IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CENTRAL EXCISE APPEAL NO. 05 OF 2015

Sharad Ramdas Sangle **Appellant**

V E R S U S

The Commissioner, Central Excise and Customs, Aurangabad **Respondent**

With

CENTRAL EXCISE APPEAL NO. 06 OF 2015

Ahmednagar rolling Mills Pvt. Ltd., Plot No.D-21-22, MIDC, Ahmednagar 414111 [MS], Through its present Director Shri Sunil Ramchandra Kapure **Appellant**

V E R S U S

The Commissioner, Central Excise and Customs, Aurangabad **Respondent**

With

CENTRAL EXCISE APPEAL NO. 07 OF 2015

Ramdas Ispat & Metals Pvt. Ltd., Plot No.122/3, M.I.D.C., Manmad Road, Ahmednagar [MS], through its present Director Shri Sharad Ramdas Sangle **Appellant**

V E R S U S

The Commissioner, Central Excise and Customs, Aurangabad **Respondent**

Mr. D.S. Ladda, Advocate for the appellants
Smt. Kalpalata Bharaswadkar, Advocate for the respondent

CORAM : A. V. NIRGUDE &
V. K. JADHAV, JJ.
DATE : 3rd March, 2015

PER COURT :

1. Heard. All these appeals can be disposed of by common order.

2. All these appeals arise from a show-cause-notice issued under Section 11A of the Central Excise Act, 1944 to the appellants, who are private limited companies and their directors at relevant time. Before show-cause-notices were given to the parties, the department made investigation into alleged evasion of excise duty. The statements of directors and employees of these companies were recorded. The directors and employees of the company admitted that they clandestinely procured the scrap and converted the same into ingots and then clandestinely sold in market without paying excise duty. The statements were made basis in the show-cause-notice. In the reply to the show-cause-notice, the directors did not retract such statements nor they stated that the statements were made under duress etc. On the basis of the record, education order was passed and duty and penalty were imposed on the appellants. This order was challenged before Customs, Excise and Service Tax Appellate Tribunal, Western Zonal Branch, Mumbai by filing appeals. The appeals were dismissed. While arguing the appeal, the main bone of contention made on behalf of the appellants was that the appellants were denied opportunity of cross-examination of

witnesses.

3. The Tribunal recorded following reason :-

> "5.1 As regards the denial of cross examination of Shri thorve and Shri Ashok Kumar Yadav and whether the said denial has caused any prejudice to the appellants, it is seen from the records that the entries made in the private records were corroborated by Shri Ramdas Shivram Sangle, Director of the appellant firm and Shri Sharad Ramdas Sangle, Proprietor of M/s. Ambica Scrap Merchant through whom the clandestinely removed goods, were sold wherein they had admitted that the entries recorded are true and correct and pertain to the unaccounted production, purchase of raw materials without accounting and sale of the finished goods in cash without payment of duty. Further from the records it is seen that about sixteen buyers [referred to in para 11.13 of the impugned order], who purchased the finished goods from the appellants without payment of duty have also confirmed that they had received these goods without the cover of proper excise documentation and without payment of duty. Similarly, two scraps suppliers, Mr. Yunus Ahmed Shaikh and Mr. Shaikh Mushtaq Gulab

have also admitted that they have supplied the MS scrap which is the raw materials for the manufacture of these goods without the cover of documents and they have received consideration for sale of such scrap in cash. Considering these evidences available in record, we hold that they denial of cross-examination of the authors of the private records has not caused any prejudice to the appellants. In fact none of the statements recorded have been retracted or disputed. In such a scenario, when the fact is not disputed, cross examination of the party is not necessary. The Hon'ble Apex Court in the case of Kanungo Company – 1983 [13] ELT 1486 [SC] and the Hon'ble High Court of Andhra Pradesh in the case of Shalini Steels Pvt. Ltd. [supra] have held that there is no absolute right for cross examination and if sufficient corroborative evidences exist, cross examination of the deponent of the statement is not necessary. In view of the above we hold that the denial of cross examination of Shri Thorve and Ashok Kumar Yadav who maintain3ed the private records has not caused any prejudice to the appellants."

From the above conclusions, we are also of the view that this was not a case which required cross-examination. The Directors themselves admitted the guilt. So, almost all allegations stood proved. As said above, the statements recorded were not retracted or disputed. Learned counsel for the appellants reiterated that he can succeed in showing that these appeals should be admitted for deciding following question, which according to him, is substantial question of law :-

> "Whether denial of cross-examination of witnesses caused any prejudice to the appellant?"

We are not inclined to accept this submission at all. In these appeals, there was no question of cross-examination, and therefore, denial of the same would not give rise to any substantial question of law. We perused the judgment of the Tribunal and find the same is quite pertinent. It is not necessary to interfere in it.

6. All the Central Excise Appeals stand dismissed. In view of dismissal of all Central Excise Appeals, Civil Application Nos. 64 of 2015, 1970 of 2015, 71 of 2015 and 2377 of 2015 stand disposed of.

(V.K. JADHAV, J.) **(A.V. NIRGUDE, J.)**

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