

## Shalini Steels Pvt. Ltd. Vs Commr. of Cus. and C. Ex.

**Court:** Andhra Pradesh High Court

**Date of Decision:** Feb. 11, 2011

**Acts Referred:** Central Excise Rules, 2002 " Rule 26  
Central Excises and Salt Act, 1944 " Section 11A(1), 11AB, 11AC, 35G  
Constitution of India, 1950 " Article 226

**Citation:** (2011) 269 ELT 485

**Hon'ble Judges:** V.V.S. Rao, J; Ramesh Ranganathan, J

**Bench:** Division Bench

**Advocate:** C.V. Narasimham, for the Appellant;

**Final Decision:** Dismissed

### Judgement

@JUDGMENTTAG-ORDER

Ramesh Ranganathan, J.

This appeal, u/s 35G of the Central Excise Act, is preferred against the order of the Customs, Excise & Service

Tax Appellate Tribunal, South Zonal Bench, Bangalore, (hereinafter called "CESTAT"), in its Final Order No. 643 to 648 of 2010 in appeal No.

E/1037-1042/05, dated 31-3-2010 2010 (180) ECR 1 93

2. The Appellant company, its Managing Director, one of its Directors and Ors. were found to have been involved in central excise duty evasion.

Pursuant to a search of the premises of the Appellant company, its Directors and Ors. on 26-9-2003, documentary evidence was recovered and

statements of several persons were recorded leading to the tentative conclusion that the Appellant company was involved in the clandestine

production and clearance of its final products i.e., CTD bars, and they had suppressed receipt of raw materials i.e., MS Ingots. The Commissioner

of Customs and Central Excise passed an order on 16-9-2005 confirming the levy of Rs. 2,37,956/- under the proviso to Section 11-A(1) of the

Central Excise Act (hereinafter called the "the Act"); Rs. 13,20,056/- under the proviso to Section 11-A(1) of the Act; penalty of Rs. 15,58,012/-

u/s 11-AB of the Act etc. In addition, penalty was imposed on the others under Rule 26 of the Central Excise Rules, 2002.

3. Aggrieved thereby, the Appellant company, its Managing Director and Ors. approached the CESTAT. In its order dated 31-3-2010, the

CESTAT noted that it was the document recovered from Sri Om Prakash Sharma which reflected a true account of the transactions in MS Ingots

and CTD Bars which were clandestinely cleared by the Appellant; the contents of the documents, recovered from Sri Om Prakash Sharma, and

other employees of the Appellant company, were accepted by the Managing Director of the Appellate Company as being correct; the evidentiary

value of these documents were, therefore, not lost for the reason that Sri Omprakash Sharma was not produced for cross-examination by the

Appellant; Sri Omprakash Sharma was not a third party witness totally removed from the transactions of the Assessee; the Appellant was a person

and its executives and employees could not, appropriately, be labelled as third party witnesses; the Commissioner had rightly relied on the

documents recovered from Sri Omprakash Sharma to find illicit removal of CTD bars on the intervening night of 25/26th September, 2003; and

the demand of Rs. 2,37,956/- and an equal amount of penalty u/s 11-AC, was sustainable.

4. Before this Court, Sri C.V. Narasimham, Learned Counsel for the Appellant, would contend that the CESTAT had erred in law in taking into

account, as evidence, the unproved written matter said to have been recovered from Sri Om Prakash Sharma, even though he was not presented

for cross-examination; and, other than this statement, there was no supportive or corroborative evidence in support of the allegations levelled

against the Appellant company. Learned Counsel would place reliance on Sunder Ispat Limited Vs. Commissioner of Cus. and C. Ex.,

Hyderabad, and Lakshman Exports Limited v. Collector of Central Excise 2002 (143) E.L.T. 21 (S.C.).

5. On being shown the entries on the left side of page No. 201 of File No. 29, recovered in the factory premises of the Appellant company, the

Managing Director of the Appellant, in his statement dated 26-7-2003, stated:

By seeing the paper shown to me, the figures written therein is written by Mr. Om Prakash Sharma, Loading Supervisor. On one side of the page

the first half account of 25-9-2003 is available which is relating to clearance of Tor Steel and re-bars as detailed in column No. 2 & 3. Column

No. 5 given the total quantity and in tons and the Column No. 5 gives the buyers" reference as well as the loaders references. The first column

gives the vehicle No. under which the material relating to the records cleared. The second half of the page gives the a/c of ingots received on 25-9-

2003. The first column gives the vehicle No. in which the ingots were received. The second column gives the quantity received as per the

weighment slip of the supplier of the ingots, the third column gives the weight as per our weighbridge and the fourth column gives the reference of

the supplier of the ingots. Similar information is available regarding receipt of ingots on 25-9-2003 and 26-9-2003 on the first half of the reverse of

page 201. The second half gives the details of re-rolled material cleared from our factory on 25-9-2003. The said ingots listed on both sides of

page 201 is received in our factory. The quantities of re-rolled products material on both sides of page No. 201 were cleared from our factory and

the said re-rolled products are manufactured in our factory.

6. On being asked to give details of the documents i.e., central excise invoices on which the re-rolled products mentioned in page No. 201 of File

No. 29 were cleared, and to explain whether the entire quantity of ingots received as per the above page were accounted for or not, the Managing

Director replied:

The accounted for quantities are reflected in the Central Excise invoices issued on the day and the date mentioned in page No. 201 and File No.

29 recovered from the factory. Similarly, the accounted for inputs i.e., ingots are reflected in the information shown in our raw material accounts.

7. It is in this context that the CESTAT, in its order dated 31-3-2010, held that, from the said statement of the Managing Director, it was apparent

that the documents recovered from Sri Om Prakash Sharma reflected a true account of the transactions of MS ingots and CTD bars cleared

clandestinely by the Appellant; though the documents were recovered from Sri Om Prakash Sharma, an employee of the Appellant, its contents

were accepted by the Managing Director of the Appellant to be correct; and, therefore, the evidentiary value of these documents were not lost for

the reason that the same could not be proved on cross-examination of Sri Om Prakash Sharma by the Appellant.

8. In *Sunder Ispat Limited Vs. Commissioner of Cus. and C. Ex., Hyderabad*, on which strong reliance is placed by the Learned Counsel for the

Petitioner, the question which fell for consideration was whether the Petitioner therein was required to be given an opportunity to rely upon

documents, (which were not relied upon by the department), in his defence. A Division Bench of this Court, following the judgment of the Calcutta

High Court in *M.S. Naina v. Collector of Customs West Bengal Calcutta - 2000 (123) E.L.T. 39*, and an unreported decision of a Division Bench

of this Court in W.P. No. 21450 of 2000 dated 24-1-2001, held that a document to be relevant may support either the prosecution or the

defence; no adjudicating authority could refuse production of such a document only because that document would be of no use to the prosecution;

refusal to permit production of such a document on that account would amount to refusal of reasonable opportunity to the defence; and, where

evidence given by a witness is proposed to be relied upon for the purposes of adjudication, principles of fair play would require that such witnesses

be summoned for examination. In *Lakshman Exports Limited - 2002* (143) E.L.T. 21 (S.C.), the Supreme Court set aside the impugned order on

the ground that the Assessee therein had not been permitted to cross examine the representatives of two concerns to establish that the goods in

question had been accounted for in their books of accounts, and that the appropriate amount of Central Excise had been paid.

9. Cross-examination of a witness, on whose statement reliance is placed by the adjudicating authority, is no doubt a facet of the principles of

natural justice. It is, however, well to remember that natural justice is no unruly horse, no lurking landmine, nor a judicial cure-all. If fairness is

shown by the decision-maker to the man proceeded against, the form, features and the fundamentals of such essential processual propriety being

conditioned by the facts and circumstances of each situation, no breach of natural justice can be complained of. Unnatural expansion of natural

justice, without reference to administrative realities and other factors of a given case, can be exasperating. We can neither be finical nor fanatical

but should be flexible yet firm in this jurisdiction. *The Chairman, Board of Mining Examination and Chief Inspector of Mines and Another Vs.*

*Ramjee*, Whether any particular facet of the principles of natural justice would be applicable to a particular situation, or whether there has been any

infraction of the application of that principle, has to be judged in the light of the facts and circumstances of each particular case. The basic

requirement is that there must be fair play in action. *K.L. Tripathi Vs. State Bank of India and Others*, The doctrine of natural justice cannot be

imprisoned within the strait-jacket of a rigid formula, and its application depends upon the nature of the jurisdiction conferred on the administrative

authority, upon the character of the rights of the persons affected, the scheme and policy of the statute and other relevant circumstances disclosed

in a particular case. *Union of India (UOI) and Another Vs. P.K. Roy and Others*, *Channabasappa Basappa Happali Vs. The State of Mysore*, . It

is not possible to lay down rigid rules as to when the principles of natural justice are to apply, nor as to their scope and extent. There is no such

thing as a merely technical infringement of natural justice. The requirements of natural justice must depend on the facts and circumstances of the

case, the nature of the inquiry, the subject-matter to be dealt with; and so forth. [Wade's Administrative Law (5th Edn., pp. 472-75)].

10. To sustain the allegation of violation of principles of natural justice one must establish that prejudice has been caused by non-observance

thereof, Syndicate Bank and Others Vs. Venkatesh Gururao Kurati, K.L. Tripathi Vs. State Bank of India and Others, ; Rajendra Singh Vs. State

of Madhya Pradesh and others, ; Aligarh Muslim University and Others Vs. Mansoor Ali Khan, and State Bank of Patiala and others Vs. S.K.

Sharma, more so on the ground of absence of opportunity of cross-examination. Jankinath Sarangi Vs. State of Orissa, ; K.L. Tripathi Vs. State

Bank of India and Others, All that the Courts have to see is whether the non-observance of any of these principles, in a given case, is likely to have

resulted in deflecting the course of justice. State of Uttar Pradesh Vs. Om Prakash Gupta, Where, on the admitted and indisputable facts, only one

view is possible no prejudice can be said to have been caused. S.L. Kapoor Vs. Jagmohan and Others, ; Aligarh Muslim University and Others

Vs. Mansoor Ali Khan, ; Dr. (Mrs.) Gurjeewan Garewal Vs. Dr. (Mrs.) Sumitra Dash and Others, Where the facts are not in dispute, an inquiry

would be an empty formality. Anil Bajaj Vs. Post Graduate Institute of Medical Education and Research and Another, Violation of principles of

natural justice may not, by itself, necessitate interference by this Court under Article 226 of the Constitution of India, in all cases. Interference

would be justified only where manifest injustice would otherwise ensue or where larger public interest would so require.

11. In the case on hand the statement of Sri Om Prakash Sharma was relied upon, by the Commissioner of Customs and Central Excise, in

demanding payment of excise duty by, and in levying penalty on, the Appellant. The statement of Sri Om Prakash Sharma, who was an employee

of the Appellant company, was accepted to be true by none other than the Managing Director of the Appellant company. It is evident, therefore,

that no prejudice was caused to the Appellant on their being denied the opportunity of cross-examining Sri Om Prakash Sharma when its

Managing Director had himself accepted the said statement to be true. Even otherwise nothing prevented the Appellant company, if they so chose,

from producing Sri Om Prakash Sharma, (who was their employee), as a witness in their defence and to examine him on their behalf. It is evident,

therefore, that this plea of denial of opportunity to cross-examine Sri Om Prakash Sharma is an afterthought, and was raised only to wriggle out of

the demand of excise duty and the penalty levied on them.

12. No substantial question of law arises for consideration in this appeal necessitating interference by this Court u/s 35G of the Act. The Appeal

fails and is, accordingly, dismissed.