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

Excise Appeal No. 1024 of 2012

(Arising out of Order-in-Original No. 18/CEX/2012 dated 30.03.2012 passed by the Commissioner of Central Excise, Kolhapur)

M/s. Shreyas Intermediates Ltd. (EOU) **Appellant**
D-21, MIDC Industrial Area, Lote Parshuram,
Tal. Khed, Dist. Ratnagiri, Maharashtra

Vs.

Commissioner of Central Excise, Kolhapur **Respondent**
Vasant Plaza, Rajaram Road, Kolhapur 416 003.

WITH

Excise Appeal No. 1028 of 2012

(Arising out of Order-in-Original No. 18/CEX/2012 dated 30.03.2012 passed by the Commissioner of Central Excise, Kolhapur)

M/s. Shreyas Intermediates Ltd. **Appellant**
D-22, 23, 24, MIDC Industrial Area, Lote Parshuram,
Tal. Khed, Dist. Ratnagiri, Maharashtra

Vs.

Commissioner of Central Excise, Kolhapur **Respondent**
Vasant Plaza, Rajaram Road, Kolhapur 416 003.

WITH

Excise Appeal No. 1029 of 2012

(Arising out of Order-in-Original No. 18/CEX/2012 dated 30.03.2012 passed by the Commissioner of Central Excise, Kolhapur)

Dinesh Sharma **Appellant**
Director of Shreyas Intermediates Ltd.,
122-125, Solaris-II, Saki Vihar Road,
Opp. L & T Gate No.2, Mumbai 400 072.

Vs.

Commissioner of Central Excise, Kolhapur **Respondent**
Vasant Plaza, Rajaram Road, Kolhapur 416 003.

AND

Excise Appeal No. 1039 of 2012

(Arising out of Order-in-Original No. 18/CEX/2012 dated 30.03.2012 passed by the Commissioner of Central Excise, Kolhapur)

Surya Prakash Pandey **Appellant**
Authorised Signatory of Shreyas Intermediates Ltd.,
D-22, 23, 24, MIDC Industrial Area, Lote Parshuram,
Tal. Khed, Dist. Ratnagiri, Maharashtra

Vs.

Commissioner of Central Excise, Kolhapur Respondent
Vasant Plaza, Rajaram Road, Kolhapur 416 003.

Appearance:

Shri Bharat Raichandani, Advocate, for the Appellants in appeal Nos. E/1024, 1028, 1029/2012
None for Appellant in appeal No. E/1039/2012
Shri Deepak Bhilegaonkar, Additional Commissioner, Authorised Representative for the Respondent

CORAM:

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

Date of Hearing: 20.02.2023
Date of Decision: 20.02.2023

FINAL ORDER NO. A/85342-85345/2023

PER: SANJIV SRIVASTAVA

These appeals are directed against order-in-original No. 18/CEX/2012 dated 30.03.2012 passed by the Commissioner of Central Excise, Kolhapur. By the impugned order, following has been held:-

"ORDER

i) I confirm the demand of Rs. 1,29,16,409/- (Rs. One Crore Twenty Nine Lacs Sixteen Thousand Four Hundred Nine only) under Sec. 11A(2) of Central Excise Act, 1944. The amount already paid of Rs. 1,00,00,000/-, is appropriated against the confirmed demand.

ii) I order to pay interest at appropriate rate on the confirmed demand under Sec. 11AB of Central Excise Act, 1944.

iii) I impose a penalty of Rs. 1,29,16,409/- (Rs. One Crore Twenty Nine Lacs Sixteen Thousand Four Hundred Nine only) on M/s Shreyas Intermediates Ltd. (100% EOU) under sec. 11AC of Central Excise Act, 1944. Further I give an option to pay 25% penalty i.e. Rs. 32,29,102/-, provided if they paid entire amount of confirmed demand, interest and penalty within 30 days from the receipt of this order.

iv) I impose a penalty of Rs. 5,00,000/- (Rs. Five lacs), On M/s Shreyas Intermediates Ltd. (DTA Unit) under Rule 26 of Central Excise Rules, 2002.

v) I impose a penalty of Rs. 5,00,000/- (Rs. Five lacs)On Shri. Dinesh Sharma, under Rule 26 of Central Excise Rules, 2002.

vi) I impose a penalty of Rs.5,00,000/- (Rs. Five lacs) on Shri Surya Prakash Pandey, under Rule 26 of Central Excise Rules, 2002."

2.1 Appellant No.1 is a 100% EOU engaged in manufacture of copper phthallo cynine blue crude. Acting on intelligence, investigations were undertaken against appellant No.1 and it was alleged that the appellant was resorting to suppression of production and clandestine clearances of excisable goods manufactured by it. During the course of investigation, statements of various persons including one employee, Shri Kamlesh S. Patil, was recorded.

2.2 After completion of investigation, show cause notice dated 11.01.2010 was issued to the appellants as follows:-

"23. Now therefore, M/s. Shreyas Intermediates Ltd. (100% EQU), D-21, MIDC Industrial Area, Lote Parshuram, Tal.: Khed, Dist: Ratnagiri, Maharashtra, are hereby called upon to show cause to the Commissioner of Central Excise, Kolhapur, Vasant Plaza, Bagal Chowk, Kolhapur within 30 days of receipt of this notice as to why:

i) the Central Excise duty amounting to Rs.1,29,16,409/- [rupees one crore twenty nine thousand sixteen thousand four hundred nine only (BCD+CVD+Edn.Cess+SAD)] as applicable should not be demanded and recovered from them in accordance with provisions of proviso to Section 11A(1) of Central Excise Act, 1944 along with interest thereon in accordance with provisions of Section 11AB of Central Excise Act, 1944.

ii) the amount of Rs.1,00,00,000/- (rupees one crore only) paid voluntarily vide Cenvat Credit Accounts detailed in Table No. 15 *herein-above should not be adjusted against the amount demanded under Section 11A(1) of Central Excise Act, 1944.*

iii) Penalty should not be imposed under Section 11AC of Central Excise Act, 1944 read with Rule 25 of Central Excise Rules, 2002.

24. Further M/s Shreyas Intermediates Ltd (DTA Unit), D-22, 23, 24, MIDC Industrial Area, Lote Parshuram, Tal.: Khed, Dist.: Ratnagiri, Maharashtra, is hereby called upon to show cause to the Commissioner of Central Excise, Kolhapur, Vasant Plaza, Bagal Chowk, Kolhapur within 30 days of receipt of this notice as to why penalty should not be imposed on it under Rule 26 of Central Excise Rules, 2002 for actively aiding and abetting the offence of evasion of duty by SIL-EOU.

25. Further Shri Dinesh Sharma and Shri Surya Prakash Pandey are hereby called upon to show cause to the Commissioner of Central Excise, Kolhapur, Vasant Plaza, Bagal Chowk, Kolhapur within 30 days of receipt of this notice as to why penalty should not be imposed on each of them separately under Rule 26 of Central Excise Rules, 2002 for actively aiding and abetting the offence of evasion of duty by SIL-EOU

26. SIL-EOU, SIL-DTA, Shri Dinesh Sharma and Shri Suryaprakash Pandey are hereby directed to produce at the time of showing cause all the evidences upon which they intend to rely in support of their defense. They are further directed to state in their written explanation whether they wish to be heard in person before the case is adjudicated. If no such specific mention is made it would be presumed that they do not desire personal hearing. If no cause is shown against the action proposed to be taken within 30 days of the date of receipt of the notice or if they fail to appear before the adjudicating authority when the case is posted for hearing, the case will be decided ex-parte on the basis of evidences available on record."

2.3 This show cause notice was replied by the appellant vide letter received in the office of the adjudicating authority on

24.08.2010. Thereafter the matter was adjudicated by the impugned order. Aggrieved appellants are in appeal.

3.1 We have heard Shri Bharat Raichandani, Advocate for the appellants (none appeared for the appellant in appeal No. E/1039/2012) and Shri Deepak Bhilegaonkar, Additional Commissioner, Authorised Representative for the Respondent.

3.2 Arguing for the appellants, learned counsel referred to various documents such as adjudication order and submitted that though in response to the show cause notice, they have made elaborate submissions running into 83 pages, the adjudicating authority has passed this order without consideration of any of the submissions. All these submissions made have been disposed of by a single para 23 of the order-in-original. He submitted that they have asked for cross-examination of various persons including Shri Kamlesh S. Patil whose statement has been alive in proceeding against them. No reason has been recorded for denying the cross-examination of the said person. The order has been passed without consideration of any submissions made, hence cannot be said to be a speaking order. Accordingly the matter needs to be re-adjudicated taking into account all the submissions made by the appellant.

3.3 Learned AR reiterates.

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

4.2 Commissioner has in his order running into 33 pages recorded the show cause notice in 26 pages. Thereafter in para 60 and 61 he has given the details of the proceedings before him. Para 60 and 61 are reproduced below:-

"60. The assessee, M/s Shreyas Intermediates Ltd. (100% EOU), vide their letter No. Nil dated Nil, submitted written reply to the said Show Cause Notice, which was received by Central Excise Kolhapur Commissionerate on 24.10.2010. SIL-EOU, in their reply quoted certain judicial decisions and denied all the charges leveled against them in the said show cause notice. Further they

prayed that the charges namely, (i) removal of input in the guise of final product (i) shortage of input and the final product and (iii) removal of goods more than once under the same invoice, are charges of clandestine removal which is a serious charge not proved by merely writing paragraph in the show cause notice or on the basis of statement of employee or of third person or on the basis of private diary but are to be established on the basis of the affirmative evidence or positive evidence and also supported by corroborative evidence and should not be based on the suspicion or assumption or presumption and prayed that in absence of any tangible evidence with respect to the above charges based on guess work of the visiting officer, requested to vacate the charges leveled against them.

61. The Commissioner Central Excise, Goa, fixed the personal hearings in the matter on 23.01.2012, at 'Vasant Plaza' Commercial Complex, Rajaram Road, Kolhapur-416001. However, for some reasons the noticees did not attend the personal hearings scheduled on 23.1.2012. When the next personal hearing was fixed on 27.02.2012, Shri H. P. Bohara and Shri. Abhijeet A. Barde, Advocate, appeared before the adjudicating authority, on behalf of the assessee. He reiterated the contents of the written reply and requested to drop the SCN and walve penalties. He also stated that some of the goods manufactured during the trial batches are still lying in their factory, however, duty on such goods has been demanded in the said notice."

4.3 Thereafter the findings on the submissions made by the appellant are recorded in para 23 as follows:-

"23. SIL-EOU in their reply quoted various decisions in respect of requirement of corrabarative evidence to sustain the charges framed in the SCN. In view of the above discussion I find that considering all factual position and affirmative statements given by the responsible persons and voluntary payment of major portion of demand of duty which shows that they have admitted the charges as framed in the show cause notice. The statements recorded at different places are in sequence and got evidentiary

value. The judments quoted by SIL-EOU in their reply are not acceptable."

4.4 It appears that the entire order has been passed without considering any submissions made by the appellant, which runs into 83 pages. Though the statements of various persons have been relied upon by the Commissioner, specifically of Shri Kamlesh S. Patil, his cross-examination though asked for has not been allowed or rejected in the impugned order. We find that the impugned order is totally a non-speaking order passed in violation of the principles of natural justice and cannot be sustained. Adjudicating authority is obligated under law to consider the submissions made in response to the show cause notice and any order passed without consideration of the submissions is in violation of the principles of natural justice and needs to be set aside.

5.1 The impugned order is set aside.

5.2 Matter is remanded back to the original authority for passing a speaking order taking into consideration the submissions made in reply to the show cause notice, including the request for cross-examination of Shri Kamlesh S. Patil. All the issues in remand are kept open.

5.3 As the matter is 11 years old, Commissioner should finalise the matter in remand proceedings within three months of the date of receipt of this order. Appellants are also directed to co-operate with the original authority for sticking to the timeline of three months.

5.4 All appeals are allowed by way of remand.

(Order pronounced in the open court)

(Sanjiv Srivastava)
Member (Technical)

(Dr. Suvendu Kumar Pati)
Member (Judicial)

tvu