

**IN THE CUSTOMS, EXCISE AND SERVICE TAX
APPELLATE TRIBUNAL
WEST ZONAL BENCH AT MUMBAI**

APPEAL NOS: E/1880 & 1882/2010

[Arising out of Orders-in-Appeal Nos: AGS (166-169) 114, 125, 130, 131/2010 dated 15th July 2010 and AGS (178-182) 113, 118, 119, 120, 123/2010 dated 16th July 2010 passed by the Commissioner of Central Excise & Customs (Appeals), Aurangabad.]

For approval and signature:

**Hon'ble Shri C J Mathew, Member (Technical)
Hon'ble Shri Ajay Sharma, Member (Judicial)**

1. Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982? : Yes
 2. Whether it should be released under Rule 27 of CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not? : Yes
 3. Whether Their Lordships wish to see the fair copy of the Order? : Seen
 4. Whether Order is to be circulated to the Departmental authorities? : Yes
-
-

Commissioner of Central Excise Customs
Aurangabad

... Appellant

versus

Hariom Iron & Steel Rolling Pvt Ltd
Adinath Steel Re-Rolling Mills

... Respondents

Appearance:

Shri AB Kulgod, Assistant Commissioner (AR) and Shri S Hasija, Superintendent (AR) for appellant

None for respondent

CORAM:

Hon'ble Shri C J Mathew, Member (Technical)
Hon'ble Shri Ajay Sharma, Member (Judicial)

Date of hearing: 01/01/2019
Date of decision: 01/01/2019

ORDER NO: 85075-85076 / 2019

Per: C J Mathew

The issue in these two appeals of Revenue against order-in-appeal no. AGS (166-169) 114, 125, 130, 131/2010 dated 15th July 2010 and no. AGS (178-182) 113, 118, 119, 120, 123/2010 dated 16th July 2010 of Commissioner of Central Excise & Customs (Appeals), Aurangabad pertaining to proceedings initiated against M/s Hariom Iron & Steel Rolling P Ltd and M/s Adinath Steel Re-rolling Mills lie within the narrow compass of appropriateness on the first appellate authority in setting aside the recoveries ordered by the lower authority merely on the ground of alleged non-compliance with the principles of natural justice. Hence, we dispose of both these appeals despite non-representation of the respondents.

2. In the proceedings before the first appellate authority, the appellants had raised doubts about the evidentiary value of statements that were not validated by cross-examination and questioned the finding of culpability in the absence of relevant documents. After

examining the submissions on this ground, the impugned order went on to conclude that the critical documents had been provided though after the hearing was concluded by the original authority. Moreover, it took note of the lack of cross-examination of the individuals from whom inculpatory statements had been recorded. The first appellate authority discarded the findings in entirety without going into the merit of the conclusions drawn by the original authority. The mandate of an appellate authority is not merely to accept such submission *prima facie* but also to examine the role that such disputed evidence could have on the final outcome as decided upon by the original authority.

3. Learned Authorised Representative relies upon the decision of the Hon'ble High Court of Karnataka in *Union of India v. Lampo Computers (P) Ltd [2014 (305) ELT 215(Kar)]* with particular reference to

'6. Since the CESTAT did not go into merits of the case and set aside the order of the Commissioner of Central Excise, Bangalore, without examining the effect of non-supply of the documents or without examining whether the said documents have any effect on merits of the case. When we so expressed, in the course of hearing of the appeal, learned counsel for the parties have fairly agreed for the following order

(a) *The order dated 4th May, 2005 passed by the CESTAT impugned in the present appeal is set aside and the*

Appeal Nos. E/876, 877/2003 and E/271/2004 are restored to file.

(b) *The CESTAT shall consider the appeals on merits in accordance with law as expeditiously as possible, preferably within a period of six months from the date of receipt of this order.*

(c) *The CESTAT while considering the merits of the case shall examine the effect of non-supply of the documents relied upon by the Department in the show cause notice. The CESTAT shall also consider whether those documents have any bearing on the outcome of the case.*

It is made clear that we are not making any observations on merits of the case and the CESTAT shall consider the case on merits in accordance with law within the stipulated time.'

4. On the face of it, it would appear that some of the evidences relied upon by the original authority may not have had any bearing in determining the outcome. A decision of the first appellate authority, in the light of the judgement in *re Lampo Computers (P) Ltd*, would require enumeration of evidence and the validity of each in having a bearing on the culpability of the appellants. If such was not available, the matter could be resolved only by remand to the original authority. The first appellate authority was, however, not vested with the jurisdiction to do so. Nevertheless, that essential requirement having escaped scrutiny in the decision of the original authority, we propose to remedy that lack of jurisdiction to enable examination of the merits

of the submission on substantive grounds.

5. For the above reason, we set aside the impugned order and remand the matter back to the original authority for issue of a fresh order after complying with the principles of natural justice and in conformity with the provisions of law relating to testing of statements.

6. The appeals are thus allowed by way of remand.

(Pronounced in Court)

(Ajay Sharma)
Member (Judicial)

(C J Mathew)
Member (Technical)

**/as011003101401*