Andaman Timber Industries vs Commissioner of Central Excise

Whether the denial of the right to cross-examine witnesses whose statements were recorded during investigation and solely relied upon by the Adjudicating Authority while passing an excise duty demand order constitutes a serious violation of the principles

Date of Order: September 2, 2026
Case Law No: GIB-SC-2015-01
Source: GST INDIA Biz (www.gstindia.biz)

CASE DESCRIPTION / SUMMARY

Background

The assessee, a manufacturer of ply-woods and related products, sold approximately 2% of its production ex-factory at its manufacturing location and the remaining 98% to dealers from its depots across the country. The assessee had filed a declaration under the Central Excise Rules declaring ex-factory prices. The Revenue found a significant price difference between ex-factory prices and prices at which goods were sold from the depots. In the course of investigation, statements of two buyers — partners of two trading firms — were recorded by the Revenue. Based solely on these statements, a Show Cause Notice dated 03.05.1995 was issued proposing that the depot sale prices be adopted as the basis for determination of excise duty value. The assessee filed a reply contesting the demand, pointed out that earlier identical proceedings had been decided in its favour by the Tribunal (not appealed by Revenue), challenged the correctness of the statements of both witnesses and specifically demanded the right to cross-examine them. The Adjudicating Authority confirmed the demand without granting cross-examination — and notably, the Adjudicating Authority itself acknowledged in its order that such a request had been made. The CESTAT dismissed the assessee's appeal, holding that cross-examination of the dealers could not have brought out any material not already in the assessee's possession.

Relevant Facts

The entire basis for issuing the Show Cause Notice was the statements of the two witnesses. No other independent material was relied upon by the Revenue to justify the demand. The assessee had specifically and expressly demanded cross-examination of those witnesses and disputed the

truthfulness of their statements. The Adjudicating Authority not only rejected the cross-examination request but also failed to deal with that plea in the order. The CESTAT further compounded the error by ruling that cross-examination "could not have brought out any material which would not be in the possession of the appellant themselves" — thereby substituting its own guesswork for the assessee's strategic litigation decision. Additionally, the price list of the assessee maintained at its depots was also independently relied upon by the Adjudicating Authority to determine the duty value. The Supreme Court noted that whether the goods were in fact sold at the price mentioned in the price list was itself a matter that could have been probed in cross-examination.

Court Observations (Verbatim)

"*Not allowing the assessee to cross-examine the witnesses by the Adjudicating Authority though the statements of those witnesses were made the basis of the impugned order is a serious flaw which makes the order nullity inasmuch as it amounted to violation of principles of natural justice because of which the assessee was adversely affected.*"

— Court's core finding on violation of natural justice

"*It would be pertinent to note that in the impugned order passed by the Adjudicating Authority he has specifically mentioned that such an opportunity was sought by the assessee. However, no such opportunity was granted and the aforesaid plea is not even dealt with by the Adjudicating Authority.*"

— On the Adjudicating Authority's conduct

"*As far as the Tribunal is concerned, we find that rejection of this plea is totally untenable. The Tribunal has simply stated that cross-examination of the said dealers could not have brought out any material which would not be in possession of the appellant themselves to explain as to why their ex-factory prices remain static. It was not for the Tribunal to have guess work as to for what purposes the appellant wanted to cross-examine those dealers and what extraction the appellant wanted from them.*"

— On the Tribunal's reasoning being "totally untenable"

"*The appellant had contested the truthfulness of the statements of these two witnesses and wanted to discredit their testimony for which purpose it wanted to avail the opportunity of cross-examination. That apart, the Adjudicating Authority simply relied upon the price list as maintained at the depot to determine the price for the purpose of levy of excise duty. Whether the goods were, in fact, sold to the said dealers/witnesses at the price which is mentioned in the price list itself could be the subject matter of cross-examination. Therefore, it was not for the Adjudicating Authority to presuppose as to what could be the subject matter of the cross-examination and make the remarks*

as mentioned above."

— On the scope and purpose of cross-examination

"*If the testimony of these two witnesses is discredited, there was no material with the Department on the basis of which it could justify its action, as the statement of the aforesaid two witnesses was the only basis of issuing the Show Cause Notice.*"

— On the critical evidentiary consequence of denial of cross-examination

Tribunal's Rejected Reasoning (Para 6 of Tribunal Order — Quoted and Overruled):
"The plea of no cross examination granted to the various dealers would not help the appellant case since the examination of the dealers would not bring out any material which would not be in the possession of the appellant themselves to explain as to why their ex factory prices remain static. Since we are not upholding and applying the ex factory prices, as we find them contravened and not normal price as envisaged under section 4(1), we find no reason to disturb the Commissioners orders."
— *Held by Supreme Court to be* "*totally untenable*"

Final Verdict

Appeal allowed. Impugned order of the CESTAT set aside. The Supreme Court held that denial of cross-examination of witnesses whose statements formed the sole basis of the Show Cause Notice and the demand order is a serious flaw rendering the order a nullity as it amounts to violation of the principles of natural justice. No costs.

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