IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

Central Excise Appeal No.1 of 2017
(The Pr. Commissioner of Customs, Service Tax and Central Excise, Nagpur vs. Sanjay Maloo, Nagpur)
with
Central Excise Appeal No.5 of 2017
(The Pr. Commissioner of Customs, Service Tax and Central Excise, Nagpur vs. Poonamchand Maloo, Nagpur)

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders	Court's or Judge's orders.

Mr.K.K.Nalamwar, Advocate for Appellant.
Mr.S.V.Bhutada, Advocate for Respondents.

CORAM : M.S.SANKLECHA &
MANISH PITALE, JJ.

DATE : 9.6.2017.

These two appeals by the Revenue under Section 35-G of the Central Excise Act, 1944 (Act) challenge the order dated 9th July, 2015 passed by the Customs, Excise and Service Tax Appellate Tribunal, Mumbai (Tribunal).

2. The Revenue has proposed the following identical questions of law for our consideration in both the appeals :

a.Whether in the facts and circumstances of the case and in law was the Tribunal *correct in setting aside demand in spite of clandestine removal on the grounds that demand is based on assumption, though it is made on evidence i.e. statements under section 14 of Central Excise Act, 1944 of concerned persons and substantial financial accounts ?*

b.Whether in the facts and circumstances of the case and in law whether the Tribunal was correct in not relying upon the statements recorded under section 14 of Central Excise Act, 1944 ?

c.Whether in the facts and circumstances of the case and in law could it be said that the statements recorded under section 14 of Central Excise Act, 1944 and substantial financial accounts are not having evidential value ?

3. The impugned order is a common order passed inter alia not only in respect of the two respondents/assessees i.e. Mr.Sanjay Malu and Mr.Poonamchand Malu before us but also in respect of Malu Electrodes Pvt. Ltd., in which they are Manager and Director respectively. By the common impugned order, the demand of Excise duty on M/s.Malu Electrodes Pvt. Ltd. as imposed by the

Commissioner was reduced. However, penalties imposed on the two respondents/assessees under Rule 26 of the Central Excise Rules, 2002 r/w. Rule 209A of the Central Excise Rules, 1944 r/w. Section 38A of the Act of Rs.1,00,000/- was undisturbed by the impugned order.

4. At the very outset, we inquired with Mr.K.K.Nalamwar, learned Counsel for the appellant/Revenue as to how the Revenue is aggrieved by the impugned order of Tribunal in respect of two respondents in the present appeals. This for the reason that the penalty of Rs.1,00,000/- imposed by adjudication order, dated 6th March, 2007 has not been disturbed by the impugned order, dated 6th August, 2015 of the Tribunal. It is also an admitted position that the respondent/revenue had not filed any appeal from the order of adjudication, dt.6.3.2007.

5. At this, Mr.Nalamwar, learned Counsel has stated that the appeal filed by the Revenue in respect of Malu Electrodes Pvt. Ltd. being Central Excise Appeal No.2 of 2017 has been admitted and hence, these two appeals also be admitted. We do not consider this to be a sufficient ground to entertain these two appeals. This for the reason that even if the Revenue succeeds in

it's appeal filed in respect of Malu Electrodes Pvt. Ltd. and the order of adjudication dt.6.3.2007 is restored, there would be no occasion to enhance penalty as the revenue was not aggrieved by adjudication order dt. 6.3.2007 imposing penalty of Rs.1,00,000/- on the two respondents in this case.

6. In the above view, the appellant/Revenue cannot be aggrieved by the impugned order of Tribunal in respect of the two respondent/assessee. Thus, no substantial question of law arises in these appeals.

7. Accordingly, both the appeals are dismissed. No order as to costs.

JUDGE **JUDGE**

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