CUSTOMS,EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST ZONAL BENCH : AHMEDABAD

REGIONAL BENCH : COURT NO – 1

EXCISE Appeal No. 557 of 2008-DB

(Arising out of OIO no. 15-17/COMMR/VDR-II/MP/2006-07 dated 13/03/2007 passed by Commissioner of Central Excise, Customs and Service Tax-VADODARA-II)

Modern Petrofils Appellant

N.H.No. 8, Post-Bamangam, Taluka-Karjan,
Vadodara
Gujarat

-VERSUS-

C.C.E. & S.T. Vadodara-ii Respondent

1st Floor... Room No.101,
New Central Excise Building,
Vadodara,
Gujarat,390023

Present For the Appellant : Shri Shailesh Vyas, Adv.
Present For the Respondent : Shri S.N. Gohil, Supdt. (AR)

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

FINAL ORDER NO. A/ 11020 /2019

Date of Hearing: 30/04/2019

Date of Decision:25.06.2019.

RAJU

This appeal has been filed by M/s Modern Petrofils against confirmation of demand of Central Excise duty, interest and imposition of penalty under Rule 25 (1) of Central excise Rule, 2002 and Rule 173Q(1) of the erstwhile Rule of Central Excise Rules,1944.

2. Ld. Counsel for the appellant pointed out that a case was booked against M/s Resham Exports, an EOU. The said EOU was found to be sourcing various raw material duty free from manufacturer and diverting the same in the open market in violation of the Central Excise Rules. M/s Resham exports obtained material from the appellant and from another unit M/s Filatex without payment of duty under CT-3 certificates issued to M/s Resham Exports during period 27.04.2000-01.06.2000.

2.1 On the basis of information received, it was found that M/s Resham Exports evaded customs duty by diverting duty free imported/indigenously manufactured goods to the local market without payment of Customs/Central Excise duty. The officers of SIB, (Exports), Mumbai and Central Excise Commissionerate, Vadodara visited the premises of M/s Resham Exports on 08/06/2000. At the time of visit, it was found that the unit was closed and a panchnama was drawn on 08/06/2000. The said Panchnama also recorded that there was no representative person of the company, and therefore, no detailed inspection of the unit could be done. Subsequently, on 29.11.2001, the premise of M/s Resham Export was visited again and still no authorized person or representative was available. Therefore, the lock of the factory was broken and the premise was searched. It was found that the premises had six no. of plane power looms in old and rusted condition and one pirn winding machine. The documents available in the unit were seized.

2.2 Ld. Counsel pointed out that during the search, Revenue obtained CT-3 no. 2 & 3 both dated 25/04/2000 issued to M/s Resham Exports issued for duty free POY from the appellant. According to the yarn receipt register maintained by the Range officer, it was shown that M/s Resham Exports had received 5 consignments of POY against the CT-3 no. 2&3 issued to M/s Resham Exports in respect of supply from the appellant. In respect of these consignments, re-warehousing certificates have been issued by the Jurisdictional Range officers. An enquiry was extended to the appellant and it was revealed that during the period 27.04.2000 to 08.06.2000, the appellants have dispatched 100 consignments of POY weighing 8,84,281kgs involving Central Excise duty of Rs. 1,57,53,846/-. It was noticed that re-warehousing certificate in respect of 55 of these consignments involving duty of Rs.88,41,894/- had been received by the appellant. However in respect of 45 consignments of POY sent by the appellant during the period 01/06/2000-08/06/2000 involving Central Excise duty of Rs.69,11,952/-, no re-warehousing certificates were received. Consequently, demand of Central Excise duty was made under sub Rule 2 of Rule 156B, as amended by Rule 173N, of the erstwhile Central Excise Rules, 1944. Penalty was also sought to be imposed under Rule 25 of Central Excise Rules, 2002 and interest was also sought to be demanded under section 11AB of the Central Excise Act, 1944 in respect of 45 consignments wherein re-warehousing certificates were not received.

2.3 Ld. Counsel for the appellant pointed out that there was no involvement of the appellant in the alleged diversion of goods. He pointed out that the entire case of diversion has been made on the strength of the statements of the Shri Bodu Gulam Shaikh, who had deposed that after receiving the goods from the appellant's premises, he was diverting the same to the open market. Shri Bodu Gulam Shaikh was a partner of M/s Resham Exports. He further argued that no cross examination was done of Shri Bodu Gulam Shaikh. Shri Bodu Gulam Shaikh had admitted in his statement that no consignment cleared from the appellant's premises had reached the factory premises of M/s Resham Exports at Halol. He had admitted that after the consignment of POY from the appellants premises, the trucks used to come to Golden Chokdi, Vadodara and at that point, he himself alongwith Shri Salim Ahmed, the other partner of M/s Resham Exports, would get the truck unloaded into other trucks and the goods were taken to Surat for sale. Ld. Counsel pointed out that diversion, if any, was done by the representative of M/s Resham Export and they cannot be held responsible for the acts of M/s Resham Exports.

2.3 Ld. Counsel for the appellant pointed out that in the case of Hytaisun Magnetic Ltd. 2008 (229) E.L.T. 634 (Tri.-Ahmd.) in similar circumstances, the penalty has been set aside.

3. Ld. AR relies on the impugned order.

4. We have gone through rival submissions. The proceedings were initiated against M/s Resham Exports for diversion of goods procured from the appellant vide SCN Nol. V.Ch-54(15)23/R-V/D-Halol/Commnr/2004 dtd 09.12.2004. In the said proceedings, a penalty was imposed on the appellant for the involvement in supplying goods to a non-functional EOU. A second SCN No. V.Ch.54(15)22/R.II-Mak/Commnr/2004 dated 09.12.2004 was issued to the appellant demanding duty in respect of supplies made to by them to M/s Resham Exports in respect of which the re-warehousing certificate was not received. The third SCN No. Ch.54 (15) 25/R-II/D-MKR/2004 dated 23.12.2004 was issued to the appellant seeking the denial of Cenvat Credit taken by them during the material period on the ground that the finished goods were illegally diverted. In the impugned order, the demand against M/s Resham Exports was also confirmed for 55 consignments and penalty was also imposed on the appellant in respect of the first Show Cause Notice dated 09.12.2004. In respect of the second Show Cause Notice, demand of the duty against appellant in respect of 45 consignments was confirmed along with interest and equal penalty. The third Show Cause Notice relating to the Cenvat Credit was dropped. The appellants came in appeal against the imposition of penalty in the first Show Cause Notice and confirmation of demand, interest and imposition of penalty in respect of second Show Cause Notice.

4.1 The impugned order was heard by tribunal. There was difference of opinion. In the order, recorded by Member (Judicial), the following was observed:

"22. In view of the above discussions, we pass the following order:

a) In show cause Notice no. V.Ch-54(15)23/R-V/D-Halol/Commnr/2004 dtd 19.9.2004, the imposition of penalty on M/s Modern is set aside and penalty on M/s Filatex is reduced to Rs. 1,00,000/-(Rupees one lac). The penalty imposed in Shri Puneet Rungta is upheld.

b) In Show Cause Notice No. V.Ch.54(15)22/R.II-Mak/Commnr/2004 dtd 09.12.2004, the demand of duty alongwith interest and penalty on M/s Mondern and the penalty imposed on M/s Puneet Kumar Rungta are upheld. The penalty on Shri Abhinandan Kataria is set aside and the appeal filed by the appellant is allowed. The appeals filed by M/s Modern and M/s Filatex are disposed of in the above terms. The appeals filed by Shri Puneet Kumar Rungta are rejected. The applications for Extension of Stay Order are disposed of."

4.1.1 Thereafter, Member (Technical) differed with Member (J) and in his findings observed as following:

"I agree with the above findings and decision of the learned brother except in two respects, namely:

(a) Setting aside of imposition of penalty on M/s. Modern Petrofils in regard to clearances of 55 consignments of POY against CT-3 under AR-3As by M/s Modern Petrofils to M/s. Resham, knowing fully well that the same was being illicitly diverted by them midway.

(b) Setting aside of penalty on Shri Abhinandan Kataria and allowing the appeal filed by him.

After examining the issue, the Member (Technical) reached to the following conclusion:

"13. In the light of the above discussions and in the facts of the case, I do not find any reason to interfere with the impugned order in original and hold as follows a regards the present appeals:-

(a) In regard to the Show Cause Notice dated V.Ch-54(15)23/R-V/D-Halol/Commnr/2004 dtd 19.9.2004, the imposition of penalties by the adjudicating authority on M/s. Modern Petrofils, M/s Filatex India Ltd., and Shri Puneet Rungta are upheld.

(b) In respect of the Show Cause Notice no. V.Ch.54(15)22/R.II-Mak/Commnr/2004 dtd 09.12.2004, the demand of duty alongwith interest and penalty on Modern, and the penalties imposed on Shri Puneet Kumar Rungta and Shri Abhinandan Kataria are upheld."

4.1.2 Thus, in fact, Member (Technical) differed with Member (J) only in respect of penalty imposed on appellant in respect of first SCN dated 09/12/2004 and penalty imposed on Shri Abhinandan Kataria in second SCN. Thereafter the following difference of opinion was crystallized by the bench for reference to third Member.

"(i) Whether with regard to Show Cause Notice V.Ch-54(15)23/R-V/D-Halol/Commnr/2004 dtd 19.9.2004, the penalty imposed on M/s Modern Petrofils is to be set aside and penalty on M/s Filatex India is to be

reduced to Rs. 1,00,000.00 as held by the Ld. Member (Judicial) or the penalties imposed on M/s Modern Petrofils and M/s Filatex India are to be upheld as held by the Learned Member (Technical)

(i) Whether the penalty imposed on Shri Abhinandan Kataria is to be set aside as held by the Learned Member (Judicial) or it is to be upheld as per order of the Learned Member (Technical).

4.1.3 It is seen that in the final order of Member (Technical) as well as the difference of opinion recorded, the Show Cause No. and date has been mentioned as V.Ch-54(15)23/R-V/D-Halol/Commnr/2004 dated 19.09.2004. It is seen that the Show Cause Notice is dated 09.12.2004 and not 19.09.2004.

4.2 Against the aforesaid difference of opinion, M/s Modern Petrofills approached Hon'ble High Court. Hon'ble High Court after examining the issue directed as follows:

"The impugned order of the Tribunal ***to the extent the same relates to the question of imposition of penalty on M/s Modern*** *as recorded in the difference of opinion between the members is hereby quashed and set aside. The Tribunal is directed to hear the appeal afresh* ***to the aforesaid limited extent*** *without in any manner being influenced by any observations made by the Members in the impugned order. The President shall ensure that the Appeal No. E/557/2008 is heard in consonance with the provisions of section129C (2) of the Act as per the original assignment of appeals to a Division Bench having territorial jurisdiction as per the position prevalent today.*

Consequently, since only M/s Modern Petrofils has approached Hon'ble High Court and since the direction of Hon'ble High Court relates only to M/s Modern Petrofils, the matter has been re-examined only in respect of M/s Modern Petrofils in regard to clearance of 55 consignments of POY against CT-3 and under AR-3s to M/s Resham subject matter of SCN No. V.Ch-54(15)23/R-V/D-Halol/Commnr/2004 dated 09.12.2004 and the issue regarding liability of duty of M/s Modern Petrofils and penalty imposed in respect of 45 consignments subject matter of SCN no. V.Ch.54(15)22/R.II-Mak/Commnr/2004 dtd 09.12.2004 stands decided by the earlier order of Tribunal no. IO/12-16/2016 dated 21.01.2016.

4.3 It is seen that the noticee while supplying goods to EOU was required to follow the provisions of Rule 156A and 156B of the Central Excise Rules. Rule 156A & 156B reads as follows:

"156A. Procedure in respect of goods removed from one warehouse to another*. –*

(i) The consignor shall prepare an application for removal of goods from a factory or a warehouse to another warehouse in quadruplicate in the

proper form, mentioning clearly such information as the Commissioner may be general or special order, require.

(ii) The consignor shall also prepare a gate pass in the proper form in respect of the goods proposed to be removed from his factory or warehouse.

(iii) The consignor shall send the original, duplicate and triplicate application and original gate pass along with the consignment to the warehouse of destination.

(iv) The consignor shall send quadruplicate application along with a copy of the gate pass to the Officer-in-charge of his factory or warehouse within twenty four hours of the removal of the consignment.

(v) On arrival of the goods at the warehouse of destination, the consignee shall, within twenty four hours of the arrival of goods, verify the same with all the three copies of the application. The consignee shall send the original application to the officer in charge of his warehouse, duplicate to the consignor and retain the triplicate for his record.

(vi) The officer in charge of the warehouse of destination shall countersign the application received by him and send it to the officer in charge of the factory or warehouse of removal.

(vii) The consignee shall retain the duplicate application duly endorsed by the consignee for his record.

156B. Failure to receive re-warehousing certificate:-

(i) In case the certificate of re-warehousing is not received back by the consignor within ninety days of the removal of the goods or such extended period as the Commissioner may allow to an assessee or class of assessees, the consignor shall pay the duty leviable on the consignment by a debit in his account number.

Provided that where such duty has been paid and proof of rewarehousing is produced by the consignor to the satisfaction of the proper officer, such consignor shall on making an application to the proper officer, be entitled to a refund of the duty so paid.

(ii) If the original application endorsed with the rewarehousing certificate is not received by the Officer in charge of the factory or warehouse of removal or if received, it shows a shortage not explained to the satisfaction of the proper officer, the consignor shall , on demand by the proper officer, pay the duty leviable on such goods within ten days of the notice of demand and if the duty is not so paid, he shall not be permitted to make fresh removals of any warehoused goods from his factory or warehouse until the duty is paid or until the certificate of re-warehousing is presented to the Officer in charge of the factory or warehouse of removal to his satisfaction."

4.4 It is seen that Rule 156A(3) reads as follows:

"156A (3)The consignor shall send the original, duplicate and triplicate application and original gate pass along with the consignment to the warehouse of destination.

From the above rule, it is clear that it is the responsibility of consignor to take the goods from the premises of a consignor to the warehouse of destination. Thus, the claim of the appellants that they were handing over the consignments to the representative of the consignee on the factory gate is itself against the rules. It was responsibility of the appellants to deliver the goods to the consignee's warehouse. Even the transporter hired by the appellant is performing the duty of transferring material to EOU on their behalf. The perusal of Rule 156A clearly indicated that the role of the consignee starts only after the arrival of the goods at the warehouse destination.

4.5 In respect of show cause notice no. V.Ch-54(15)23/R-V/D-Halol/Commnr/2004 dated 09.12.2004, penalty of Rs. 80 lakhs has been imposed on appellant under Rule 25 (1) of Central Excise Rules, 2002 (Rule 173Q of erstwhile Central Excise Rules, 1944). In respect of this Show Cause Notice, the impugned order concludes that the appellant were aware of the fact that the goods cleared by them to the M/s Resham Exports are being diverted. Para 8.4 of the impugned order deals with the following issue:

> *"Whether in all the cases of dispatch of POY by M/s Modern and M/s Filatex to M/s Resham, its illicit diversion by M/s Resham was with the knowledge of M/s Modern and M/s Filatex and whether Shri V.K. Sharma, Sr. Manager (Commercial). M/s Modern was also aware of the illicit diversion of the duty free goods by M/s Resham and whether M/s. Modern, M/s Filatex and Shri V.K. Sharma are liable for penalty?"*

Thus, it is seen that impugned order does not differentiate between the liability to penalty on appellant on account of slight difference in facts of first and second SCN. In one case re-warehousing certificates were not received whereas in others, they were received. It is seen that the impugned order deals with liability to penalty on a common standards. The impugned order observes as follows:

> *In both cases, the transportation had been arranged by the consignors i.e. M/s. Modern and M/s. Filatex. While in case of M/s. Filatex the owners of the transport company could not be traced and therefore, no inquiry could be made, but in case of M/s Modem the owner/Manager of concerned transporters were traced. Shri Abhinandan Kataria, Manager of M/s. Vardhaman and Shri Harish Natwarlal Bhatt, Proprietor of M/s. Nirav in their statements dated 02-04-04 and 25-06-04 respectively have clearly admitted that the goods dispatched by M/s. Modern had been illicitly diverted from Golden Chokadi at Vadodara, that for this purpose, by a prior arrangement the partners of M/s. Resham used to receive the goods at Golden Chokadi, Vadodara, unload the same at that place and transfer the same to other trucks and thereafter used to sign the LRs and that Shri V.K. Sharma, Sr. Manager (Commercial) of M/s Modern was also aware of this fact. Though, Shri Kataria has retractred this statement, in course of his cross examination at the time of hearing, he did admit that once the goods are handed over to the transport company by a consignor for delivery at the place as mentioned in the LR, the transporter has to deliver and unload the goods at that place only and he cannot deliver the goods at some place not mentioned in the LR and delivery at some place other than that mentioned in the LR can be made only on the instructions of the consignor. This deposition of Shri Kataria, made by him in course of his cross-examination makes sense also, as no*

transport company in its senses will deliver the goods at some place other than the consignee's address as mentioned in the LR, and if he does so, in case of any claim for damages by the consignor, it is the transporter who will be liable to pay the damages. Since in this case, the movement of the goods was under AR-3A under the provisions of Rule 156A & 156B, as amended by Rule 173N, it was absolutely necessary for the consignors to ensure that the goods are delivered by the transporter at the consignee's address as mentioned in the LR, failing which the consignor would be liable to pay the duty. But in this case, as discussed above, the goods instead of being delivered at the consignee's address i.e the factory premises of M/s. Resham at GIDC, Halol, were delivered to the consignee's partners/persons at Golden Chokadi, Vaodara and at Kadodara, near Surat. Since no transporter on his own will deliver the goods at a place other than that mentioned in the LR, obviously in this case, this has been done on the instructions received from the consignors. Therefore, the claim of M/s. Modern and M/s. Filatex that they had no knowledge about the illicit diversion of the goods dispatched by them is a blatant lie. The involvement of M/s. Modern is also clear from the fact that in case of 45 consignments of POY dispatched by them during the period from 01-06-2000 to 08-06-2000, as detailed in Annexure-A to the SCN No.2 neither the duplicate copies of the AR-3As bearing the consignees signatures has been produced by them nor the original copies of AR-3As signed by the consignee and countersigned by the Jurisdictional Range officer/Sector officer have been received by the Range office having jurisdiction over M/s. Modern from which it is clear that the goods had not been delivered at the consignee's premises and this fact is more clear in case of eight consignments of POY dispatched by M/s. Modern to M/s. Resham on 08-06-2000, the day when the Customs officers from Mumbai accompanied by Central Excise officers of Vadodara were also present at the factory premises as no truck of POY dispatched by M/s. Modern to M/s. Resham on that day was seen at the factory premises or near the factory premises and there was absolutely no stock of yarn or any sign of any goods having been unloaded in the factory premises. It is being claimed by M/s. Modern that illicit diversion of the goods was taking place on account of connivance of the drivers of the transport companies with the partners of M/s. Resham for which M/s. Modern should not be penalised and the investigating officers have not recorded the drivers' statements. Firstly this claim is unacceptable as no driver on his own will deliver and unload the goods at a place other than that mentioned in the LRs and if he do so, he will do only on the instructions from the transport company and the transport company, in turn, will do it on the instructions in this regard from the consignor. Secondly, if the claim of M/s. Modern is accepted, they should have claimed the damages from the transporters, but no such suits for damages have been filed by M/s. Modern against M/s. Vardhaman and M/s. Nirav, as if they do so, the truth will come out. It does not appeal to commonsense that M/s. Modern and M/s. Filatex handed over some consignments of duty free POY dispatched under bond to some transporters for delivery to a 100% EOU knowing very well that if the proof of delivery of the duty free consignments at the consignee's address, as prescribed in Rule 156A and 156B, as amended by Rule 173N, is not received, they will be liable to pay the duty in respect of those goods and the transporters without any instructions from their respective consignors, instead of delivering the goods at the address of 100% EOU mentioned in the LRs, deliver the goods midway to some persons claiming to be the persons of the consignee, as a result of which both the consignors -— M/s. Modern and M/s. Filatex, face huge duty demands and they do not file any suit for damages against the transporters. The absence of any action taken by M/s. Modern and M/s. Filatex against their respective transporters is a clear indication of their connivance. As regards not recording the statements of drivers, the same could be recorded only if the Manager/Proprietor of the transport companies had given their names and address, but the same were *not given by them inspite of being asked. I, therefore, hold that both M/s. Modern and M/s. Filatex were fully aware of the illicit diversion of the duty free POY dispatched by them to M/s. Resham, but still they continued to make such dispatches.*

The appellants have relied on the decision in the case of Hytaisun Magnetic Ltd. (supra). It is seen that in the said case there were no circumstances which indicate the appellant's knowledge or reason to believe that the documents received by them are forged. In the instant case, the facts cited above indicated that the appellants were aware of the diversion from the facts and circumstances of this case. Thus, the decision in the case of Hytaisun Magnetic Ltd. is not applicable to the facts of this case. The appellants have also relied on the decision in the case of Santogen Textile Mill Ltd. 2007 (214) E.L.T. 386 (Tri Mumbai). It is seen that in the said case, the decision was without having referred to Rule 156A (3) which puts responsibility on delivery of goods on the consignor. Thus, the said decision is per incuriam as it has been passed without taking notice of Rule 156A(3).

4.6 From the facts of the case, it is apparent that the appellants were not careful enough and were willing party to the diversion of goods by the consignee. In this regard, the affidavit filed by the transporter regarding delivery of goods at the premise of M/s Resham Exports also appears to have been obtained without knowledge of the transporter. In this regard the observation of the Commissioner in the impugned order reproduced above becomes relevant. From the said observation, it is seen that Shri Abhinandan Kataria, Manager of M/s Vardhaman and Shri Harish Natwarlal Bhatt, Proprietor of M/s Nirav in their statements have admitted that goods cleared by M/s Modern have been illicitely diverted. It is also seen that these submissions are supported by the statements of Shri Bodu Gulam Shaikh which was the representative of the consignee involving in the diversion of the goods. In the light of the facts that the statement of Shri Kataria & H.N. Bhatt and Shri Bodu Gulam Shaikh are in consonance, later retraction of Shri Kataria loses its significance. In this regard, observation in para 9.5 of the impugned order becomes relevant.

"9.5.1 SCN no. 2 seeks imposition of penalty on Shri Kataria, Manager of M/s Vardhman and Shri H.N. Bhatt, Prop. of M/s Nirav under rule 26 of the Central Excise Rules, 2002 (Rule 209A of the erstwhile Central Excise Rules, 1944) alleging that both these persons were aware of the illicit diversion of the goods dispatched by M/s Modern to M/s Resham. Shri Harish Natwarlal bhatt, Proprietor of M/s Modern were being unloaded at Golden Chokadi and being transferred into other trucks and from the they used to be takne to some other place for sale and that this fact had been learn by him, from the

drivers who were returning very early. Shri Abhinandan Kataria in his statement dated 02/04/2004 recorded under Section 14 of the Central excise Act, 1944 has also made a similar statement but subsequently he retracted his statement. However his retraction is not credible as his statement is corroborated by the statements of Shri H.N. Bhatt and Shri Bodu Ghulam Shaikh. From the above discussion, it is clear that in 99 out of 100 cases, the consignments of POY dispatched by M/s Modern to M/s. Resham during the period from 27-04-2000 y0 08-06-20000 had never reached the factory premises of M/s Resham at Halol and had been diverted from Golden Chokadi, Vadodara. It has also been pleaded as on behalf of Shri Kataria that this diversion may have taken place on account of connivance of their drivers with the partners of M/s Resham. But if this is so, the burden of proving this is on Shri Kataria as it is Shri Kataria who during the relevant period was the manager of M/s. Vardhman, Vadodara as was overall in charge of the operations of the transport company. No driver in his senses will deliver the goods at a place other than the consignee's address mentioned in the LR and when this happens, it is obvious that this would be done with the knowledge and instructions of the management of the transport company. Therefore, if Shri Kataria claims that as per his personal knowledge his drivers, in connivance with the partners of M/s. Resham, were delivering the goods at places other than the consignee's address as mentioned in the LRs, as per the provisions of Rule 106 of Evidence Act, the burden of proving this would be on him. Shri Kataria in course of recording of his statement has even not given the names such has not discharged the burden of proof. Shri Harish N. Bhatt of M/s Nirav has not retracted his statement. I, therefore, hold that both the transporters had full knowledge of the illicit diversion of the goods, in question, and both of them are liable for penalty under the provisions of Rule 26 of the of the Central excise Rules, 2002 (Rule 209 of the erstwhile Central Excise Rules, 1944)

It is seen from the statements of Shri Anil Kataria dated 02.04.2004 that he was aware of the diversion of goods after clearance from the factory. It is also admitted position of the appellant that Shri Anil Kataria was their regular transporter. In the statements of Shri H.N. Bhatt dated 07.07.2004 he had reaffirmed that he has informed the representatives of appellant namely Shri Manmohan Agarwal about the diversion of goods and route. He also confirmed that Shri VK Sharma, was also aware of the facts. Another factor which is relevant is that during the short period of about 10 days they had cleared almost 100 consignments weighing 884 tonnes to one party. This fact itself should have raised alarm bells and doubts in appellant's organization. In any case, it was responsibility of appellant's to ensure delivery of goods. From the above set of facts, it is apparent that the appellants were aware of the diversion of goods en-route. In view of above facts, we find significant merit in imposing penalty on the appellants. Consequently, the penalty imposed in the order is upheld. The appeal on this count is dismissed.

(Pronounced in the open court on 25.06.2019)

(Ramesh Nair)
Member (Judicial)

(Raju)
Member (Technical)

Diksha