Customs, Excise & Service Tax Appellate Tribunal

West Zonal Bench at Ahmedabad

REGIONAL BENCH-COURT NO. 3

EXCISE APPEAL NO. 12850 of 2018- DB

(Arising out of OIA-CCESA-SRT-APPEAL-PS-184-185-2018-19 dated 24/07/2018 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-SURAT-I)

Art Luminaires **........Appellant**
Plot No. 377/1 (16), Zari Causeway Road,
Char Rasta, Kachigam, Nani Daman
DAMAN (UT)

VERSUS

Commissioner of C.E. & S.T.-Daman **......Respondent**
3RD FLOOR...ADARSH DHAM BUILDING, VAPI-DAMAN ROAD, VAPI
OPP.VAPI TOWN POLICE STATION,
VAPI,GUJARAT-396191

WITH

i. **EXCISE APPEAL NO. 12851 of 2018- DB (Ashwin Dias)**
ii. **EXCISE APPEAL NO. 12864 of 2018- DB (Commissioner of Central Excise and Service Tax, Daman vs. Art Luminaires)**
iii. **EXCISE APPEAL NO. 12618 of 2019- DB (Art Luminaires)**

[(Arising out of OIA-CCESA-SRT-APPEAL-PS-156-2019-20 dated 20/06/2019 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-SURAT-I]

APPEARANCE:
Shri Ishan Bhatt, Advocate appeared for the Appellant-Assessee
Shri Tara Prakash, Deputy Commissioner (AR) appeared for the Respondent-Revenue

CORAM: HON'BLE MEMBER (JUDICIAL), MR. RAMESH NAIR
HON'BLE MEMBER (TECHNICAL), MR. C L MAHAR

Final Order No. 12579-12582/2024

DATE OF HEARING: 05.07.2024
DATE OF DECISION: 05.11.2024

RAMESH NAIR

The following appeals are filed by appellant M/s. Art Luminaires and its partner Mr. Ashwin Dias and also against the common order by the department that is Commissioner of Central Excise and Service Tax, Daman:-

<table>
<tr><th>Appeal</th><th>Appellant</th><th>SCN dated</th><th>Order-in-Original No.</th><th>Impugned Order-in-Appeal No.</th><th>Period</th><th>Duty demand (Rs.)</th><th>Penalty imposed (Rs.</th></tr>
<tr><td>E/12850/2018</td><td>Art Luminaires</td><td rowspan="3">30.03.2017</td><td rowspan="3">02/C.Ex/OA/BPS-ADC/DMN/2017-18 dated 27.10.2017</td><td rowspan="3">CCESA(APPEALS)PS-184 & 185/2018-19 dated 24.07.2018</td><td rowspan="3">April 2012 to March 2016</td><td>1,21,73,743</td><td>1,21,73,743</td></tr>
<tr><td>E/12851/2018</td><td>Mr. Ashwin Dias</td><td>N.A.</td><td>30,00,000</td></tr>
<tr><td>E/12864/2018</td><td>Commissioner of Central Excise & S.T., Daman</td><td colspan="2">N.A.
(Dept. Appeal against setting aside of redemption fine of Rs.1,20,00,000/- in the Order-in-Appeal)</td></tr>
<tr><td>E/12618/2019</td><td>Art Luminaires</td><td>03.05.2018</td><td>DMN-II/AC/AKA/03/18-19 dated 10.02.2019</td><td>CCESA-SRT(APPEAL)PS-156/2019-20 dated 20.06.2019</td><td>April 2016 to June 2017</td><td>To be quantified (As per SCN - 33,97,757)</td><td>To be quantified (As per SCN - 33,97,757)</td></tr>
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1.1 The issues involved in the above appeals in brief are as under:-

(i) Appeal nos. E/12850/2018 & E/12618/2019 - Whether the lighting fixtures of Wipro brand manufactured and supplied by the Appellant to the brand owner M/s Wipro Ltd. is required to be valued at the average sale price at which these lighting fixtures are sold by Wipro, under Rule 10A(ii) of the Central Excise Valuation Rules, 2000, where Department has raised the demand on the ground that one of the raw materials, i.e. ballast, was purchased from Wipro.

(ii) Appeal No. E/12851/2018 – Whether separate personal penalty under Rule 26 of Central Excise Rules, 2002 is imposable on Mr. Ashwin Dias, who is a partner of the partnership firm M/s Art Luminaires?

(iii) Appeal No. E/12864/2018 – Whether the Ld. Commissioner (Appeals) has erred in setting aside the redemption fine of Rs.1,20,00,000/- on the ground that the goods were not available for confiscation?

1.2 M/s. Art Luminaires (hereinafter referred to as "the Appellants") are, inter alia, engaged in the manufacture of lighting fixtures and reflectors falling under Chapter 94 of the First Schedule to the Central Excise Tariff Act, 1985.The Appellants have entered into an agreement with M/s. Wipro Ltd. ("Wipro") for manufacture and sale of lighting fixtures for a mutually agreed price on which excise duty was discharged. The case of the department is that there is relationship between the appellant and the buyer M/s. Wipro Ltd, on the ground that the appellant are actually job worker of M/s. Wipro Ltd and therefore, the appellant are liable to pay central excise duty on the lighting fixtures sold to Wipro based on the average sale price of the Wipro in terms of Rule 10A(ii) of Central Excise Valuation Rules, 2000 and not on the transaction value. Accordingly, two periodical show cause notices were issued first dated 30.03.2017 and second dated 03.05.2018.The adjudicating authority confirmed the differential duty demand, imposed equal penalty and also imposed penalty on the partner of the appellant firm before the Commissioner (Appeals), the Commissioner (Appeals) has set aside the redemption fine. Therefore, the appellant filed appeals challenging the demand of duty, equal penalty and penalty against the partner. The department also filed appeal against the setting aside of redemption fine in the Order In Appeal. Accordingly, being common issue involved, all the appeals are taken together for disposal.

2. Shri Ishan Bhatt, Ld. Counsel, appearing on behalf of the appellant submits that as regard the first show cause notice, the order was passed ex-parte as no hearing was conducted. He submits that against the hearing notice dt.21.09.2017, whereby, the hearing was fixed on 03.10.2017 & 13.10.2017, due to the miscommunication between the appellants and their Advocates nobody could attend the personal hearing and on noticing the same, appellant filed letter dated.29.11.2017 explaining the reason for non attendance and requested for a fresh date of hearing. Meanwhile, without granting another opportunity for hearing, the additional Commissioner has passed Order In Original dated 27.10.2017. As regard the second show cause notice, since the first show cause notice was decided against the appellant, following the same the second show cause notice was also decided by confirming the differential duty demand on the identical grounds as in the earlier show cause notice dated 30.03.2017. Therefore, he submits that there is a clear violation of principles of Natural Justice. Therefore, the Orders In Original as well as Orders In Appeal are not sustainable only on the ground of Natural Justice. He further submits that as regard the penalty imposed against the partner Shri Ashwin Dias of the partnership firm, he submits that it is settled by the Hon’ble High Court of Gujarat in the case of CCE v. Jai Prakash Motwani and the judgment of the Hon’ble Tribunal in the case of Shah Petroleum and Snehal Arvindbhai Shah v. C.C.E. & S.T. –

Surat-II - 2023 (2) TMI 67 - CESTAT AHMEDABAD that separate penalty on partner is not imposable. As regard the department's appeal, challenging the setting aside of redemption fine, he submits that the issue is no longer res-integra, as the same is covered by various judgments whereby, it is categorically held that if the goods are not available, there is no question of confiscation thereof and consequential redemption fine. He also made a detailed submission on merit that the appellant and customers are not related in terms of Section 4, therefore, the duty was correctly paid on the transaction value. In support of his above submission, he placed reliance on the following judgments:-

- Poona Bottling Co. Ltd. v. U.O.I.1981 (8) ELT 389 (Del.)Affirmed by Supreme Court in 2003 (154) ELT A240 (SC)
- Steel City Beverages Pvt. Ltd. v. UOI 1986 (23) ELT 147 (Pat.)
- Spencer and Co. Ltd. v. ACCE 1983 (14) ELT 2098 (Mad.)
- Basant Industries v. CCE1995 (75) ELT 21 (SC)
- Nilkamal Ltd v. CCE2018 (2) TMI 1305 CESTAT New Delhi
- Rustagi Plastics Industries Pvt. Ltd v. CCE2018 (3) TMI 1228-CESTAT New Delhi
- Tata Engineering and Locomotive Company Ltd v. UOI
  1988 (35) ELT 617 (Kar.)
  Affirmed by the Hon'ble Supreme Court of India
  1997 (94) ELT A128(SC)
- Interocean Shipping Co. v. CST2013 (30) STR 244(T)
- Sujhan Instruments Vs CCE2019 (368) ELT 135 (T)
- Prestige Engineering (India) Ltd. Vs. CCE 1994 (73) ELT 497 (SC)
- Coromandel Paints Ltd. Vs. CCE2010 (260) ELT 440 (T)
- CCE Vs. Innocorp Ltd 2013 (289) ELT 172 (T)
- Miraj Drymix Pvt, Ltd Vs. CCE2018 (8) TMI 162-CESTAT New Delhi
- Symphony Comforts System Ltd. Vs. CCE 2013 (313) ELT 467 (T)
- Nirmal R. Ruparel Vs. CCE 2014 (304) ELT 711 (T)
- L.V.T. Products Ltd. Vs. CCE 1997 (93) ELT 134 (T)
- Kwality Ice Cream Co. Vs. CCE2002 (145) ELT 584 (T)
  Affirmed in Supreme Court in the case reported at 2010(260) ELT 327 (SC)
- CCE v. Jai Prakash Motwani2009 (1) TMI 501 - GUJARAT HIGH COURT
- Shiv Kripa Ispat Pvt. Ltd. v. CCE, Nasik2009 (235) E.L.T. 623 (Tri. LB)
- CCE v. Asoj Soft Caps Pvt. Ltd.2012 (280) E.L.T. 88 (Tri. Ahmd.)

- Bil Metal Industries Ltd. v. CCE, Vadodara – 12013 (12) TMI 169 - CESTAT AHMEDABAD

3. Shri Tara Prakash, Learned Deputy Commissioner (AR) appearing on behalf of the revenue, reiterates the findings of the impugned order. He submits that since the appellant were working exclusively for M/s. Wipro Ltd. there is a relationship and the duty was supposed to be paid under Section 10A (ii) of the Central Excise Valuation Rules, 2000. Hence, the demand was correctly made by the department and the same is sustainable.

4. We have carefully considered the submissions made by both the sides and perused the records. We find that in the entire case, no personal hearing has been conducted by the adjudicating authority though, the adjudicating authority has given a notice of hearing on 21.09.2017 but by one notice two consecutive date of hearing i.e. 03.10.2017 & 13.10.2017 was fixed. In this regard, we find that it is a settled law that by giving one hearing notice letter even though, two or three dates are given it is to be considered as one date of hearing and as per the statute, minimum three opportunities of personal hearing is required to be given to the assessee. Moreover, the appellant also filed a letter dated 29.11.2017 explaining the reason for non attendance and requested for a fresh date of hearing. However, by that time, the adjudication order came to be passed. As regard the second show cause notice, even though, hearing is conducted but the order was passed on the same line of the order passed in the show cause notice dated 30.03.2017. Therefore, taking total stock of the proceeding, we are of the view that there is a clear violation of principles of Natural Justice in adjudication of the show cause notices. As regard the appeal of Shri Ashwin Dias on whom personal penalty of Rs.30,00,000/- was imposed, we find that Shri Ashwin Dias is undisputedly partner of M/s. Art Luminaires which is a partnership firm. The Hon’ble jurisdictional High of Gujarat in the case of CCE v. Jai Prakash

Motwani & judgment in the case of Shah Petroleum and Snehal Arvindbhai Shah v. C.C.E. & S.T. – Surat-II held that in case of partnership firm, no separate penalty can be imposed on the partner. In view of the settled legal position by the Hon'ble High Court of Gujarat irrespective of any merit of the case, the personal penalty on Mr. Ashwin Dias is clearly not sustainable. Hence, the same is set aside. As regard the revenue's appeal, it seeks imposition of redemption fine of Rs. 1,20,00,000 which was set aside by the Commissioner (Appeals) on the ground that since goods are not available, redemption fine is not sustainable. We find that the Ld. Commissioner (Appeals) is absolutely correct in setting aside the redemption fine, as the issue is squarely covered by the Larger Bench judgment in the case of Shiv Kripa Ispat Pvt. Ltd. (supra) wherein, it was held that when the goods are not available for confiscation no redemption fine can be imposed. Therefore, we do not find any infirmity in the order of the Commissioner (Appeals) to the extent, it set aside the redemption fine.

5. As a result Appeal No.E/12850/2018 & E/12618/2019 filed by M/s. Art Luminaires are allowed by way of remand to the adjudicating authority for passing a fresh order by observing the principles of Natural Justice. The appeal No. E/12851/2018 filed by Mr. Ashwin Dias is allowed. The Appeal No. E/12864/2018 filed by the revenue is dismissed.

(Pronounced in the open court on 05.11.2024)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(C L MAHAR)
MEMBER (TECHNICAL)

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