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

REGIONAL BENCH- COURT NO.3

Excise Appeal No.12483 of 2019

(Arising out of OIO-DMN-EXCUS-000-COM-10-19-20 dated 19/06/2019 passed by Commissioner of Central Excise, Customs and Service Tax-DAMAN)

AJAY F GARG **.........Appellant**
N D Metal Industries Ltd., 417, 4th Floor, Maker Chamber-V, Narima Point
Mumbai
Mumbai, Maharashtra

VERSUS

C.C.E. & S.T.-DAMAN **.........Respondent**
3rd Floor...Adarsh Dham Building, Vapi-Daman Road, Vapi
Opp.Vapi Town Police Station,
Vapi, Gujarat-396191

WITH

Excise Appeal No.12573 of 2019

(Arising out of OIO-DMN-EXCUS-000-COM-10-19-20 dated 19/06/2019 passed by Commissioner of Central Excise, Customs and Service Tax-DAMAN)

N D METAL INDUSTRIES LTD **.........Appellant**
417, 4th Floor, Maker Chamber-V, Narima Point
Mumbai
Mumbai, Maharashtra

VERSUS

C.C.E. & S.T.-DAMAN **.........Respondent**
3rd Floor...Adarsh Dham Building, Vapi-Daman Road, Vapi
Opp.Vapi Town Police Station,
Vapi, Gujarat-396191

APPEARANCE:
Shri B.B. Mohite, Advocate for the Appellant
Shri Sharad Airan, Assistant Commissioner (AR) for the Respondent

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

Final Order No. A/ 12420-12421 /2021

DATE OF HEARING: 20.07.2021
DATE OF DECISION: 08.10.2021

RAMESH NAIR

These appeals are directed against Order-In-Original No. DMN-EXCUS-000-COM-10-19-20 dated 19.06.2019 passed by the Principal Commissioner Central GST & Central Excise, Daman Commissionerate wherein, the demand of Cenvat Credit and corresponding interest, penalties were confirmed as proposed in the Show Cause Notice, personal penalty were also imposed on the co-appellants Shri. Ajay F. Garg under rule 26 of Central Excise Rules, 2002. The case of the department is that the appellant have availed the Cenvat Credit in respect of imported copper scrap, brass scrap, zinc scrap, aluminum scrap as shown received in their factories. However, the same was diverted in the market but availed the Cenvat Credit thereon on the strength of bills of entry. To substantiate their case the department has relied upon the various documents recovered during investigation.

02. Shri. B. B. Mohite, learned Counsel appearing on behalf of the appellant mainly submits that the entire adjudication was done in gross violation of principles of natural justice. He submits that it is a matter of record that all the relied upon documents were not made available and copies of only few documents/statements i.e. only 37 documents out of 52 relied upon documents were made available. Thus, the impugned order is required to be set aside solely on this ground alone. In support of his submission only on the ground of Principles of Natural justice he placed reliance on the various judgments:-

- RDB INDUSTRIES LTD. Vs. C.C.E, 1998 (29) RLT 1 (Cal.),
- JAYANTILAL A SHAH & ORS. Vs C.C.E., 1999 (34) RLT 466,
- SANGHI TEXTILE PROCESSORS PVT. LTD. Vs. C.C.E., 1993 (65) ELT 357 (SC)
- TRIBHUVANDAS BHIMJI ZAVERI Vs. C.C.E., 1997 (92) ELT 467 (SC),
- JVS FOOD PVT. LTD., 2018 (10) GSTL 291 (Raj.)
- KOTHARI FILAMENTS-2009 (233) ELT 289 (SC)
- A.V. ELECTRONICS-2000 (117) ELT 697 (Tri.)
- SUNDER ISPAT LTD.,-2002 (141) ELT 24 (A.P.)
- GUPTA CRANES & STORAGES PVT. LTD. & ORS.- 2002 (49) RLT968
- METHODEX SYSTEMS LTD.,- 2001 (127) ELT 44 (M.P.)
- RAMESH C. VASWANI- 1999 (110) ELT 882 (Tri.)

- TRILOCHAN SINGH- 1981 ELT 667 (Del.)
- MILAP CHANDRAJAIN, J.STATE OF RAJASTHAN Vs. RIKHAB DAS JAIN- AIR 1994 RAJASTHAN 114
- STATE OF MADHYA PRADEHS VS. SARDARMAL- AIR 1987 MADHYA PRADESH 156
- SECRETARY OF STATE VS. UPENDR NARAIN ROY- AIR 1923 CALCUTTA 247
- STATE OF BIHAR VS. S.K. THACKER & ORS.- AIR 1981 PATNA 81
- RAJ PETROLEUM PRODUCTS-2005 (192) ELT 806 (T);
- TAMBRAPARANI CONTAINERS (P) LTD.-2005 (187) ELT 276 (T)
- VENAYAGA SPINNING MILLS LTD.-2006 (205) ELT 625 (T)
- SUNHILL CERAMICS PVT. LTD.-2007 (217) ELT 353 (T)

2.1 Shri B.B. Mohite, in his argument referred to various correspondence whereby, the appellant have been asking to supply relied upon documents from the department but the required relied upon documents were not supplied and the impugned adjudication order which passed without going into the merits of the case deserves to be set aside only in violation of Principles of Natural justice and appeal be allowed.

03. Shri Sharad Airan Learned Assistant Commissioner, (Authorized Representative) appearing on behalf of the revenue reiterates the finding of the impugned order. He submits that as per the acknowledgment of the Show Cause Notice it appears that the appellant have been supplied all the relied upon documents therefore, there is no violation of principles of natural justice.

04. We have carefully considered the submissions made by both the sides and perused the records. As per the submissions from both the sides the preliminary issue to be decided by us is that whether there is a violation of Principle of natural justice in passing the adjudication order. We were invited the attention by the Learned Counsel to various correspondence to submit that it is established that all the documents relied upon in the show cause notice were not given to the appellants. We find that there is a chain of correspondence between appellant and department which are listed below:-

- Department’s letter dt. 08.11.2010
- Appellant’s letter dt. 29.11.2010
- Appellant’s letter dt. 18.01.2011
- Appellant’s letter dt. 24.01.2011

- Department’s letter dt. 23.11.2011
- Department’s letter dt. 07.01.2014
- Appellant’s letter dt. 10.01.2014
- Department’s letter dt. 05.06.2015
- Appellant’s letter dt. 18.06.2014
- Department’s letter dt. 11.09.2017
- Appellant’s letter dt. 20.09.2017
- Department’s letter dt. 21.09.2017
- Department’s letter dt. 21.10.2017
- Department’s letter dt. 05.12.2017
- Appellant’s letter dt. 20.12.2017
- Department’s letter dt. 15.06.2018
- Appellant’s letter dt. 26.06.2018
- Department’s letter dt. 13.07.2018
- Department’s letter dt. 10.08.2018
- Appellant’s letter dt. 17.08.2018
- Appellant’s letter dt. 10.09.2018
- Department’s letter dt. 12.03.2019
- Appellant’s letter dt. 26.03.2019
- Department’s letter dt. 27. 03.2019
- Appellant’s letter dt. 02.04.2019
- Appellant’s letter dt. 16.04.2019
- Department’s letter dt. 23.04.2019

4.1 On going through the above correspondence, we find that it is not only the correspondence between the appellant and DGCEI and the adjudicating authority but there are also number of letters written by the office of the adjudication authority to the DGCEI for supplying the required documents. This itself shows that the appellant have not been given all the relied upon documents at any point of time. Since, there is no dispute that the appellant were not supplied the relied upon document as mentioned by them, the adjudication should not have taken place in absence of providing the said documents to the appellant. In this fact which is not under dispute there is a gross violation of principle of natural justice on the part of the adjudicating authority. It is a settled law that principles of natural justice is the foremost requirement to be complied with before passing the adjudication order. The various judgments cited by the Learned Counsel on the point of principles of natural justice directly supports their case.

05. Accordingly, the impugned order, since passed without observance of principles of natural justice, shall not sustain and accordingly we set aside the impugned order.

06. The adjudicating authority is directed to supply all the relied upon documents to the appellants only thereafter sufficient opportunity for filing their defence and personal hearing be given before passing a denovo adjudication order. The appeals are allowed by way of remand to the adjudicating authority.

(Pronounced in the open court on 08.10.2021)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)

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