CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL MUMBAI

WEST ZONAL BENCH

EXCISE APPEAL NO: 1347 OF 2010

[Arising out of Order-in-Original No: 24/SR(24)COMMR/RGD/09-10 dated 30th March 2010 passed by the Commissioner of Central Excise, Customs & Service Tax, Raigad.]

Pradeep Shetye (P) Ltd
Survey No. 36 VII Sagaon, Tal: Alibag, Dist: Raigad … ***Appellant***

Versus

Commissioner of Central Excise & Customs
Mumbai – VII
CBD Belapur, Navi Mumbai – 400 614 ***…Respondent***

WITH

(i) Excise Appeal No: 1424 of 2010 (Commissioner of Central Excise, Customs & Service Tax, Raigad v. Shaper Chemicals Ltd); (ii) Excise Appeal No: 1425 of 2010 (Commissioner of Central Excise, Customs & Service Tax, Raigad v. Pradeep Shetye (P) Ltd); (iii) Excise Appeal No: 1426 of 2010 (Commissioner of Central Excise, Customs & Service Tax, Raigad v. Rang Rasayan Udyog); and (iv) Excise Appeal No: 2107 of 2010 (Rang Rasayan Udyog);

[Arising out of Order-in-Original No: 24/SR(24)COMMR/RGD/09-10 dated 30th March 2010 passed by the Commissioner of Central Excise, Customs & Service Tax, Raigad.]

APPEARANCE:

Shri Neerav Mainkar, Advocate for the appellant

Shri Ajay Kumar, Additional Commissioner (AR) for the respondent

CORAM:

HON'BLE MR C J MATHEW, MEMBER (TECHNICAL)
HON'BLE DR SUVENDU KUMAR PATI, MEMBER (JUDICIAL)

FINAL ORDER NO: A/87567-87571 / 2019

DATE OF HEARING:	15/01/2019
DATE OF DECISION:	15/01/2019

PER: C J MATHEW

We dispose off five appeals, all arising from order-in-original no. 24/SR (24) COMMR/RGD/09-10 dated 30th March 2010 of Commissioner of Central Excise, Raigad, by this common order. The impugned order adjudicated three show cause notices confirming disallowance, under rule 57I of Central Excise Rules, 1944, of MODVAT credit of ₹ 1,26,17,981, ₹15,36,350 and ₹ 23,05,250 availed, while imposing penalties of ₹ 2,00,000, ₹20,000 and ₹ 30,000 under rule 226 of Central Excise Rules, 1944 on, M/s Sharper Chemicals Limited, M/s Rang Rasayan Udyog and M/s Pradeep Shetye respectively.

2. Revenue is also an appeal against the order for having failed to consider imposition of penalty under rule 57I(4), and charging of interest under rule 57I(5), of Central Excise Rules, 1944 even though the remand order of the Tribunal had required fresh adjudication of all issues other than penalty under rule 209A and rule 173Q of Central Excise Rules, 1944.

3. This matter is on its second visit before the Tribunal and, on the

earlier occasion, the order impugned in the appeals had been set aside for fresh determination of all issues except penalties under rule 209A and rule 173 Q of Central Excise Rules, 1944 that were quashed.

4. We have heard Learned Counsel and Learned Authorized Representative at length.

5. We find the observation of the adjudicating authority that the

> *'27.1 On the issue of genuineness of the transactions and actual purchase/sale and movement of goods between them and M/s Shaper Chemicals I find that both the noticees hae not submitted any new or additional evidence. The facts of the case genuineness or otherwise of the transactions and other record based evidence has already been considered by the original adjudicating authority. The original adjudicating authority has also discussed in length that the Noticees had also submitted that the intention was to create a rosy picture in their balance sheet and to get extra over drawal facilities from the bank. Hence, I find that the contention of the assessee that there was actual movement of goods is not tenable. Further, in light of my limited role in denova proceedings as per the tribunal decision, the issues already decided vide the original adjudicating authority is not open for re adjudication.*
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> *27.2 Further, Shri P.S. Shetye, Director of M/s P.S.Shtye Pvt. Ltd. and Shri Vijay P Puri, Proprietor, M/s Rang Rasayani Udyog have already very categorically in their statement recorded under Section 14 of the CEA, 1944 admitted the allegations levelled against them. These facts have been substantially discussed in the Order in Original No. 22.06.2000. Since no new evidences/records to counter the*

findings of the original adjudicating authority have been bought forward, I do not find it necessary to again discuss the entire proceedings in length since the same has already been discussed in the OIO dated 22.06.2000. Hence, in view of specific directions of Hon'ble Tribunal with regard to de-novo proceedings, I find that the evidences already considered by the original adjudicating authority are not required to be re-adjudicated upon in view of the limited scope of the de-novo proceedings before me.

27.3 As regards the plea of the statements having been recorded under coercion, duress or force, here again I find that the issue has been addressed by the original adjudicating authority at length with due findings thereon. Also this plea was neither taken before the Tribunal in their appeal no are there any directions from the tribunal in this regard. This aspect is already settled by the original order and is out of the purview of the scope of de-novo proceedings. Hence do no find it necessary to re-open the issue. I again reiterate that the issue regarding the retraction of statements were already discussed at length in the Order in Original dated 22.06.2000, wherein it was substantially proved that the plea that the statements were recorded under duress, stress was not tenable. It was also discussed that none of the Noticees whose statements were recorded had bought any evidence in support of the claim that the statements were recorded under stress, duress or coercion. Further, each of them occupied very responsible positions and hence the plea that they were unaware of the law was untenable. I therefore find that I agree with the findings recorded in the Order in Original dated 22.06.2000 that the Statements recorded under Section 14 of the CEA, 1944 is to be accepted as corroboratory evidence. This argument also finds strength in the decision of the Hon'ble Tribunal in the case of M/s Nazir Ahmed v/s CC. Lucknow as *reported in 1998 (101) ELT 337 (T) holding that the delayed retraction cannot be accepted on the face value. Further, the Supreme Court in the case of K.I. Pavunny vs AC (HQ) , CCE, Cochin held that if confession is retracted, the same is to be held as evidence. Further, I find that my limited role in the denovo proceedings does not permit me to redecide this issue already decided by the original adjudicating authority.*

28. In view of the above discussion I am inclined to believe that the noticees have not disclosed the true and correct facts of the case before the tribunal in getting the case remanded back for de-novo proceedings. The evidence claimed to have been placed before original adjudicating authority by M/s. SCL is not available on record and further, there is nothing new on record to show that such evidence was ever placed before the original adjudicating authority. Even assuming, for the sake of argument, that there was any such evidence, it was in the interest of M/s. Rang Rasayan Udyog and M/s. Pradeep Shetye Pvt. Ltd. to plead their case/refer to such evidence before me, as they both were parties to the appeal and the order of the tribunal is common for the three noticees. Their silence on the specific issue of remand further strengthens/supports my finding that M/s. Shaper Chemicals Ltd. have not produced/submitted any such evidence to the original adjudicating authority.

29. In view of the above I do not find any reason to differ with the findings and order of the original adjudicating authority that all the three noticees had fraudulently availed of inadmissible modvat credit which was as demanded in the noticees issued to them and held as recoverable from each of them in the Order-in-Original No. 05/2000/M-VII dated 22.06.2000.'

is clear demonstration of lack of application on the part of that authority and, patently, in breach of the directions of the Tribunal. An order that has been set aside in appellate jurisdiction has no existence and the original authority is barred from adopting, or relying on, the contents of such erased order.

6. As the directions of the Tribunal have not been complied with, we set aside the impugned order and remand the matter back to the original authority for fresh decision with detailed findings on the issues in the show cause notice to which response has been made by the noticees.

7. In view of our order remanding back to the original authority, the appeals of Revenue have become infructuous and are dismissed.

(Pronounced in open court)

(Dr. Suvendu Kumar Pati)
Member (Judicial)

(C J Mathew)
Member (Technical)

**/as*