

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

REGIONAL BENCH- COURT NO.3

Excise Appeal No. 12455 of 2013

(Arising out of OIO-58/COMMR/2013 dated 30.03.2013 passed by Commissioner of Central Excise-Rajkot)

SHREE VIKRAM JAGDISHBHAI KHOONT

.....Appellant

C/O. M/S, J.M.COPPER INDUSTRIES, PLOT NO. G-527-2,
NEAR MEHTA UNANI PHARMACY, GIDC, METODA,
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. 12463/2013 (Prakashbhai Vasantbhai Parekh)**
- (ii) Excise Appeal No. 12465/2013 (Mukeshbhai Himatbhai Patel)**
- (iii) Excise Appeal No. 12469/2013 (Hemalkumar P Kalaria)**
- (iv) Excise Appeal No. 12470/2013 (Sumeet Rameshbhai Butani)**
- (v) Excise Appeal No. 12472/2013 (Ashwinbhai Nagjibhai Kothiya)**
- (vi) Excise Appeal No. 12473/2013 (Bharatbhai Purushottambhai Fuletra)**
- (vii) Excise Appeal No. 12476/2013 (Hrjibhai Pitambarbhai Dalwadi)**
- (viii) Excise Appeal No. 12478/2013 (Alpeshbhai Ramnikbhai Mehta)**

(Arising out of OIO-58/COMMR/2013 dated 30.03.2013 passed by Commissioner of Central Excise-Rajkot)

APPEARANCE:

Shri Rahul Gajera, Advocate appeared for the Appellant

Shri P. Ganeshan, Superintendent (AR) for the Respondent

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

Final Order No. A/ 10346-10354 /2023

DATE OF HEARING: 23.02.2023

DATE OF DECISION: 23.02.2023

RAJU

When the matter was called, Shri Rahul Gajera, learned Counsel appeared for Shree Vikram Jagdishbhai Khoont. No one appeared for other appellants. All the appellants are in the nature of buyers or the suppliers of goods to the main noticee namely M/s Maruti Industries.

2. Shri Rahul Gajera, learned Counsel pointed out that Shree Vikram Jagdishbhai Khoont is the power of attorney holder of M/s J M Copper. He pointed out that separate notice was issued to J M Copper Industries in the same investigation as in the impugned proceedings against Maruti

Industries-Rajkot. He pointed out that in both the cases heavy reliance has been placed on the statements of various witnesses and the same have been relied without examination/ cross examination as mandated under Section 9D of the Central Excise Act. He pointed out that the matter related to J M Copper was remanded by Tribunal to the Original Adjudicating Authority for completing the proceedings necessary under Section 9D of the Central Excise Act. He further pointed out that the main noticee M/s Maruti Industries has settled the matter under SVLDR and therefore is no longer in appeal before Tribunal.

2.1 He sought similar relief as in case of J M Copper with a direction for time bound proceedings before the lower authorities.

3. Learned Authorized Representative relies on the impugned order.

4. I have considered the rival submissions. I find that investigations were initiated against M/s Maruti Industries – Rajkot a manufacturer of Copper winding wires. It is apparent from the first para of the Final Order No. A/10594-10595/2019 dated 26.03.2019 that both the matters originate from same investigation. It is seen that a large number of statements have been relied upon in the instant case and no examination/ cross examination has been conducted before placing reliance on these statements. I find that Tribunal in the case of J M Copper has observed as follows:

"4. On careful consideration of the submission made by both the sides and perusal of records, I find that since both the lower authorities have heavily relied upon the statements of various persons recorded under Section 14 of Central Excise Act, 1944, therefore, it was incumbent on the adjudicating authority to first examine/cross-examine the witnesses whose statements were relied upon while passing the order. It is settled law that once statements are intended to be relied upon by the adjudicating authority has been disputed by the defendant, the witnesses must be examined/cross-examined as provided under Section 9D of Central Excise Act, 1944. Therefore, without carrying out the process of examination/cross-examination of witnesses, the adjudication is in violation of principle of natural justice.

5. However, in the interest of justice, I am of the view that the de novo adjudication process can be undertaken after conducting examination/cross-examination of the witnesses. Accordingly, I set aside

the impugned order and remand the matter to the adjudicating authority for passing a fresh order by keeping in mind the above observations”

5. Learned Counsel has pointed out that though this order was issued on 26.03.2019 still the examination/ cross examination has not been undertaken by the lower authorities. I find that since the provisions of Section 9D have not been followed the matters need to be remanded back to the original adjudicating authority as was done in the case of J M Copper in the decision cited above. Therefore, the impugned orders in the case of these notices is set aside and matters are remanded to the original adjudicating authority to pass fresh orders after following the procedure under Section 9D within period of two months from the receipt of this order. Appeals are allowed by way of remand.

(Dictated & Pronounced in the open court)

(RAJU)
MEMBER (TECHNICAL)

Neha