

IN THE HIGH COURT OF BOMBAY AT GOA.**EXCISE APPEAL NOS.6 OF 2010 , 1 OF 2010, 1 OF 2011, 4 OF 2010, 5 OF 2010, 7 OF 2010 AND 8 OF 2010.****EXCISE APPEAL NO. 6 OF 2010**

Commissioner of Customs &
Central Excise, Goa
Commissionerate, Ice House,
Patto Plaza, Panaji, Goa. Appellant.

V/s

M/s Twenty First Century Wire
Rods Ltd., Plot No. D-9/1,
Madkaim Industrial Estate,
Madkaim, Goa. Respondent.

WITH**EXCISE APPEAL NO.1 OF 2010.**

M/s. Kundil Ispat Limited,
Gogolvoril Mal, Usgaon, Ponda
Goa. Appellant.

V/s

The Commissioner of Customs
and Central Excise EDP
Complex, Panaji-Goa. Respondent.

WITH**EXCISE APPEAL NO. 1 OF 2011**

Commissioner of Customs &
Central Excise, Goa
Commissionerate, Ice House,
Patto Plaza, Panaji, Goa. Appellant.

V/s

M/s. Ellenabad Steel Pvt. Ltd.

Plot No.4 & 5, Honda Industrial
Estate, Honda, Sattari,
Goa 403 430.

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Respondent.

WITH**EXCISE APPEAL NO. 4 OF 2010**

Commissioner of Customs &
Central Excise, Goa
Commissionerate, Ice House,
Patto Plaza, Panaji, Goa.

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Appellant.

V/s

Mr. Vinod Goel, The Then
Director of Twenty First
Century Wire Rod Ltd. Plot No.
D-9/1, Madkaim Industrial
Estate, Madkaim, Goa.

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Respondent.

WITH**EXCISE APPEAL NO. 5 OF 2010**

Commissioner of Customs &
Central Excise, Goa
Commissionerate, Ice House,
Patto Plaza, Panaji, Goa.

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Appellant.

V/s

Darshan Churiwala, Director of
Twenty First Century Wire Rod
Ltd., Plot No. D-9/1, Madkaim
Industrial Estate, Madkaim,
Goa.

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Respondent.

WITH**EXCISE APPEAL NO. 7 OF 2010**

Commissioner of Customs &
Central Excise, Goa

Commissionerate, Ice House,
Patto Plaza, Panaji, Goa. Appellant.
V/s

Pawan Sharma, Administrative
Officer, of Twenty First Century
Wire Rod Ltd., Plot No. D-9/1,
Madkaim Industrial Estate,
Madkaim, Goa. Respondent.

**WITH
EXCISE APPEAL NO. 8 OF 2010**

Commissioner of Customs &
Central Excise, Goa
Commissionerate, Ice House,
Patto Plaza, Panaji, Goa. Appellant.
V/s

Kishan Sharma, Supervisor &
Authorised Signatory of Twenty
First Century Wire Rod
Ltd., Plot No. D-9/1, Madkaim
Industrial Estate, Madkaim,
Goa. Respondent.

Ms. Asha Desai, Advocate for the appellant in all appeals except Excise Appeal No.1 of 2010.

Mr. Rajiva Shrivastava, Advocate for the appellant in Excise Appeal No.1 of 2010.

None for the respondents.

**Coram:- S. C. Gupte &
Prithviraj K. Chavan, JJ.
Date:- 12th June 2019.**

ORAL JUDGMENT (Per S. C. Gupte, J.)

These Excise Appeals challenge a common order passed by
Customs, Excise and Service Tax Appellate Tribunal, West Zonal

Bench, Mumbai ("Tribunal") partly allowing the appeals on the ground of denial of principles of natural justice and remanding the matters to the Adjudicating Authority for a fresh decision in accordance with law.

2. Excise Appeal No. 6 of 2010 and others filed by the Commissioner of Customs and Central Excise, were admitted on the following substantial questions of law:-

- (i) *When the assessee itself acknowledged receipt of all legible copies vide letter dated 18.09.2008, whether the plea of the Solicitors of the Respondent contained in their application dated 10.10.2008 received on 14.10.2008, without reference to the acknowledgment dated 18.09.2008 and the finding of CESTAT relating to denial of principles of natural justice is proper ?*
- (ii) *Whether the finding relating to the denial of principles of natural justice contained in the impugned order is legally tenable ?*

3. These matters were considered by the Tribunal mainly with reference to the facts of the cases of M/s Twenty First Century Wire Rods Limited ("Company") who were suppliers of the goods, namely, Steel Ingots, and who were claimed to have removed the goods clandestinely by evading duty and who were ordered to pay the applicable duties together with interest and penalties, respectively, under Sections 11A (2), 11AB and 11 AC of the Central Excise Act 1944.

4. Before the Tribunal, the company and its directors were the appellants. The impugned order of the Commissioner was sought

to be challenged by them on two grounds. The first was failure on the part of the Authorities to comply with the basic principles of natural Justice. The grievance of the company and its directors was that they were not furnished with copies of the documents relied upon by the department; so also documents, which were seized in the course of the investigation, were not returned to them. It was also their grievance that their request for cross examination of the persons, whose statements were recorded, was rejected. The second ground, which we are not presently concerned with was the ground concerning duties/liabilities to be restricted to the amount found in cash in their premises. Since the appeals were disposed of and the matters were remanded by the Tribunal on the ground of non-observance of principles of natural justice, we shall restrict our observations in this order to that aspect of the matter.

5. As noted above, the grounds concerning failure on the part of the Authority to comply with the principles of natural justice bear on three aspects, the first being non furnishing of relevant documents, the second, non-return of seized documents and the third, rejection of their prayer for cross examination of the persons whose statements were recorded in the course of investigation. So far as the third aspect, namely, rejection of the prayer for cross examination, is concerned, the Tribunal found no substance in the submission of the appellant before it. The Tribunal essentially came to a conclusion that the impugned orders in challenge before the Tribunal did not disclose

that the Authority had given any credence to the statements of the various persons, whose cross examinations were sought, but had decided the matters on the basis of other evidence found in the course of the investigation by the department. The Tribunal, in the premises, observed that there was no denial of natural justice. The Tribunal rightly held that whilst assessing the merits of a case of violation of principles of natural justice, the Court has to assess not merely the technical aspect of refusal to allow cross examination but whether as a result, a failure of justice has been caused so far as the complainant before it is concerned. Since the statements of the persons, whose cross examinations were sought by the assesses, were not relied upon for arriving at the conclusion on payment of duties, interest or penalties, no failure of justice could be said to have been occasioned.

6. Coming now to the grievance of non-furnishing of documents, the Tribunal found that the Adjudicating Authority had noticed in detail the events in chronological order, which bore on the aspect of documents not being made available to the assesses for contesting the department's case of determination of duties, interest and penalties. The impugned order, however, did not disclose any consideration of the contentions raised in that regard by the assesses before the Adjudicating Authority. The Tribunal was of the view that having noticed the facts bearing on the issue of the alleged failure of the authority to make available the documents to the appellant to prepare their case in defence, it was obligatory for the Adjudicating

Authority to ascertain whether the appellants were able to make out a case that the alleged failure had been exclusively on account of the negligence on the part of the Authority in that regard and whether the same had resulted in failure of justice or caused prejudice to the appellant so as to warrant interference. In particular reference to the documents, the Tribunal observed that most relevant documents, which were taken into consideration for assessing and quantifying the duty liability of the appellant, were Book Nos. 72,73, 74, 75, 76, 77, 79 and 80. The Tribunal observed that under letter dated 10.10.2018, the appellant had specifically brought to the notice of the Authority that they were not furnished with the copies of various pages of these Books. In other words, the Tribunal found that the relevant documents, which the Authority appeared to have relied upon, in fact, comprised of the very documents regarding which the grievance was made by the appellant about non-receipt. The Tribunal observed that the duty liability had to be fixed on the basis of the entire documentary evidence collected in the course of investigation, including the fact about the cash transaction by the appellant in relation to the products, which were manufactured and clandestinely removed from the appellant's premises. Having thus considered the matter, the Tribunal was of the view that the appellants' case that there had been failure of principles of natural justice vis-a-vis the appellant company and its directors could not be rejected.

7. Non-receipt of the relevant pages of the Books referred to above by the company and its directors is not a matter of dispute. The Appellant Commissioner's case before the Court is that the company and its directors, by their conduct, sought to delay the matter and ought not to be heard on the case of failure of principles of natural justice. The fact, however, remains that whatever be the conduct of the company and its directors, the documents, on the basis of which their duty liability was ascertained by the Department, were in fact not made available to the company and its directors while preparing and submitting their reply or defending the department's case of liability. The company and its directors had specifically raised the plea of denial of natural justice both before the Adjudicating Authority and the Tribunal. Original observations of the Adjudicating Authority regarding events in chronological order in the context of the grievance of the company and its directors about non furnishing of documents is a testimony to the raising of such plea. Before the Tribunal, this was indeed the main ground on which the appeal was prosecuted.

8. As we have noted above, the Tribunal cannot be said to have erred in law in observing that vital documents, on which duty liability of the assessee was assessed, not being made available to the assessee, there was failure of principles of natural justice and that the matter ought to be remanded to the Adjudicating Authority.

9. The judgment of Dharampal Satyapal Ltd. Vs. Deputy Commissioner of Central Excise, Gauhati relied upon by Ms. Desai has no bearing on the facts of the present case. That was a case where the the subject matter of challenge involved refund of the benefits earlier accorded to the appellant before the Supreme Court. The Notification under which benefits were accorded to the appellant stood nullified by Section 154 of Finance Act, 2003, which was given a retrospective effect. The legal consequence of this statutory provision was to make the amount, by which the appellant was benefited under the notification, refundable. The demand for refund was made without any show cause notice. The appellant's complaint of denial of natural justice was negated by the Supreme Court by holding that in the facts of the case, issuance of notice would be a futile exercise, since anyway the appellant had no plea available for retaining the amount on any ground whatsoever. In other words, the court came to a conclusion that issuance of a notice would be an empty formality. The court was of the view that even where it found an infraction of principles of natural justice, the court had to address a further question as to whether any purpose would be served in remitting the case to the authority. The Court held that natural justice cannot be applied in a straight jacket formula. The jurisprudential basis of principles of natural justice was procedural fairness, accuracy of outcome leading to general social goals, etc. Nevertheless, there may be situations where a fair hearing would make no difference, meaning that a hearing would not change the ultimate conclusion reached by the decision maker. In such case,

no legal duty to supply a hearing arises. These observations have no bearing on the facts of our case. In our case, the authority relied on materials without supplying copies to the assesseees, that is to say, without enabling the latter to show effective cause against the materials or submit explanation. The remission of the matter in such a case is no empty formality, but a legal imperative.

10. Excise Appeal Nos. 6 of 2010, 4 of 2010, 5 of 2010, 7 of 2010 and 8 of 2010 are, in the premises, dismissed by answering the questions of law against the Appellant Commissioner of Customs and Excise, that is to say, in the affirmative.

11. So far as Excise Appeal of M/s Ellenabad Steels Private Limited (Excise Appeal No.1/2011) is concerned, even this appeal can be appropriately disposed of in terms of the observations made above. M/s Ellenabad Steels Private Limited are the purchasers of the subject goods from M/s twenty first Century Wire Rods Limited and their case will, in turn, depend on what happens to the duty liability claimed from M/s Twenty First Century Wire Rods Limited.

12. So far as the Excise Appeal against M/s Kundil Ispat Limited (Excise Appeal No.1 of 2010) is concerned, the appellant is a purchaser of Steel Ingots from M/s Twenty First Century Wire Rods. In their case, the Tribunal appears to have proceeded to dismiss the appeal without examining the issue whether the order of the

Adjudicating Authority was passed in violation of principles of natural justice. When the Tribunal allowed the appeal of M/s Twenty First Century Wire Rods Limited and remanded their matters for fresh adjudication to the Adjudicating Authority on the ground of violation of principles of natural justice, it is inconceivable that an appeal challenging a similar order passed in case of M/s Kundil Ispat Limited, could be dismissed. If the duty liability, on the basis of which penalty was levied against M/s Kundil Ispat limited, was being remitted to the Adjudicating Authority for a fresh determination in accordance with law, there could be no point in dismissing the appeal of M/s Kundil Ispat Limited by affirming the order of penalty passed against them. Accordingly, for the same reasons, which are discussed in the case of M/s Twenty First Century Wire Rods above, the impugned order of the Tribunal passed in the case of M/s Kundil Ispat Limited deserves to be set aside and the matter remanded to the Adjudicating Authority for a fresh decision in accordance with law. It is ordered accordingly.

13. Excise Appeal No. 1 of 2010 is accordingly allowed and Excise Appeal No.1 of 2011 is accordingly dismissed, by answering the questions of law against the Appellant Commissioner.

PRITHVIRAJ K. CHAVAN, J.

S. C. GUPTE, J.