CUSTOMS,EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST ZONAL BENCH : AHMEDABAD

REGIONAL BENCH : COURT NO. 3

EXCISE Appeal No. 10138 of 2022-SM

[Arising out of Order-in-Original/Appeal No AHM-EXCUS-002-APP-54-2021-22 dated 31.12.2021 passed by Commissioner of Central Excise, Customs and Service Tax-AHMEDABAD]

SWISS PARANTERALS PVT LTD ...Appellant

808-810 Kerala Ind Estate Near Bavla
Ahmedabad,
Gujarat-382220

VERSUS

C.C.E.-AHMEDABAD-II ...Respondent

Custom House... First Floor,
Old High Court Road, Navrangpura,
Ahmedabad,
Gujarat-380009

APPEARANCE:

Present For the Appellant : Shri S J Vyas, Advocate
Present For the Respondent : Shri Prakash Kumar Singh, Superintendent (AR)

CORAM:

HON'BLE MEMBER (JUDICIAL) ,RAMESH NAIR

FINAL ORDER NO. A/ 12281 /2022

DATE OF HEARING: 23.12.2022
DATE OF DECISION:23.12.2022

RAMESH NAIR

This appeal was directed against order in appeal passed by Commissioner (Appeals), whereby, the Commissioner (Appeals) remanded the matter to the Adjudicating Authority to re-examine the matter.

2. Shri S. J Vyas, Learned Counsel appearing on behalf of the appellant submits that the Adjudicating Authority has decided the matter relying on the report of jurisdictional superintendent, which is letter dated 12.09.2016. However, the said report was not given to the appellant. Therefore, there is a gross violation of principles of natural justice. He submits that since the copy

of report is not given, any finding given by the adjudicating authority cannot be sustained. Hence, the entire matter needs to be looked a fresh. As regard penalty, he submits that when the regulation provided The Central Excise (Removal of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 2001, issued under Notification No.34/2001-CE (N.T). Therefore, separate penalty cannot be imposed under Rule 26 under Central Excise Rules, 2002.

3. Shri Prakash Kumar Singh, Learned Superintendent (Authorized Representative) submits that there is no infirmity in the impugned order remanding the matter to the adjudicating authority. Therefore, the appeal be dismissed.

4. Considering the submission made by both the sides and perusal of record, I find that the adjudicating authority has decided the entire case on the basis of the report given by the jurisdictional Superintendent. Non supplying of the report to the appellant is a gross violation of natural justice. Therefore without giving report dated 12.09.2016 to the appellant, no inference can be drawn against the appellant. In my considered view the entire matter should be re-considered only after providing the report given by the jurisdictional Superintendent to the appellant. All the issues are kept open. The impugned order is set aside, and appeal is allowed by way of remand to the adjudicating authority for passing a fresh order after granting the opportunity of personal hearing to the appellant.

(RAMESH NAIR)
MEMBER (JUDICIAL)

Palak