CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD

REGIONAL BENCH - COURT NO.I

Customs Appeal No.70047 of 2020

(Arising out of Order-in-Appeal No.523-CUS/APPL/LKO/2019 dated 24.10.2019 passed by the Commissioner (Appeals) Customs, Central GST & Central Excise, Lucknow)

Ram Prakash Singh **.....Appellant**
(Proprietor of M/s R.P. Traders
865, Y-Block, Kidwai Nagar, Kanpur)

VERSUS

Commissioner of Customs (Preventive), Lucknow
....Respondent

(5th Floor, Kendriya Bhawan,
Sector-H, Aliganj, Lucknow)

APPEARANCE:

Shri Santosh Kumar Srivastava, Advocate for the Appellant
Shri S.T. Khairnar, Authorised Representative for the Respondent

WITH

Customs Appeal No.70264 of 2020

(Arising out of Order-In-Appeal No.483-CUS/APPL/LKO/2019 dated 09.09.2019 passed by the Commissioner (Appeals) Customs, Central GST & Central Excise, Lucknow)

Yogesh Tripathi **.....Appellant**
(R/o 220, Shiv Dham, Near DPS, Bithoor Road,
Kalyanpur, Kanpur-208017)

VERSUS

Commissioner (Appeals), Customs, GST & Central Excise, Lucknow **....Respondent**
(3/194, Vishal Khand-3, Gomti Nagar, Lucknow)

APPEARANCE:

Shri Yogesh Tripathi for the Appellant
Shri S.T. Khairnar, Authorised Representative for the Respondent

AND

Customs Appeal No.70749 of 2019

(Arising out of Order-In-Appeal No.483-CUS/APPL/LKO/2019 dated 09.09.2019 passed by the Commissioner (Appeals) Customs, Central GST & Central Excise, Lucknow)

Commissioner of Customs (Preventive), Lucknow .....Appellant
(3/194, Vishal Khand-3, Gomti Nagar, Lucknow)

VERSUS

Shri Yogesh Tripathi ....Respondent

(R/o 220, Shiv Dham, Near DPS, Bithoor Road, Kalyanpur, Kanpur-208017)

APPEARANCE:

Shri S.T. Khairnar, Authorised Representative for the Appellant
Shri Yogesh Tripathi for the Respondent

CORAM: HON'BLE MR. P.K. CHOUDHARY, MEMBER (JUDICIAL)
HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)

FINAL ORDER NO.70263-70265/2023

DATE OF HEARING : 29.11.2023
DATE OF DECISION : 29.11.2023

SANJIV SRIVASTAVA:

These appeals are directed against two Order-In-Appeals having O-I-A No. 483-CUS/APPL/LKO/2019 dated 09.09.2019 (For C/70264/2020 & C/70749/2019) & Order-in-Appeal No.523-CUS/APPL/LKO/2019 dated 24.10.2019 (For C/70047/2020) passed by Commissioner of Customs, CGST & Central Excise, Lucknow. By the Order-In-Original following has been held:-

"F.1. I order for rejection of the declared description of the imported goods covered under bill of entry no. 8799437 dated 07.03.2017 and I accept the

reclassification of the same under CTH as enumerated, in RUD-26(i) of the SCN.

F.2 I order for rejection of the declared assessable value of the goods imported vide the Bill of Entry No. 8799437, dated 07.03.2017 under Rule 12 of the Valuation Rules 2007

F.3 I confirm the redetermined value of the goods imported under Bill of Entry No. 8799437, dated 07.03.2017, and as enumerated at Sl.no.1-11 of Table III of the SCN at Rs. 18,91,120/- in accordance with the Rule 9 of the Valuation Rules 2007 read with Sec. 14 of the Customs Act 1962.

F.4. I confirm classification of description of the imported goods covered under Bill of Lading No.1517500322, dated 12.02.2017 and Bill of Entry no. 2166614, dated 20.06.2017, under CTH (Custom Tariff Heading) as given in RUD-26(ii) of the SCN.

F.5. I order for rejection of the declared assessable value of the goods imported vide the Bill of Entry No. 2166614, dated 20.06.2017 under Rule 12 of the Valuation Rules 2007.

F.6. I order for demand of the total applicable duty of Rs. 2,78,247/- (Two Lakh Seventy Eight Thousand Two Hundred Forty Seven) (As per RUD-26(i) of the SCN from the importer under the provisions of Section 28 of the Customs Act, 1962, alongwith applicable interest under Section 28AA ibid on the imported goods vide Bill of Entry no.8799437, dated 07.03.2017and as enumerated at Sl.no.1-11 of Table III of the SCN.

F.7. I confirm redetermined value of the imported goods under Bill of Lading No. 1517500322 dated 12.02.2017 (Bill of Entry No. 2166614, dated 20.06.2017) as enumerated at Table V of the SCN, at Rs. 89,63,335/- (Eighty Nine Lakh Sixty Three Thousand Three Hundred Thirty Five) (As per RUD-26(ii) of SCN) in accordance with the Rule 9 of the Valuation Rules 2007, read with Sec. 14 of the Customs Act 1962.

F.8 I order for demand of the total applicable duty of Rs. 30,91,770/- (Thirty Lakh Ninty One Thousand Seven Hundred Seventy) (As per RUD-26(ii)) from the importer under the provisions of Section 28 of the Customs Act, 1962, along with interest under Section 28AA ibid, on the goods imported vide Bill of Lading No. 1517500322, dated 12.02.2017 (later filed B/E No. 2166614, dated 20.06.2017) and as enumerated at Table V of SCN.

F.9 I order for confiscation of the imported goods as enumerated at Sl.no.1-11 of Table III of the SCN, valued at Rs. 18,91,120/- (Eighteen Lakh Ninty One Thousand One Hundred Twenty) (re-determined A.V.) has imported vide Bill of Entry no.8799437, dated 07.03.2017,under Section 111(1) and 111(m) of the Customs Act, 1962. However, I give the owner an option to redeem the said seized imported goods as enumerated at Sl.no.1-11 of Table III of the SCN, valued at Rs. 18,91,120/- (Eighteen Lakh Ninty One Thousand One Hundred Twenty) (re-determined A.V.) imported vide Bill of Entry no.8799437, dated 07.03.2017, on payment of redemption fine of Rs. 3,70,000/- (Rs. Three Lakh Seventy Thousand only) under Section 125 of the Customs Act, 1962 alongwith applicable customs duty, interest and charges within 30 days of receipt of this order failing which the goods *shall be disposed off as per the provisions of Customs Act, 1962.*

F.10. I order for confiscation of 322 cartons of smuggled cosmetics items viz. hair dye, listed at sl. No.12 and 13 of Table III of SCN, totally valued at Rs. 30,00,000/- (Rs. Thirty lakh only), imported by way of concealment and non-declaration in the bill of entry no. 8799437, dated 07.03.2017, without being possession of any valid licence and in contravention of the provisions of Rules 129, 133 and Rule 43 A of Drugs and Cosmetics Rules, 1945, under Sections 111(d), (i), (1) & (m) of the Customs Act, 1962 read with Rule 129 of the Drugs and Cosmetics Rules, 1945.

F.11 I order for confiscation of the imported goods covered under Bill of Entry no. 2166614, dated 20.06.2017, totally valued at Rs. 89,63,335/- (Eighty Nine Lakh Sixty Three Thousand Three Hundred Thirty Five) after redetermining of assessable value (As per RUD-26(ii) of SCN) under Section 111 (d), (f), (i), (l) and (m) of the Customs Act 1962 read with the provisions of Legal Metrology Act, 2009. However, I give the owner an option to redeem the said seized imported goods excluding the goods mentioned at serial no. 02 & 03 (i.e. Steel Measuring tape of 3m & 5m length) of the RUD-26(ii) of SCN so valued as redetermined at Rs. 58,05,850.60/-(Fifty eight lakh five thousand eight hundred and fifty rupees and sixty paisa) (As per RUD-26(ii) of SCN) on payment of redemption fine of Rs. 12,00,000/- (Rs. Twelve Lakh only) under Section 125 of the Customs Act, 1962 within 30 days of receipt of this order, failing which the goods shall be disposed off as per the provisions of Customs Act, 1962. However, for the goods mentioned at serial no. 02 & 03 (i.e. Steel Measuring tape of 3m & 5m length) of the RUD-26(ii)-of-SEN-so-valued as redetermined at Rs. 31,57,484.40/- (Rupees Thirty one *lakh fifty seven thousand four hundred & eighty four and forty paisa) (As per RUD-26(il) of SCN), I give the owner an option to redeem the said goods on payment of redemption fine of Rs. 7,50,000/- (Rs. Seven Lakh Fifty thousand only) under Section 125 of the Customs Act, 1962 subject to the production of NOC from the competent authority and fulfilment of relevant conditions as required under the Legal Metrology Act, 2009 within 30 days of receipt of this order, failing which the goods shall be disposed off as per the provisions of Customs Act, 1962.*

F.12 I order for imposition of Penalty under Sections 112(a) and 114AA of the Customs , 1962 on the noticees as under:

1. M/s R.P. Traders Rs. 4,00,000/- (Rs. Four lakh only) u/s 112 (a) and Rs. 20,00,000/-(Rupees Twenty Lakh only) u/s 114AA of the Customs Act, 1962, -MI

2. Shri Yogesh Tripathi - Rs. 3,00,000/- (Rupees Three Lakh only) u/s 112 (a) and Rs. 20,00,000/- (Rupees Twenty Lakh only) u/s 114AA of the Customs Act, 1962,

3. Shri Ashok Singh - Rs. 3,00,000/- (Rupees Three Lakh only) u/s 112 (a) and Rs. 20,00,000/- (Rupees Twenty Lakh only) u/s 114AA of the Customs Act, 1962."

1.2. In the appeal Commissioner (Appeals) has refused to interfere with the Order-In-Original in respect of the Appellant No.1 i.e. R.P. Singh whereas he has in the case of Appellant No.2 reduced the penalties imposed under Section 114AA and under Section 112(a) from Rs.20 lakhs + Rs.03 Lakhs to Rs.5 lakhs + Rs.1 lakhs. Against the reduction of penalties on Appellant No.2 Revenue has also filed an appeal being Customs Appeal No.70749 of 2019.

2.1 The Appellant No.1 had self-filed Bill of Entry No.8799437 dated 07.03.2017 at ICD Kanpur. On the basis of intelligence, the consignment was checked by DRI on 09.03.2017 and on examination of the said consignment it was found to be misdeclared. Considerable amount of cosmetics was also recovered which was not declared in the Bill of Entry.

2.2 While the matter in respect of the above stated bill of entry was under investigation by DRI, another **Bill of Entry No.2166614 dated 20.06.2017** was filed by the same importer in the same manner and the consignment was after examination found to be misdeclared.

2.3 Investigations were made, statements of the concerned persons were recorded and it appeared that Appellant No.1 through Appellant No.2 of M/s Enrich Cargo, Kanpur and one M/s Ashok Singh of Mumbai connived and fabricated invoice and other documents in the name of overseas supplier and presented the same before the Customs for clearance of imported goods.

(iv) On the basis of their statement recorded under Section 108 of Customs Act, 1962 it was alleged that the three persons involved namely appellant 1 & appellant 2 and Shri Ashok Singh have admitted their role in the case of misdeclaration being investigated. On completion of the investigation a Show Cause Notice dated 04.09.2017 was issued to the Appellant No.1 & Appellant No.2 asking them as to why:-

> *"31. In view of the above, M/s. R. P. Traders, 865, Y Block, Kidwai Nagar, Near Y Block Post Office, Kanpur Nagar, U.P. - 208011 (IEC-0613004914) are hereby called upon to show cause to the Joint/Additional Commissioner of Customs, 117/7, Sarvodaya Nagar, Kanpur, U.P. within 30 days from the receipt of this notice as to why:*
>
> *i. The declared description of the imported goods covered under bill of entry no. 8799437 dated 07.03.2017, should not be rejected, and re-classified under CTH as enumerated in RUD-26(i).*
>
> *ii. The declared assessable value of the goods imported vide the Bill of Entry No. 8799437 dated 07.03.2017 should not be rejected under Rule 12 of the Valuation Rules 2007 for the reasons mentioned at Para 29(ii) above.*

iii. The value of the imported goods under Bill of Entry No. 8799437 dated 07.03.2017, and as enumerated at Sl.no.1-11 of Table III above, should not be re-determined at Rs. 18,91,120/- (Eighteen Lakh Ninety One Thousand One Hundred Twenty) (As per RUD-26(i)) in accordance with the Rule 9 of the Valuation Rules 2007, read with Sec. 14 of the Customs Act 1962.

iv. The total applicable duty of Rs. 2,78,247/- (Two Lakh Seventy Eight Thousand Two Hundred Forty Seven) (As per RUD-26(i)), should not be demanded from the importer under the provisions of Section 28 of the Customs Act, 1962, alongwith interest under Section 28AA ibid, on the imported goods vide Bill of Entry no.8799437 dated 07.03.2017, and as enumerated at Sl.no.1-11 of Table III above.

v. The imported goods as enumerated at Sl.no.1-11 of Table III above, valued at Rs. 18,91,120/- (Eighteen Lakh Ninety One Thousand One Hundred Twenty) (re-determined A.V.) imported vide Bill of Entry no.8799437 dated 07.03.2017, should not be held liable for confiscation under Section 111(1) and 111(m) of the Customs Act, 1962.

vi. The 322 cartons of smuggled cosmetics items viz hair dye, listed at sl. No.12 and 13 of Table III above, totally valued at Rs. 30,00,000, imported by way of concealment and non-declaration in the bill of entry no. 8799437 dated, 07.03.2017, without being in possession of any valid licence and in contravention of the provisions of Rules 129, 133 and Rule 43 A of Drugs and Cosmetics Rules, 1945, should not be confiscated under Sections 111(d), (i), (1) & (m) of the Customs Act, 1962 read with Rule 129 of the Drugs and Cosmetics Rules, 1945.*

vii. The description of the imported goods covered under Bill of Lading No.1517500322 dated 12.02.2017 and Bill of Entry no. 2166614 dated 20.06.2017, should not be classified under CTH as per RUD-26(ii);

viii. The declared assessable value of the goods imported vide the Bill of Entry No.2166614 dated 20.06.2017 should not be rejected under Rule 12 of the. Valuation Rules 2007 for the reasons mentioned at Para 29(iv) above.

ix. The value of the imported goods under Bill of Lading No. 1517509322 dated 12.02.2017 (Bill of Entry No. 2166614 dated 20.06.2017), and as enumerated at Table V above, should not be re-determined at Rs. 89,63,335/- (Eighty Nine Lakh Sixty Three Thousand Three Hundred Thirty Five) (As per RUD-26(ii)) in accordance with the Rule 9 of the Valuation Rules 2007, read with Sec. 14. of the Customs Act 1962.

x. The total applicable duty of Rs. 30,91,770/- (Thirty Lakh Ninety One Thousand Seven Hundred Seventy) (As per RUD-26(ii)), should not be demanded from the importer under the provisions of Section 28 of the Customs Act, 1962, alongwith interest under Section 28AA ibid, on the imported goods vide Bill of Lading No. 1517500322 dated 12.02.2017 (later filed B/E No. 2166614 dated 20.06.2017), and as enumerated at Table V above.

xi. The imported goods covered under Bill of Entry no. 2166614 dated 20.06.2017, totally valued at Rs. 89,63,335/- (Eighty Nine Lakh Sixty. Three Thousand Three Hundred Thirty Five) (As per RUD-26(ii)) should not be held liable for confiscation under Section 111 (d), (f), (i), (l) and (m) of the Custom Act 1962 read with the provisions of Legal Metrology Act, 2009.

xii. Penalty under Sections 112(a) and 114AA of the Customs Act, 1962 should not be imposed on the importer.

32. Shri Yogesh Tripathi, 220, Shivdham, Near D.P.S., Bithoor Road, Kalyanpur, Kanpur Nagar, is hereby called upon to show cause to the Additional/Joint Commissioner of Customs, 117/7, Sarvodaya Nagar, Kanpur, U.P. within 30 days from the receipt of this notice as to why penalty under Sections 112(a) and Section 114AA of the Customs Act, 1962 should not be imposed on him."

2.5 The show cause notice has been adjudicated as per the Order-In-Original referred in Para 1 and by the impugned order Commissioner (Appeals) has in the case of Appellant No.1 refused to interfere and in the case of Appellant No.2 reduced the penalty.

2.6 Aggrieved by the said order both the appellants have filed the present appeals and Revenue has filed an appeal against reduction of penalty on Appellant No.2.

3.1 Heard Shri Santosh Kumar Srivastava, Advocate learned counsel for Appellant No.1 & Shri Yogesh Tripathi, Appellant No.2

3.2 Heard Shri S.T. Khairnar learned Departmental Representative appearing on behalf of the Revenue.

3.3 Arguing for the Appellant No.1 learned counsel submits that,-

- ➢ they are not concerned with the imports made. They are also not claiming any of the goods.
- ➢ It was only that they had lent their IEC for the purpose of the clearance of these goods. Apart from the fact that they have lent IEC they were totally ignorant about the imports made and the documents filed.
- ➢ They are not responsible for any misdeclaration or attempting to import goods without a valid import license.
- ➢ The penalties imposed on them are excessive and needs to be set aside.
- ➢ The statements on which reliance has been placed has been recorded under dures and were not voluntary.
- ➢ They had specifically sought cross-examination of one Shri Sanjay Baber who allegedly is a mastermind behind the entire fraudulent importation being made which has been denied to them without assigning any reasons.

3.4 The Appellant No.2 arguing for himself submits that

- ➢ He is not responsible for any of the imports made.
- ➢ The checklist on the basis of which importer filed the Bill of Entry was forwarded to him by a CHA in Mumbai namely Jypson & Company;
- ➢ This checklist received by him from Bombay has been provided by him to the DRI officer at time of his statement recorded on 03.04.2017 as is evident from Question No 5.
- ➢ He was a H card Holder and was aware of Customs procedure and by himself asked for first check of the consignment imported as he is aware that such

consignment could not have been cleared without the intervention of Customs.

- He has acted in a *bona fide* manner and was in no way responsible for fabricating any documents for clearance of these consignments.
- He has assisted in filing of the Bill of Entry which were filed on the self-attested basis by the importer under his own signature.
- He is not aware of goods being cleared, misdeclared or imported otherwise.
- Commissioner (Appeals) has given relief but he prays for setting aside the penalties.

3.5 Arguing for the Revenue learned Departmental Representative submits that

- The statements of appellants and others involved in the matter which are voluntary in nature and have been recorded under Section 108 of the Customs Act, 1962. These statements were never retracted.
- The case against both the appellants is very clear. On the basis of the admittance made by the Appellant No.1 & Appellant No.2 and Shri Ashok Kumar Singh it is evident that the entire scheme was masterminded by the Appellant No.2 and Shri Ashok Kumar Singh.
- They used the name of Appellant No.1 for filing the Bill of Entry for clearance of these goods inasmuch as they had agreed with Appellant No.1 orally that a sum of Rs.1 lakh per container would be paid to him.
- As Appellant No.1 allowed the use of his IEC for making such fraudulent importation the penalties imposed upon him are justified. All the documents have been filed in the name of Appellant No.1 on the self basis.
- Appellant No.2 was one of the mastermind and the documents namely invoices against which these Bill of Entries have been filed were recovered from his premises.
- He has also admitted in his statement of the role played by him for clearance of the goods being cleared by him.

- ➢ As he is responsible for making these documents, penalties imposed on him under Section 114AA by the Adjudicating Authority and modified by the Commissioner (Appeal) are very reasonable. In fact Commissioner (Appeals) while reducing the penalties has held that the Appellant No.2 was responsible for the contraventions leading to imposition of penalties.
- ➢ Revenue has filed this appeal challenging reduction of penalty by the Commissioner (Appeals).

4.1 We have considered the impugned order, Order-In-Original along with the submissions made in the appeals and during the course of arguments.

4.2 Some interesting facts which we note in the case are as follows:-

(i) DRI had started investigation against the first Bill of Entry filed by the Appellant No.1 on 06.03.2017. Searches were conducted and statements of the Appellant 1 and Appellant 2 were recorded.

(ii) As these investigations were on Appellant No 1 filed another Bill of Entry on 02.06.2017 for clearance of similar consignment in the same manner. When DRI is investigating the matter in such circumstances could only be an act of daredevil whereby the same person who is under DRI scanner would file another bill of entry in similar manner, when he is under an investigation after giving statements with regards to misdeclaration in respect of earlier consignment 03 months back.

(iii) The Appellant No.2 in his statement recorded on 30.04.2017 has specifically in response to Question No.5 has stated as follows:-

> *"I know one person, Manish Tripathi, who is a CHA clerk employed with Balaji Maniship which is a CHA firm. Manish Tripathi usually attends to clearance work at JRY. Kanpur. I Know Manish Tripathi for the past six year's during the last week of Jan 2017 Manish Tripathi introduced me two persons Ashok Singh and RP Singh as he told me that Ashok*

> *Shing is a CHA in Mumbai and R P Singh is a person dealing in DGFT licences in Kanpur. Ashok Singh told me that he was interested in getting some import goods cleared through Kanpur and wanted an agent to handle the customs documents. He offered me Rs 10,000/- for each container he said that he would import 10-15 containers in a month. I agreed to clear the consignment through Kanpur port.* ***He told me that two consignments are due to come from China within one month. He went back to Mumbai and sent me a copy of invoice through whatsapp he said that this invoice is of first consignment and provided me with an already prepared checklist of CHA of Mumbai through whatsapp he told me that the bill of entry had to be filled as per the descriptions in the provided checklist. The commercial invoice which was whatsapp to me in the name of Rp Traders Kanpur was provided on 07/03/17 by RP Singh and Ashok Singh he met me at JRY with the papers. I am submitting copy of the print out taken by me of the checklist of CHA sent by Ashok Singh through whatsapp for my reference.***"

(iv) No investigations were made against the CHA who had forwarded the checklist from Bombay and was made available to the DRI officers along with this statement. Exactly list checklist is some and we find it to tally in all manner with the Bill of Entry against which first consignment was sought to be imported. Interestingly the checklist forwarded by the CHA in Bombay has the signature of Appellant No.1 who happens to be in Kanpur.

(v) It is also interesting to note when Appellant No.1 had asked for cross-examination of the person namely Shri Sanjay Baber located in Mumbai who is allegedly responsible for entire fraudulent import being made. Why no investigation has been made against the said person or even cross-examination was allowed so that correct facts could have been brought on record.

(vi) From the above and by denying the cross-examination of the person Shri Sanjay Babbar located at Bombay it is evident that the Authorities were not interested in unearthing the complete fraud and for bringing the mastermind on record. In the absence of that we do not find that the penalties as imposed could be justified.

4.3 No evidence has been produced with regards to the manipulation of the documents by the Appellant No.1 and Appellant No.2. If it was the case of the Revenue that Appellant No.2 was responsible for preparing these documents, the documents should have been subjected to verification of handwriting expert or could have been subjected to any other possible forensic examination. Investigation could have been made by Officers of DRI at Hong Kong or at least at Bombay for unearthing the complete chain. Catching some small fries as Appellant No.1 & 2 in the matter would not help the cause of Revenue.

4.4 We also are not in a position to agree that the statements specifically of Appellant No.1 were voluntary in nature. The fact that Appellant No.1 is studied till 12 standard only is given in the third Statement recorded by the DRI. Might be it was recorded in this as this statement has been recorded as dictated by the Appellant No.1 to an officer of DRI to be typed in the computer of DRI. Earlier two statements which were recorded in question answer form were recorded in the hand of Appellant No.1 and are in Hindi. While the first two statements state the facts, the last two statements recorded in English are admittance of misdeclaration and furnishing so many details which Appellant No.1 dictated extempore without reference to any documents to DRI officers by himself. These statements are not in the form of question and answer. These statements though read over and accepted by the appellant cannot be said to be completely voluntary. In case of K I Pavunny [1997 (90) ELT 241 (SC)] Hon'ble Supreme Court has held as follows:

"25. *It would thus be seen that there is no prohibition under the Evidence Act to rely upon the retracted confession to prove the prosecution case or to make the same basis for conviction of the accused. The practice and prudence require that the Court* *could examine the evidence adduced by the prosecution to find out whether there are any other facts and circumstances to corroborate the retracted confession. It is not necessary that there should be corroboration from independent evidence adduced by the prosecution to corroborate each detail contained in the confessional statement. The Court is required to examine whether the confessional statement is voluntary; in other words, whether it was not obtained by threat, duress or promise. If the Court is satisfied from the evidence that it was voluntary, then it is required to examine whether the statement is true. If the Court on examination of the evidence finds that the retracted confession is true, that part of the inculpatory portion could be relied upon to base confiction. However, the prudence and practice require that Court would seek assurance getting corroboration from other evidence adduced by the prosecution.*

32. *It is true that in criminal law, as also in civil suits, the trial Court and the appellate Court should marshal the facts and reach conclusion, on facts. In a criminal case, the prosecution has to prove the guilt beyond doubt. The concept of benefit of doubt is not a charter for acquittal. Doubt of a doubting Thomas or of a weak mind is not the road to reach the result. If a Judge on objective evaluation of evidence and after applying relevant tests reaches a finding that the prosecution has not proved its case beyond reasonable doubt, then the accused is entitled to the benefit of doubt for acquittal. The question then is : whether the learned Single Judge of the High Court has committed any error of law in reversing the acquittal by the Magistrate. Not every fanciful reason that erupted from flight of imagination but relevant and germane requires tested. Reasons are the soul of law. Best way to discover truth is through the interplay of view points. Discussion captures the essence of controversy by its appraisal of alternatives, presentation of pros and cons and review on the touchstone of human conduct and all attending relevant circumstances. Truth and falsity are sworn enemies. Man may be prone to speak falsehood but circumstantial* *evidence will not. Falsity is routed from man's proclivity to faltering but when it is tested on the anvil of circumstantial evidence truth trans. On scanning the evidence and going through the reasoning of the learned Single Judge we find that the learned Judge was right in accepting the confessional statement of the appellant, Ex. P-4 to be a voluntary one and that it could form the basis for conviction. The Magistrate had dwelt upon the controversy, no doubt on appreciation of the evidence but not in proper or right perspective. Therefore, it is not necessary for the learned Judge of the High Court to wade through every reasoning and give his reasons for his disagreement with the conclusion reached by the Magistrate. On relevant aspects, the learned Judge has dwelt upon in detail and recorded the disagreement with the Magistrate and reached his conclusions. Therefore, there is no illegality in the approach adopted by the learned Judge. We hold that the learned Judge was right in his findings that the prosecution has proved the case based upon the confession of the appellant given in Ex. P-4 under Section 108 of the Evidence Act and the evidence of PWs 2, 3 and 5. The prosecution proved the case beyond doubt and the High Court has committed no error of law."*

4.5 In case of Andaman Timber Industries [2015 (324) ELT 641 (SC)] Hon'ble Supreme Court held as follows:

"6. According to us, not allowing the assessee to cross-examine the witnesses by the Adjudicating Authority though the statements of those witnesses were made the basis of the impugned order is a serious flaw which makes the order nullity inasmuch as it amounted to violation of principles of natural justice because of which the assessee was adversely affected. It is to be borne in mind that the order of the Commissioner was based upon the statements given by the aforesaid two witnesses. Even when the assessee disputed the correctness of the statements and wanted to cross-examine, the Adjudicating Authority did not grant this opportunity to the assessee. It would be pertinent to note that in the impugned order passed by the

Adjudicating Authority he has specifically mentioned that such an opportunity was sought by the assessee. However, no such opportunity was granted and the aforesaid plea is not even dealt with by the Adjudicating Authority. As far as the Tribunal is concerned, we find that rejection of this plea is totally untenable. The Tribunal has simply stated that cross-examination of the said dealers could not have brought out any material which would not be in possession of the appellant themselves to explain as to why their ex-factory prices remain static. It was not for the Tribunal to have guess work as to for what purposes the appellant wanted to cross-examine those dealers and what extraction the appellant wanted from them.

7. As mentioned above, the appellant had contested the truthfulness of the statements of these two witnesses and wanted to discredit their testimony for which purpose it wanted to avail the opportunity of cross-examination. That apart, the Adjudicating Authority simply relied upon the price list as maintained at the depot to determine the price for the purpose of levy of excise duty. Whether the goods were, in fact, sold to the said dealers/witnesses at the price which is mentioned in the price list itself could be the subject matter of cross-examination. Therefore, it was not for the Adjudicating Authority to presuppose as to what could be the subject matter of the cross-examination and make the remarks as mentioned above. We may also point out that on an earlier occasion when the matter came before this Court in Civil Appeal No. 2216 of 2000, order dated 17-3-2005 [2005 (187) E.L.T. A33 (S.C.)] was passed remitting the case back to the Tribunal with the directions to decide the appeal on merits giving its reasons for accepting or rejecting the submissions."

4.6 We find that certain contraventions have been committed by Appellant No.1 & 2 inasmuch as they have signed or assisted in the clearance of such fraudulent goods for which certain penalties should have been imposed but the penalties imposed by the Order-In-Original are excessive and it is not understood why Commissioner (Appeals) gave relief to the Appellant No.2 and not to Appellant No.1. In our view the end of justice will be made if the penalties imposed upon Appellant No.1 and Appellant No.2 are reduced to Rs.50,000/- under Section 114AA and Rs.10,000/- under Section 112 (a) of the Customs Act, 1962.

4.7 With the above discussion appeals filed by the Appellant No.1 & 2 are partially allowed and appeal filled by the Revenue is dismissed.

(Dictated and pronounced in open court)

(P.K. CHOUDHARY)
MEMBER (JUDICIAL)

(SANJIV SRIVASTAVA)
MEMBER (TECHNICAL)

Nihal