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

REGIONAL BENCH- COURT NO.3

Customs Appeal No. 13000 of 2019

(Arising out of OIO-VIII-10-23-COMMR-O&A-2018 dated 15/11/2019 passed by Commissioner of Central Excise, Customs and Service Tax-JAMNAGAR (PREV))

PARTHIV VIJAYKUMAR DAVE **.... Appellant**
403, 4th Floor, Upnishad Complex, Ambawadi
Ahmedabad,
Ahmedabad,gujarat

VERSUS

C.C.JAMNAGAR(PREV) **....Respondent**
Sharda House...Bedi Bandar Road,
Opp. Panchavati,
Jamnagar,Gujarat

APPEARANCE:
Shri D.K. Trivedi, Advocate for the Appellant
Shri S.N. Gohil, Superintendent (Authorised Representative) for the Respondent

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

FINAL ORDER NO.A/10476 /2021

DATE OF HEARING: 01.02.2021
DATE OF DECISION : 04 .02.2021

RAMESH NAIR

This appeal was filed by the appellant against letter F.NO.VIII/10-23/COMMR/O&A/2018 Dated 15.11.2019 whereby, the request of Cross-Examination of Three Officers of DRI and one Mr. Bhaskar Bhatt, Chartered Engineer has been denied by the Commissioner in context with the Show Cause Notice F.No. DRI/AZUI/GI/Enq-06(Int-09)/2018 dated 18.02.2019 issued amongst other to the appellant.

2. Shri Devashish Trivedi, Learned Counsel appearing on the behalf of the appellant submits that the Show Cause Notice relied upon the valuation report given by Shri Bhaskar Bhatt, Chartered Engineer therefore, which according to the appellant is incorrect. Therefore appellant seeks cross examination of Chartered Engineer. He submits that as regard DRI officers they have recorded the statement under pressure, threat, and duress. The

officers have not taken into consideration all the documents shown to them. The value of the goods was inflated multifold. For these reasons Cross-examination of the officers was sought for. He placed reliance on the following judgments:-

- Unibourne Food Ingredients LLP Vs Commissioner of Customs, Hyderabad reported at 2018 (364) ELT 254 (Tri-Hyd.)
- Sterlite Optical Technologies V/s. Commissioner of Cus, (Exp.) ACC, Mumbai reported at 2008 (226) ELT 69 (Tri-Mum.)
- Ellora Tobacco Co. Ltd. V/s. Commissioner of Central Excise, Indore, reported at 2017 (347) ELT 614 (Tri-Del)
- Andaman Timber Industries V/s. Commisssioner of Central Excise, Kolkata –II, reported at 2015 (324) ELT 641(S.C)
- USMS SAFFRON CO. INC. V/s. Union of India reported at 2017 (346) ELT 582 (Bom).
- Balaji Enterprise V/s. Union of India reported at 2018 (36) Elt 94(Guj.)
- Savino Micron (India) Pvt. Ltd. V/s. Union of India reported at 2017 (351) ELT 250(Guj.)
- Ganpat Rai Shree Ram & Co V/s. Commissioner of Cus.(Port). Kolkata reported at 2020 (371) ELT 601 (Tri- Kolkata).
- Carrara Marble & Granite Industries V/s. Comr. Of Cus (E.P) Mumbai reported at 2001 (129) ELT 654 (Tri- Mumbai)
- Sanjeev Arora V/s. Commissioner of Central Excise, Meerut reported at 1999 (112) ELT 420(Tribunal).
- Thilagarathinam Match Works V/s. Commissioner of Central Excise Tirunelveli reported at 2013 (295) ELT 195 (Mad)
- Amkap Marketing Pvt. Ltd. V/s. Commissioner of Central Excise, Lucknow reported at 2010 (256) ELT 260 (Tri. Delhi)
- Amkap Marketing Pvt. Ltd. V/s. Commissioner of Central Excise, Lucknow reported at 2012 (278) ELT A143 (SC)

3. On behalf of the revenue, Shri S.N Gohil, Learned Superintendent (Authorized Representative) reiterates the reasons in the order passed by the Commissioner for denying the Cross-Examination. He also submitted a written submission dated 11.01.2021 along with various judgments which has been taken on record.

4. We have heard both sides and perused the records. We find that the limited issue in the present case is that the appellant's request for Cross-Examining three DRI Officers and One Mr. Bhaskar Bhatt, Chartered Engineer should be allowed or not. As per the facts in the Show Cause Notice , the report given by Shri Bhaskar Bhatt, Chartered Engineer has been relied upon. Since this witness is 3rd Party as far as appellant is concerned the Cross- Examination of Shri Bhaskar Bhatt, Chartered Engineer must be allowed to the appellant as mandated under section 138B of the Customs Act ,1962 which is reproduced below:

Relevancy of statements under certain circumstances

> *(1) "A statement made and signed by a person before any Gazetted Officer of customs 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 interest of justice.*
>
> *(2) The Provision 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."*

4.1 From the above section 138B it is clear that the statement given by a person as a witness must be examined, then only the same can be admitted in evidences. In the present case the valuation report given by Chartered Engineer, Shri Bhaskar Bhatt has been relied upon in the Show Cause Notice and considered as one of the important witnesses. Therefore, it is mandatory on the part of the adjudicating authority to allow the Cross- Examination of Shri Bhaskar Bhatt, Chartered Engineer in terms of section 138B as discussed above.

4.2 As regard, the appellant seeking Cross- Examination of three DRI Officers, the reason given by the appellant is not convincing to us for the reasons that as regard allegation of the appellant that the officer have recorded the statement under duress threat and pressure. It is up to the witnesses whose statements were recorded to dispute this charges, if anything exist. As regard the charge of inflation of the value multifold, the appellant has all the right to challenge it on the basis of the document and the same can be discarded if the valuation done by the DRI Officers is incorrect therefore, for this reason, in our considered view there is no need of Cross-examination of the DRI Officers. The DRI Officers have performed their duty as required in the law.

4.3 As per above discussion and finding we hold that the Adjudicating Authority shall allow the Cross- Examination of Shri Bhaskar Bhatt, Chartered Engineer. The request for Cross- Examination of DRI Officers is rejected. The appeal is partly allowed in the above terms.

5. Since the revenue as well as the appellant have filed early hearing application in the present case and shown the urgency in the case, we direct the Adjudicating Authority to complete the adjudication process by following the Principles of Natural Justice and pass the order within a period of 3 months from the date of this order.

(Pronounced in the open court on 04.02.2021)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)

Geeta