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

REGIONAL BENCH-COURT NO. 3

Excise Appeal No. 12014 of 2014- DB

(Arising out of OIA-SUR-EXCUS-001-COM-96-13-14 dated 31/01/2014 passed by Commissioner of Central Excise, Customs and Service Tax-SURAT-I)

C.C.E. & S.T.-Surat-i **........Appellant**
New Building...Opp. Gandhi Baug,
Chowk Bazar,
Surat, Gujarat - 395001

VERSUS

Fireoz Ahmed Waghbakriwala **......Respondent**
Partner Of M/S, Waghbakriwala Rayons,
346/358, Gidc, Pandesara,
Surat, Gujarat

WITH

Excise Appeal No. 12015 of 2014- DB

(Arising out of OIA-SUR-EXCUS-001-COM-96-13-14 dated 31/01/2014 passed by Commissioner of Central Excise, Customs and Service Tax-SURAT-I)

C.C.E. & S.T.-Surat-i **........Appellant**
New Building...Opp. Gandhi Baug,
Chowk Bazar,
Surat, Gujarat - 395001

VERSUS

Percy Navroze Munshi **......Respondent**
Ex Accountant Of M/S, Shree Siddhi Vinayak Silk Mills,
Proprietor Of M/S, J P Consultancy, Shop No. 04, Lower Ground Floor, White House,
Kaliawadi, Navsari,
Gujarat

APPEARANCE:
Shri Tara Prakash, Deputy Commissioner (AR) for the Appellant
None appeared for the Respondent

CORAM: HON'BLE MEMBER (JUDICIAL), MR. RAMESH NAIR
HON'BLE MEMBER (TECHNICAL), MR. C.L MAHAR

Final Order No. A/ 11708 -11709 /2023

DATE OF HEARING: 17.04.2023
DATE OF DECISION: 17.08.2023

RAMESH NAIR

The brief facts of the case are that the present appellants along with the main noticee with Siddhivinayak Silk Mills (100% EOU) and other Co- notice were issued Show cause notice dated 03.03.2006. The said SCN was adjudicated in respect of all the noticees including the present appellant vide

Order-In-Original No. 15/MP/2009-2013 dated 21.01.2013 wherein the present appellants were imposed penalties of Rs. 50Lacs each under rule 26 of Central Excise Rules, 2002. Against the said Order-In-Original out of all the noticees only three noticees namely first Shri Siddhivinayak Silk Mills 2. Devang Rameshchandra Gandhi and 3. Rameshchandra Ishwarlal Gandhi filed appeal before CESTAT Ahmedabad. However, the present two appellants have not filed any appeal against Order-In-Original dated 21.01.2013. The Cestat Ahmedabad in respect of aforesaid three noticees set aside Order-In-Original dated 21.01.2013 and remanded the matter vide Order No. A/10506-10508/WZB/AHD/2013 dated 04.04.2013. After the remand the Adjudicating Authority in de novo adjudication proceeding confirmed the demand and imposed penalties on the three appellants which were before the Tribunal however, as regard the present appellants the Learned Commissioner has given the following observation:

> *"38. As this order is passed in view of denovo order issued by CESTAT on being appealed by M/s. Shree Sidhi Vinayak Silk Mills (100% EOU), and its Partners Shri Ramesh Chandra I. Gandhi and Shri Dewang Ramesh Gandhi. Hence the earlier order bearing No. 15/MP/2012 -13 dated 21.01.2013 attained finality in respect of Shri Firoz Ahmed Gulam Mohammed Waghbakriwala, Partner if M/s. Waghbakriwala Rayons (100% EOU), Surat and Shri Percy Navroze Munshi, Ex- Accountant of M/s. Shree Siddhi Vinayak Silj Mills & Proprietor of M.s, J.P Consultancy, Navsari and this order is not applicable to them.*
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> *39. This order is issued without prejudiced to any other action which can be taken against the notice, under Central Excise Act, 1944, Customs Act, 1962 and Rules made there under or any other law, for the time being in* force."

1.2 It is this observation against which the Revenue filed the present appeals on the ground that the Commissioner ought to have confirmed the charges against the present appellants made in the show cause notice in the impugned de-novo adjudication order.

2. Shri Tara Prakash, Learned Deputy Commissioner (AR) appearing on behalf of the Revenue appellant reiterates the ground of appeal.

3. None appeared on behalf of the Respondent.

4. We have carefully considered the submission made by Learned AR and perused the record. We find that against the first Order-In-Original dated 21.01.2013, the present appellants had not filed any appeal before CESTAT therefore, the order dated 21.01.2013 passed in respect of the present appellant's attained finality. Since the appeals were filed by other three noticees the order of the CESTAT dated 04.04.2013 was strictly in respect of those three appellants only. For the ease of reference, the finding of the CESTAT order is reproduced below:-

> "*4. We find that a show cause notice dt.03.03.2006 was received by the appellant on 27.04.2006. We find from the records that the appellants vide their letter dt.27.04.2006, which is acknowledged by the office of Commissioner of Central Excise & Customs, Surat-I, on 01.05.2006, had requested for photo copies of various documents which were either illegible or not supplied with the show cause notice. Surprisingly, this letter was not acknowledged by the office of Commissioner of Central Excise & Customs, Surat-I, nor is there is any mention in their Order-in-Original. We find that the adjudicating authority has granted 3 hearings in one letter and on 17.01.2013, the appellant had again remanded the Commissioner of Central Excise, Surat to give the documents as was requested by them vide their letter dt.27.04.2006. Even this letter is not acknowledged in any form or in Order-in-Original. We find that the appellants have also not filed any reply to the show cause notice in the absence of receipt of documents sought by them vide their letter dt.27 04.2006. In our considered view, the impugned order is passed in violation of principles of natural justice. In order to meet the ends of justice, we direct the adjudicating authority to provide all the documents asked for by the assessee vide their letter dt 27.04.2006 within 30 days of production of certified copy of this order On receipt of such documents from the adjudicating authority, the appellant are directed to file a reply within 30 days to the adjudicating authority in defence against the allegations made in the show cause notice. On receipt of such reply from the appellant, the adjudicating authority will pass an order, after following the principles of natural justice and considering all the submissions which may be made.*
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> *5. The impugned order is set aside and the appeals are allowed by way of remand."*

From the above observation of this Tribunal, it is clear that the observation is in respect of the appellants which were before the CESTAT. Therefore, even though the operating portion of the order sets aside the impugned order but it is only in respect of appellants which were before the CESTAT. It is obvious that the parties, the appellants in the present case which were not before the CESTAT, the order of the CESTAT cannot be said to have been given in respect of the present appellant which were not the parties as appellants before the CESTAT.

5. In view of above facts and specific observation made by the Learned Commissioner in the impugned order about the present appellants is absolutely legal and correct. Therefore, we do not find any infirmity in the impugned order. Hence, the same is upheld and Revenue's appeals are dismissed.

(Pronounced in the open court on 17.08.2023)

RAMESH NAIR
MEMBER (JUDICIAL)

C.L.MAHAR
MEMBER (TECHNICAL)

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