

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL  
NEW DELHI  
PRINCIPAL BENCH, COURT NO. 1**

**EXCISE APPEAL NO. 51448 OF 2022**

[Arising out of Order-in-Original No. ALW-EXCUS-000-COM-055-056-21-22 dated 12.01.2022 passed by the Commissioner of Central Excise & CGST, Alwar, Rajasthan]

**M/S SHREE BALAJI FURNACES PVT LTD**

**Appellant**

E-906A, Phase-III, RIICO Industrial Area,  
Bhiwadi Distt. Alwar (Rajasthan)-301019

Vs.

**COMMISSIONER OF CENTRAL EXCISE & CGST-  
ALWAR**

**Respondent**

Surya Nagar, Alwar (Rajasthan)-301001

**WITH  
EXCISE APPEAL NO. 51548 OF 2022**

[Arising out of Order-in-Original No. ALW-EXCUS-000-COM-055-056-21-22 dated 12.01.2022 passed by the Commissioner of Central Excise & CGST, Alwar, Rajasthan]

**SH. NAVNITYA PRAKASH GOYAL, DIRECTOR**

**.....Appellant**

SHRI SHREE BALAJI FURNACES PVT LTD  
E-906A, Phase-III, RIICO Industrial Area,  
Bhiwadi Distt. Alwar (Rajasthan)-301019

Vs.

**COMMISSIONER OF CENTRAL EXCISE & CGST-  
ALWAR**

**Respondent**

Surya Nagar, Alwar (Rajasthan)-301001

**Appearance:**

Shri Ajay K. Mishra, Advocate for the Appellant  
Shri Unmesh Kumar, Authorised Representative for the Respondent

**CORAM:**

**HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT**

**HON'BLE MR. P. V. SUBBA RAO, MEMBER ( TECHNICAL )**

**Date of Hearing : 29/08/2024  
Date of Decision : 27/09/2024**

**FINAL ORDER NO'S. 58732-58733 /2024**

**P. V. SUBBA RAO:**

1. The Order-in-Original dated 12.01.2022 passed by the Commissioner of CGST, Alwar in the *de novo* proceedings is assailed by M/s Balaji Furnaces Pvt. Ltd.<sup>1</sup> and Shri Navnitya Prakash Goyal<sup>2</sup>, Director. The assessee is assailing the demand of central excise duty of Rs.68,86,290/-under section 11A(4) along with interest and imposition of penalty of equal amount under section 11AC. Prakash is assailing the penalty of Rs.20,00,000/- imposed on him under rule 26(1) of Central Excise Rules, 2002<sup>3</sup>.

2. The facts which led to the issue of the impugned order are that the Directorate General of Central Excise Intelligence<sup>4</sup>, New Delhi searched the premises of one M/s Kamdhenu Ispat Limited<sup>5</sup> and some of its secret locations and recovered an ingot purchase file. It also recovered a pen-drive during searches. The pen-drive was got examined by the Government Examiner of Questioned Documents<sup>6</sup>. The data from the pen-drive was retrieved and based on the data in the pen-drive and the ingot purchase file, its investigation showed that several companies including the assessee herein had supplied ingots clandestinely to Kamdhenu. Accordingly, show cause notices were issued to Kamdhenu and the alleged suppliers including the assessee herein proposing to recover duty and impose penalties. Notices were also issued to individuals responsible in the firms.

3. These proposals were confirmed by the Commissioner by order dated 06.09.2014, against Kamdhenu and also by various orders

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**1** The assessee  
**2** Prakash  
**3** The Rules  
**4** DGCEI  
**5** Kamdhenu  
**6** GEQD

against others. The Order dated 19.11.2013 was passed in respect of the assessee herein and Shri Prakash.

4. In the first round of litigation by an order dated 02.04.2018 the appeals files by Kamdhenu and Revenue were remanded to the original authority by this Tribunal with the following remarks:

"9. After hearing both sides and perusal of the voluminous records, we note that the entire case has been made on the basis of the data retrieved from the laptops, CPUs, Pen drives seized from the secret office in Gurgaon. The data was retrieved by the GEQD, Hyderabad. The data was submitted along with detailed report dated 25/02/2009 by the GEQD. The Adjudicating Authority has doubted the veracity of the retrieved data. He has come to the conclusion that these Laptops & other devices were possibly manipulated in the office of the investigating agency i.e. DGECI, the investigating agency. During the course of arguments, the Ld. DR has drawn our attention to the detailed report dated 25/02/2009 received from GEQD. He has highlighted from the report that the data file was written on 18/10/2008, which was held as modified on 13/11/2008 by the Commissioner. From the record we also find that the concerned official of GEQD has not been examined by the Adjudicating Authority. Since the entire case is based on the data retrieved by the GEQD, we are of the view that the issue needs to be readjudicated after examining the concerned official of GEQD in a personal hearing in the presence of the assessee or his representative for the purpose of arriving at the proper conclusion on the veracity of the data retrieved. Due opportunity of cross examination is also required to be extended after examination of such officials by the Adjudicating Authority.

**10. In view of the above observations we set aside the impugned order and remand the matter to the Adjudicating Authority for passing de novo decision. We keep all issues open and the Adjudicating Authority is directed to decide all issues after examination/ cross examination of the concerned officials of GEQD. Needless to mention that reasonable opportunity of hearing is required to be extended to the assessee. Additional evidence, if need be, may be admitted as per law."**

**(emphasis supplied)**

5. Since the appeals filed by Revenue in respect of others including the assessee herein and Shri Prakash were linked to the outcome of the decision in Kamdhenu, by another Final Order No. 51140-51184/2018 dated 02.04.2018, all those appeals were also allowed by

way of remand. In pursuance of the order dated 02.04.2018, the Commissioner passed the impugned order.

5. Learned counsel for the appellant submits that the show cause notice dated 04.09.2012 was issued to the appellants with 11 relied upon documents<sup>7</sup>. On examining the show cause notice we find it so. Of the 11 RUDs, two are panchnamas drawn by DGCEI at the place of the assessee and the place of Kamdhenu (RUD-1 and 8).

6. One RUD is an account of payment of central excise duty by the assessee through its RG-23A part-II account (RUD-11), one is summons issued to Shiv Prakash (RUD-9). Four are statements of different persons recorded under section 14 under the Central Excise Act, 1944, and the remaining three are the import purchase file, (RUD-2) of Kamdhenu, data retrieved by DGCEI on pen-drive (RUD-6) and data retrieved by GEQD, Hyderabad (RUD-7).

7. As far as the four statements relied upon in the show cause notice are concerned, learned counsel submits that these statement are not relevant to the case because the procedure prescribed under section 9D of the Central Excise Act has not been followed. This section reproduced as follows:

**"9D. Relevancy of statements under certain circumstances.—**

(1) A statement made and signed by a person before any Central Excise Officer of a gazetted rank during the course of any inquiry or proceeding under this Act shall be relevant, for the purpose of proving, in any prosecution for an offence under this Act, the truth of the facts which it contains,--

(a) when the person who made the statement is dead or cannot be found, or is incapable of giving evidence, or is kept out of

the way by the adverse party, or whose presence cannot be obtained without an amount of delay or expense which, under the circumstances of the case, the Court considers unreasonable; or

(b) when the person who made the statement is examined as a witness in the case before the Court and the Court is of opinion that, having regard to the circumstances of the case, the statement should be admitted in evidence in the interests of justice.

(2) The provisions of sub-section (1) shall, so far as may be, apply in relation to any proceeding under this Act, other than a proceeding before a Court, as they apply in relation to a proceeding before a Court."

8. Learned authorized representative appearing for the Revenue also submits that it is a matter of record that the procedure prescribed under section 9D was not followed.

9. The summons issued to Shri Prakash and the amounts of Central Excise duty paid by the appellant and the panchnamas are matters of record and are included as RUDs Intended for the sake of completeness.

10. The data on the basis of which the allegations of clandestine removal has been confirmed and the duty has been demanded and penalties have been imposed against the assessee are

(a) the ingot purchased file of Kamdhenu;

(b) the data retrieved from pen-drive and the PCU and Laptop; and

(c) the data retrieved by GEQD as above.

11. As far as the data retrieved by the GEQD is concerned, it has specifically been recorded in this Tribunal's order dated 02.04.2018 in

case of Kamdhenu that the concerned official of GEQD was not examined by the adjudicating authority and, therefore, the matter was remanded directing it to be re-adjudicate after examining the concerned official of GEQD in a personal hearing in the presence of the assessee or its representative for the purpose of arriving at the proper conclusion on the veracity of the data retrieved. It was also recorded in the first round of litigation that the adjudicating authority had doubted the data and further remarked that the laptops and other devices were possibly manipulated in the office of the DGCEI.

12. However, we find that while passing the impugned order the Principal Commissioner specifically declined to examine and allow cross-examination of the officials of GEQD on the ground that GEQD enjoys trust of premier investigating agencies including CBI and NIA that had played a major role in investigation of several high profile cases. To cast a doubt on working or result of such prestigious institution without a solid reason or evidence is an attempt to delay the process of adjudication. In other words, the Commissioner has openly defied the direction of this Tribunal. The reasoning that since GEQD is a premier institute, it is above examination or cross-examination cannot be accepted. Simply because an expert has a high profile does not mean that the evidence produced by such an expert cannot be questioned and can be used against anyone without even giving them an opportunity to cross-examine such a person. The Principal Commissioner clearly erred in holding that the officers of GEQD was not required to be examined or cross examined.

13. We further find that the mandatory procedure prescribed under section 36B of the Central Excise Act was not followed with respect to the data retrieved from the several computers by the officers of DGCEI. Therefore, such data is not admissible as evidence.

14. After excluding the report of GEQD, the data retrieved from the pen-drives by DGCEI and the statements recorded under section 14 of the Excise Act by various persons due to clear non-compliance of the mandatory statutory requirements by the Commissioner, the only RUD left is an ingot purchase file recovered from Kamdhenu, in which the appellant's name is indicated.

15. In our considered view, this sole document is not sufficient to either charge the assessee with clandestine removal or to recover duty from it. Consequently, the confirmation of demand of duty interest and penalty against the assessee as well as the penalty imposed on Prakash cannot be sustained.

16. In view of above, both appeals are allowed and the impugned order is set aside with consequential relief to the appellants.

[Order pronounced on **27.09.2024**]

**(JUSTICE DILIP GUPTA)**  
**PRESIDENT**

**(P. V. SUBBA RAO)**  
**MEMBER ( TECHNICAL )**