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

REGIONAL BENCH- COURT NO. 1

Customs Appeal No. 12442 of 2014-DB
(Arising out of OIO-RAJ-EXCUS-000-COM-06-14-15 Dated-28/05/2014passed by Commissioner of Central Excise-RAJKOT)

Mitesh Impex ....**Appellant**
Plot No. 287-289, 311 & 312,
Jamnagar, Gujarat

VERSUS

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

WITH

- **Customs Appeal No. 12443 of 2014 (Prakashchandra Panalal Lavti)**
- **Customs Appeal No. 12444 of 2014 (Rameshchandra Panalal Lavti)**
- **Customs Appeal No. 12445 of 2014 (Nathulal Panalal Lavti)**
- **Customs Appeal No. 13216 of 2014 (Anand C Patel)**

(Arising out of OIO-RAJ-EXCUS-000-COM-06-14-15 Dated-28/05/2014passed by Commissioner of Central Excise-RAJKOT)
(Arising out of OIO-RAJ-EXCUS-000-COM-06-14-15 Dated-28/05/2014passed by Commissioner of Central Excise-RAJKOT)
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APPEARANCE:
Shri. P. M. Dave, & Shri. Paresh Sheth, Advocates for the Appellant
Shri. G. Kirupanandan, Assistant Commissioner (AR) for the Respondent

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

Final Order No. A/10489-10493 /2023

DATE OF HEARING: 13.03.2023
DATE OF DECISION:13.03.2023

Raju

These appeals have been filed by M/s. Mitesh Impex against the order of Commissioner confirming the demand of Customs duty and imposing penalties.

2. Learned Counsel for the appellant M/s. Mitesh Impex, Shri. Prakashchandra Panalal Lavti, Shri. Rameshchandra Panalal Lavti , Shri. Nathulal Panalal Lavti pointed out that during the adjudication proceedings they have specifically asked for cross examination of six persons whose statement was taking by the revenue during the investigation, and was relied upon by the show cause notice. The said request was rejected by the adjudicating authority while simultaneously the order relied on the said statements. He point out that in terms of section 138(B), such statements are not relevant unless the persons whose statement is being relied upon examined as cross-examined before the adjudicating authority. He requested the matter should be remanded back to the original adjudicating authority for granting opportunity under section 138(B) of the Customs Act, 1962.

3. No one appeared for Shri. Anand C Patel in Appeal No. C/13216/2014 however, the adjournment request was received.

4. Learned AR relied on the impugned order. He pointed out that the adjudicating authority has rightly denied the opportunity of cross-examination.

5. We have considered the rival submissions. We find that the statement of six persons who the appellant sought to cross-examine has been relied in the impugned order. It is also noticed that no examination/cross-examination of the said witness was undertaking by the adjudicating authority in terms of 138(B) of the Customs Act, 1962. We find that the issue regarding cross-examination has been examined by Hon'ble High Court of Delhi in the case of J & K CIGARETTES LTD.-2009 (242) ELT 189 (Del.) and by Hon'ble High Court of Punjab and Haryana in the case of JINDAL DRUGS PVT. LTD VSL UNION OF INDIA-2016 (340) ELT 67 (P & H). Respectfully following the aforesaid decisions we hold that no reliance can be placed on the statements without granting the opportunity under Section 138 (B) of the Customs Act, 1962 to the appellants. We also take note on the fact that Section 9D of the Central Excise Act, and 138 (B) of the Customs Act, 1962 are Pari materia.

6. In view of above, the order is set aside and appeals are allowed by way of remand to the adjudicating authority for fresh adjudication after granting the appellant to due opportunity for cross-examination. All the issues are kept open.

(Dictated and pronounced in the open court)

(RAJU)
MEMBER (TECHNICAL)

(SOMESH ARORA)
MEMBER (JUDICIAL)

PRACHI