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: 02/01/2018

To

Appellant as per address in table below
Respondent as per address in table below

Final Order No. A/70034/2018-SM[BR] dated 01/01/2018

I am directed to transmit herewith a certified copy of order passed by the Tribunal under section 129-A(4) of the **Customs Act, 1962.**

Asstt. Registrar

Application	Appeal	Name and Address of Appellant
1	C/330/2011	HMT WATCHES LIMITED Watch Factory, Ranibagh, Nainital.
		Name and Address of Respondent
2		-C.C.E. MEERUT II Opp. Saheed Park (Near Ashok ki Lat) Delhi Road, Meerut (UP)

3Advocate(s) / Consultant(s):

**Rajesh Chhibber, CAS ASSOCIATES
A-403, 414-415 SOMDUTT
FA-9,KAVI NAGAR
GHAZIABAD
UTTARPRADESH
201002**

4 Bar Association, CESTAT, Allahabad

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

6 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, Opp ICICI Bank of Defence Colony New Delhi-3

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

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

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

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

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

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

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

14 C.D.R. 15 Office Copy 16 Second Folder Copy 17 Guard File

Asstt. Registrar

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH : ALLAHABAD
COURT No. I

APPEAL No.C/330/2011-CU[SM]

(Arising out of Order-in-Original No. 34/COMM./M-II/2010 dated 14/03/2011 passed by Commissioner of Central Excise & Customs, Meerut-II)

M/s HMT Watches Ltd. **Appellant**

Vs.

Commissioner of Central Excise, Meerut-II **Respondent**

Appearance:

Shri Rajesh Chhibber, Advocate for Appellant
Shri Gyanendra Kr. Tripathi, Asstt. Commissioner (AR), for Respondent

CORAM:

Hon'ble Mr. Anil G. Shakkarwar, Member (Technical)

Date of Hearing : 27/12/2017
Date of Decision : 27/12/2017

FINAL ORDER NO- 70034/2018

Per: Anil G. Shakkarwar

The present appeal is directed against Order-in-Original No. 34/COMM./M-II/2010 dated 14/03/2011 passed by Commissioner of Central Excise & Customs, Meerut-II.

2. The brief facts of the case are that the appellant were issued with a show cause notice dated 07th January, 1992. The said show cause notice was adjudicated through Order-in-Original No.35/Collector/95 dated 18.04.1995 passed by Collector of Central Excise and Customs, Meerut. Aggrieved

by the said order, present appellant preferred appeal before this Tribunal. This Tribunal decided the said Appeal bearing No.C/411,412,415,469 & 261/95-B through Final Order No.267-271/04B dated 23.03.2004. The relevant directions in the said Final Order are reproduced bellow:-

> "6. *We have carefully considered the submissions. The learned Senior Advocate has heavily relied on Order No.16/93 passed by the Collector of Customs, Bangalore, whereby goods similar to the seized goods involved in the instant case were held to be items other than watch cases and not liable to confiscation. That order was passed in respect of another watch factory of M/s HMT Ltd. We have found that the Revenue has accepted that order and the findings contained therein have become final and binding on both sides. One of the findings of the Bangalore Customs Collector is that M/s KHL had procured certain parts from the local market and manufactured watch cases. Another finding is that Shri Chandulal was actually involved in the transaction relating to procurement of watch cases by M/s KHL. In the instant case, the adjudicating authority has arrived at contrary findings. It has held that KHL had no capability to manufacture watch cases and that Chandulal was non-existent. It is on the basis of these and other findings that the adjudicating authority has come to the conclusion that HMT-WFR smuggled watch cases of foreign origin into India through KHL and others. The appellants are challenging these findings. Their counsel has argued that the Revenue cannot resist the challenge against the above findings of the adjudicating authority in relation to M/s KHL and Shri Chandulal inasmuch as the contra findings recorded by the*

Bangalore Customs Collector on the same questions of facts were accepted by the Department. There is much force in this argument. However, we are not inclined to take the cue from this argument and head for further findings as we have at once come across a conspicuous element of violation of natural justice in the impugned order. The request of M/s HMT Ltd. to cross-examine Nagin Kothari and Sunil Kothari was rejected as irrelevant by the adjudicating authority. However, their "relevance" was noted by the Collector of Customs in the impugned Order vide para (47.2) thereof. para (47.2) reads:-

> *"Shri M. Srinivas, Managing Director, KHL was alleged that he, at the time of HMT officers' visit was present at Munnier S. A., France (Munnier in short). He offered to HMT, Ranibagh (WFR in short), vide his quotation No. KHL/HMT/89-90/05-18, referred to in HMT's Purchase Order No. I-3594 dated 10.06.89, to supply the models manufactured by the aforesaid French company knowing that his unit did not have the know-how nor the technology to manufacture such IB cases. He, in the month of July 1989 alongwith Shri Nagin Kothari again visited Munnier and finalized the mode of procurement and shipment of the said quantities and models of IB cases manufactured by the said French firm. In all probability, he availed the help and assistance of Shri Nagin Kothari and Sunil Kothari of Bombay in managing to smuggle the said IB cases, dials and hands, in batches into India from Munnier. There was no doubt whatsoever that the IB cases supplied by Shri M. Srinivas were the very good manufactured by the said French Company which had become amply clear from the various telexes exchange between the officers of HMT, Munnier Shri S.S. Gupta, the local representative of Munnier and the visit of the representative of the said French Company during 1990 to discuss various defects and short-comings in the supplies defected pertaining to various models when, in fact, the only models supplied by Munnier were 2000 Nos. each models 1000/130 and 100/30 directory to HMT. To raise money for the supplies effected to WFR, Shri M. Srinivas with the help and connivance of Ranjit Kanunga, Devi*

> *Chand and Suresh Shah, floated 8 fictitious/front firms from where a sum of Rs.6,54,33,546.79 was siphoned out of KHL. The stand of Shri M. Srinivas and Ranjit Kanunga that supplies were effected by on Shri Chandulal of Bombay was a figment of their imagination. No such person by the name of Chandulal existed and only to cover-up the illicit procurement of IB cases supplied, Chandulal was created. In fact, it appeared more likely that the recipient of the funds was Nagin Kothari and/or Sunil Kothari who, on more than one occasion, visited Munnier along with M. Srinivas. It was preposterous to say that M. Srinivas had met the said Chandulal, if any, only on one occasion when he had procured goods worth over Rs.4.5 Crores and did not even know the address nor the capacity in which Chandulal represented the four firms (fictitious) from which IB cases were reportedly purchased. Further, the claim of Shri C.N. Anand of KHL did not stand to reason that blanks could be imported and finishing was done in India. In case this was true, which did not appear possible, as none of the supplier firms were in existence and KHL would have definitely received the goods under Central Excise gate passes keeping in mind that the transactions with each firm were almost/over Rs.1 Crore." (Emphasis Supplied)."*.

It is apparent that, in the context of examining the penal liability of Shri M. Srinivas (one of the appellants before us), the Collector of Customs found the two Kotharis to be relevant. He noted that their assistance was availed by M. Srinivas for smuggling IB cases, dials etc. into India from "Munnier". Having rejected the request for cross-examining Nagin Kothari and Sunil Kothari, the Collector should not have examined their conduct for penalizing M. Srinivas and his company, KHL. What was adjudged irrelevant should have been kept out of reckoning. It appears to us from para (47.2) ibid that the Collector's order is vitiated by the twin infirmities viz. denial of natural justice and consideration of irrelevant materials. Nothing more is required to set aside the order and remand the case for fresh adjudication. The adjudicating *authority shall have to give the parties concerned an opportunity of cross-examining Nagin Kothari and Sunil Kothari if the authority wants to look into their role in the case.*

7. It is also noted that, though the appellants' request to cross-examine Nikunj Shah and Irfan Sheriff was allowed by the Collector, neither of them turned up for being cross-examined. The statements of both these persons have been heavily relied on in the impugned order. Now that the case is being remanded, we are of the view that a further opportunity to cross-examine the two persons must be given to the party.

8. For the reasons we have recorded, the impugned order is set aside and these appeals are allowed by way of remand. The jurisdictional Commisisoner is directed to adjudicate the case afresh in accordance with law and the principles of natural justice as well as in terms of this order. It is made clear that we have not expressed any view on the substantive issues involved in the case and that all such issues are left open to be decided upon by the adjudicating authority."

Subsequently impugned Order-in-Original dated 14.03.2011 was passed. Aggrieved by the same, appellant is before this Tribunal.

3. The learned Counsel for the appellant has submitted that in para-12 of the impugned Order-in-Original, the findings recorded by the original authority are as follows:-

"The case is approximately 18 years old and has already been adjudicated. Once the witnesses are not turning up

and their addresses have changed from the addresses declared in the show cause notice. One witness namely Shri Nikunj P. Shah has already been expired. Numerous adjournments have already been given. The disposal of the case is blocked in view of the fact that present address of persons who are required to be cross examined are not available. I am inclined to proceed in the matter on the basis of available records without affording any more opportunity."

He has further pointed out that following are the finding recorded in para-19 of the impugned Order-in-Original:-

"In my view, carrying out or not carrying out cross-examination of a person who has tendered voluntary statement would not lead to any infirmity in accepting the facts stated by a person who has tendered the statement under Section 108 of the Customs Act, 1962."

The learned Counsel further submitted that this Tribunal's direction to cross-examine Shri Nagin Kothari, Shri Sunil Kothari and Shri Irfan Sheriff were not followed by the Original Authority and further Original authority has given finding that carrying out or not carrying out cross-examination of a person would not lead to any infirmity in accepting the facts stated by that person is amounting to adjudication by lower authority on the directions of Higher Appellate Authority and therefore, the impugned Order-in-Original is bad in law.

4. Heard the learned A.R. who has supported the impugned Order-in-Original.

5. Having considered the rival contentions and on perusal of the directions given in the said Final Order dated 23.03.2004 and finding recorded by Original Authority as pointed out by the learned Counsel for appellant, I find that the impugned Order-in-Original is not passed in accordance with the directions of this Tribunal in the said Final Order dated 23.03.2004 and therefore present impugned order is bad in law.

6. Therefore, I set aside the impugned order and allow the appeal filed by the appellant.

(Dictated in Court)

Sd/-

ANIL G. SHAKKARWAR

(MEMBER TECHNICAL)

akp

प्रमाणित प्रति/Certified True Copy

01/02/18

सहायक पंजीकार/Asstt. Registrar
सीमाशुल्क, उत्पाद शुल्क एवं सेवा कर अपील अधिकरण(C.E.S.T.A.T.)
38, एम.जी.मार्ग, इलाहाबाद-211001
38, M. G. MARG,ALLAHABAD-211001