CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI
REGIONAL BENCH

Excise Appeal No. 1329 of 2012

(Arising out of Order-in-Original No. 16 to 78/PKA/Th-II/2012 dated 05.06.2012 passed by Commissioner of Central Excise, Thane-II)

Joit Kumar Jain **Appellant**
Prop. J & J Precision Industries,
Plot No.24, D-3/3, Mapusa Industrial Estate,
Mapusa, Goa 403 507.

Vs.

Commissioner of Central Excise, Thane-II **Respondent**
3rd floor, Navprabhat Chambers, Ranade Road,
Dadar (W), Mumbai 400 028.

WITH

Excise Appeal No. 1330 of 2012

(Arising out of Order-in-Original No. 16 to 78/PKA/Th-II/2012 dated 05.06.2012 passed by Commissioner of Central Excise, Thane-II)

M/s. J & J Precision Industries **Appellant**
Plot No.24, D-3/3, Mapusa Industrial Estate,
Mapusa, Goa 403 507.

Vs.

Commissioner of Central Excise, Thane-II **Respondent**
3rd floor, Navprabhat Chambers, Ranade Road,
Dadar (W), Mumbai 400 028.

Appearance:

Shri C.S. Biradar, Advocate, for the Appellant
Shri N.N. Prabhudesai, Superintendent, Authorised Representative for the Respondent

CORAM:

HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)
HON'BLE DR. SUVENDU KUMAR PATI, MEMBER (JUDICIAL)

FINAL ORDER NO. A/**85084-85085/2022**

Date of Hearing: 07.02.2022
Date of Decision: 07.02.2022

PER: SANJIV SRIVASTAVA

These two appeals are directed against order in original No 16 to 78/PKA/Th-II/2012 dated 5th June 2012 of the Commissioner Central Excise Thane II. By the impugned order

Commissioner has adjudicated a number of show cause notices issued to various noticee as co noticee holding as follow:

"IN RESPECT OF SHOW CAUSE NOTICE F. NO. V-CH-74 /ADJ / 2006 DATED 26.9.2006 ISSUED BY SHILLONG COMMISSIONER :

1.1 to 1.10 ......

2 to 6. ....

B. ***IN RESPECT OF 62 INDIVIDUAL SHOW CAUSE NOTICES ISSUED BY DGCEI MUMBAI / DELHI***

1. *I hold that cenvat credit as indicated in column (4) fraudulently availed by each of the noticees is inadmissible under the provisions CENVAT Credit Rules, 2002/2004 and determine the demand, in terms of then Section 11A(2) of the Central Excise Act, 1944 (now Section 11A(10) of Central Excise Act, 1944) read with provisions of Rule 12 of Cenvat Credit Rules, 2002 /Rule 14 of Cenvat Credit Rules, 2004 made in the show cause notice (indicated in column 2) as payable by/ recoverable from the noticee(s) (indicated in column 3 of the table below) under then Section 11A(1) of the Central Excise Act, 1944 by invoking the proviso clause thereto.*
2. *I order that interest at the appropriate rate, on the amount determined as payable amount as indicated in column 4 of the table below) shall also be recovered from each of the noticees mentioned in column 3 of the table below under Section 11AB (now Section 11AA) of the Central Excise Act, 1944, read with Rule 12 of Cenvat Credit Rules, 2002/Rule 14 of CENVAT Credit Rules, 2004.*
3. *I impose penalty (amount as indicated in column 5 of the table below) on noticees indicated in column 3 of the table below under the provisions of Section 11AC of the Central Excise Act, 1944 read with Rule 13(2)/15(2) of the CENVAT Credit Rules, 2002/2004.*
4. *I impose penalty (amount as indicated in column 6 of the table below) on noticees indicated in column 3 of the table below under Rule 13(1)/15(1) of the CENVAT Credit Rules, 2002/2004.*

5. I impose penalty (amount as indicated in column 7 of the table below) on firms/persons as indicated in column 3 of the table below under Rule 26 of the Central Excise Rules, 2002

6. I appropriate the Central Excise duty reversed/paid (as indicated in column 8) by the noticees as indicated in column 3 against the duty determined to be payable as indicated in column 4 of the table below.

TABLE

SI. No	SCN No. and date	Name of the noticee/ co-noticee(s)	Duty determined to be payable	Penalty under	Section 11AC read with Rule 13(2)/15(2)	Penalty under Rule 13(1)/15(1)	Penalty under Rule 26	Duty paid appropriated
1-18								
19	DGCEI/MZU/I&IS'C'/12(4)25/2004/Pt-XVII dated 12.01.2017	J&J Precisions Inds	606780	606780	0	0	0	606780
		Shri Joit Kumar Jain					10000	
20-62								

All the noticees mentioned at (A) and(B) above are at liberty to avail of the benefit of reduced penalty in terms of first and second proviso to Section 11AC of Central Excise Act; 1944, as applicable at the material time which are reproduced below:

Provided that where such duty as determined under sub-section (2) of section 11A, and the interest payable thereon under section ITAB, is paid within thirty days from the date of communication of the order of the Central Excise Officer determining such duty, the amount of penalty liable to be paid by such person under this section shall be twenty-five percent of the duty so determined: Provided further that the benefit of reduced penalty under the first proviso shall be available if the amount of penalty so determined has also been paid within the period of thirty days referred to in that proviso:

The above adjudged amount should be paid forthwith."

2.1 We have heard Shri C S Biradar, Advocate for the appellant and Shri N N Prabhudesai, Superintendent, Authorized Representative for the revenue.

2.2 Learned Counsel submits that

- the issue in respect of other co-noticees was heard by the tribunal and remanded back to the original authority by the order No A/124 to 194/13/EB/C-II date 29.01.2013.
- the matter against the other co-noticees is still pending before the Commissioner in remand proceedings.
- These matters which were somehow left need to be remanded back to the original authority for consideration along with the matters of other co-noticees.

2.3 Learned Authorized representative agrees with the submissions made by the counsel for appellant, and submits that this matter in remand proceeding is now before the Commissioner, Palghar.

3.1 We have considered the impugned order along with the submissions made in appeal and during the course of argument.

3.2 We find, as submitted by both the sides, that tribunal has vide its order No 194/13/EB/C-II date 29.01.2013, held as follows:

"10. We have considered the submissions made by the learned counsel and examined the record. On examination of the record, we find that the main grievance of the appellant, MMPL, is that neither the replies of co-noticees were supplied to them nor the cross-examination as asked by them is given to them and these grounds have been taken by them before the Hon'ble High Court of Guwahati in writ petition, who also directed the adjudicating authority to take appropriate decision on the issue and thereafter pass the adjudication order. But in the impugned order, no finding has been given by the adjudicating authority regarding the specific request for supply of replies of the co-noticees and the reasons for denial of cross-examination as desired by the appellants. Therefore, we hold that there is a gross violation of the principles of natural justice. Accordingly, the impugned order is set aside. The appellants are directed to approach to the adjudicating authority within 30 days of the receipt of this order with their grievances for supply of replies of the co-noticees and a request for cross-examination as desired.

The adjudicating authority shall give a hearing on the issue whether cross-examination as desired is required in the facts and circumstances of the case or not. Thereafter, the adjudicating authority shall pass an appropriate order in accordance with law within 90 days. All other issues are kept open. The stay applications as well as the appeals are disposed of in the above terms. The cross objections are also disposed of in the same terms."

3.3 Since the matter of other co-noticees is pending before the original authority (Commissioner, Palghar), in remand proceedings as per the CESTAT order referred to above in our view these matters also need to be remanded back to same Commissioner for consideration along with the matters of other co-noticees.

4.1 Appeals are allowed and the matter remanded back to the original authority for consideration along with the matters earlier remanded in case of other co-noticees.

(Order pronounced in the open court)

(Sanjiv Srivastava)
Member (Technical)

(Dr. Suvendu Kumar Pati)
Member (Judicial)

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