IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD.

FIRST APPEAL NO. 430 OF 2010

WITH

CIVIL APPLICATION NO. 2213 OF 2010

The Commissioner of Central
Excise and Customs, Kendriya
Rajaswa Bhavan, Gadkari Chowk,
Nasik. **Appellant.**

Versus

1. M/s. Pravin Metal Works
C-1/1, M.I.D.C. Jalgaon.

2. Ashok Prabhakar Chaudhari
Partner of M/s. Pravin
Metal Work and M/s. Pankaj
Auto, Jalgaon

3. Dinesh Prabhakar Chaudhari
Partner of M/s. Pravin
Metal Work and M/s. Sarang
Auto, 153, Jillha Peth,
Jalgaon.

4. Parvin Prabhakar Chaudhari
Partner of M/s. Pravin
Metal Work and M/s. Pankaj
Auto Works, Jalgaon.

5. P.P. Chaudhari
Partner of M/s. Pankaj
Auto, Jalgaon.

6. V.D. Chaudhari
Partner of M/s. Pankaj
Auto, Jalgaon

7. Ujwala Ashok Chaudhari
Partner of M/s. Yogesh
Auto, Jalgaon

8. Pankaj Ashok Chaudhari
Partner of M/s. Sarang
Auto, Jalgaon **Respondents.**

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Mr.D.S. Ladda, Advocate for appellant.

Mr.R.F. Totla, Advocate for the respondents.

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CORAM : **R.D. DHANUKA &**
SUNIL K. KOTWAL,JJ.

Dated : 14-09-2017.

ORAL ORDER :-

1. After hearing learned Counsel for the parties partly, the learned Counsel for the parties, on instructions from their respective clients, have agreed to the following order.

(a) The impugned orders dated 25.07.2006 passed by the Tribunal in Appeal

No.E/3969/2002-Mumbai and also the orders passed by the Chief Commissioner, Central Excise and Customs, dated 30.09.2002 are set aside.

(b) Show cause notices issued by the Commissioner, Central Excise and Customs, Aurangabad dated 22.04.1999 are restored to file.

(c) The learned Chief Commissioner, Central Excise and Customs shall hear the parties who were issued show cause notices afresh and shall give them an opportunity of being heard. It is made clear that if any of the Noticee seeks any opportunity to cross examine any of the person whose statements were recorded by the Commissioner, Central Excise and Customs, which were referred in the impugned order passed by the learned Commissioner, Central Excise as well as in the show cause notices including adherence thereto, the learned Commissioner shall render such opportunity to such Noticees.

(d) It is made clear that the learned Chief Commissioner, Central Excise and Customs shall decide the matter based on the material produced by both the parties already on record and after giving an opportunity to Noticees of cross-examination as provided aforesaid and after giving an opportunity of being heard to the parties through their representatives and shall pass a fresh order in accordance with law. Such order shall be passed within 8 weeks after conclusion of hearing. It is made clear that the learned Chief Commissioner, Central Excise and Customs shall not be influenced by any of the observations made in the impugned order passed by the Commissioner, Central Excise and Customs as well as by the CESTAT.

(e) If any of the Noticee seeks to cross examine any of the parties whose statements were recorded, an application in writing shall be made by the Noticee before the Chief Commissioner, Central Excise and Customs with a copy to the Revenue to enable the Revenue to make such persons available for cross examination. The Revenue shall be granted sufficient time to produce such witnesses for cross examination.

(f) It is made clear that if the Chief Commissioner, Central Excise and Customs is not now authorised to hear the parties in response to such show cause notices, he would be authorised to delegate such powers to such officer who is empowered to hear such matters, in accordance with law.

(g) The appellant shall issue notices upon all the Noticees and shall communicate date, time and place for hearing, which shall be at least 2 weeks' notice.

(h) First Appeal No. 430 of 2010 is disposed of in aforesaid terms.

(i) It is made clear that this Court has not expressed any views on the merits of the matter. All the contentions raised by both the parties in this appeal are kept open.

(j) In view of disposal of First Appeal, Civil Application No. 2213 of 2010 is disposed of.

(SUNIL K. KOTWAL)
JUDGE

(R.D. DHANUKA)
JUDGE

vdd/