IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

CENTRAL EXCISE APPEAL NO.65 OF 2019

Specific Alloys Pvt. Ltd. ...Appellant
vs.
The Commissioner of Central Tax,
Pune -III Commissionerate ...Respondent

WITH
CENTRAL EXCISE APPEAL NO.66 OF 2019

Narendra Mohanlal Surana
(Director of Specific Alloys Pvt. Ltd.) ...Appellant
vs.
The Commissioner of Central Tax,
Pune -III Commissionerate ...Respondent

WITH
CENTRAL EXCISE APPEAL NO.67 OF 2019

Bhagya Alloys ...Appellant
vs.
The Commissioner of Central Tax,
Pune -I Commissionerate ...Respondent

WITH
CENTRAL EXCISE APPEAL NO.69 OF 2019

Narendra Mohanlal Surana
(Director of Specific Alloys Pvt. Ltd.) ...Appellant
vs.
The Commissioner of Central Tax,
Pune -III Commissionerate ...Respondent

Mr. Prakash Shah a/w. Makrand Joshi i/b. Max Legal, for the Appellants.
Mr. Karan Adik a/w. Mr. Ram Ochani, for the Respondents in Central Excise Appeal Nos. 65, 66 and 69 of 2019.

Mr. Vijay Kantharia a/w. Mr. Ram Ochani, for the Respondent in Central Excise Appeal No.67 of 2019.

CORAM : M. S. SANKLECHA &

M. S. SONAK, JJ.

DATE : JUNE 04, 2019

P.C.:

. These four Appeals filed under section 35 G of the Central Excise Act, 1944 (the Act) challenge the order dated 16th January, 2018 passed by the Customs Excise and Service Tax Appellate Tribunal (Tribunal). The common impugned order dated 16th January, 2018 disposed of four Appeals before the Tribunal. Thus, the four Appeals before us.

2. The Appellants urged the following identical question of law for our consideration in all the four Appeals.

(i) Whether in the facts and circumstances of the case, the Tribunal was justified in not giving any finding on the submission of the Appellants that the Order in Original dated 15th February, 2008 was passed ex-parte without considering the request made by the Appellants by letter dated 5th February, 2008 to await the outcome of Writ Petition No. 974 of 2008 ?

3. Briefly, the facts leading to these Appeals are that these proceeding originated in two show cause notices dated 9th March, 2004 and 11th March, 2004 issued to the Appellants herein seeking to recover Central Excise Duties and to impose penalty for contravention of the Act. On receipt of the two show cause notices, the Appellants herein had approached the Settlement Commission. However, the Settlement Commission rejected the applications of the Appellants. This on the ground that there was no full and true disclosure of duty liability made by the Appellants. Consequent thereto, the proceeding before the adjudicating authority stood revived. The adjudicating authority i.e. Commissioner relating to the above two notices dated 9th March, 2004 and 11th March, 2004 made repeated requests to the Appellants by letters dated 12th June, 2006, 10th July, 2006, 24th August, 2006 and 8th November, 2006 to file their replies to the show cause notice dated dated 9th March, 2004 and 11th March, 2004. However, the Appellants chose not to file the reply. Therefore, the Commissioner of Central fixed the matter for personal hearing on 14th December, 2006, 19th January, 2007, 20th February, 2007 and 14th March, 2007. However, the Appellants chose not to appear for personal hearing on any of the above dates nor did any of them file any reply to the

two show cause notices. This lead to order dated 11th April, 2007 being passed by the Commissioner confirming the demands made in the show cause notices and also imposing penalties upon the Appellants. Aggrieved by the order dated 11th April, 2007 of the Commissioner, the Appellants filed an Appeal to the Tribunal. By an order dated 24th September, 2007 the Tribunal set aside the order dated 11th April, 2007 and restored the notices dated 9th March, 2004 and 11th March, 2004 for re-consideration by the Commissioner of Central Excise. However, whilst passing the above order dated 24th September, 2007 the Tribunal observed as under:

> *"As such, we are of the opinion that perhaps there may be no merits, in this case. But since the order is an ex-parte order, without granting a opportunity of personal hearing and filing a reply, we feel that principles of natural justice are violated, but at the same time the applicants have also not came clean before the adjudicating authority, by not filing the reply and not attending the hearing. As such, we direct that a further amount of Rs. 15 lakhs be deposited by the applicant within 4 weeks from today and file a reply within six weeks from today. On such compliance of pre-deposit and filing or reply, the Ld. Commissioner may take up the matter for adjudication and pass appropriate order on merits after hearing the applicants. It is made very clear that the applicants will not seek any adjournment, on being granted of personal hearing by the adjudicating authority. The appeal is allowed by way of remand, as directed in above paragraphs."*

4. In the remand proceeding, the Appellants filed their replies to the two notices by letter dated 10th December, 2007 and sought cross examination of the investigating offices, officers who

conducted audit of the units and jurisdictional range officers. Besides, the Appellants also sought copies of the data which was seized during the investigation in the form of floppies. The aforesaid request was rejected by the Commissioner by communication dated 18th December, 2007. In the meantime, the Commissioner had fixed personal hearing on 11th December, 2007, 20th December, 2007, 30th January, 2008 and 7th February, 2008. It is the Appellants' case before us that on 11th December, 2007 the Commissioner was not available for granting the hearing even though the Appellants did appear in the office of the Commissioner of the Central Excise. On 20th December, 2007 the Appellants did not attend the office of the Commissioner. This resulted in the Commissioner giving a fresh date of hearing i.e. 30th January, 2008. However, on 30th January, 2008, the Appellants sought time on the ground of ill health of the counsel resulting in the appeal being adjourned to 7th February, 2008. On 5th February, 2008 the Appellants vide letter informed the Commissioner that the refusal to grant cross examination and denial of the documents and data as sought for, has left to the Petitioners with no option but to file Petition to this Court and requested the Commissioner to adjourn the hearing fixed on 7th February, 2008 till this Court decides the issue. But, on 15th February, 2008 and 19th February, 2008 the Commissioner of Central Excise disposed of two show cause notices dated 9th March, 2004 and 11th March, 2004 confirming the same and imposing penalty upon the Appellants.

5. Being aggrieved, with the orders dated 15th February, 2008 and 19th February, 2008, the Appellants filed Appeals to the Tribunal. The impugned order dated 16th January, 2018 of the Tribunal while dismissing the Appeals records the fact that the challenge to the orders dated 15th February, 2008 and 19th February, 2008 of the Commissioner of the Appellants was not on merits of the order but only on the ground that principles of natural justice had been violated. The above grievance is considered by the impugned order of the Tribunal and found absence of any merits in it. The impugned order held that the grievance of not furnishing relied upon evidence was without merit, as the same was made available along with the show cause notices to the Appellants. So also the impugned order holds requests for cross examination made by the Appellants had been denied to the Appellants as the cross examination was sought of the investigating officers, audit officers and range officers as they were

not witnesses being relied upon by the Revenue in support of the impugned notices. In these circumstances, the impugned order of the Tribunal dismissed the Appeals of the Appellants.

6. The Appellants have now challenged the impugned order dated 16th July, 2018 in these Appeals.

7. Mr. Prakash Shah, learned counsel for the Appellants submit that the impugned order of the Tribunal is unsustainable in law as it fails to consider the fact that before rejecting the application for adjournment of personal hearing, the Commissioner should have given reasons to the Appellants as to why the adjournment has been refused. This not having been done, make the subject proceedings bad in law. Further, it is submitted that no reasons have been accorded by the Commissioner in its letter dated 18th December, 2007 for refusing the cross examination sought by the Appellants in its letter dated 10th December, 2007. Lastly he submits that request for the data which was seized in the form of floppies was also not made available to the Appellants to meet the show cause notices dated 9th March, 2004 and 11th March, 2004 on merits. It is therefore submitted that, the impugned order needs

to be set aside and the matter be restored to the Commissioner for fresh consideration after following the principles of natural justice.

8. We have already noticed that by the earlier order dated 24th September, 2007 the Tribunal while setting aside the ex-parte order dated 11th April, 2007 passed by the Commissioner, had deprecated the conduct of the Appellants in not filing a reply and not attending the personal hearing when granted. Nevertheless, the Tribunal set aside the order dated 11th April, 2007 of the Commissioner and restored it to him for filing adjudication after deposit of Rs. 15 lakhs. Moreover, the Tribunal directed the Appellants not to seek any adjournment, on grant of personal hearing. The Commissioner of Central Excise granted to the Appellants personal hearing, but the Appellants not appear at the hearing on three consecutive dates i.e. 20th December, 2007, 30th January, 2008 and 7th February, 2008. In fact, on 20th December, 2007 the Appellants did not even seek adjournment but just remained absent, yet in fairness the Commissioner granted a fresh hearing to the Appellants on 30th January, 2008. However, on 30th July, 2008 the Appellants could not attend the hearing because of ill health of the advocate appearing for them. So far as the hearing

on 7th February, 2008 is concerned the Appellants sought time on the ground that it had challenged the Commissioner's order dated 18th December, 2007 not giving cross examination. Therefore, the submission that the Commissioner ought to have awaited for the decision of this Court on the Petitioners' challenge to the order of the Commissioner refusing cross examination. This cannot be accepted. If the Appellants were so concerned about the fact that the cross examination was necessary, in the facts of the present case, they ought to have moved the Court and sought urgent interim relief, from the Court before the hearing and disposal of the notice of the Commissioner of Central Excise. The Appellants seek adjournment on the ground that a writ is pending, clearly show that the Appellants seeks to delay the proceeding by not cooperating with the adjudication proceeding. This is apparent from the history of the present proceedings, particularly the earlier ex-parte order passed on account of non cooperation of the Appellants in disposal of the show cause notice by the Commissioner. This lead to the order of the Tribunal dated 24th September, 2007 setting aside the order dated 11th April, 2007 and restoring the notices to the Commissioner for fresh adjudication. On the aforesaid facts, we would have expected the parties to have cooperated with the adjudicating proceeding. It must be borne in mind that the principles of natural justice, is not a one way street. It does not require the authority to keep adjourning the hearing till such time as the party condescends to attend the hearing and make submission.

9. So far as the submission that no reasons were indicated in the Commissioner's order dated 18th December, 2007 rejecting the cross examination, cannot be accepted. This for the reason that the application which was made on 10th December, 2007 seeking cross examination gave no reasons as to why the cross examination of the investigating offices, audit officers and jurisdictional range officers are necessary for appropriate disposal of the notices, bearing in mind that they are not the witnesses upon which the show cause notices were issued/relied.

10. In any case, the orders of the Commissioner dated 15th February, 2008 and 19th February, 2008 record reasons for non giving of cross examination. Moreover, both the above orders dated 15th February, 2008 and 19th February, 2008 also record the fact that the data obtained on the floppies was returned back to the

Appellants on 14th September, 2008 during the course of the investigation under proper acknowledgement. These findings of the Commissioner were not a subject matter of specific challenge before the Tribunal as is clear from the impugned order of the Tribunal. The impugned order of the Tribunal finds that the the documents relied upon by the revenue were given to the Appellants along with show cause notices and there was no evidence produced to show that evidence other then that relied upon in the show cause notices were being relied by the revenue. Besides, witnesses whose cross examination were sought were not the witnesses in support of the show cause notices. Thus, the view taken by the Tribunal in dismissing the Appellants' Appeal in the present facts, cannot be said to be perverse in any manner.

11. In the above view, we find no reasons to interfere with the order dated 16th January, 2018. The proposed question of law does not give rise to a substantial question of law, thus not entertained.

12. Accordingly, all the four Appeals are dismissed.

(M.S. SONAK, J.) **(M. S. SANKLECHA, J.)**