

**Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench At Ahmedabad**

REGIONAL BENCH-COURT NO. 3

EXCISE Appeal No. 11507 of 2016- DB

(Arising out of OIO-RAJ-EXCUS-000-PR-COM-31-15-16 dated 31/03/2016 passed by Commissioner of Central Excise and Service Tax-RAJKOT)

Shri Abbasbhai Teherali Bharmal

.....Appellant

M/s Bharat Hardware Stores, 58/60, White House,
1st Floor, Sherif Devji Street Chakala,
Mumbai, Maharastra

VERSUS

Commissioner of C.E. & S.T.-Rajkot

.....Respondent

Central Excise Bhavan,
Race Course Ring Road...Income Tax Office,
Rajkot, Gujarat- 360001

WITH

EXCISE Appeal No. 11508 of 2016- DB

(Arising out of OIO-RAJ-EXCUS-000-PR-COM-31-15-16 dated 31/03/2016 passed by Commissioner of Central Excise and Service Tax-RAJKOT)

Bharmal Hardware Product

.....Appellant

Plot No. 649/a,
Gidc, Phase-ii, Dared
Jamnagar, Gujarat

VERSUS

Commissioner of C.E. & S.T.-Rajkot

.....Respondent

Central Excise Bhavan,
Race Course Ring Road...Income Tax Office,
Rajkot, Gujarat- 360001

APPEARANCE:

Shri Paresh V Seth, Advocate for the Appellant

Shri Rajesh Nathan, Assistant Commissioner(AR) for the Respondent

CORAM: HON'BLE MEMBER (JUDICIAL), MR. RAMESH NAIR

HON'BLE MEMBER (TECHNICAL), MR. RAJU

Final Order No. 10770-10771/2024

DATE OF HEARING: 08.12.2023

DATE OF DECISION: 05.04.2024

RAMESH NAIR

These appeals are directed against Order-In-Original No. RAJ-EXCUS-000-PR-COM-31-15-16 dated 31.03.2016 whereby Excise Duty of Rs.

1,52,06,323/-, equal penalty, demand of interest and personal penalty on Shri Abbasbhai for Rs. 15,00,000/- were confirmed on the charge of clandestine removal of the goods for the period March-2009 to August-2012. Therefore, the present appeals filed by the appellants.

2. Shri Paresh V Seth, Learned Counsel appearing on behalf of the appellant submits that the entire case was made out on the basis of the printout taken from the computer lying in the factory premises and the statements of the various persons. It is his submission that regarding the printout taken from the computer the provision Section 36B of the Central Excise Act was not followed. Therefore, the computer printout cannot be used as evidence in this case.

2.1 He further submits that on the specific request of cross-examination of the witnesses whose statements were heavily relied upon, was rejected. Therefore, the order without allowing the cross-examination of the witnesses is not sustainable. He placed reliance on the following judgments:-

- Oudh Sugar Mills Ltd. Reported in 1978-02-ELT-J172 (SC)
- M/s Vishwa Traders P. Ltd. Reported in 2013-287-ELT-243 (Guj H.c.) Confirmed by S.C. reported in 2014-303-ELT-A21
- M/s Gupta Synthetics Ltd. Reported in 2014-312-ELT-225 (Trib-Ahmd)
- M/s Shree Sidhbali Ispat Ltd. Reported in 2017-357-ELT- 724 (Trib-Mum)
- M/s Chhajusingh S. Kanwal reported in 2011-272-ELT-202 (Guj-HC)
- M/s Flevel International reported in 2016-332-ELT-416 (Del-H.C.)
- M/s Hingora Industries Pvt. Ltd. Reported in 2015-325- ELT-116 (Trib-Ahmd)
- Copy of decision in the case of M/s Mansa Cigarettes Pvt. Ltd. No. A/11434-11439/2019 dtd 02-08-2019

- Copy of decision in the case of Mahendra G. Duggad. No. A/10067-10068/2019 dtd 10-01-2018
- Copy of decision in the case of Dr. Bandana Chandrashekhara Naidu. No. A/10348-10352/2019 dtd 21- 02-2019

3. Shri Rajesh Nathan, Learned Assistant Commissioner (AR) appearing on behalf of the Revenue reiterates the finding of the impugned order.

4. We have carefully considered the submission made by both the sides and perused the records. We find that apart from other evidences such as computer printout, and other documents. Mainly the case is based on statements of various persons. The appellant have requested for cross-examination of the witnesses, which has been rejected by the Adjudicating authority. In the Adjudication process, the conducting the examination-in-chief and thereafter offering the witness to appellant for cross-examination is mandatory under Section 9D of Central Excise Act, 1944 which is reproduced below:-

“[9D. Relevancy of statements under certain circumstances.— (1) A statement made and signed by a person before any Central Excise Officer of a gazetted rank during the course of any inquiry or proceeding under this Act shall be relevant, for the purpose of proving, in any prosecution for an offence under this Act, the truth of the facts which it contains,—

(a) when the person who made the statement is dead or cannot be found, or is incapable of giving evidence, or is kept out of the way by the adverse party, or whose presence cannot be obtained without an amount of delay or expense which, under the circumstances of the case, the Court considers unreasonable; or

(b) when the person who made the statement is examined as a witness in the case before the Court and the Court is of opinion that, having regard to the circumstances of the case, the statement should be admitted in evidence in the interests of justice.

(2) The provisions of sub-section (1) shall, so far as may be, apply in relation to any proceeding under this Act, other than a proceeding before a Court, as they apply in relation to a proceeding before a Court.]”

From the plain reading of the above Section 9D, it can be seen that it is not the whims of the Adjudicating authority to allow or reject the request of cross-examination.

4.1 As per the above statutory provision, if the appellant dispute the statements which are relied upon for adjudication it is incumbent on the adjudicating authority to allow the cross-examination of the witnesses and thereafter if the outcome of cross-examination is in consistence with the statement given by the witnesses, the same can be admitted as evidence. Therefore, we are of the view that the cross-examination is necessary for arriving at a fair trial of the case.

5. Therefore, we set aside the impugned order and allow the appeals by way of remand to the adjudicating authority, for passing a fresh order, after allowing the cross-examination of the witnesses and considering the further submission to be made by the appellant.

(Pronounced in the open court on 05.04.2024)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)