CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI

REGIONAL BENCH - COURT NO. I

Excise Appeal No. 806 of 2010

(Arising out of Order-in-Appeal No. SB/18/M-IV/2010 dated 12.02.2010 passed by the Commissioner of Central Excise (Appeals), Mumbai-I)

M/s Standard Industries Ltd. **.... Appellant**
59, The Arcade, 1st Floor,
World Trade Centre, Cufe Parade, Colaba,
Mumbai - 400005

Versus

Commissioner of Central Excise, **.... Respondent**
Mumbai-I Commissionerate

Appearance:

Shri N.S. Patel, Advocate for the Appellant

Shri R.K. Dwivedi, Authorized Representative for the Respondent

CORAM:

HON'BLE DR. D.M. MISRA, MEMBER (JUDICIAL)
HON'BLE MR. P. ANJANI KUMAR, MEMBER (TECHNICAL)

FINAL ORDER NO. A/86049 / 2019

Date of Hearing: 19.02.2019
Date of Decision: 19.02.2019

Per: Dr. D.M. Misra

This is an appeal filed against Order-in-Appeal No. SB/18/M-IV/2010 dated 12.02.2010 passed by the Commissioner of Central Excise (Appeals), Mumbai-I.

2. Briefly stated the facts of the case are that during the period from April 1994 to October 1994, the appellant has

cleared processed textile fabrics against CT-3 certificate/AR-3A to their unit at KFTZ, Kandla and the same were re-warehoused at Kandla. Since the said goods could not be used at their Kandla unit, on their request letter dated 2.9.2002 to the Dy. Commissioner, Incharge KSEZ, Gandhidham for return of the said goods, it was permitted on 17.9.2002 and the same were removed and duly warehoused at Mumbai after necessary verification by the jurisdictional Central Excise Officer. The processed textile fabrics were later cleared on payment of duty at the appropriate rate by adopting the transaction value of the goods under intimation to the Central Excise Department. The appellant was later issued with a show-cause notice dated 21.8.2002 for recovery of the differential duty alleging that the appellant had short paid duty of Rs.3,33,424/- and consequently proposed to be recovered with interest and penalty. On adjudication, the demand was confirmed with interest and penalty. Aggrieved by the said order, they filed an appeal before the learned Commissioner (Appeals), who in turn, rejected their appeal. Hence, the present appeal.

3. The learned Advocate for the appellant submits that in the first round of litigation before this Tribunal, they have submitted that all the issues raised by them since not considered, this has resulted in violation of principles of natural justice. In the remand proceedings also, the adjudicating authority confirmed the demand ignoring the fact that after receipt of the goods from their Kandla unit the same

were sold in the open market, hence the transaction value at which the goods were sold ought to have been considered for the purpose of determination of duty and not the initial value at which the goods were cleared to their Kandla unit.

4. Per contra, the learned AR for the Revenue has submitted that initially the goods were cleared by the appellant against AR-3A/CT-3 certificate for exports, but the said goods were returned after 8 years without being used by the Kandla FTZ unit. Therefore, the methodology contained in the Board's Circulars No. 422/55/98-CX dated 21.9.1998 and 581/18/2001-CX dated 29.6.2001 is applicable to the facts of the present case when the said goods are cleared to the domestic buyers.

5. Heard both sides and perused the records.

6. We have carefully considered the submissions advanced by both sides. There is no dispute of the fact that the appellant had cleared during the year 1994, around 96212.30 L Meter of processed fabrics to their unit at KFTZ to be used as inputs in the manufacture of made-ups and ultimately for export of the finished articles. At the time of clearance of the said goods, the value reflected in the AR-3A was Rs.47,02,776.90. The said goods could not be used at their KFTZ unit but returned after 8 years to Mumbai from where it was sold, resulting into short payment of applicable duty as the transaction value was lower in comparison to the declared value in the AR-3

applications, while clearing the goods to their FTZ unit at Kandla. The Department has adopted the methodology laid down in the Board's Circular No. 422/55/98-CX dated 21.9.1998 and 581/18/2001-CX dated 29.6.2001 for determination of the duty when the goods were diverted to local market instead of being used by the manufacturer/exporter who procured duty free goods. We do not find any discrepancy in the reasoning of the learned Commissioner (Appeals) in adopting the methodology prescribed in the said two circulars. Consequently, the contention of the appellant for adoption of the transaction value of the diverted goods cannot be accepted. However, the adjudicating authority besides confirming the differential duty has also imposed penalty of Rs.5,64,333/- under Rule 25 of Central Excise Rules, 2002. Keeping in view the circumstances of the case, we are of the view that the penalty imposed is too harsh and needs to be reduced. Consequently, we reduce the penalty to Rs.50,000/- and appeal is partly allowed to the extent of reduction of penalty mentioned as above. Appeal is partly allowed.

(Operative portion of the order pronounced in court)

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

(P. Anjani Kumar)
Member (Technical)

Sinha