FAX : 0532-2400149

REGISTERED / AD

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
38,MG Marg Civil Lines,Old Red Building,Allahabad-211001
Regional Branch, Allahabad

Dated: 22/02/2017

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. **A/70198-70204/2017-EX[DB]** dated **30/01/2017**

I am directed to transmit herewith a certified copy of order passed by the Tribunal under section **35-C(1) of the Central Excise and Salt Act, 1944.**

Asstt. Registrar

Application	Appeal	Name and Address of Appellant
1	E/53937/2014	**Vasudev Udyog** Jai Bhagwan Goyal Authorized Signatory Of, D-28, Near Ram Mandir, Vivek Vihar NEW DELHI DELHI
2	E/53938/2014	**Shivam Metals** Through Its Propreiter ,sanjeev Gupta,a- 4,first Floor Ashoka Niketan NEW DELHI 110092
3	E/53939/2014	**Mayank Metals** Through Its Propreiter ,sanjeev Gupta,a- 4,first Floor Ashoka Niketan NEW DELHI
4	E/54157/2014	**Sandeep Manufacturing Strips** C-26, Sector A-5/6, Tronica City, Loni GHAZIABAD UP
5	E/54158/2014	**Sandeep Gupta** 287,phatak Karor,chawri Bazar DELHI -110006
6	E/54912/2014	**Subodh Gupta** A-1,indrapuri Extension In Front Of Hanuman Mandir, Loni Road GHAZIABAD UP
7	E/55566/2014	**Shri Mukesh Chauhan** S/o Late Shri Ranjeet Singh, H. No. 228. Gali No. 10, I.p. Colony, Buradi, DELHI-110084
		Name and Address of Respondent
8		C.C.E. & S.T.-Ghaziabad 202...WING A C.G.O. COMPLEX- II,KAMLA NEHRU NAGAR, GHAZIABAD, UTTAR PRADESH-201002
9		C.C.E. & S.T.-Ghaziabad 202...WING A C.G.O. COMPLEX- II,KAMLA NEHRU NAGAR, GHAZIABAD, UTTAR PRADESH-201002
10		C.C.E. & S.T.-Ghaziabad 202...WING A C.G.O. COMPLEX- II,KAMLA NEHRU NAGAR, GHAZIABAD, UTTAR PRADESH-201002

11 C.C.E. & S.T.-Ghaziabad
202...WING A C.G.O. COMPLEX-
II,KAMLA NEHRU NAGAR,
GHAZIABAD,
UTTAR PRADESH-201002

12 C.C.E. & S.T.-Ghaziabad
202...WING A C.G.O. COMPLEX-
II,KAMLA NEHRU NAGAR,
GHAZIABAD,
UTTAR PRADESH-201002

13 C.C.E. & S.T.-Ghaziabad
202...WING A C.G.O. COMPLEX-
II,KAMLA NEHRU NAGAR,
GHAZIABAD,
UTTAR PRADESH-201002

14 C.C.E. & S.T.-Ghaziabad
202...WING A C.G.O. COMPLEX-
II,KAMLA NEHRU NAGAR,
GHAZIABAD,
UTTAR PRADESH-201002

Other Appellants and Respondents as per Annexure

Copy To

15 Advocate(s) / Consultant(s):

Rajesh chibber
FA-9, KAVI NAGAR,
GHAZIABAD, UP

ASHISH BANSAL ADVOCATE
D-10, PRITHVIRAJ ROAD, ADARSH
NAGAR, DELHI-33

Prabhat Kumar
B-51(BASEMENT), SARVODAYA
ENCLAVE
NEAR MOTHER INTERNATIONAL
SCHOOL NEW DELHI

Tarun Chawla (Advocate)
A-2/101, RAJOURI GARDEN,
NEW DELHI, 110027

JATIN MAHAJAN ADV
37, LGF, VINOBAPURI, LAJPAT
NAGAR-II NEW DELHI 110024

16 Bar Association, CESTAT, Allahabad

17 Director Publications, Customs, Excise. I.P. Estate, Delhi

18 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, New Delhi-3

19 Company Law Institute of India Pvt. Ltd., No.2 (old no.36), Vaithyaram Street, T. Nagar, Chennai-17

20 Taxmann Allied Service Pvt. Ltd., 59/32, New Rohtak Road, New Delhi-110005

21 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)

22 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi - 110070

23 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad – 38

24 The ICFAI society, 52, Nagarjuna Hill,Punjagutta Hyderabad.-500082

25 M/S Knowledge Processing Pvt. ltd.(taxmanagementindia.com),FF-19,1st Floor,Cross River Mall,CBD Ground,Near Karkardooma Court,Delhi-110032

26 C.D.R. 27 Office Copy 28 Guard File

Asstt. Registrar

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, REGIONAL BENCH : ALLAHABAD

Appeal Nos. E/53938, 54157, 53939, 53937, 54158, 54912 & 55566/2014-EX[DB]

Arising out of Order-in-Original No.01/COMMR./GZB/2014-15 dated 30.05.2014 passed by Commissioner, Customs & Central Excise, Ghaziabad.

I. Shivam Metals.
II. Sandeep Manufacturing Strips.
III. Mayank Metals.
IV. Vasudev Udyog.
V. Sandeep Gupta.
VI. Subodh Gupta.
VII. Shri Mukesh Chauhan ...APPELLANTS

VERSUS

C.C.E. & S.T.-Ghaziabad .....RESPONDENTS

APPEARANCE

Shri Rajesh Chibbar, Advocate for Appeal Nos.E/53937 & 53938/2014, Shri Prabhat Kumar, Advocate for Appeal No. E/53939/2014, Shri Tarun Chawala, Advoctae for Appeal No. E/54157, 54158/2014.

Shri Rajiv Ranjan (Joint Commr.), A.R. for the Department

CORAM:

HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)
HON'BLE MR. ANIL G. SHAKKARWAR, MEMBER (TECHNICAL)

DATE OF HEARING & PRONOUNCEMENT : 30. 01. 2017

FINAL ORDER NO.-70198-70204/2017

Per Mr. Anil Choudhary :

All these appeals arise from common Order-in-Original dated 30.05.2014 passed by Commissioner of Central Excise & Customs, Ghaziabad. The issue for decision in these appeals is whether the impugned order is vitiated for lack of proper opportunity of cross examining the witnesses of the Revenue and also if the order have been passed in haste without adequate opportunity of hearing to the appellants herein.

2. The brief facts are that the appellant Sandeep Manufacturing Strips (SMS for short), located at Ghaziabad a proprietorship concern of Shri Sandeep Gupta, registered with the Department and engaged in manufacture and clearance of copper wire, strips etc. appeared to be resorting to clandestine activity by way of unaccounted procurement of raw material, that is copper ingots from the factories of different suppliers/appellants herein namely Mayank Metals, Shivam Metals and Vasudev Udyog. The raw materials so procured was used by SMS for unaccounted manufacture of finished goods that is copper wire and strips in his factory and later removed in a clandestine manner to his shop namely Sandeep Metals Supply situated at Chawdi Bazar, Delhi-6 for retail sale in the market to other buyers. Consequently searches were conducted at various places that included all the manufacturing premises of the persons referred hereinabove. Pursuant to the investigations and enquiries, show cause notice was issued by the DGCI, Delhi Zonal Unit, Delhi both dated 18.04.2012 for demand and recovery of Rs.6,71,05,300/- from SMS towards clandestinely manufacture and surreptitious supply of copper wire and

strips by SMS without payment of duty during the period 8/2008 to 7/2010. The SCN also proposed penalty upon SMS under Rule 25 of CER, 2002 readwith Section 11 AC of the Act. Further, penalty was proposed on the proprietor Sandeep Gupta, Pawan Agarwal–proprietor of Mayank Metals, Sanjiv Gupta, proprietor of Shivam Metals, Shri Jai Bhagwan, authorized person and defacto owner of Vasudev Udyog (Ex-Manager, M/s. SMS) and Shri Mukesh Chauhan (Ex-Accountant of SMS). Vide another show cause notice demand of duty against clandestine clearances of finished excisable goods namely copper ingots without payment of appropriate duty during the period 8/2008 to 7/2010 was demanded as follows :-

(i) Mayank Metals Rs.2,32,94,419/-

(ii) Shivam Metals Rs.2,90,57,862/- and;

(iii) Vasudev Udyog Rs.41,64,554/-

And further penalty was proposed under Rule 25 of CER readwith Section 11AC of the Act upon Sandeep Gupta, proprietor of SMS under Rule 26 of CER, 2002. The SCNs were adjudicated vide the impugned OIO and the proposed demand was confirmed on SMS. Further, penalty of Rs. 5 crore was imposed on Sandeep Gupta, Rs. 2 crores on Pawan Agarwal proprietor of Mayank Metals, Rs. 2 crores 50 Lacs on Sanjiv Gupta proprietor of Shivam Metals, Rs. 30 lakhs on Shri Jai Bhagwan, the authorized person and defecto owner of Vasudev Udyog, Rs. 20 lakhs on Subodh Gupta, alleged Ex-Manager of SMS, Rs. 10 lakhs on Mukesh Chauhan, Ex-Accountant of SMS. Further, demand of Rs.41,64,554 was confirmed on Vasudev Udyog along with equal amount of penalty under Rule 25 of CER read with Section 11AC of the Act, demand of Rs.2,32,94,419/- was confirmed against Mayank Metals along with equal amount of penalty, demand of Rs.2,90,57,862/- was confirmed against Shivam Metals along with equal amount of penalty.

3. Being aggrieved the appellants are in appeal before this Tribunal. Learned counsel Mr Rajesh Chibber appearing for Shivam Metals and Vasudev Udyog have taken us through the order sheet and the impugned order in support of their grounds, that there have been miscarriage of Justice as neither the opportunity of cross examination have been provided nor any denial of cross examination was intimated, neither any date for personal hearing was fixed after the purported completion of cross examination, if any, and thus the impugned order is in gross violation of the provisions of the Act and the principles of Natural Justice and as such fit to be set aside. The learned counsel further points out that initially at the stay stage this Tribunal had directed the appellants herein to deposit 50% of the adjudicated duty against which being aggrieved, the appellant had moved the Hon'ble Allahabad High Court in C.E.A. No. 131 of 2015 and wherein with the leave of the Hon'ble High Court they had brought the

entire order sheet from the file of learnred Commissioner in respect of the present impugned order on record. On going through the said record of personal hearing, we find and from the noting in the file, we notice-that on 31/12/2013 it is recorded that request for cross examination of the following persons was made namely (i) Mohd. Israr, (ii) Balram Srivastava, (iii) Subodh Gupta, (iv) Shri Anil Kumar and (v) Arvind Kumar as per interim reply and letter given dated 22/11/2013. Further, order sheet states that defence replies/interim reply have been received from Sandeep Manufacturing Strips, Mayank Metals, Shivam Metals, and Vasudev Udyog. Further, states that the file is put up with comments that the letters for personal hearing to Shivam Metals and Mayank Metals and its proprietor had been returned back by the postal authority. Further, for approval to issue notice to the concerned counsels of the parties. Thereafter order sheet dated 29.11.2013 records - we are in receipt of the communication dated 22.11.2013 from the counsel of the noticees/appellants namely Sanjiv Gupta, proprietor Shivam Metals, Pawan Kumar Agrawal and Shri Jai Bhagwan. Further, it is recorded that fresh date for personal hearing has been prayed for, along with cross-examination of some of the persons. Further, order sheet dated 31.12.2013 states that, let other noticees be called for PH, let request for cross examination may be examined at our end. Further, the order sheet dated 24.01.2014 states as directed by Superintendent Adjudication, the person sought to be cross-examined by some of the notices have been shortlisted along with the reasons for cross examination. Further order sheet dated 12.02.2014 states that the file is put up with the comments that while looking for the RUDs for the case, it was confirmed by Shri Vinod Kumar–STA, custodian of the RUDs that no RUDs have been forwarded by the DGCI, DZU till date. Thereafter order sheet dated 07.03.2014 states– It is observed that in total 22 persons have been sought to be cross-examined by Shri Pawan Agarwal proprietor of Mayank Metals, Sanjiv Gupta proprietor of Shivam Metals, Jai Bhagwan, authorized person of Vasudev Udyog and Sandeep Gupta, proprietor of SMS out of which four are co-noticees, 11 are suppliers of raw materials to M/s. SMS. In case of Arvind Kumar, labourer of SMS and Anil Sharma, Supervisor of Shivam Metals none of their statements/documents etc. have been relied upon in the SCN, the cross-examination would not suffice any purpose hence not allowed. In the case of 11 suppliers of raw material to SMS as detailed, the persons had already confessed of their involvement/role substantiated by the material evidence, further cross-examination in this regard would tantamount to reinvestigation and as such not allowed. Further recorded-as per existing provisions of law, since four persons named to be cross-examined are the co-noticees namely Subodh Gupta Manager of SMS, Pawan Agarwal proprietor of Myank Metals, Sanjiv Gupta proprietor of Shivam Metals and Jai Bhagwan authorized person and defacto owner of Vasudev

Acn

Udyog, they cannot be compelled to appear as a witness to give evidence. The said persons–co-noticees if wish to be cross-examined may appear for that purpose on the date fixed in this regard. Further, observed since the remaining five persons namely Mohd. Israr, Anil Kumar Driver, Balram Srivastava, Yogesh Chandra Shukla and Gopal driver are not the co-noticees the request in this regard is allowed and some dates of personal hearing as mentioned against the name of the persons for cross-examination along with time fixed was given with the direction to convey the same to the concerned persons. It is observed by us that the date for cross-examination was fixed on 19,20/03/2014. Thereafter as per order sheet dated 21st of March– letter for cross-examination and PH as mentioned above placed opposite for perusal and signature. Thereafter there is no further record of any cross-examination. The order sheet dated 21.03.2014 further states that another opportunity of cross examination as requested by the noticees/appellants is granted on 28.03.2014 at 11:30 and 16:00 hours. "Please issue notices". Thereafter the order sheet shows recording of findings by the learned Commissioner dated 30.05.2014 resulting into the present impugned order. The learned counsel further brought to our notice from the record of personal hearing as recorded in the impugned order wherein also the learned Commissioner have recorded that personal hearing was attended to by the appellants on 31/12/2013 and requested for cross-examination of certain persons as per their interim reply dated 24.112013. Learned counsel for appellants also ensure to submit detailed reply thereafter. They requested for cross-examination of the persons mentioned in para-37 of their interim reply dated 20 January, 2013. They further requested to keep the matter in abeyance till decision of criminal complaint against Subodh Gupta by court of ACJ M, Ghaziabad. They ensured to submit final reply and and arguments to be made after cross-examination, if allowed. It is further recorded that SMS, Mayank Metals, Shivam Metals and Vasudev Udyog have mentioned in their defence replies submitted in the case that the replies were interim and that they shall file final defence reply, but they failed to do so. Is it is further evident from the impugned order that cross-examination of the following persons had been conducted and/or completed namely Pawan Kumar Agrawal–proprietor Mayank Metals on 20.03.2014, Sanjiv Gupta proprietor of Shivam Metals on 28.03.2014, Jaibhagwan authorized signatory of Vasudev Udyog and one Gopal son of Shri Tejpal who is stated to be a driver.

4. The learned counsel also points out that the Hon'ble High Court in its final order dated 21/07/2015 in C.E.A. No. 130,131/2015 along with C.E.A No. 129 of 2015 have also recorded that it directed the appellants to produce the order sheet maintained by the Commissioner who passed the Order-in-Original. Supplementary affidavit is filed from which it is found that cross-examination of 22 witnesses was

considered and allowed in part on 07.03.2014 wherein five of the persons were permitted to be cross-examined namely Mohd. Israr, Anil Kumar, Balram Srivastava, Yogesh Chandra Shukla and Gopal. Hon'ble High Court further recorded the finding, modifying the amount of pre-deposit, observing that there is no averment as to undue hardship. It was further observed that once the authority permitted the appellants to cross-examine the witnesses, the same should have been done unless further orders denying such cross-examination was passed. With these observations the High Court modified the stay order directing the appellants to make a pre-deposit of 30% of the duty. The learned counsel also pointed out to some correspondence namely letter dated 07.04.2014 written by Ashish Bansal, Advocate on behalf of Mayank Metals and Vasudev Udyog stating that the authority had allowed the cross examination of the persons as requested by the noticees. Accordingly, the counsel of the noticee's appeared alongwith the proprietors and authorized signatory of the noticee's on the scheduled date and time i.e. 19.03.2014 and 28.03.2014. However, following persons did not present for their cross examination namely :- (i) Shri Yogesh Chandra Shukla, (ii) Anil Kumar, (iii) Subodh Gupta (iv) Mohd. Israr and; (v) Balram Srivastava. Further, request was made to call the remaining persons in the process of cross examination and on conclusion of the same to file their final reply to the show cause notices. Another request letter dated 15.05.2014 also appeared to be filed on same date as per the acknowledgement on the copy filed before us wherein also Mr. Ashish Bansal, Advocate stated that Shri Jai Bhagwan have prayed for cross examination of persons whose statements had been relied against them. However, witness of Gopal Driver was conducted on 28.03.2014 but as no date have been fixed for further cross examination, the intimation of the next date was prayed for personal hearing to be given before any final order is passed. Learned counsel for Sandeep Gupta, proprietor of SMS states that similar prayer was made by them also on 28.03.2014 and on 14.05.2014 and further prayer on 11.06.2014. Similarly, learned counsel for Mayank Metals also state that similar prayer was made by them on 07.04.2014 and 15.05.2014. Counsels for all the parties have stated that no communication as to denial with respect to the cross-examination of the witnesses-some of the witnesses was ever made to them. This also resulted in violation of their right to defend. Further, it is evident from record that the learned Commissioner have not given any notice of having closed the cross-examination nor any opportunity to file any final reply and/or opportunity of personal hearing pursuant thereto. Accordingly, it is in the interest of Justice to set aside the impugned order and to remand the same to the learned Commissioner to re-adjudicate after giving adequate opportunity of cross examination, filing of final reply and opportunity of personal hearing to them.

5. The learned A.R. for Revenue have relied on the impugned order. On query from the Bench regarding the factual aspects as stated by the counsel's for the appellants and also brought on record, no objection was raised by Revenue in this matter.

6. Having considered the rival contentions and on perusal of the appeal records and the documents brought on record, we are satisfied that there is failure on the part of the learned Commissioner in giving intimation to the appellants as regards the persons in respect of whom the cross-examination was refused, secondly we also find that the cross-examination after being conducted in part of only four persons have been abruptly stopped without there being any recording in the order sheet why the learned Commissioner did not complete the process of cross-examination of the other persons as permitted by him. We also find that no notice was given to the appellants that the process of cross-examination have been stopped and or completed from the side of Revenue, neither any opportunities was given to the parties to file their final reply in the matter and consequently they were not heard before passing of the impugned order. In this view of the matter, we are satisfied that there have been violation of the principles of Natural Justice and the provisions of Section 9D of the Central Excise Act, 1944. Accordingly, we allow these appeals by way of remand and set aside the impugned order. We further direct the learned Commissioner to convey the reasons to the appellant for

refusal of cross-examination of the persons, if any, whose cross examination he have denied and/or he intends to deny for the reasons to be recorded, complete the process of cross-examination, thereafter allow opportunity to file final reply by the appellants and thereafter grant opportunity for personal hearing in accordance with law. We also direct the appellants herein to appear before the learned Commissioner within a period of 90 days from the date of receipt of this order or preferably on 27/04/2017 with a copy of this order and seek opportunity in accordance with law in view of the directions contained in this order. Thus, the appeals are allowed by way of remand with directions.

(Order was dictated in the open Court)

-Sd/-
(ANIL G. SHAKKARWAR)
Member (TECHNICAL)

-Sd/-
(ANIL CHOUDHARY)
Member(JUDICIAL)

Patel/-