CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, WEST ZONAL BENCH : AHMEDABAD

REGIONAL BENCH - COURT NO. 3

EXCISE Appeal No. 718 of 2012

[Arising out of Order-in-Original/Appeal No 08-10-COMMR-RAJU-AHD-II-2012 dated 06.06.2012 passed by Commissioner of Central Excise-AHMEDABAD-II]

Vaibhav Auto Industries **.... Appellant**
41, New Ahmedabad Industrial Estate, B/h Nova
Petrochem, Maraiya, Taluka-Sanand, AHMEDABAD,
GUJARAT

VERSUS

Commissioner of Central Excise, Ahmedabad **.... Respondent**
Custom House... First Floor, Old High Court Road,
Navrangpura, Ahmedabad,
Gujarat-380009

WITH

(i) Excise Appeal No. 10292 of 2014 Vaibhav Auto Industries
(ii) Excise Appeal No. 10293 of 2014 Vaibhav Auto Industries
(iii) Excise Appeal No. 11272 of 2016 Vaibhav Auto Industries
(iv) Excise Appeal No. 13268 of 2014 Vaibhav Auto Industries

[Arising out of Order-in-Original/Appeal No AHM-EXCUS-002-APP-223-224-13-14 dated 25.11.2013 passed by Commissioner of Central Excise-AHMEDABAD-II, Arising out of Order-in-Original/Appeal No AHM-EXCUS-002-APP-003-16-17 dated 26.04.2016 passed by Commissioner of Central Excise-AHMEDABAD-II and Arising out of Order-in-Original/Appeal No AHM-EXCUS-002-APP-080-14-15 dated 20.06.2014 passed by Commissioner of Central Excise-AHMEDABAD-II]

APPEARANCE :

Shri Amal Dave Advocate for the Appellant
Shri PRV Ramanan, Special Counsel for the Respondent

CORAM: HON'BLE MR. RAMESH NAIR, MEMBER (JUDICIAL)
HON'BLE MR. P. ANJANI KUMAR, MEMBER (TECHNICAL)

FINAL ORDER NO. A/12516-12520 / 2021

DATE OF HEARING/DECISION: 18.11.2021

RAMESH NAIR :

In the present case the issue involved is of clandestine removal of Chhakada.

2. Shri Amal Dave, learned Counsel appearing on behalf of the appellant submits that under the same investigation, there was some other case along with the present case was made out including the one of the case of *Atithi Gokul*

Automobile Works in which vide order No. A/10885-10886/2014 dated 01.05.2014, the matter was remanded. He request that this case may also be remanded to pass a fresh order after allowing the cross-examination.

3. Shri PVR Ramanan, learned Special Counsel appearing on behalf of the Revenue has no objection if the matter is remanded.

4. We have heard both sides and perused the record. We find that under the same set of facts, in a common investigation along with the present case, a case of *Atithi Gokul Automobile Works* was also made out . In the said case, this matter, vide order No. A/10885-10886/2014 dated 01.05.2014 was remanded by passing the following order :-

> *"4. On consideration of the submissions made by both sides and perusal of the records, we find that the appellant in this case in his interim reply dt.15.09.2012 in Paragraph 7 has stated as under:*
>
> > *"7. It is further submitted that the allegation of clandestine removal under the impugned show cause notice is not supported by the cogent and corroborative evidences. The procurement of raw material has not been proved, the entries made in the records recovered and seized from the premises of M/s Parishram Marketing, M/s Manish Auto and M/s Chirag Auto Industries have been taken as basis to raise the demand against us. We have been provided with the scanned one or two pages taken from the said registers/diaries. The said entries being third part details cannot be automatically be applied against us. The said entries have to be verified for its correctness before it can be relied upon for demanding any duty from us. Accordingly, we desire to cross examine the following persons, whose statements have been relied upon and the documents recovered from their premises have been considered as an evidence to sustain the charge of clandestine manufacture and removal by us.*
> >
> > *> Shri Govindbhai Hirabhai Mytra,*
> > *Proprietor of M/s Manish Auto, Keshod.*
> >
> > *> Shri Nathubhai Gajera,*
> > *Proprietor of M/s Parishram Marketing, Keshod.*
> >
> > *> Shri Sabirbhai Yusufbhai Ghatkai,*
> > *Proprietor of M/s Chirag Auto Industries, Jamnagar.*
> >
> > *> Shri Kishor Gordhanbhai Chandra,*
> > *Partner, New Chandra Motor Cycle House.*
> >
> > *> Shri Mansukh Patel,*

Proprietor, M/s Dattatrey Auto Centre, Rajkot

*> Shri Kasambhai Umarbhai Kaida,
Proprietor, Kamal Auto Centre, Rajkot."*

5. It can be seen from the above reproduced paragraph that the appellant had specifically stated that the demand raised are on the entries being of third party, cannot be applied directly to the appellant's case. We find that the appellant has specifically stated that they want cross-examination of the persons as indicated hereinabove. In our view, the adjudicating authority has not dealt with the question of granting of cross-examination in accordance with the law, in as much as the adjudicating authority has in a passing remark in Para 15.13 has stated that the cross-examination of RTO is not called for and hence he denies the same. It can be noted that the appellant had never sought cross-examination of the RTO but had sought the cross-examination of the individuals on whose records the demands have been raised on them. In our considered view, the judgment of Hon'ble High Court of Gujarat in the case of Mahek Glazes Pvt.Ltd would apply in all force, the ratio of which we reproduce.

> *"7. Merely because the Commissioner was of the opinion that the petitioners had made such a request somewhat belatedly, would not permit him to, in the facts of the present case, deal with such an application only in the final order itself. Sum total of this discussion is that we are inclined to set-aside the impugned order and request the adjudicating authority to pass a separate order on the petitioners' application/request letter for granting cross-examination of the named witnesses. We are conscious that the Commissioner has already decided such an issue, however, since we are quashing the order, this part of the order would also not survive and hence, the requirement of a fresh order. We are informed that the same officer continues to hold the office of the Commissioner of Customs & Central Excise, Surat-II. It would therefore, be not necessary to separately hear the petition once again before passing any such order. This would, however, not preclude the Commissioner from requiring the petitioners to show relevance for seeking cross-examination of the witnesses."*

6. In our considered view, the claim of the appellant in the facts and circumstances of this case, seems to be justified that there is a violation of principles of natural justice by not granting the cross-examination of the persons as is indicated by them in interim reply.

7. We agree that there is a violation of principles of natural justice due to there being no findings on either granting or rejection of the plea for cross-examination of the persons.

8. Accordingly, without expressing any opinion on the merits of the case, keeping all the issues open, we set aside the impugned order and remand the matter back to the adjudicating authority to reconsider the issue afresh. The adjudicating authority will grant cross-examination of the persons as has been indicated hereinabove in Paragraph 4; and subsequently grant four weeks time to the appellant to file a detailed reply. After receiving such detailed reply, the adjudicating authority shall grant an opportunity of personal hearing and come to conclusion on the matter and pass a reasoned order.

9. Both the appeals are allowed by way of remand."

5. From the above order, it is clear that the Adjudicating Authority has not followed the principles of natural justice in as much as the cross-examination was not allowed. We, therefore, following the above decision of the Tribunal, set-aside the impugned order and remand the matter to the Adjudicating Authority for passing afresh order, considering the observations made by this Tribunal in the above referred order dated 01.05.2014. The appeals are disposed of by way of remand to the Adjudicating Authority.

(Operative part of the order pronounced in the open court)

(Ramesh Nair)
Member (Judicial)

(P. Anjani Kumar)
Member (Technical)

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