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

REGIONAL BENCH- COURT NO.3

Excise Appeal No.1631 of 2010

(Arising out of OIA-402-412/2010/COMMR-A-/CMC/RAJ dated 07/09/2010 passed by Commissioner of Central Excise, Customs and Service Tax-RAJKOT)

Shiv Shakti Watch Case ....**Appellant**
5, Gokul Nagar, Punit Society,
Rajkot, Gujarat

VERSUS

C.C.E. & S.T.-Rajkot ....**Respondent**
Central Excise Bhavan,
Race Course Ring Road...Income Tax Office,
Rajkot, Gujarat-360001

WITH

i. **Excise Appeal No.1632 of 2010 (Rajesh Thakur)**
ii. **Excise Appeal No.1681 of 2010 (Khurana Traders)**
iii. **Excise Appeal No.1682 of 2010 (Bhatia General Store)**
iv. **Excise Appeal No.1683 of 2010 (A M Traders)**
v. **Excise Appeal No.1720 of 2010 (Srichand Wadhwa)**
vi. **Excise Appeal No.1846 of 2010 (C.C.E. & S.T., RAJKOT)**

(Arising out of OIA-402-412/2010/COMMR-A-/CMC/RAJ dated 07/09/2010 passed by Commissioner of Central Excise, Customs and Service Tax-RAJKOT)
(Arising out of OIA-402-412/2010/COMMR-A-/CMC/RAJ dated 07/09/2010 passed by Commissioner of Central Excise, Customs and Service Tax-RAJKOT)
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APPEARANCE:
Shri Paresh Sheth, Advocate for the Appellant
Shri J.A.Patel, Superintendent (Authorised representative) for the Respondent

CORAM: HON'BLE MEMBER (JUDICIAL), MR. RAMESH NAIR
HON'BLE MEMBER (TECHNICAL),MR.(P.Anjani Kumar M)

Final Order No. A/ 12536-12542 /2021

DATE OF HEARING: 16.11.2021
DATE OF DECISION:16.11.2021

RAMESH NAIR

All these appeals arising out of common Order-In-Appeal passed by the Commissioner (Appeals) whereby, the Order-In-Original was upheld. The issue involved is of clandestine removal and clubbing of number of various units. The Adjudicating Authority confirmed the demand relying on various documents and statements of various persons recorded under Section 14 of the Central Excise Act, 1944.

02. Shri Paresh Sheth, learned counsel at the outset submits that they had requested for cross-examination of the witnesses, statements of whom were relied upon for passing of Order-In-Original. However, the cross-examination has been rejected during the personal hearing. He submits that when the statements of various persons were relied upon, cross examination of those witnesses are must. In this regard he placed reliance on the following judgments:-

- ANDAMAN TIMBER INDUSTRIES 2015-324-ELT-641(SC)
- JINDAL DRUGS PVT. LTD. 2016-340-ELT-67(P&H)
- SHREE PARVATI METALS 2018-11-GSTL-137(RAJ)
- GOLDEN STEEL CORPORATION LTD. 2017-347-ELT-570 (TRI-KO)
- NABHA STEELS LTD 2016-344-ELT-561 (TRI-CHAN)
- VISHWA TRADERS PVT. LTD. 2012-278-ELT-362 (TRI-AHMD)
- VISHWA TRADERS PVT. LTD. 2013-287-ELT-243 (GUJ-HC) CONFIRMED BY SC 2014-303-ELT-A24 (SC)
- GUPTA SYNTHETICS LTD. 2014-312-ELT-225 (TRI-AHMD)
- SHREE SIDHBALI ISPAT LTD 2017-357-ELT-724 (TRI-MUM)
- SAAKEEN ALLOYS PVT. LTD. 2014-308-ELT-655 (GUJ-HC)
- SUPER INDUSTRIES 2014-310-ELT-779 (TRI-AHD)
- ASSOCIATED ENGINEERING PROJECTS 2019-370-ELT-756 (TRI-ALL)
- POLY RESINS 2003-161-ELT-1136 (TRI-CHENNAI)
- SAPNA ENGINEERING 2018-360-ELT-1019 (TRI-MUM) CONFIRMED BY BOMBAY H.C

03. Shri J.A. Patel, Learned Superintendent (Authorized Representative) appearing on behalf of the revenue submits that the case is based not only on statements but various other documents therefore, the Commissioner has

rightly rejected the request for cross-examination. He reiterates the finding of the impugned order.

04. We have carefully considered the submission made by both the sides. We are not going through the entire records as the case can be decided on the preliminary issue that whether the cross-examination should have been allowed or otherwise. We find that the appellant have made a categorical request vide their letter dated 4.8.2008 wherein, they have requested for cross examining 17 persons whose statements were relied upon. We are of the clear view that as mandated under Section 39 of Central Excise Act, 1944, it is mandatory on the part of the Commissioner that to rely upon any statement, the witness has to be examined. In this case particularly, when the appellant have made a request for cross examining, he has no reason to deny cross examination before deciding the case. This issue has been consistently held in the various judgments as cited by the appellant that statements can be relied upon only after cross examining the witness who has given the statement.

05. We are therefore, of the view that the learned Commissioner by rejecting the request for cross examination of the witness has violated the Principles of Natural Justice. Accordingly, we set aside the impugned order and remand the matter to the Adjudicating authority for passing a fresh order.

(Dictated & Pronounced in the open court)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(P.Anjani Kumar M)
MEMBER (TECHNICAL)

Mehul