

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE  
TRIBUNAL, KOLKATA  
EASTERN ZONAL BENCH : KOLKATA**

REGIONAL BENCH - COURT NO.1

**Excise Appeal No.76976 of 2018**

(Arising out of Order-in-Appeal No.48-49/CE/RKL-GST/2018 dated 19.03.2018 passed by Commissioner(Appeals), GST, Central Excise & Customs, Bhubaneswar.)

**M/s. Sharda Rerollers Private Limited**  
(At-Beldihi, P.O.-Kalunga, Dist.-Sundergarh, Odisha.)

**...Appellant**

*VERSUS*

**Commissioner of CGST, CX & Customs, Rourkela  
Commissionerate**

**.....Respondent**

(KK-42, Civil Township, Rourkela-769012, Odisha.)

**WITH**

**Excise Appeal No.76977 of 2018**

(Arising out of Order-in-Appeal No.48-49/CE/RKL-GST/2018 dated 19.03.2018 passed by Commissioner(Appeals), GST, Central Excise & Customs, Bhubaneswar.)

**Shri Santosh Kumar Pareek,  
Managing Director  
M/s. Sharda Rerollers Private Limited**  
(At-Beldihi, P.O.-Kalunga, Dist.-Sundergarh, Odisha.)

**...Appellant**

*VERSUS*

**Commissioner of CGST, CX & Customs, Rourkela  
Commissionerate**

**.....Respondent**

(KK-42, Civil Township, Rourkela-769012, Odisha.)

**APPEARANCE**

Shri N.K.Chowdhury, Advocate for the Appellant (s)  
Shri P.K.Ghosh, Authorized Representative for the Revenue

**CORAM: HON'BLE SHRI ASHOK JINDAL, MEMBER(JUDICIAL)**

**FINAL ORDER NO. 75166-75167/2024**

DATE OF HEARING : 30 January 2024  
DATE OF DECISION : 08, Feb. 2024

**ASHOK JINDAL :**

The appellants are in appeal against the impugned order demanding duty alleging clandestine clearance of goods and imposing penalty on both the appellants.

2. The facts of the case are that the departmental officers searched the factory premises of the appellant on 02.06.2012 and during the course of search some pages containing some entries allegedly Daily Report, three invoices, waybill were found. Statement of Shri Kailash Chandra Bhol and Shri Santosh Kumar Pareek, the employees of the appellant company were recorded, who stated that the entries made in those documents pertains to clearance of some goods without payment of duty, some on which duty has been paid, therefore, further investigation was conducted and the statement of Managing Director Shri Santosh Kumar Pareek was recorded on 03.05.2013, who gave a contradictory statement to the statement given by the employees. Later on the show cause notice alleging that the appellant has cleared the goods on the strength of parallel invoices. Some demands sought to be confirmed on the basis of the documents recovered during the course of investigation. The matter was contested by the appellant, but adjudication order was passed confirming the demand proposed in the show cause notice along with interest and penalties on both the appellants were imposed. Against the said order, the appellants are before me.

3. The Ld.Counsel for the appellants submits that demand has been raised against the appellants on the basis of alleged three parallel invoices and some rough papers seized during the course of investigation and statements of the employees of the appellants. It is his submission that no investigation was conducted at the end of the buyer mentioned in those parallel invoices nor any investigation was conducted with the transporter through whom they have transported the goods or not? No cross-examination of the employees was given to

the appellants and there is a contradiction in the statement of the employees and the Managing Director, in that circumstances, without cross-examination it cannot be concluded that it is a case of clearance of goods without payment of duty or clearance of goods on the strength of parallel invoices, nor any enquiry was made to corroborate the documents recovered during the course of investigation, in that circumstances, the demands against the appellants are not sustainable. Consequently, no penalty is imposable on the appellant.

4. On the other hand, the Ld.Authorized Representative for the department supported the impugned order and submitted that it is the case where the parallel invoices were recovered during the course of investigation which was admitted by the employees of the appellants, who were looking after the business of the appellants, therefore, demand is rightly confirmed and penalties are rightly imposed on the appellants.

5. Heard the parties, considered the submissions.

6. I find that in this case, the case has been made out on the basis of rough papers seized during the course of investigation, which were in the possession of the employees of the appellants, who made inculpatory statement at the time of seizure of the documents. But, the Managing Director has controverted the statement made by the employees. Moreover, three parallel invoices on the basis of which demand has been confirmed against the appellants were not examined. Neither an investigation was made with the buyers mentioned in those parallel invoices nor any investigation was made with the transporters. No effort was made to find out, who is the author of those invoices. In the absence of any corroboration to that effect, the demand is not sustainable. Moreover, the cross-examination of the employees were not granted to the appellants which is in gross violation of the principles of natural justice in terms of Section 9D of the Central Excise Act and same view was taken by the Hon'ble Apex Court in the case of *Andaman Timber Industries vs. Commissioner of C.Ex., Kolkata-II* [2015 (324) E.L.T. 641 (S.C.)], wherein it has been held that denial of

cross-examination is in violation of principles of natural justice when the statement of that person has been relied upon to allege against the assessee.

7. Further, without corroboration of the corroborative evidence, the demand cannot be raised against the appellant when appellant has denied the said charge during the course of investigation. Moreover, this Tribunal in the case of S.K.V. Chemicals vs. Commissioner of Central Excise, Pondicherry [2006 (193) E.L.T. 212 (Tri.-Chennai)] held that mere factum of two set of invoices is not sufficient to prove the charge of clandestine removal in the absence of positive evidence with regard to the same.

8. Admittedly in the case at hand no investigation was conducted at the end of the buyers mentioned in the invoices and transporter of the goods. In the absence of the same, the demand cannot be raised against the appellants. Therefore, I set aside the impugned demand raised against the main appellant and penalty imposed on both the appellants.

9. In view of this, I set aside the impugned order and allow the appeals with consequential relief, if any.

(Order pronounced in the open court on 08.02.2024.)

Sd/  
**(ASHOK JINDAL)**  
**MEMBER (JUDICIAL)**