





ISSUES IN APPEAL:

Shri Rajendra Laxmanrao Lokinyal, owner of Motor Truck No. GU-438648, Motor No. 111, Sankar Park E, Hill Top's Complex, Sion Road, Dist:Chharghat (hereinafter referred to as "Appellant") filed a writ appeal against State-In-Original No. 40760/R.U.MI/19/2013-17 dated 14.02.2013 (hereinafter referred to as "the impugned order") passed by the Assistant Commissioner, Central Excise, Sion Division Bhavnagar (the aforesaid referred to as "the lower adjudicative authority").

2.1 Brief facts of the case are as follows: Plaintiff Central Excise Commissionerate impounded vehicles No. GU-438648 and GU-438648 on 16.02.2013 near plot No. 51, Wang Nadi Road which were loaded with Iron Bolts & nuts (5-6000), Copper Scrap & Brass Scrap (Ch. 8400) after the breaking of padlocks. The drivers of the said vehicles stated that they had loaded the said goods from Plot No. 51 of Shri. Pradeep farm, Wang belonging to Appellant No. 1 and they were not concerned with bill of invoice in respect of the said loaded goods. Shri. Pradeep Acharya, authorized person of Appellant No. 1 also stated that the said goods were removed without issuance of Central Excise invoices. The Central Excise officers stated that 77 MT of said goods valued at Rs. 14,15,000/- were loaded in vehicles No. GU-438648 and GU-438648 each valued at Rs. 2,10,000/- which were used in the transportation of the illicitly removed goods from Bhavnagar. It is further stated that the said goods and vehicles were liable to confiscation under Central Excise Act, 1944 (hereinafter referred to as "the Act") and Central Excise Rules, 2002 (hereinafter referred to as "the Rules") as framed near to Shri. Pradeep Acharya, authorized person of Appellant No. 1 in the custody under a seizure number 15.03.2013.

2.2 The investigation revealed into records of various interlinking documents, namely, Delivery Order Book containing information such as Date, Description of Goods, Qty, Date of payment, condition, purchase, name of the truck and weight in respect of business transactions carried out by Appellant No. 1 alongwith various documents related to ship booking (between 15.02.2013 to 16.02.2013). The statements of key persons recorded by Central Excise Bhavnagar revealed that seized records conclusively in fact were carried out by Appellant No. 1 which inter alia included bill of lading, various packing materials. The investigation also revealed that these records contained details of receipt of cash amount from different buyers against

standard in removal of goods involving Central Excise duty of Rs. 1,99,507/-.

23. Above order, written Order No. 1240/2019-19 dated 15.09.2017 issued to Appellant No. 1 imposing confiscation of 12.27.27 seized goods valued at Rs. 52,49,127/- involving Central Excise duty of Rs. 3,99,807/- under the provisions of Rule 25(1) of the Central Excise Rules, 2002 and proposed to impose penalty of Rs. 1,99,507/- under Section 114C of the Act read with Rule 25 of the Rules under Appellant No. 1. It was also proposed to impose penalty of Rs. 3,99,807/- under Rule 25(1) of the Rules on Shri Pradeep Kumar, an authorized person of Appellant No. 1, worth of Rs. 10,000/- and on Shri Rajesh Lal Lakshmi Lal Laxmiya and Shri Bhakhlal Kumar via Revenue drawer of vehicle No. GJ-18-6018 and GJ-48-5648 respectively. It was also proposed to confiscate seized vehicle No. GJ-18-6018 and GJ-48-5648 each valued at Rs. 2 Lakh under Section 11(2) of the Customs Act, 1962 made applicable to Central Excise matters when order to release was same as agreed to terms.

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24. The lower adjudicating authority, vide impugned order, under notification of 12.27.27 seized goods valued at Rs. 52,49,127/- involving Central Excise duty of Rs. 3,99,807/- under the provisions of Rule 25(1) of the Central Excise Rules, 2002 and since the said goods has released provisionally to Appellant No. 1 on payment of bond and fixed terms, the lower adjudicating authority give an option to Appellant No. 1 to receive the same on payment of fine of Rs. 1,99,507/- Penalty of Rs. 3,99,507/- under Section 114C of the Act read with Rule 25 of the Rules was imposed under Appellant No. 1. Penalty of Rs. 1,99,507/- under Rule 25(1) of the Rules was imposed on Shri Pradeep Kumar, an authorized person of Appellant No. 1, worth of Rs. 10,000/- each and impose on Shri Rajesh Lal Lakshmi Lal Laxmiya and Shri Bhakhlal Kumar via Revenue drawer of vehicle No. GJ-18-6018 and GJ-48-5648 respectively. It was also ordered to confiscate seized vehicle No. GJ-18-6018 and GJ-48-5648 each valued at Rs. 2 Lakh under Section 11(2) of the Customs Act, 1962 made applicable to Central Excise matters and since the said vehicle has been released provisionally on execution of bond and fixed terms to Shri Rajesh Lal Lakshmi Lal Laxmiya and respective son, Shri Rajendra Lakshmi Lal Laxmiya, the lower adjudicating authority give an option to receive the same on payment of fine each of Rs. 10,000/- on Shri Rajendra Lakshmi Lal Laxmiya and the Appellant i.e. Shri Rajesh Lal Lakshmi Lal Laxmiya.

3. Being aggrieved with the impugned order, Appellant preferred the present appeal, inter-alia, on the following grounds:

(i) The impugned order is non-speaking and non-reasoned; that the tempo is not liable to confiscation as the fact of its destruction itself has to be proved; that it was never intended to transport taxable goods without payment of Cess and without an invoice; that the transporter merely acted on the instructions of the person who hired the vehicle and he cannot be penalized for the wrongful act of such person; that the department has no case; that the appellant had the knowledge; and the appellant has not concealed himself in transacting, receiving, keeping, concealing, selling or purchasing, or any other manner in regard with the taxable goods weighing 900 Kg. valued at Rs. 1,45,000/-; that as per their business method they are transporting the goods as per the oral contract made with the purchaser of goods and in this case also the purchaser of the goods had informed the driver regarding loading of sacks of copper and brass and destination and accordingly after taking the rest, the driver went to load the goods and after loading the same, as per his instruction, he had transported the goods from the concerned plot; that the appellant did not know that the goods which were loaded in his vehicle were liable to confiscation; that the fine imposed is very high in as much as the Income tax lease exemption is at the rate of 10% of the value of goods and they rely on the decision of H.C. Company reported as 2007 (233) 11 109 and 2010 (201) 11 311 (H.C. 184); that the fine imposed is very high and the same may be reduced.

(ii) Appellant filed application for condonation of delay of 20 days stating that he received the impugned order on 15/09/2017 and his consultant being Chartered Accountant was busy with the reply to the notices issued by the Income Tax Department for the demonetization of currency and statutory audit work of Nationalized Banks; that the delay was not intentional on the part and requested to condone delay by relying the judgments in the cases of *K.S. Gopinath & Others* - 587 (201) P.T. 145 (S2), *Bhag Singh and Others* - 1907 (13) CLT 252 (S.C), *Shrinagar Gokuldas Patil* - 2887 (13) LLJ 15 (S.C) and many others.

4. Shri M. P. Vaidyanya, Chartered Accountant appeared for the appellant and reiterated the grounds of appeal and their content summarily under paras 20-22/18.

11. Findings:

5. The Appellant has carefully gone through the facts of the case, the Appellate order, appeal memorandum filed by appellant and submissions made in writing. The issue in the matter is the applicability of Section 152 of the Customs Act, 1962 made applicable to Central Excise duties and whether redemption fine of Rs. 40,000 imposed is proper or not.

6. It is found that the Appellant has not made any pre-deposit under Section 35F of the Act on the ground that they had submitted a fixed deposit receipt of Rs. 50,000/- as a condition of provisional release of the seized vehicle and the same tallying with the Department's data that that the appellant has filed appeal file by 30 days with application for condonation of delay stating that their remittance being chartered account was busy with reply to the notices issued by the Income Tax Department due to devaluation of currency and statutory Public work of Nationalised Banks. It is the duty was not intentional on their part and requested to condone delay by relying the judgments in the cases of *U. S. Nadkarni & Others - 1987 (23) ELT 135 (SC)*, *Brahm Singh and Others - 1987 (24) ELT 291 (SC)*, *Shankaram Beharao Patil - 2001 (118) ITD 107 (SC)* and many others. Since, the delay is within the 30 days, the issue of delay of 25 days in this appeal, be Appellant.

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7. It is on record that the officers of Central Excise, Bangalore intercepted vehicles bearing BTQ Registration No. CU-48-0018 and CU-48-0674 at 23/45 hours on 14/02/2013 near Plot No. 51, Airport Road. The said Tempos were loaded with Non-Ferrous Scrap (CU-3002), Copper Scrap & Iron Scrap (CU-3804) imported from Thailand as a Shipper. On inquiry about details of the goods loaded in the said Tempos, Sri Ramesh of Lakshminthai Lokanilaya, owner of Lanka No. CU-38-0118 and Sri Bhuvanath of Lakshminthai Pathol, owner of Tempo No. CU-48-0674 stated that these are loaded as goods from 17th. No. 1st ship loading yard, along of M/s. Goyal Traders and they were not given any bill of lading in respect of the said goods. Since, in this regard, investigation was extended to the premises of M/s. Goyal Traders, Bangalore where the principal partner, Mr. Hanumanth Gowda of M/s. Goyal Traders. This inquiry conducted in itself as a bill of lading was not found and an affidavit on this issued on 20/02/2013 dated 15/02/2013. On being asked about goods loaded in said Tempos intercepted by Central Excise officers without any

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Central Excise Division, authorized person at Mrs. Goyal Traders, Bhanagar stated that said goods were manufactured in factory of Mrs. Goyal Traders, Bhanagar and not Central Excise Division. Some goods were found in its clearance documents, 12/27/81 of seized goods valued at Rs.52,14,137 were seized although Motor No. 48 8006 and CJ-162648 each valued at Rs.2,00,000/- and a transporter of Udaipur removed goods under reasonable belief that said goods and permits were liable to duty and not under Central Excise law.

7.1 The investigation of various manufacturing documents seized under Memorandum dated 16/04/83 substantiated the allegations of clandestine manufacture of goods and clearances by Mrs. Goyal Traders, Bhanagar. The records seized from premises of Mrs. Goyal Traders, Bhanagar at Bhanagan dated 16/04/83 (a) Delivery Note contained inter alia such as details of the goods, rate of sale, vehicle no. Prepared by authorized signatory at Mrs. Goyal Traders, Bhanagar and gave it to Shri Gopal Suraj, Bhanagar. The statements of key persons, namely authorized person at Mrs. Goyal Traders, Bhanagar, transporter, were recorded, which revealed that Mrs. Goyal Traders, Bhanagar had indulged in clandestine clearance of goods without sale of goods and without payment of Central Excise duty.

7.2 I find that the facts of this case very clearly establish that Mrs. Goyal Traders, Bhanagar were indulging into clandestine production and clearances thereof, were also preparing delivery documents to evade payment of Central Excise duty. Investigation revealed that the seized goods were not accounted for by Mrs. Goyal Traders, Bhanagar in their statutory records and hence such finished goods were liable to notification under Central Excise law and consequently first hands to be treated as the goods seized by the Department and liable to confiscation.

7.3 I find that during search of factory premises of Mrs. Goyal Traders on 16.05.2013, manufacturing documents, namely, Delivery Note, Sale Note found are returned under Paragraph 14 proceedings during investigation, statements of authorized persons at Mrs. Goyal Traders, Bhanagar are recorded the evidence available in Delivery Note Book which contained all particulars as detailed above and categorically admitted evasion of Central Excise duty by clearing that products of Mrs. Goyal Traders, Bhanagar were not regarding manufacturing and clearances of excisable goods in their statutory records also without issuance of invoices without payment of central excise duty. I find that





9. In view of above, uphold the impugned order and reject the present appeal.

10. अतिरिक्त शुल्क एवं कर को लौटा कर 10 लाख रुपये की सीमा तक है।

9. The appeal filed by the appellant is disposed of in above terms.

सा.स.स.  
*(Signature)*  
अधीक्षक (आ.स.)  
आ.स. कार्यालय

श्री. अ.स.स.  
(अधीक्षक (आ.स.))  
आ.स. कार्यालय

By P.F.A.:

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Copy for information and necessary action to:

- 1) The Chief Commissioner, GST & Central Excise, Amritsar Office, Amritsar for his kind information.
- 2) The Commissioner, GST & Central Excise, Jalandhar.
- 3) The Assistant Commissioner, GST & Central Excise, District Office, Dera Bassi.
- 4) The Superintendent, GST & Central Excise, Dera Bassi, Amritsar, Gurdaspur.



