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

REGIONAL BENCH- COURT NO. 1

Customs Appeal No. 10469 of 2024-DB
(Arising out of OIO No. AHM-CUSTM-000-COM-015-016-21-22 Dated-29.11.2021 passed by Principal Commissioner of Customs- Ahmedabad)

Shri Mehul Rasikbhai Bhimani **........Appellant**
602, Anjani Tower,
Near Amra Kadamb Bungalows,
Opp. Kanravati Club, Ramdevnagar,
Ahmedabad- 380015

VERSUS

C.C.-Ahmedabad **........Respondent**
Custom House, Near All India Radio
Navrangpura, Ahmedabad-380009

WITH
Customs Appeal No. 10470 of 2024-DB
(Arising out of OIO No. AHM-CUSTM-000-COM-015-016-21-22 Dated-29.11.2021 passed by Principal Commissioner of Customs- Ahmedabad)

Shri Pramodgiri Premgiri Goswami **........Appellant**
302, Golden Nest Apartment,
Shroff Road, Rajkot-360 001

VERSUS

C.C.-Ahmedabad **........Respondent**
Custom House, Near All India Radio
Navrangpura, Ahmedabad-38000

APPEARANCE:
Shri Hardik Modh, Advocate appeared for the Appellant
Sh. Girish Nair, Assistant Commissioner (Authorized Representative) for the Respondent

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

FINAL ORDER NO. 12386-12387 /2024

DATE OF HEARING:07.10.2024
DATE OF DECISION:16.10.2024

RAMESH NAIR

The appellants preferred these appeals challenging the impugned order in original No. AHM- EXCUS-CUSTM- Com-015-016-21-22 dated 29.11.2021 passed by the Principal Commissioner of Customs, Custom House, Ahmedabad whereby he confirmed the charges levelled in the show cause notice and imposed penalty under section 112 (b)(i) of the customs Act, 1962. On the ground that the appellant financed Shri Rutugna Trivedi for smuggling of gold from Dubai and sold in India. It was held that the appellant is concerned with selling, purchasing and dealing with the goods for which they knew that the same were liable for confiscation and rendered himself liable to penalty in terms of Section 112 (b) (i) of

Customs Act, 1962. Being aggrieved by the said impugned order the appellants filed the present appeals.

2. Shri Hardik Modh, Learned Counsel appearing on behalf of the Appellant, at the outset, submits that the impugned order was passed by the respondent imposing penalty on the appellant without compliance of natural justice. Therefore, deserves to be quashed and set aside.

2.1 Learned counsel submits that his preliminary submission is limited to challenge the impugned order on the ground of principle of natural justice. He deserves his right to file the additional written submission in case the matter is heard on merit. On the point of principle of natural justice, he further submits that the documents relied upon in the show cause notice and in the impugned order were not provided to the appellants. The show cause notice was issued on 24.12.2019 referring to the documents seized from the premises of Ms. Neeta Parmar. However, such documents were neither provided nor annexed to the show cause notice but only inspection of the documents were offered which itself is insufficient compliance to the principle of natural justice. The appellant submitted a letter requesting to provide the documents relied upon in the show cause notice for the purpose of filing additional reply. However, no documents were supplied and no further date of hearing was given and the impugned order was passed on 29.11.2021 which in facts amounts to denial of an opportunity of personal hearing.

2.2 He further submits that the impugned order records that the advocate of the appellant was informed for collecting the documents by communication dated 20.10.2021. However, such letter was not received at all and specific assertion in this behalf has been made in the appeal of the appellants which was not denied by the respondent in the petition preferred before the Hon'ble Gujarat High Court. Such letter was not produced at all with the affidavit but handed over to the Hon'ble Gujarat High Court at the time of hearing without any proof of dispatch. The impugned order was passed relying upon the data retrieved from the pen drive which was not supplied to the appellants at all. Therefore, there is breach of principle of natural justice.

2.3 He further submits that the appellants were not granted an opportunity of cross-examination of Ms. Neeta Parmar and Shri Rutungna Trivedi though the data recovered from Ms. Neeta Parmar and statements of both persons were relied upon for the purpose of implicating the petitioner which is in breach of the principle of natural justice.

2.4 He submits that contrary to what has been stated further purpose for rejecting the request for cross-examination, the respondent has relied upon the statements of two persons Ms. Neeta Parmar and Rutugna Trivedi for purpose of implicating the appellant despite which cross-examination was denied which in breach of principle of natural justice. He submits that in any case request for cross-examination could not have been denied. It is the contention of the respondent that the party cannot seek cross-examination of co-noticee is incorrect and illegal on the basis of various decisions. In support of his above submission he placed reliance on the following judgments:-

- M.G. M Metaliesers Ltd vs. UOI – 2018 (10) GSTL 537 (Guj.)
- Kothari Filaments vs. Commissioner of Cus.(Port), Kolkata – 2009 (233) ELT 289 (SC)
- C.C.E &Cus. Vs. Chandan Steel Ltd – 2009 (238) ELT 716 (Guj.)
- Vinay Wires & Poly Product P. Ltd vs. Member (C.Ex). C.B.E & C., New Delhi - 2010 (252) ELT 10 (Del.)
- BNS Import Export vs. UOI – 2018(362) ELT 398 (Bom.)
- Gujarat Narmada Valley Fertilizers and Chemicals Ltd (GNFC) vs. UOI – 2020 (1) TMI 1204
- Shree Salasarji Metal Industries vs. UOI – 2018 (9) TMI 1980
- DharampalSatyapal Ltd vs. Dy. Commissioner of C.Ex., Gauhati – 2015 (320) ELT 3 (SC)
- Sameer Shah vs. UOI &Anr – 2022 (6) TMI 534
- Andaman Timber Industries vs. CCE - 2016 (15) SCC 785
- Mahek Glazes Pvt. Ltd vs. UOI – 2014 (300) ELT 25 (Guj.)

3. Shri Girish Nair, Learned Assistant Commissioner (AR) appearing on behalf of the Revenue reiterates the finding of the impugned order.

4. We have carefully considered the submission made by both sides and perused the records. We find that as per the submission made by learned counsel we are into agreement that there is gross violation of principle of natural justice in passing the impugned order. We find that despite the request made by the appellant, the relied documents have not been supplied to the appellants along with the show cause notice and only inspection was allowed which in our view is not sufficient to enable the party to present their case effectively. The appellants vide their letter dated 20.10.2021 requested for relied upon documents however, no documents were supplied to them and without giving the documents the hearing was

fixed and the impugned order was passed on 29.11.2021. This in our view amounts to denial of opportunity of personal hearing.

4.2 As regard the letter dated 20.10.2021 mentioned in the impugned order that the advocate for the appellants was informed for collecting the documents, however such letter has not been received. We also find that the entire case against the appellants was decided completely relying on the data retrieved from the pen drive but the same was not provided to the appellant. The appellant have also requested for the cross-examination of Ms. Neeta Parmar and Shri Rutugna Trivedi from whom the data was recovered and their statements were relied upon implicating the present appellants, but the cross-examination was denied. It is surprising that when the entire case is based mainly on the statements of Ms. Neeta Parmar and Shri Rutugna Trivedi as per Section 138B it is mandatory for the adjudicating authority to grant the cross-examination which the adjudicating authority miserably failed to comply the requirement of Section 138B. We find that the adjudicating authority has rejected the request for cross- examination on a flimsy ground whereas Section 138B mandates that if the statements to be admitted as evidence cross-examination of the witnesses is must. Therefore, no discretion is provided under Section 138B for the adjudicating authority to use his whims to allow or to disallow the cross-examination. Therefore, the rejection of cross-examination by the adjudicating authority is absolutely contrary to the mandate given in Section 138B.On this issue, we take support from the following decision:-

- Dharampal Satyapal Ltd vs. Dy. Commissioner of C.Ex., Gauhati – 2015 (320) ELT 3 (SC)
- Sameer Shah vs. UOI &Anr – 2022 (6) TMI 534
- Andaman Timber Industries vs. CCE - 2016 (15) SCC 785

4.3 In view of the above judgments it is mandatory on the part of the adjudicating authority to allow the cross-examination for the fair adjudication of the case.

4.4 We find that the adjudicating authority contended that party cannot seek cross- examination of co-noticee which is absolutely incorrect in the light of the following judgments:-

- Gujarat Narmada Valley Fertilizers and Chemicals Ltd (GNFC) vs. UOI – 2020 (1) TMI 1204
- Shree Salasarji Metal Industries vs. UOI – 2018 (9) TMI 1980
- Vasudev Garg

4.5 As per the settled legal position as observed above we are of the clear view that the adjudicating authority has grossly violated the principles of natural justice by not providing the data/ relied upon documents and by not allowing the cross- examination of the witnesses as requested by the appellants. Therefore, in our considered view the impugned order will not sustain to the extent of the present appellants. Hence, we set aside the impugned order and allow the appeals by way of remand to the adjudicating authority for passing a fresh order considering our above observation.

4.6. Needless to say once again that the appellants may be provided all the required documents/data relied upon in the present case and also be allowed the cross-examination of the witnesses, thereafter to pass a fresh and reasoned order in the interest of justice.

5 The appeals are allowed by way of remand to the Adjudicating Authority in above terms.

(Order pronounced in the open court on 16.10.2024)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)

Neha