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

REGIONAL BENCH- COURT NO.3

Excise Appeal No. 122 of 2012

(Arising out of OIA-242-245/2011/COMMR-A-/RBT/RAJ dated 20/12/2011 passed by Commissioner of Central Excise, Customs and Service Tax-RAJKOT)

Relief Pump Industries **........Appellant**
Somnath Industrial Area, Plot No. 15, Survey No. 224, Shiv Chowk,
Opp. Krishna Park, Near Kotharia Railway Crossing, Gondal Road,
Rajkot
Gujarat

VERSUS

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

WITH

Excise Appeal No. 123 of 2012

(Arising out of OIA-242-245/2011/COMMR-A-/RBT/RAJ dated 20/12/2011 passed by Commissioner of Central Excise, Customs and Service Tax-RAJKOT)

Dilipbhai Madhubhai Guna **........Appellant**
Relief Pump Industries,
Somnath Industrial Area, Plot No. 15, Survey No. 224, Shiv Chowk,
Opp. Krishna Park, Near Kotharia Railway Crossing, Gondal Road,
Rajkot
Gujarat

VERSUS

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

AND

Excise Appeal No. 124 of 2012

(Arising out of OIA-242-245/2011/COMMR-A-/RBT/RAJ dated 20/12/2011 passed by Commissioner of Central Excise, Customs and Service Tax-RAJKOT)

Pravinbhai B Ranparia **........Appellant**
Relief Pump Industries,
Somnath Industrial Area, Plot No. 15, Survey No. 224, Shiv Chowk,
Opp. Krishna Park, Near Kotharia Railway Crossing, Gondal Road,
Rajkot
Gujarat

VERSUS

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

APPEARANCE:
Shri Rahul Gajera, Advocate appeared for the Appellant
Shri Vijay G Iyengar, Assistant Commissioner (AR) for the Respondent

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

Final Order No. A/ 10215 - 10217 /2023

DATE OF HEARING: 10.10.2022
DATE OF DECISION: 07.02.2023

RAMESH NAIR

In the present case demand of duty, confiscation fine , penalty etc was confirmed on the allegation of clandestine removal of excisable goods and personal penalty on Shri Dilipbhai Madhubhai Guna and Shri Pravinbhai B Ranparia was imposed under Rule 26.

2. Shri Rahul Gajera, Learned Counsel appearing on behalf of the Appellant at the outset submits that in the present case the demand of duty was raised alleging the clandestine removal. The basis of clandestine removal is mainly the statement of buyer and the appellant's representatives. He submits that apart from statements there is no documentary evidence. The Adjudicating Authority has not cross- examined the witnesses under section 9D of Central Excise Act, 1944. In this case since the cross- examination has not been done and the statements cannot be relied upon, hence the case of clandestine removal will not sustain. He submits that as certain documents such as rough note books, sales ledger etc themselves are not evidence of clandestine manufacture and removal as the same was not corroborated with any other document. He placed reliance on the following judgments:

- Jindal Drugs Pvt Ltd – 2016 (340) ELT 67 (P& H)
- Basudev Garg – 2013 (294) ELT 353 (Del.)
- Arya Fibers Pvt Ltd – 2014 (311) ELT 529 (Tri. Ahmd)

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

4. On careful consideration of submission of both sides and perusal of records I find that though some documents such as rough book, sales ledger etc were relied upon but mainly the case was made out on the basis of statements of various persons. The Learned Counsel has vehemently raised the issue of cross examination in terms of section 9D I find that since the case was mainly made relying on the various statements it is incumbent on the Adjudicating Authority to carry out the cross-examination of such witnesses as mandated under section 9D of the Central Excise Act, 1944. Since the Cross- examination has not been conducted the impugned order is not proper. Therefore, the same is liable to be set aside.

5. Accordingly, I set aside the impugned order and remand the matter to the Adjudicating Authority for passing a fresh order after conducting the cross- examination of the witnesses. Needless, to say that if by all the efforts the cross- examination is not possible the adjudicating authority is not precluded from passing de novo order in accordance with law.

6. Appeals are allowed by way of remand to the Adjudicating Authority. Since the appeal pertains to year 2012 and period of the case is much before that, the Adjudicating Authority is expected to pass a de-novo order within a period of 2 months from the date of this order.

(Pronounced in the open court on 07.02.2023)

RAMESH NAIR
MEMBER (JUDICIAL)

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