(2020) 12 CESTAT CK 0061

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Customs Appeal No. 10738, 10739, Of 2020

Navshakti Filaments And Anr. @Hash C.C.-Ahmedabad

Date of Decision : 15-12-2020

Acts Referred:
Customs Act, 1962 — Section 108, 138(b)

Citation : (2020) 12 CESTAT CK 0061

Hon'ble Judges : Ramesh Nair, J;Raju, Technical Member

Bench : Division Bench

Advocate : K.I. Vyas, S.N. Gohil

Final Decision : Allowed

Judgement

1. These appeals are filed against an order passed by the Principal Commissioner whereby the request of appellant for cross-examination of witnesses

has been rejected during the adjudication proceedings in the Show cause notice no. LDZU/856/(Int-9)(Enq-60)2017/2360 dated 07/11/2019.

2. Shri K.I. Vyas, learned Counsel appearing on behalf of the appellants submits that in the identical case in respect of the same witnesses, this

Tribunal has allowed the appeal in the case of Kudrat Corporation vide order no. A/11131/2020 dated 29/07/2020.

3. Shri S.N. Gohil, learned Superintendent appearing on behalf of the Revenue placed reliance on the following judgments:

(1) Commissioner vs. Systems and Components Pvt. Ltd. 2004(165) E.L.T. 136 (S.C)

(2) Patel Engineering Ltd. vs. Union of India 2015 (323) ELT A73 (S.C)

(3) Shyam Lal Biri Merchant vs Union of India 1993 (68) ELT 548 (All.)

(4) Spenta Multimedia Pvt. Ltd. vs Commissioner of Customs, Nhava Sheva-II 2020 (371) E.L.T. 814 (Tri- Mubmai)

(5) Dharampal Satyapal Ltd. vs Deputy Commissioner- 2015 (320) ELT 3 (SC)

(6) Devine Impex vs. Commissioner of Customs (E) Nhava Sheva 2019 (369) ELT 858

(7) Paragon Steels (P) Ltd. vs Commissioner of C. Ex. Cus & S.T., Calicut 2018 (15) GSTL 298 (Tri- Bang.)

(8) Sridhar Paints Co. P. Ltd. vs Commissioner of Cus. & C.Ex. Hyderabad-III 2006 (198) E.L.T. 514 (Tri- Bang.)

(9) N.S. Mahesh vs. Commissioner of Customs, Cochin 2016 (331) E.L.T. 402 (Ker.)

(10) M/s Patwari Clothing Pvt. Ltd. vs Commissioner of Customs, Tuticorin2020-TIOL-1993-HC-Mad-Cus

(11) Visal Lubetec Corporation vs Addiional Commissioner 2016 (342) ELT 201 (Mad.)

(12) Ahmednagar Rolling Mills Pvt. Ltd. vs. Commissioner of C. Ex., Aurangabad 2014 (300) ELT 119 (Tri- Mumbai)

(13) Shalini Steels Pvt. Ltd. vs. Commissioner- 2011 (269) ELT 485 (A.P.)

(14) Manidhari Stainless Wire Pvt. Ltd. vs. Union of India- 2018 (360) ELT 255 (A.P.)

(15) A.L. Jalaludeen vs Deputy Director Enforcement Directorate- 2010 (261) ELT 84 (Mad.)

(16) Jagdish Shaker Trivedi vs Commissioner- 2006 (194) ELT 290 (Tribunal)

(17) Surjeet Singh Chhabra vs Union of India- 1997 (89) ELT 646 (S.C.)

(18) Fortune Impex vs Commissioner- 2001 (138) ELT 556 (Tribunal)

(19) In Re: G Subramanian 2002 (142) ELT 224 (G.O.I.)

(20) Patel Engineering Ltd. vs Union of India 2014 (307) ELT 862 (Bom)

(21) Simco Paints Inds. Vs Commr. of Raigad 2014- TIOL-CESTAT-Mum

3. We have heard both sides. We find that the identical case has been investigated and identical Show Cause Notice was issued in the case of Kudrat

Corporation. In the said case also, the appellant had approached the Tribunal against the order rejecting cross examination of the same witnesses i.e.

Shri Ashok Prasad, Assistant Professor, NIFT Delhi and Shri Bipin Kumar, Assistant Professor, IIT, Delhi who have given the expert technical

opinion which were relied upon in the show cause notice and this Tribunal has allowed the cross examination vide order no. A/11131/2020 dated

29/07/2020 wherein this Tribunal has passed the following order:

4. We have heard both sides and perused the records. We find that the Adjudicating Authority has given precisely the reasoning for the rejection of

the request of the cross examination of the witnesses in para 6 of the order which is reproduced below:

â??6. The request for cross examination of SIO who recorded the statements of the witnesses and who obtained technical opinion on the subject

issue, I find that the relied upon documents have already been provided alongwith Show Cause Notice and the cross examination of the SIO shall not

bring out any new facts other than the facts which have already been recorded in the statements and in the technical opinions. The request for cross

examination of 11 persons is not maintainable as nothing new is likely to come out and will only delay adjudication proceedings. In this regard, I refer

to the judgment of Honâ??ble High Court of Kerala in the case of N.S. Mahesh reported as 2016 (331) ELT 402 (Ker.) wherein the Honâ??ble

Court upheld the denial of cross examination of the departmental officers.â??

From the above finding, the Adjudicating Authority has stated that the request for cross examination of 11 persons is not maintainable as nothing new

is likely to come out and will only delay adjudication proceedings. We do not agree with the Adjudicating Authority that only due to likelihood of delay

in adjudicating proceeding, the cross examination can be denied. There is no shortcut in the adjudication process. It is a fact on record that except

SIO, all other persons have either given the statements under section 108 of the Customs Act, 1962 or taken their stand by way of letters. Shri Ashok

Prasad and Shri Bipin Kumar have admittedly given the technical opinions which have been taken on record as evidence in the Show Cause Notice.

Therefore, these evidences were used against the appellant. During the adjudication proceeding, any evidence can be admitted only when the witness

is cross examined under section 138B which is reproduced below:

SECTION 138B. Relevancy of statements under certain circumstances. â?

(1) A statement made and signed by a person before any gazetted officer of customs 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.

From the plain reading of the above section, particularly, clause (b) of sub section 1 of section 138(b), it is clear that the statement made and signed by

person before the Custom Officer can be admitted as evidence 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. In the above section, no exception is provided or any discretion is provided for the Adjudicating Authority to allow or not to allow the cross

examination. Particularly, in the present case, when the appellant have vehemently requested the cross examination of the witnesses. The

Adjudicating Authority cannot have his own assumption and presumption that whether anything will come out from the process of cross examination.

It is up to the defendant that whether the cross examination will help for his defence. The cross examination is a vital part of principles of natural

justice. Therefore, we are of the view that the appellant should be allowed cross examination, the witnesses except the SIO. The SIO is part of the

investigation and the Show Cause Notice has relied upon various statements, letters and opinions. Therefore, the cross of SIO is unwarranted. As per

our above discussion, we hold that the learned Principal Commissioner being adjudicating authority shall grant cross examination of witnesses as

requested by the appellant. Accordingly, the appeal is allowed in the above terms.

Since the same issue particularly, cross-examination of the same persons was involved, the above decision is directly applicable in the appellantâ??s

case. Accordingly, following the above Tribunalâ??s order, we allow the appeal and cross examination of Shri Ashok Prasad and Shri Bipin Kumar

has to be allowed by the adjudicating authority. Learned Counsel, Shri K.I. Vyas has not pressed for cross examination of the SIO. Therefore, there is

no need for cross examination of the SIO. The appeal is accordingly allowed in above terms.

(Dictated & Pronounced in the open court)

