissioner (AR)	for Respondent

CORAM:

HON'BLE DR. D.M. MISRA, MEMBER (JUDICIAL)
HON'BLE MR. S. SRIVASTAVA, MEMBER (TECHNICAL)

Date of Hearing: 28.11.2018

Date of Decision: 28.11.2018

ORDER NO. **A/88011 / 2018**

Per: Dr. D.M. Misra

This is an appeal filed against Order-in-Original No. 13/BR/Th-I/2010 dated 03.03.2010 passed by the Commissioner of Central Excise, Thane-I.

2. Briefly stated the facts of the case are that on the basis of investigation carried out, it revealed that the appellant indulged in removing excisable goods without payment of duty.

Consequently, a demand notice was issued to the appellant for recovery of duty amounting to Rs.28,62,449/- for the period from 1995 to November, 1998 with interest and penalty. On adjudication, the demand was confirmed with interest and penalty. Aggrieved by the said order, the appellant filed an appeal before this Tribunal and this Tribunal vide Order dated 07.03.2003 remanded the matter to the adjudicating authority for *de novo* consideration. Aggrieved by the said order, the Revenue filed an appeal before the Hon'ble High Court of Bombay. Consequently, the appellant received hearing notices for completion of the *de novo* proceedings pursuant to the remand order by this Tribunal. The appellant submitted before the adjudicating authority that since the matter had been pending before the Hon'ble High Court, therefore, hearing of the case may be kept in abeyance. However, the Commissioner proceeded with the adjudication and confirmed the demand with interest and penalty. Hence, the present appeal.

3. At the outset, learned Consultant Shri S.M. Vaidya for the appellant submits that the order was passed by the learned Commissioner *ex parte* and the appellant have not filed detailed reply to the show-cause notice. He prays that as a last opportunity the matter may be remanded to the adjudicating authority and he undertook to file their reply within four weeks from the date of communication of the order and participate in the adjudication proceedings.

4. Learned AR for the Revenue has no objection.

5. We find that the learned Commissioner has afforded sufficient opportunities to the appellant to present their case, but the appellant did not avail such opportunities on the ground that the matter was pending before the Hon'ble Bombay High Court. However, in the interest of justice, we are of the view that appellant should be allowed one more last opportunity to present their case before the Commissioner. The learned Consultant categorically made a statement before us that they would file reply to the show-cause notice and participate in the adjudication proceedings without seeking any unwarranted and unnecessary adjournments.

6. In these circumstances, the appeal is remanded to the adjudicating authority to hear the case afresh and pass an appropriate order after affording a reasonable opportunity to the appellant. All issues are kept open. Appeal is allowed by way of remand.

(Dictated and pronounced in Court)

(S. Srivastava)
Member (Technical)

(Dr. D.M. Misra)
Member (Judicial)

Sinha