

**Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench at Ahmedabad**

REGIONAL BENCH-COURT NO. 3

EXCISE Appeal No. 10305 of 2014 - DB

(Arising out of order in Appeal OIA-AHM-EXCUS-002-COMMR-038-13-14 dated 31/10/2013 passed by Commissioner of Central Excise-AHMEDABAD-II)

Torrent Power Limited

Ahmedabad Electricity Co.ltd,
Sabarmati Power House,
Ahmedabad, Gujarat

.....Appellant

VERSUS

Commissioner of C.E.-Ahmedabad-ii

Custom House... First Floor,
Old High Court Road, Navrangpura,
Ahmedabad, Gujarat- 380009

.....Respondent

APPEARANCE:

Shri Anand Nainawati, Advocate for the Appellant
Shri Ajay Kumar Samota, Superintendent (AR) for the Respondent

**CORAM: HON'BLE MEMBER (JUDICIAL), MR. RAMESH NAIR
HON'BLE MEMBER (TECHNICAL), MR. RAJU**

Final Order No.11746/2024

DATE OF HEARING: 22.04.2024
DATE OF DECISION: 13.08.2024

RAMESH NAIR

This appeal is filed against order-in-Appeal No. AHM-EXCUS-002-COMMR-038-13-14 dated 31.10.2013 passed by Commissioner of Central Excise-AHMEDABAD-II challenging the imposition of penalty under Rule 209A of erstwhile Central Excise Rules, 1944.

2. Shri Anand Nainawati, Learned Counsel appearing on behalf of the appellant at the outset submits that this penalty under Rule 209A was imposed vide impugned order in connection with confirmed demand of Rs. 69,91,973/- against M/s Richardson and Cruddas Limited. He submits that in the first round, the adjudicating authority has dropped the proceeding of show cause notice against which the Revenue had filed appeal only against

M/s Richardson and Cruddas Limited but no appeal was filed against the appellant then M/s Ahmedabad Electricity Company Ltd (now M/s Torrent Power Ltd). He has taken us to the records and appeal copy of the Revenue, and submits that though the prayer of appeal seeks to impose penalty on the present appellant under 209A. However, the appellant was not made a respondent and no order was passed against the respondent by the Tribunal in said appeal. In the appeal filed by the Revenue against only M/s Richardson and Cruddas Limited remanded the matter, setting aside the impugned order. The adjudicating authority in de-novo adjudication, imposed the penalty of Rs. 17,50,000/- under Rule 209A of Central Excise Rules, 1944 upon the appellant.

2.1 It is his submission that once, the earlier order dropped the proceedings against which the appeal was not filed against the present appellant, the first order in as much as dropping the proceeding of imposition of penalty under 209 A attained finality and after remand by the Tribunal in de-novo adjudication, the adjudicating authority had no legal right to re-open the case and impose a penalty. On this ground itself, the penalty imposed by the adjudicating authority in the impugned order is not sustainable. He placed reliance on the decision of Hon'ble Guajrat High court in the case of Krishna Cleaning Agency vs. Union of India 2016 (334) ELT 427 (Guj.). He alternatively submits that penalty under Rule 209A cannot be imposed on a company, as the same can be imposed only upon the natural person. The ingredient for imposing penalty mentioned in Rule 209 A can be made applicable only against a natural person not against a artificial entity such as company, for this reason also the penalty cannot be imposed.

3. Shri Ajay Kumar Samota, Learned Superintendent (AR) appearing on behalf of the Revenue reiterates the findings of the impugned order.

4. On careful consideration of the submission made by both the sides and perusal of record, we find that in the first adjudication order, the entire proceeding of the show cause notice was dropped by the adjudicating authority, against which the Revenue filed appeal. Form the EA-5 of the appeal filed by the Revenue is Scanned below:-

ANNEXURE 3

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FORM E.A.5
(See Rule 7)

FORM OF APPLICATION TO THE APPELLATE TRIBUNAL UNDER SECTION 35B OF THE CENTRAL EXCISE ACT, 1944.

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI

APPLICATION NO. OF 2006
E/825/06

COMMISSIONER,
CENTRAL EXCISE,
AHMEDABAD-II,
CUSTOMS HOUSE,
NEAR ALL INDIA RADIO,
ASHRAM ROAD,
NAVARANGPURA
AHMEDABAD-380 009.

(ON BEHALF OF THE COMMITTEE
CONSISTING OF CHIEF COMMISSIONER,
CENTRAL EXCISE, AHMEDABAD & CHIEF
COMMISSIONER, CUSTOMS, AHMEDABAD)

..... APPLICANT

VS.

M/S.RICHARDSON AND CRUDDAS (1972) LTD.,
BYCULLA IRON WORKS,
SIR J J ROAD, POST BOX NO.4503,
MUMBAI.

..... RESPONDENT

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| 1 | Designation and address of the applicant (if the applicant is not the Adjudicating Authority, a copy of Authorization from the Commissioner of Central Excise to make the application should be enclosed | The Commissioner, Central Excise, Ahmedabad-II, Customs House, Near All India Radio, Ashram Road, Navrangpura, Ahmedabad- 380 009. |
| 2 | Name and address of the Respondent | M/s.Richardson and Cruddas (1972) Ltd., Byculla Iron Works, Sir J J Road, Post Box No.4503, Mumbai. |
| 3 | Designation and address of the officer passing the decision or order in respect of which this application is being made and the date of the decision or order. | The Commissioner, Central Excise, Ahmedabad-II, Customs House, Near All India Radio, Ashram Road, Navrangpura, Ahmedabad- 380 009. Date of Order 28.02.2005. |
| 4 | State/Union territory and the Commissionerate in which the order or decision was made. | Gujarat State, Central Excise Commissionerate, Ahmedabad-II. |
| 5 | Date on which order under Sub-section (1) of the Section 35E of the Act has been passed by the Committee of Chief Commissioners. | 17.02.2006. |

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| | Date of communication of the order referred to in (3) above to the Adjudicating Authority. | 20.02.2006 |
| 7 | Whether the decision or order appealed against involves any question having a relation to the rate of duty of excise or to the value of goods for purposes of assessment if not, Difference in duty or duty involved, or amount of fine or penalty involved or value of goods involves, as the case may be. | Manufacturing (fabrication) without payment of duty. Duty involved is Rs.69,91,973/-. |
| 8 (i) | Description and classification of goods | Fabrication falling under Chapter 7308 of CETA 1985. |
| (ii) | Period of dispute | Prior to 1.12.89. |
| (iii) | Amount of duty, if any, demanded for the period mentioned in column (ii) | Rs.69,91,973/-. |
| (iv) | Amount of refund, if any, claimed for the period mentioned in column (ii) | N.A. |
| (v) | Amount of fine imposed. | N.A. |
| (vi) | Amount of penalty imposed | N.A. |
| (vii) | Market value of seized goods | N.A. |
| 9 | Relief claimed in appeal | To set aside the OIO and remand the case denovo and any other order. |
| 10 | Statement of facts / Grounds of appeal | As per Review Order No.R-18/2006 dtd. 17.02.06 issued from F.No.V/15-42/CCO/RC/05.(Copy enclosed) |

M. Michael
(M. MICHAEL)
COMMISSIONER,
CENTRAL EXCISE,
AHMEDABAD-II.

VERIFICATION

I. M. Michael, Commissioner, Central Excise, Ahmedabad-II, the applicant, do hereby declare that what is stated above is true to the best of my information and belief.

Verified today the day of March, 2006.

M. Michael
(M. MICHAEL)
COMMISSIONER,
CENTRAL EXCISE,
AHMEDABAD-II.

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ad

From the above appeal memo, it is crystal clear that the Revenue has filed appeal only against M/s Richardson and Cruddas Limited and no name of the present appellant is appearing on the appeal memo. Obviously, when the appellant was not made a respondent in that appeal, the appeal was not filed against the present appellant and consequently, neither the appellant was put to notice nor the order passed by the Tribunal is in respect of the present appellant. Therefore, in absence of any appeal, against the present appellant, against the first order-in-original, the said

order-in-original as far as related to the present appellant has attained finality. Therefore, in the de-novo adjudication after remand by the Tribunal, the adjudicating authority had no locus standi or statutory power to impose penalty on the present appellant. Accordingly, the imposition of penalty under Rule 209 A in the impugned order against the appellant is absolutely illegal and incorrect.

5. Hence, the impugned order to the extent imposing penalty on the appellant under 209 A is set aside. Appeal is allowed.

(Pronounced in the open court on 13.08.2024)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)

Raksha