
 सत्यमेव जयते	<b>केंद्रीय कर आयुक्त (अपील)</b> <b>O/O THE COMMISSIONER (APPEALS), CENTRAL TAX,</b> केंद्रीय कर भवन, सातवीं मंजिल, पॉलिटेक्निक के पास, आम्बावाडी, अहमदाबाद-380015	 7 <sup>th</sup> Floor, GST Building, Near Polytechnic, Ambavadi, Ahmedabad-380015
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9912 + 9919

रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : V2(39)100&125-128/Ahd-South/2018-19  
Stay Appl.No. /2018-19

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-001-APP-0161to165-2018-19  
दिनांक Date : 20-03-2019 जारी करने की तारीख Date of Issue

27/3/2019

श्री उमा शंकर आयुक्त (अपील) द्वारा पारित

Passed by Shri. Uma Shanker, Commissioner (Appeals)

ग Arising out of Order-in-Original No. V.39/15-31/Commr./OA-I/2015 दिनांक: 13.07.2018 & 12/CE-I/Ahmd/JC/KP/2018 दिनांक: 27.08.2018 issued by Joint Commissioner, Div-Ahd south, Central Tax, Ahmedabad-South

घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent  
**Shefali Plastic Industries**  
**Ahmedabad**

कोई व्यक्ति इस अपील आदेश से असंतोष अनुभव करता है तो वह इस आदेश के प्रति यथार्थिती नीचे बताए गए सक्षम अधिकारी को अपील या पुनरीक्षण आवेदन प्रस्तुत कर सकता है।

Any person aggrieved by this Order-In-Appeal may file an appeal or revision application, as the one may be against such order, to the appropriate authority in the following way :

भारत सरकार का पुनरीक्षण आवेदन :

**Revision application to Government of India :**

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1994 की धारा अतत नीचे बताए गए मामलों के बारे में पूर्वोक्त धारा को उप-धारा के प्रथम परन्तुक के अंतर्गत पुनरीक्षण आवेदन अधीन सचिव, भारत सरकार, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली : 110001 को की जानी चाहिए।

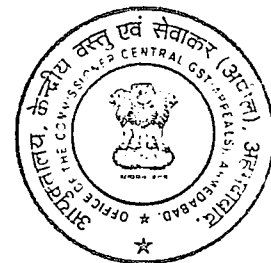
(i) A revision application lies to the Under Secretary, to the Govt. of India, Revision Application Unit Ministry of Finance, Department of Revenue, 4<sup>th</sup> Floor, Jeevan Deep Building, Parliament Street, New Delhi - 110 001 under Section 35EE of the CEA 1944 in respect of the following case, governed by first proviso to sub-section (1) of Section-35 ibid :

(ii) यदि माल की हानि के मामले में जब ऐसी हानि कारखाने से किसी भण्डागार या अन्य कारखाने में या किसी भण्डागार से दूसरे भण्डागार में माल ले जाते हुए मार्ग में, या किसी भण्डागार या भण्डार में चाहे वह किसी कारखाने में या किसी भण्डागार में हो माल की प्रक्रिया के दौरान हुई हो।

(ii) In case of any loss of goods where the loss occur in transit from a factory to a warehouse or to another factory or from one warehouse to another during the course of processing of the goods in a warehouse or in storage whether in a factory or in a warehouse.

(b) In case of rebate of duty of excise on goods exported to any country or territory outside India of on excisable material used in the manufacture of the goods which are exported to any country or territory outside India.

(ग) यदि शुल्क का भुगतान किए बिना भारत के बाहर (नेपाल या भूटान को) निर्यात किया गया माल हो।



... 2 ...

(ख) भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित माल पर या माल के विनिर्माण में उपयोग शुल्क कच्चे माल पर उत्पादन शुल्क के रिबेट के मामलों में जो भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित है।

(b) In case of rebate of duty of excise on goods exported to any country or territory outside India of on excisable material used in the manufacture of the goods which are exported to any country or territory outside India.

(ग) यदि शुल्क का भुगतान किए बिना भारत के बाहर (नेपाल या भूटान को) निर्यात किया गया माल हो।

(c) In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.

अंतिम उत्पादन की उत्पादन शुल्क के भुगतान के लिए जो ड्यूटी क्रेडिट मान्य की गई है और ऐसे आदेश जो इस धारा एवं नियम के मुताबिक आयुक्त, अपील के द्वारा पारित वो समय पर या बाद में वित्त अधिनियम (नं.2) 1998 धारा 109 द्वारा नियुक्त किए गए हो।

(d) Credit of any duty allowed to be utilized towards payment of excise duty on final products under the provisions of this Act or the Rules made there under and such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec.109 of the Finance (No.2) Act, 1998.

(1) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 के नियम 9 के अंतर्गत विनिर्दिष्ट प्रपत्र संख्या इए-8 में दो प्रतियों में, प्रेषित आदेश के प्रति आदेश प्रेषित दिनांक से तीन मास के भीतर मूल-आदेश एवं अपील आदेश की दो-दो प्रतियों के साथ उचित आवेदन किया जाना चाहिए। उसके साथ खाता इ. का मुख्यशीर्ष के अंतर्गत धारा 35-इ में निर्धारित फी के भुगतान के सबूत के साथ टीआर-6 चालान की प्रति भी होनी चाहिए।

The above application shall be made in duplicate in Form No. EA-8 as specified under Rule, 9 of Central Excise (Appeals) Rules, 2001 within 3 months from the date on which the order sought to be appealed against is communicated and shall be accompanied by two copies each of the OIO and Order-In-Appeal. It should also be accompanied by a copy of TR-6 Challan evidencing payment of prescribed fee as prescribed under Section 35-EE of CEA, 1944, under Major Head of Account.

(2) रिविजन आवेदन के साथ जहाँ संलग्न रकम एक लाख रुपये या उससे कम हो तो रुपये 200/- फीस भुगतान की जाए और जहाँ संलग्न रकम एक लाख से ज्यादा हो तो 1000/- की फीस भुगतान की जाए।

The revision application shall be accompanied by a fee of Rs.200/- where the amount involved is Rupees One Lac or less and Rs.1,000/- where the amount involved is more than Rupees One Lac.

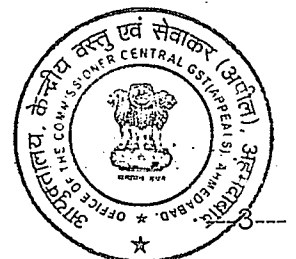
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील:-  
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1944 की धारा 35-बी/35-इ के अंतर्गत:-

Under Section 35B/ 35E of CEA, 1944 an appeal lies to :-

(क) उक्तलिखित परिच्छेद 2 (1) क में बताए अनुसार के अलावा की अपील, अपीलो के मामले में सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, अहमदाबाद में ओ-20, न्यू मैन्टल हॉस्पिटल कम्पाउण्ड, मेघानी नगर, अहमदाबाद-380016

(a) To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at O-20, New Metal Hospital Compound, Meghani Nagar, Ahmedabad : 380 016. in case of appeals other than as mentioned in para-2(i) (a) above.



The appeal to the Appellate Tribunal shall be filed in quadruplicate in form EA-3 as prescribed under Rule 6 of Central Excise(Appeal) Rules, 2001 and shall be accompanied against (one which at least should be accompanied by a fee of Rs.1,000/-, Rs.5,000/- and Rs.10,000/- where amount of duty / penalty / demand / refund is upto 5 Lac, 5 Lac to 50 Lac and above 50 Lac respectively in the form of crossed bank draft in favour of Asstt. Registrar of a branch of any nominate public sector bank of the place where the bench of any nominate public sector bank of the place where the bench of the Tribunal is situated.

- (3) यदि इस आदेश में कई मूल आदेशों का समावेश होता है तो प्रत्येक मूल आदेश के लिए फीस का भुगतान उपर्युक्त ढंग से किया जाना चाहिए इस तथ्य के होते हुए भी कि लिखा पढी कार्य से बचने के लिए यथास्थिति अपीलीय न्यायाधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाता है।

In case of the order covers a number of order-in-Original, fee for each O.I.O. should be paid in the aforesaid manner notwithstanding the fact that the one appeal to the Appellate Tribunal or the one application to the Central Govt. As the case may be, is filled to avoid scriptoria work if excising Rs. 1 lacs fee of Rs.100/- for each.

- (4) न्यायालय शुल्क अधिनियम 1970 यथा संशोधित की अनुसूची-1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूल आदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रति पर रु.6.50 पैसे का न्यायालय शुल्क टिकट लगा होना चाहिए।

One copy of application or O.I.O. as the case may be, and the order of the adjournment authority shall a court fee stamp of Rs.6.50 paise as prescribed under scheduled-I item of the court fee Act, 1975 as amended.

- (5) इन ओर संबंधित मामलों को नियंत्रण करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है जो सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्याविधि) नियम, 1982 में निहित है।

Attention is invited to the rules covering these and other related matter contended in the Customs, Excise & Service Tax Appellate Tribunal (Procedure) Rules, 1982.

- (6) सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट), के प्रति अपील के मामले में कर्तव्य मांग (Demand) एवं दंड (Penalty) का 10% पूर्व जमा करना अनिवार्य है। हालांकि, अधिकतम पूर्व जमा 10 करोड़ रुपए है। (Section 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994)

केन्द्रीय उत्पाद शुल्क और सेवा कर के अंतर्गत, शामिल होगा "कर्तव्य की मांग"(Duty Demanded) -

- (i) (Section) खंड 11D के तहत निर्धारित राशि;
- (ii) लिया गलत सेनवैट क्रेडिट की राशि;
- (iii) सेनवैट क्रेडिट नियमों के नियम 6 के तहत देय राशि.

⇒ यह पूर्व जमा 'लंबित अपील' में पहले पूर्व जमा की तुलना में, अपील दाखिल करने के लिए पूर्व शर्त बना दिया गया है।

For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (Section 35 C (2A) and 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994)

Under Central Excise and Service Tax, "Duty demanded" shall include:

- (i) amount determined under Section 11 D;
- (ii) amount of erroneous Cenvat Credit taken;
- (iii) amount payable under Rule 6 of the Cenvat Credit Rules.

इस इस आदेश के प्रति अपील प्राधिकरण के समक्ष जहाँ शुल्क अथवा शुल्क या दण्ड विवादित हो तो माँग किए गए शुल्क के 10% भुगतान पर और जहाँ केवल दण्ड विवादित हो तब दण्ड के 10% भुगतान पर की जा सकती है।

In view of above, an appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty where penalty alone is in dispute."



ORDER IN APPEAL

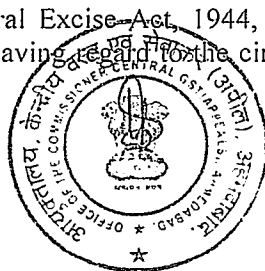
Vide this Orders-in-Appeal, the following appeals, filed by the appellants, mentioned in the table below, are being disposed of viz.

Sr. No.	Name of the appellant	Impugned OIO No. and date/order on which the appeal is filed	Order/OIO passed by	Appeal No.
1	M/s. Shefali Plastic Industries S/105, Vivekanand Industrial Estate, Rakhiyal, Ahmedabad.	V.39/15-31/Commr/OA-1/2015 dated 13.7.2018	Joint Commissioner, CGST, Ahmedabad South [for short – 'adjudicating authority']	V2(39)100/Ahd South/2018-19
2	M/s. Shefali Plastic Industries S/105, Vivekanand Industrial Estate, Rakhiyal, Ahmedabad.	12/CE-I Ahmd/JC/KP/2018 dtd 27.8.2018		V2(39)125/Ahd South/2018-19
3	Dipesh P Jain, Proprietor M/s. Shefali Plastic Industries, S/105, Vivekanand Industrial Estate, Rakhiyal, Ahmedabad			V2(39)128/Ahd South/2018-19
4	Ritesh P Jain, Proprietor 1 & 3 Vakil Appartment, Inside Samandh Shikar ni Pole, Nr. Mandvi Pole, Astodiya Chakla, Ahmedabad 380 001.			V2(39)127/Ahd South/2018-19
5	Parasmal S Jain, 1 & 3 Vakil Appartment, Inside Samandh Shikar ni Pole, Nr. Mandvi Pole, Astodiya Chakla, Ahmedabad 380 001.			V2(39)126/Ahd South/2018-19

2. Briefly, the facts of the case are that a search was carried out on the premises of the appellants and a show cause notice dated 2.12.2015, came to be issued to the aforementioned appellants *inter alia* proposing confiscation of excisable goods, currency and further proposing penalty on the appellants mentioned above under Rules 25 and 26 of the Central Excise Rules, 2002. During the course of personal hearing before the adjudicating authority, the appellants requested for cross examination of the panchas, the printing operator of the appellant and the investigating officer. Vide the letter dated 13.7.2018, the adjudicating authority rejected their request for cross examination. The appeal mentioned at Sr. No.1 above, is against the said letter wherein the adjudicating authority has rejected their request for cross examination. Consequently, the show cause notice was decided by the adjudicating authority vide her OIO dated 27.8.2018, wherein the goods and currency placed under seizure were confiscated. Vide the impugned OIO, penalty was imposed on all the appellants mentioned above. The appeals mentioned at Sr. No. 2 to 5, is an appeal against the impugned OIO dated 27.8.2018.

3. The appellant mentioned at Sr. No. 1, feeling aggrieved has filed the appeal against the letter dated 13.7.2018, raising the following contention viz:

- that in terms of section 9D(1)(b) of the Central Excise Act, 1944, the person who made the statement is to be examined as a witness and having regard to the circumstance in the case, the



adjudicating authority, should be of the opinion that such statement should be admitted in evidence in the interest of justice;

- that they would like to rely on the case of Jindal Drugs P Ltd [2016(340) ELT 67(P&H)], and Shree Parvati Metals[2018(11) GSTL 137(Raj)];
- that the reliance of the adjudicating authority on the case of Lucky Dyeing Mills is not correct since in this dispute the appellant is disputing the panchnama in so far as it is incomplete and does not reveal the true and correct facts ;
- that even the reliance on the case of Somani is not correct;
- that the order dated 13.7.2018 needs to be quashed.

3.1 Feeling aggrieved, against the impugned OIO dated 27.8.2018, the appellants have raised the following contentions, viz.

**M/s. Shefali Plastic Industries**

- that after 27.2.2017, no personal hearing was accorded or fixed in the mater; the personal hearing was also not granted after the denial of cross examination; that the principles of natural justice was not followed;
- that the denial of cross examination order dated 12.7.2018 was received on 16.7.2018 & that they had time upto 15.9.2018 to file an appeal against the said order denying cross examination; that on 28.8.2018, the appellant intimated the adjudicating authority that they intent to file an appeal against the order dated 12.7.2018; that the OIO was issued one day before i.e. 27.8.2018, but was only served on 18.9.2018;
- that the specific clause of Rule 25 of the Central Excise Rules, 2002, for the contravention of which confiscation was proposed, was not mentioned in the show cause notice; the adjudicating authority however held that the appellant had violated all the four clauses of the Rule 25, ibid;
- that the provisions of notification No. 8/2003-CE is to be followed by a manufacturer availing exemption from payment of duty based on the value of clearances; that the appellant in this case is not a manufacturer but a trader engaged in trading of plastic goods; that the plant and machinery available in the factory of the appellant does not suggest its capability to manufacture the goods; that it was obligatory to put on record the evidence which revealed that the goods under seizure were manufactured by the appellant and were intended to be removed without payment of duty;
- that the goods lying in the factory which are not attempted to be removed cannot be confiscated;
- that the adjudicating authority was under obligation to specify as to which circumstantial evidence suggested that the goods under seizure were liable for confiscation;
- that the reliance of the adjudicating authority on the case of BLKapur & Sons [2004(177) ELT 948(T)], is not tenable since in this case, the goods were manufactured by the assessee, while the appellant was not in a position to manufacture the goods mentioned in Annexure A with the three semi automatic hot stamping and heat transfer printing machines; that a cross examination of Manjur Alam, printing operator, would have revealed the correct picture;
- that creating floral design on the goods did not amount to manufacture;
- that para 3.1.2 of the notice states that the proprietor of the appellant had stated that the machinery shown in trial balance of 2014-15 was given to Kuldevi Plast; that the machinery was given without invoice; that in the statement of the proprietor of M/s. Kuldevi Plast [4.1.2] it is recorded that since the prices quoted were very high, the said machines were returned to the appellant; that the findings in this regard in the OIO is factually incorrect;
- that the adjudicating authority has relied upon the memorandum issued by the District Industries Centre, Ahmedabad and that it was nowhere relied upon in the notice and hence the reliance is highly perverse and illegal;
- the reliance of the adjudicating authority on the case of M/s. Everest Diamond Tools and M/s. Pumm Chem India, is not correct since in the present dispute the main crux of the argument is that they are not the manufacturer of the goods and that it was got manufactured by independent job workers to whom in some cases they had supplied the raw materials;
- that penalty can be imposed only if it could be shown that the appellant had acted in defiance of law; that they were engaged in the trading of goods and therefore they were not required to follow the procedure prescribed under the excise law;
- that if the contention in the notice is accepted the goods as per annexure D could not have been seized as they were alleged to be semi process goods; that the goods had not reached the stage at which they were marketable could not have been seized and consequently confiscated;
- that as far as confiscation of cash of Rs. 79,09,500/- is concerned the impugned order has no findings as to how the said goods are liable for confiscation;
- that in case of recovery of cash from the premises of Shefali Marketing, a separate notice was required to be issued to M/s. Shefali Marketing for the proposed confiscation of cash;
- that the amount of Indian currency seized from the residential premises could not have been confiscated as in the entire proceedings no attempt had been made to ascertain the acquisition of the said cash;



- that no explanation has been obtained from the owners of the lockers and the adjudicating authority has proceeded based on the statement of Shri Dipesh Jain;
- that the provisions of section 121 of the Customs Act, 1962 is made applicable to the Central Excise matters have been applied for confiscating cash; that in notification No. 68/63, in clause 1(v) the provisions of Central Excise Rules, 1944 is mentioned; that the said rules have been omitted and the present rules have come into force on 1.3.2002; that it therefore cannot be said that the goods were removed in contravention to the provision of the said Rules;
- that they would like to rely on the case of Patran Pipes P Ltd [2010(261) ELT 1173], Sada Shiv Steel Mills [2017(357) ELT 481].

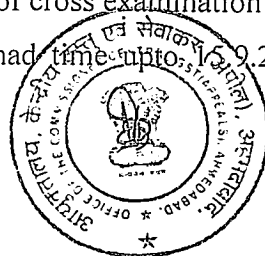
**Dipesh P Jain, Ritesh P Jain and Parasmal S Jain**

- that after 27.2.2017 no personal hearing was accorded or fixed in the mater; the personal hearing was also not granted after the denial of cross examination; that the principles of natural justice was not followed;
- that the denial of cross examination order dated 12.7.2018 was received on 16.7.2018 & that they had time upto 15.9.2018 to file an appeal against the said order denying cross examination; that on 28.8.2018, the appellant intimated the adjudicating authority that they intent to file an appeal against the order dated 12.7.2018; that the OIO was issued one day before i.e. 27.8.2018, but was only served on 18.9.2018;
- that in the impugned OIO no evidence has been adduced to show that the appellant had some knowledge of contravention of law and hence the penalty is not correctly imposed;
- that they would like to rely on the case of Liladhar Pasoo Forwarders p Ltd [2000(122) ELT 737 (T)], Hindustan Steel Ltd [1979 ELT J 402], Akbar Badruddin Jiwan [1990(47) ELT 161(SC)], Brahma Vasudeva [1988(33) ELT 20(P&H)], Vidhyavati [1988(37) ELT 341(Del.)], Karnataka Mineral & Mfg Co [1989(41) ELT 444], Shyam Kumar and Ors [1982 ELT 392];
- that no evidence is pointed out that the appellant is concerned with the removal and selling of excisable goods which they knew were liable to confiscation; that they would like to rely on the case of Steel Tubes of India Ltd [2007(217) ELT 506], Bellary Steel and Alloys Ltd [2003(157) ELT 324], ITC [1992(59) ELT 163], Lovely Offset Printers P Ltd [2014(311) ELT 305], Kamdeep Marketing Ltd [2004(1650) ELT 206].

4. Personal hearing in the matter was held on 5.3.2019, wherein Shri N.K.Tiwari, Consultant appeared on behalf of all the appellants and reiterated the grounds of appeal. He further stated that no cross examination was allowed nor personal hearing granted consequent to denial of cross examination to ascertain whether machines at the premises were capable of manufacturing seized goods which they have claimed to have been manufactured on job work. In respect of cash seized, the Learned Consultant further stated that notices were not issued to the persons from whom the cash was seized. He also submitted that the penalty could not have been imposed on the firm and the proprietor, in case of proprietorship.

5. I have gone through the facts of the case, the grounds of appeal, the oral averments made during the personal hearing. The impugned OIO is is an order for the seizure portion only. The issue to be decided in this appeal is whether the adjudicating authority was correct in confiscating the goods and the cash seized and whether the penalty has been correctly imposed in the case.

6. Before moving further on the merits of the case, I find that the appellant(s) have vehemently claimed that the principles of natural justice was not followed. Let me take up the first appeal [Sr. No. 1 of the table supra]. The appellants reasoning [all the appellant's herein have claimed] that the principles of natural justice were violated in so far as - after 27.2.2017, no personal hearing was accorded or fixed in the mater; the personal hearing was also not granted after the denial of cross examination; that the denial of cross examination order; dated 12.7.2018, was received on 16.7.2018 & that the appellants had time upto 15.9.2018, to file an appeal



against the said order denying cross examination; that on 28.8.2018, the appellant intimated the adjudicating authority of his intent to file an appeal against the order dated 12.7.2018 before the Commissioner(Appeals); that the OIO was issued one day before i.e. 27.8.2018, but was only served on 18.9.2018. The appellant has also heavily relied upon section 9D of the Central Excise Act, to substantiate their case that the adjudicating authority erred in not granting them cross examination.

7. Now, section 9D of the Central Excise Act, 1944, states thus

**SECTION 9D. Relevancy of statements under certain circumstances. —**

(1) A statement made and signed by a person before any Central Excise Officer of a gazetted rank during the course of any inquiry or proceeding under this Act shall be relevant, for the purpose of proving, in any prosecution for an offence under this Act, the truth of the facts which it contains, -

(a) when the person who made the statement is dead or cannot be found, or is incapable of giving evidence, or is kept out of the way by the adverse party, or whose presence cannot be obtained without an amount of delay or expense which, under the circumstances of the case, the Court considers unreasonable; or

(b) when the person who made the statement is examined as a witness in the case before the Court and the Court is of opinion that, having regard to the circumstances of the case, the statement should be admitted in evidence in the interests of justice.

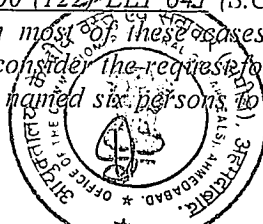
(2) The provisions of sub-section (1) shall, so far as may be, apply in relation to any proceeding under this Act, other than a proceeding before a Court, as they apply in relation to a proceeding before a Court.

7.1 Further, Board in its master circular no. 1053/2/2017-Cx dated 10.3.2017, on show cause notice, adjudication and recovery on the question of cross examination has clarified as follows: issued

*14.9 Corroborative evidence and Cross-examination : Where a Statement is relied upon in the adjudication proceedings, it would be required to be established through the process of cross-examination, if the noticee makes a request for cross-examination of the person whose statement is relied upon in the SCN. During investigation, a statement can be fortified by collection of corroborative evidence so that the corroborative evidence support the case of the department, in cases where cross-examination is not feasible or the statement is retracted during adjudication proceedings. It may be noted retracted statement may also be relied upon under given circumstances. Frivolous request for cross-examination should not be entertained such as request to cross examine officers of CERA.*

7.3 The Hon'ble Tribunal in the case of Bharti Bhutada [2012 (25) S.T.R. 284 (Tri. - Mumbai)], dealt with the question of cross examination, in para 6, which is reproduced below :

*6. It is settled law that cross-examination of witness cannot be claimed as a matter of right by any person involved in an adjudication proceedings. At the same time, this Tribunal, High Courts and the Supreme Court have held in a plethora of cases that the request of a party to cross-examine a witness has to be examined on its merits. Cross-examination is a part of 'evidence-taking' whether it be before an adjudicating authority or before a court. Personal hearing follows 'evidence-taking'. The proceedings must culminate in an order. In the present case, the learned Commissioner apparently took the stand that his reasoning for not acceding to the request for cross-examination would be mentioned in the final order. This, in our view, does not conform to the rule of natural justice. Once a witness has been cross-examined, it is open to either side to claim support from the record of cross-examination, at the final hearing stage. If the reasoning for denying cross-examination are stated only in the final order, the whole proceedings should be held to be violative of the principles of natural justice. In this context, the Hon'ble High Court's order dated 23-9-09 in Writ Petition No. 793/09 comes to our mind once again. While disposing of the writ petition, their Lordships observed that the writ petitioner had an alternative efficacious remedy by way of appeal against the order of adjudication. It is this remedy which is being pursued by the appellants at present against the denial of cross-examination. The case law cited by the counsel on the cross-examination aspect includes Air Trade International v. Commissioner, 2010 (251) ELT 471 (Tri.-Mum.), Bharat K. Dattani v. Commissioner, 2000 (121) ELT 256 (Tri), Swadeshi Polytex Ltd. v. Collector, 2000 (122) ELT 641 (S.C.), Laxman Exports Ltd. v. Collector, 2002 (143) ELT 21 (S.C.) etc. In most of these cases, the matters were remanded to the original authority with a direction to consider the request for cross-examination on merits and then to pass final orders. Mr. Rajendra named six persons to be cross-examined,*



while Mr. Suresh Hole named eight persons to be cross-examined. Counsel for Mr. Rajendra has submitted that he wants to cross-examine all the six witnesses, while counsel for Mr. Suresh Hole has submitted that he wants to cross-examine all the witnesses barring one (Smt. Bharati R. Bhutada). The adjudicating authority will have to examine whether cross-examination of the witnesses has to be allowed to the appellants after considering the facts and evidence already on record. His decision on this issue has to be communicated to the parties concerned in keeping with the principles of natural justice, but before this exercise, the non-relied-upon documents must be returned to the parties concerned and an opportunity of filing final reply to the show-cause notice should also be given to them. In case the originals of any of such documents are required to be retained for purposes of prosecution, or any on-going investigations relating to these appellants, such documents shall be retained and copies thereof should be supplied to the appellants. It shall be only after the filing of reply to the show-cause notices that the Commissioner should consider the request for cross-examination of witnesses. The reason why the witnesses should be cross-examined shall be clearly spelt out in the replies to the show-cause notice and the same shall be considered by the learned Commissioner and appropriate decision taken thereupon, which should be intimated to the appellants. Personal hearing will then follow.

8. In the above backdrop, let me examine the claim of the appellant that the principles of natural justice, was not followed by the adjudicating authority. The letter dated 13.7.2018, clearly states that the appellant has requested for cross examination of the two panch witness, the printing operator and the investigating officer [ no names are mentioned in the letter]. A combined reading of Section 9D of the Central Excise Act, 1944, the master circular issued by the Board clearly speak about cross examination of person whose statement has been relied upon. However, the Tribunal has broadened it to include witness also. However, I find that the appellant is not challenging the panchnama *per se* except for stating that it is incomplete. Hence, it is not understood as to why the appellant needs to cross examine the panch witness. Panchnama as is mentioned by the adjudicating authority is a document recording certain things which occur in the presence of the panchas and which are seen and heard by them. The contention that it is incomplete is a subjective statement. Nothing is claimed in the grounds which even raises any merit as far as the cross examination of panch witness is concerned. I therefore agree with the finding of the adjudicating authority wherein she has rejected the request for cross examination of panchas. However, in respect of the cross examination of Shri Manjur Alam, Printing Operator is concerned, I find that the search of the premises at B-131, Push Industrial Estate on 5.6.2015 was conducted in his presence; that certain facts were sought from him. So, the request for cross examination, going by Section 9D, *ibid*, the master circular and the direction of the Tribunal, should have been granted. Moreover, as far as cross examination of officers, the appellant has not given his reasoning/grounds as to why it is required. Proper and cogent reasons need to be advanced before the adjudicating authority can come to a finding as to whether to allow it or otherwise.

9. However, after having said so, I find that the non granting of personal hearing after the appellant was informed that his request for cross examination was denied, was a clear violation of the principles of natural justice.

10. In view of the foregoing, I find that the ends of justice would be served if the impugned OIO dated 27.8.2018 is set aside and the matter is remanded back to the adjudicating authority to [a] first grant cross examination in case of Shri Manjur Alam; and [b] re-examine the request for cross examination of the officers, based on the fresh request of the appellant, which needless to state should - as I have mentioned *supra*, be proper and cogent proper grounds to



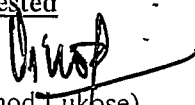


substantiate the reasoning. As far as the other grounds that have been raised, the appellant is requested to raise these grounds before the adjudicating authority if not already raised, who will pass an order consequent to following the principles of natural justice.

11. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।  
11. The appeal filed by the appellants stands disposed of in above terms.

Date: 20.3.2019

Attested

  
(Vinod Lukose)  
Superintendent (Appeal),  
Central Tax,  
Ahmedabad.

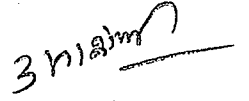
By RPAD.

To,

1.M/s. Shefali Plastic Industries S/105, Vivekanand Industrial Estate, Rakhiyal, Ahmedabad.
2.Dipesh P Jain, Proprietor M/s. Shefali Plastic Industries, S/105, Vivekanand Industrial Estate, Rakhiyal, Ahmedabad
3.Ritesh P Jain, Proprietor 1 & 3 Vakil Appartment, Inside Samandh Shikar ni Pole, Nr. Mandvi Pole, Astodiya Chakla, Ahmedabad 380 001.
4.Parasmal S Jain, 1 & 3 Vakil Appartment, Inside Samandh Shikar ni Pole, Nr. Mandvi Pole, Astodiya Chakla, Ahmedabad 380 001.

Copy to:-

1. The Chief Commissioner, Central Tax, Ahmedabad Zone .
2. The Principal Commissioner, Central Tax, Ahmedabad South Commissionerate.
3. The Assistant Commissioner, Central Tax Division- I, Ahmedabad South Commissionerate.
4. The Assistant Commissioner, System, Central Tax, Ahmedabad South Commissionerate.
5. Guard File.
6. P.A.



(उमा शंकर)

प्रधान आयुक्त (अपील्स)

