Santosh

IN THE HIGH COURT OF BOMBAY AT GOA

EXCISE APPEALS NO.3, 5, 8 & 13/2012

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

V/s.

M/s. Shivam Ispat Pvt.Ltd.,
333-335, Kundaim Industrial Estate,
Kundaim, Goa. .... Respondent

WITH

CUSTOM APPEALS NO.10 & 11/2012

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

V/s.

M/s. Karthik Induction Ltd.,
120-121, Kundaim Industrial Estate,
Kundaim, Goa. .... Respondent

WITH

CUSTOM APPEALS NO.12, 14, 16, 17/2012

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

V/s.

M/s. Shivam Ispat Pvt.Ltd.,
333-335, Kundaim Industrial Estate,
Kundaim, Goa. .... Respondent

WITH

CUSTOM APPEALS NO.13, 19/2012

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

V/s.

M/s. Prateek Alloys Pvt.Ltd.
108, Kundaim Industrial Estate,
Kundaim, Goa. .... Respondent

WITH
CUSTOM APPEALS NO.15, 18, 20 & 21/2012

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

V/s.
M/s. Shri Balaji Rollings Pvt.Ltd.
14-15, Cuncolim Industrial Estate,
Cuncolim, Salcete, Goa. .... Respondent

WITH
EXCISE APPEALS NO.4 & 9/2012

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

V/s.
M/s. Karthik Inductions Ltd.,
120-121, Kundaim Industrial Estate,
Kundaim, Goa. .... Respondent

WITH
EXCISE APPEALS NO.6, 7, 10 & 14/2012

Commissioner of Customs & Central Excise
Goa Commissionerate, Ice House,

Patto Plaza, Panaji, Goa. .... Appellant

V/s.

M/s. Shree Balaji Rollings Pvt. Ltd.
14-15, Cuncolim Industrial Estate,
Cuncolim, Goa. ..... Respondent

WITH

EXCISE APPEALS NO.11 & 12/2012

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

V/s.

M/s. Prateek Alloys Pvt.Ltd.
108, Kundaim Industrial Estate,
Kundaim, Goa. .... Respondent

Ms. Asha Dessai, Senior Standing Counsel for the Respondents/ Commissioner of Customs & Central Excise.

Coram : M.S. Sonak &
Nutan D. Sardessai, JJ.

Date : 1st October, 2019.

ORAL JUDGMENT :- (Per M.S. Sonak, J.)

Heard Ms. Dessai, learned Senior Central Government Standing Counsel for the Commissioner of Customs and Central Excise. Though the Respondents are served in all these matters, neither are their representatives present, nor is any Counsel on their behalf present.

2. All these Appeals were admitted on the following substantial questions of law :

> *A) When the Tribunal arrived at the conclusion that the Respondent had been granted hearing before passing the Order by the Commissioner, whether any direction for remand could have been made?*
>
> *B) When the Tribunal notes that the adjudication order does not expressly refer to the credit entry in RG 23 register and tallying of the same with the amounts figuring in the related invoices on the basis of which Central Excise demand have been made, is specifically held by CESTAT to be a minor deviation the adjudication order, whether this could form a ground for refund?*
>
> *C) When the Tribunal has consistently come to the conclusion that attempts were made to derail the adjudication proceedings by various modus operandi and having recorded findings by the Tribunal that the Respondent have not come out with clean hands, whether any indulgence could have been shown to the respondent and others?*
>
> *D) Whether remand can be directed without any justifiable and legally tangible reasons?*
>
> *E) Whether the direction of remand is illegal and perverse?*

3. In all these matters, the challenge is in fact to the common Judgment and Order dated 30/11/2010 made by the Customs, Excise and Service Tax Appellate Tribunal (Tribunal), allowing the Appeals instituted by the Assessees and remanding the matters for

adjudication to the Commissioner of Customs and Central Excise, as the case may be.

4. As against the aforesaid common Judgment and Order, both, the Department, as well as the Assessees, had instituted Custom Appeals No.3, 4 of 2011, Excise Appeal No.5 of 2011 and other connected Appeals. All these Appeals were disposed of by a common Judgment and Order dated 22.08.2019, by which the impugned common Judgment and Order, made by the Tribunal, was set aside, but, because the Tribunal had not really decided the matter on merits, the Appeals instituted by the Assessees were restored to the file of the Tribunal for fresh adjudication on the disposal.

5. We are satisfied that the issues, which arise in these Appeals, are squarely covered by our common Judgment and Order dated 22/08/2019 in Custom Appeal No.3/2011 and connected matters.

6. Therefore, for the reasoning in the common Judgment and Order dated 22/08/2019 in Custom Appeal No.3/2011 and connected matters, we set aside the common Judgment and Order dated 30.11.2010 made by the Tribunal and restore the Appeals instituted by the Assessees before the Tribunal for fresh consideration, in accordance with law and on their own merits, no doubt by adverting to the observations made in the common Judgment and Order dated 22.08.2019 in Custom Appeal No.3/2011 and

connected matters. The contentions of all parties, on merits of the adjudication orders, are expressly kept open for evaluation by the Tribunal. We request the Tribunal to dispose of the Assessees' Appeals as expeditiously as possible and, in any case, within a period of six months from the date on which parties file an authenticated copy of this Judgment and Order.

7. Ms. Dessai, learned Standing Counsel for the Commissioner states that the authenticated copy of this Judgment and Order will be placed before the Tribunal by 14th October, 2019.

8. The Tribunal will have to issue notices to the Assessees and thereafter proceed to dispose of the Assessees' Appeals on their own merits and in accordance with law.

9. All these Appeals are disposed of in the aforesaid terms. There shall be no order as to costs.

10. All concerned to act on the basis of an authenticated copy of this Judgment and Order.

Nutan D. Sardessai, J. ***M.S. Sonak, J.***