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CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066

CUSTOMS APPEAL BRANCH

Appeal No. C/350 to 357, 555, 560-563 /2005, C65, 252 to 254 /2006 - CU[DB] Date 05/04/2010

Assistant Registrar
C.E.S.T.A.T, New Delhi

To :
R.S.TRADE LINK

R.S.TRADE LINK Appellant

Vs

C.C. (EXPORT) NEW DELHI Respondent

I am directed to transmit herewith a certified copy of **Final order No. C/41 to 55 / 2010 CU[DB]** dated 30.03.10 passed by the Tribunal under Section 129, (B) of the Customs Act,1962 & Financial Act 1994 relating to Service Tax

Assistant Registrar
(Customs Appeal Branch)

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1. Respondent
   C.C. (EXPORT) NEW DELHI
   AIR CARGO EXPORT, NEW CUSTOM HOUSE, NEW DELHI 110037
2. Adv. / Consult

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4 J.C.D.R.
5 Bar association. CESTAT. New Delhi
6 Director Publications. Customs. Excise. I.P. Estate. New Delhi
7 M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi - 3
8 Commercial Laws of India Pvt Ltd. Post Bag No. 1033, No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
9 Raghuraman's 44-B. Regal Flat.Shipra Suncity. Indirapuram - 201010.Ghaziabad. DT. U.P.
10 M/s Manupatra Information Solutions Pvt Ltd. Excise & Customs Cases B-37, Sector - 1, Noida - 201301, Gautam Budh Nagar, (UP)
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Assistant Registrar
(Customs Appeal Branch)

19 M/S. KANSARA MODLER LIMITED.
A-41(B) MARUDHAR INDUSTRIAL AREA PHASE II, BASMIT,
JODHPUR

M/a Gautam Chaterje, 69, ASHIRWAD APARTMENTS,
I.P.EXTENSION, DELHI

SHRI MANOJ SHAH
[illegible]01, DEVENDRA APARTMENTS, D- WING ROKHADIA LANE,
BORIVALI (W) MUMBAI-92

22 Sh. J.M.Sharma, conslt., G- 31, Basant Enclave, New Delhi

23 Sh.L.P.Asthana Adv, R-163, SF, Greater Kailash – I, New Delhi

24 Sh. Prabhat Kumar, Adv., B-51, Basement, Sarvodaya Enclave (near Mothers International School) New Delhi – 17

25 Sh. Piyush Kumar, B-25, Lajpat Nagar-III, New Delhi.

26 M/S R.S. TRADE LINK,
5438, IST FLOOR, BASTI HARPHOOL SINGH,
SADAR BAZAR, DELHI – 6.

27 SHRI SANJEEV KHURANA,
5438, IST FLOOR, BASTI HARPHOOL SINGH,
SADAR BAZAR, DELHI – 6.

28 M/S B.M. NON-FERROUS ALLOYS PVT. LTD.,
375, MAIN ROAD GAZIPUR, DELHI – 96.

29 MR VISHWANATH JALAN,
203/305, VANDANA APPARTMENTS,
22/1, ALIPORE ROAD, KOLKATA – 27.

30 M/S KAVERY ENTERPRISES,
D-6, GULAB PARK, JAGADHARI,
HARYANA – 135 005.

31 M/S RAHUL JEE & CO.
375, MAIN ROAD GAZIPUR, DELHI – 96.

32 M/S ASHOK METAL INDUSTRIES,
357-A, GALI NO.1, FRIENDS COLONY,
SHAHDRA, DELHI – 95.

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.
Principal Bench, New Delhi

COURT NO. I

Customs Appeal No. 350 of 2005

[Arising out of the Order-in-Original No. 15/05 dated 17/03/2005 passed by The Commissioner of Customs (ICD), New Delhi.]

M/s R.S. Trade Link — Appellant (Shri L.P. Asthana, Advocate)

Versus

CC, New Delhi — Respondent

Customs Appeal No. 351 of 2005

[Arising out of the Order-in-Original No. 15/05 dated 17/03/2005 passed by The Commissioner of Customs (ICD), Delhi.]

Shri Sanjeev Khurania person incharge of M/s R.S. Trade Link]] Appellant

Versus

CC, Delhi — Respondent

Customs Appeal No. 353 of 2005

[Arising out of the Order-in-Original No. 14/05 dated 17/03/2005 passed by The Commissioner of Customs (ICD), Delhi.]

Shri Anil Goel, Executive Director of M/s B.M. Non-Ferrous Alloys Pvt. Ltd.]] Appellant

Versus

CC, Delhi — Respondent

Customs Appeal No. 354 of 2005

[Arising out of the Order-in-Original No. 12/05 dated 26/02/2005 passed by The Commissioner of Customs (ICD), Delhi.]

M/s Rahuljee & Co. Ltd. — Appellant (Shri Prabhat Kumar, Advocate)

Versus

CC, Delhi — Respondent

Customs Appeal No. 355 of 2005

[Arising out of the Order-in-Original No. 12/05 dated 26/02/2005 passed by The Commissioner of Customs (ICD), New Delhi.]

Shri Anil Goel Executive Director of] Appellant
M/s Rahuljee & Co. Ltd.]

Versus

CC, New Delhi Respondent

Customs Appeal No. 356 of 2005 with Misc. Application No. 670 of 2009

[Arising out of the Order-in-Original No. 16/05 dated 17/03/2005 passed by The Commissioner of Customs (ICD), New Delhi.]

M/s Kavery Enterprises Appellant
(Shri L.P. Asthana, Advocate)

Versus

CC, New Delhi Respondent

Customs Appeal No. 357 of 2005 with Misc. Application No. 667 of 2009

[Arising out of the Order-in-Original No. 13/05 dated 17/03/2005 passed by The Commissioner of Customs (ICD), New Delhi.]

M/s Ashok Metal Industries Appellant
(Shri L.P. Asthana, Advocate)

Versus

CC, New Delhi Respondent

Customs Appeal No. 555 of 2005

[Arising out of the Order-in-Original No. 12/05 dated 26/02/2005 passed by The Commissioner of Customs (ICDs), New Delhi.]

Shri Gautam Chatterjee Appellant

Versus

CC, New Delhi Respondent

Customs Appeal No. 560 of 2005

[Arising out of the Order-in-Original No. 14/05 dated 17/03/2005 passed by The Commissioner of Customs (ICDs), New Delhi.]

Shri Gautam Chatterjee | Appellant

Versus

CC, New Delhi | Respondent

Customs Appeal No. 561 of 2005

[Arising out of the Order-in-Original No. 15/05 dated 17/03/2005 passed by The Commissioner of Customs (ICDs), New Delhi.]

Shri Gautam Chatterjee | Appellant

Versus

CC, New Delhi | Respondent

Customs Appeal No. 562 of 2005

[Arising out of the Order-in-Original No. 16/05 dated 17/03/2005 passed by The Commissioner of Customs (ICDs), New Delhi.]

Shri Gautam Chatterjee | Appellant

Versus

CC, New Delhi | Respondent

Customs Appeal No. 563 of 2005

[Arising out of the Order-in-Original No. 13/05 dated 17/03/2005 passed by The Commissioner of Customs (ICDs), New Delhi.]

Shri Gautam Chatterjee | Appellant

Versus

CC, New Delhi | Respondent

Customs Appeal No. 65 of 2006

[Arising out of the Order-in-Original No. 90/05 dated 19/10/2005 passed by The Commissioner of Customs (ICDs), New Delhi.]

Shri Gautam Chatterjee | Appellant

Versus

CC, New Delhi | Respondent

Customs Appeal No. 252 of 2006

[Arising out of the Order-in-Original No. 75/05 dated 31/08/2005 passed by The Commissioner of Customs (Adjudication), New Delhi.]

Shri Manoj Shah — Appellant
(Shri J.M. Sharma, Consultant)

Versus

CC, New Delhi — Respondent

Customs Appeal No. 253 of 2006

[Arising out of the Order-in-Original No. 76/05 dated 31/08/2005 passed by The Commissioner of Customs (Adjudication), New Delhi.]

Shri Manoj Shah — Appellant
(Shri J.M. Sharma, Consultant)

Versus

CC, New Delhi — Respondent

Customs Appeal No. 254 of 2006

[Arising out of the Order-in-Original No. 90/05 dated 19/10/2005 passed by The Commissioner of Customs (Adjudication), New Delhi.]

Shri Manoj Shah — Appellant
(Shri J.M. Sharma, Consultant)

Versus

CC, New Delhi — Respondent

For Approval and signature :

Hon'ble Shri D.N. Panda, Judicial Member
Hon'ble Shri Rakesh Kumar, Technical Member

1. Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982? : Yes.

2. Whether it would be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not? : Yes.

3. Whether their Lordships wish to see the fair copy of the order? : Seen.

4. Whether order is to be circulated to the Department Authorities? : Yes.

Appearance

S/Shri Sumit Kumar and Vijay Kumar, Authorized Representative (SDR) – for the Respondent.

CORAM : **Hon'ble Shri D.N. Panda, Judicial Member**
Hon'ble Shri Rakesh Kumar, Technical Member

DATE OF HEARING : 08/01/2010.
DATE OF DECISION : 30/ /2010

Final Order No. C/41-55/10 Dated : 30/3/2010

Per. Rakesh Kumar :-

This is a common order in respect of 16 appeals, the details of which are as under :-

S. No.	Appeal No.	Appellant	Order against which appeal filed
1.	C/354/05	Rahuljee & Co. Ltd. An importer of non-ferrous scrap against forged advance licence	Order-in-Original No. 12/05 dated 26/2/05
2.	C/355/05	Anil Goel, Executive Director of M/s Rahuljee & Co. Ltd.	- do -
3.	C/555/05	Gautam Chatterjee	- do -
4.	C/357/05	Ashok Metal Industries– An importer of non-ferrous scrap against forged advance licence	Order-in-Original No. 13/05 dated 17/3/05
5.	C/563/05	Gautam Chatterjee	- do -

6.	C/353/05	Anil Goel, Executive Director of M/s B.M. Non-Ferrous Alloys Pvt. Ltd.	Order-in-Original No. 14/05 dated 17/3/05
7.	C/560/05	Gautam Chatterjee	- do -
8.	C/350/05	M/s R.S. Trade Link An importer of non-ferrous scrap against forged advance licence	Order-in-Original No. 15/05 dated 17/3/05
9.	C/351/05	Sanjeev Khurania, person incharge of M/s R.S. Trade Link	- do -
10.	C/561/05	Gautam Chatterjee	- do -
11.	C/356/05	M/s Kavery Enterprises An importer of non-ferrous scrap against forged advance licence	Order-in-original No. 16/05 dated 17/3/05
12.	C/562/05	Gautam Chatterjee	- do -
13.	C/252/06	Manoj Shah	Order-in-Original No. 75/05 dated 31/8/05
14.	C/253/06	Manoj Shah	Order-in-Original No. 76/05 dated 31/8/05
15.	C/65/06	Gautam Chatterjee	Order-in-Original No. 90/05 dated 19/10/05
16.	C/254/06	Manoj Shah	- do -

1.1 The facts of these appeals are common and the same are, in brief, as under.

1.1.1 The officers of DRI, on receipt of an information on 27/7/97 that an advance licence No. 03030976 dated 27/7/99 registered in Nhava Sheva Custom House is forged and release advices have been issued against such a licence, initiated inquiry. On inquiry with Jt. DGFT's office it was confirmed that this licence is bogus, as no such licence had been issued. Inquiry with Customs house confirmed that this licence is, indeed, registered in DEEC Section and RAs have been issued. However on inquiry with group AC he informed that, the RA file is not traceable. On 1/2/2000, on receipt of further intelligence that the persons who had obtained the RAs against the above-mentioned licence have again come to the Customs house, the DRI officers immediately reached the Customs house and got hold of two persons who identified themselves as Manikchand Lalchand Tarkar alias Raju and Gautam Chatterjee. Statements of Manikchand were recorded on 1/2/2000, 2/2/2000, 8/2/2000, 7/3/2000 and 10/5/2000 wherein he, implicating one Shri Subhash, a LDC in the Customs house, and admitting the forged nature of the advance licence No. 03030976 dated 27/7/99, named Shri Bipin Shah and Manoj Shah as the persons who had given the forged licence to him for obtaining the RAs for which he was getting Rs. 60,000/- per RA. Shri Gautam Chatterjee in his statements dated 1/2/2000, 2/2/2000, 8/2/2000, 24/2/2000, 7/3/2000, 22/3/2000 and 30/6/2000 disclosed that he is engaged in customs clearing job using the CHA licence of M/s Star Carriers, and that he was aware of the forged nature of the licence, but he still acted as middleman between Shri Manoj Shah/Bipin Shah and Importers for sale of the forged advance licence and arranged customs clearance for the importers, for which he received commission from Shri Bipin Shah as well as Importers.

1.1.2 Further inquiry at the Nhava Sheva Custom house revealed that in all 12 bogus advance licence including licence No. 03030976 dated 27/7/99 had been got registered by Bipin Shah and Manoj Shah at the Custom house against which release advices had been issued in favour of a number of importers including M/s R.S. Trade Links, M/s Rahuljee & Co., M/s Ashok Metal Industries, M/s Kaveri Enterprises, M/s Holy Sales Corporation, M/s Dinesh Metal, M/s B.M. non-Ferrous Pvt. Ltd., M/s Micro Metal, M/s Bipin Enterprises, M/s Dinesh International Pvt. Ltd. etc. Further inquiry also revealed Shri Vishvanath Jalan as the person who alongwith Shri Bipin Shah had fabricated and forged the DEEC books and advance licence.

1.1.3 Show cause notices were issued to the importer companies, the Directors/persons incharge of the importer companies, Shri Manoj Shah, Shri Bipin Shah, Shri Vishwanath Jalan and Shri Gautam Chatterjee for demand of duty from the importer companies with interest, confiscation of the goods imported against RAs issued against forged advance licences and for imposition of penalty under Section 112 on the importers and other persons involved. Some of such orders are No. 12/05 dated 26/2/05; 13/05 dated 17/3/05; 14/05 dated 17/3/05; 15/05 dated 17/3/05; 16/05 dated 17/3/05; 75/05 dated 31/8/05; 76/05 dated 31/8/05 and 90/05 dated 19/10/05. The 16 appeals detailed in para 1 have been filed against these orders.

1.1.4 Miscellaneous application No. 670/09 in appeal No. C/356 of 2005 and Misc. application No. 667 of 2009 in app0eal No. C/357 of 2005 are for extension of stay.

2. Heard both the sides.

2.1 None appeared for Shri Gautam Chatterjee.

2.2 Ms. Reena Khair and Shri Abhishek Jaju, Advocates, representing M/s R.S. Trade Links, Shri Sanjeev Khurana, M/s Kaveri Enterprises and M/s Ashok Metal Industries; Shri Prabhat Kumar, Advocate, representing M/s Rahuljee & Co. and Shri Anil Goel, Shri J.M. Sharma, Consultant, representing Shri Manoj Shah made the following submissions.

(1) While it is not disputed that the advance licences were forged, the TRAs issued by the Custom house in favour of the importers were genuine. Since the licences were registered with the custom house and the same in term of the Board's Circular No. 51/95-Cus, are supposed to be registered after verification and since there was no doubt about the genuineness of the TRAs, the importers had no reason to suspect the genuineness of the licences. There is no allegation or finding that the importers had knowledge about the forged nature of licences. Hence neither the extended period under Section 28 of the Customs Act for duty demand and nor Section 114A of the Customs Act for imposition of penalty equal to the short paid/non-paid duty, is invokable. In any case, no penalty is

imposable on the Importers and in this regard, reliance is placed on Hon'ble Calcutta High Court's judgment in case of **ICI India Ltd. vs. CC, Calcutta** reported in **2005 (184) E.L.T. 339 (Cal.)** which has been upheld by Hon'ble Supreme Court vide judgment reported in **2005 (187) E.L.T. A-31 (S.C.)** and also Hon'ble Punjab & Haryana High Court's judgment reported in **2007 (218) E.L.T. – 349**.

(2) The signatures of the signatories of the licence transfer letters – M/s Super Abrasive Tooling (in case of imports by M/s Ashok Metal Industries), and M/s Stay Sharp Diamond Tools and M/s Supria Chemicos (in case of imports by M/s Kaveri Enterprises) had been duly certified by the Bank of India and Bank of Baroda respectively and transfer letter of M/s Oriental Containers Ltd. (in case of imports by M/s R.S. Trade Links) had been duly certified by State Bank of Patiala. The importers had, therefore, no reason to suspect the genuineness of the licences in respect of which TRAs had been issued.

(3) Premium paid for the licences is substantial, which indicates that the Appellant importers – M/s Rahuljee & Co., M/s Ashok Metal Industries, M/s R.S. Trade Links, M/s Kaveri Enterprises etc. were unaware about forged nature of the licences. In any case, since premium of advance licence depends upon factors like supply and demand, when the licence is expiring etc., just from licence premium one

cannot make judgment about the genuineness of the licence.

(4) Shri Gautam Chatterjee while admitting the forged nature of the license has not implicated the importers or their Directors/persons in charge. In fact, the Importer companies have initiated criminal proceedings against Shri Gautam Chatterjee and other perpetrators of fraud before Deputy Commissioner of Police.

(5) In any case, redemption fine in lieu of confiscation cannot be imposed on the importers in respect of the goods which have already been cleared and are not available for confiscation.

(6) Where the importer is a proprietorship firm, separate penalty on the importer firm and proprietor is not imposable.

(7) As regards Shri Manoj Shah, no penalty is imposable on him in view of the following :-

(i) It is only Shri Vishvanath Jalan, Shri Bipin Shah, Shri Manikchand Tarkar and Shri Gautam Chatterjee who are involved in forging of advance licences and their sale to various importers. Shri Manoj Shah merely forwarded the documents given by Bipin Shah, to Shri Gautam Chatterjee and vice-versa, for which he was getting a commission. He was not aware about the forged nature of the advance licences.

(ii) Shri Manoj Shah had no role to play in forgery or fabrication of advance licence or their sale/ transfer to importers. No role has been played by Shri Manoj Shah in issue of TRAs.

(iii) There is no implicatory statement made by any of the co-noticees against Shri Manoj Shah.

(iv) In view of the above, there is no evidence to infer that Shri Manoj Shah has abetted the illicit imports so as to attract the penal provisions of Section 112 of the Customs Act, 1962.

2.3 Shri Vijay Kumar, the learned Departmental Representative made the following submissions.

(1) There is no dispute about the forged nature of the licences. Out of 12 advance licences registered at Nhava Sheva Custom house, 7 licences had never been issued by the Jt. DGFT's office. In case of 5 licence, while licences bearing those number had been issued, the same were for import of chemicals – none of them were for import of Copper/brass scrap. The fabrication of DEEC book and advance licence stands proved from the statements of Bipin Shah, Manik Chand Tarken and Gautam Chatterjee.

(2) Since Shri Bipin Shah, Shri Manoj Shah, Gautam Chatterjee have played an active role in forgery of advance licences and their sale/transfer to importers, on commission, all of them have actively abetted the illicit duty free import of copper/brass scrap against forged advance licences and therefore penal provisions of Section 112 (a) are attracted in respect of these persons,

(3) As regards the importers – M/s Rahuljee & Co., M/s Ashok Metal Industries, M/s Kaveri Enterprises and M/s

R.S. Trade Links and their Directors/persons incharge, they had knowledge about the forged nature of the advance licences used by them for duty free imports in view of the following –

(i) In each case, the licence premium paid by DDs in around 50% to 75% of the duty foregone as against the market rate of premium of 98% of the duty foregone. The claim of payment of balance premium in cash over and above the DD amount is an after thought.

(ii) The payment of premium by DDs was in the name of M/s Uno Enterprises, not in the name of the transferee of the licences, which, prima facie, as suspicious and no bonafide buyer would have accepted this. This shows that in spite of circumstances indicating fraud, the importers purchasing the licences did not take any precaution.

3. Since the order could not be issued within a period of three months from the date of hearing, the appeals were re-listed and heard again on 8/1/10 when Shri L.P. Asthana, Advocate, representing M/s R.S. Trade Link, Shri Sanjeev Khurana, M/s Kaveri Enterprises and M/s Ashok Metal Industries; Shri Prabhat Kumar, Advocate, representing M/s Rahuljee & Co. and Shri Anil Goel, Shri J.M. Sharma, Consultant, representing Shri Manoj Shah, and Shri Vijay Kumar, the DR, representing the Department appeared and reiterated the submissions made at the time of hearing on 3/9/2009.

4. We have carefully considered the submissions from both the sides and perused the records. In this case, out of 12 licences, the RAs issued in respect of which had been used by various importers for duty free imports of copper/brass scrap, 7 licences, as reported by the office of the concerned Jt. DGFT, had never been issued and, thus, are bogus. As regards the remaining 5 licences, as per the report of the Jt. DGFT, though the licences bearing the same numbers and same licence holder's name had been issued, but for the import of chemicals, not copper/brass scrap, from which it is clear that the licences heaving the same number and the same licence holder's name but valid for duty free import of copper/brass scrap have been fabricated. This is clear from the –

(i) Statements dated 7/1/03 and 17/1/03 of Shri Vasudev V Kataria of M/s Vindas Chemical Industries P. Ltd.;

(ii) Statements dated 27/6/03, 3/7/03 and 8/7/03 of Shri Mohanlal H Shah of M/s Super Abrasive Toolings ;

(iii) Statements dated 6/1/03 and 23/1/03 of Shri Satish Waman Wagh, Chairman of M/s Supria Chemicals ;

(iv) Statements 13/1/03 and 17/1/03 of Shri Jimmy Baria, Director of M/s Star Industries ;

(v) Statement dated 7/1/02 of Sudhir Tulsyan, Director of M/s Stay Sharp Diamond Tools ;

(vi) Statements dated 7/11/2002 of Shri Parsh Ram Kalra, Director of M/s Oriental Containers ;

(vii) Statements dated 30/6/2000 of Shri Manish Kedia, Proprietor, Star Industries ; and

(Viii) Statements dated 30/9/2002 of Shri Dipu Keshavan, GM of M/s Vipna Export; wherein they have stated that the letterheads of their companies and signatures of their officials have been fabricated for preparing the application for transfer of licence and that the licences valid for import of copper/brass scrap had never been issued to them. Thus all the 12 licences are forged and, in fact, forged/fabricated nature of the licences has not been disputed by any of the appellants. The points of dispute, which are to be decided in this group of appeals are –

(a) Are Shri Manoj Shah and Shri Gautam Chatterjee liable for penalty under Section 112 (a) of the Customs Act, 1962 for abetment of import of copper scrap/brass without payment of duty against forged licences ;

(b) Are the importers – M/s R.S. Trade link, M/s Rahuljee & Co., M/s Ashok Metal Industries and M/s Kaveri Enterprises liable to pay customs duty alongwith interest on the imports of copper/brass scrap against the licences which have been found to be forged and whether these importers are liable for penalty under Section 114A of the Customs Act, 1962

(c) Whether Shri Anil Goel of M/s Rahuljee & Co and M/s B.M. Non-ferrous Pvt. Ltd. and Shri Sanjeev Khurana of M/s R.S. Trade Links, are liable to penalty under Section 112 of the Customs Act, 1962, and

(d) Whether the consignments of copper/brass scrap imported free of duty against forged advance licences are liable for confiscation under Section 111 (d) of the Customs Act 1962 and whether redemption fine in lieu of confiscation under Section 125 of the Customs Act, is imposable on the importers of the goods which are not available for confiscation.

4.1 Our findings on the above points are as under.

5. ***Liability of Shri Manoj Shah and Shri Gautam Chatterjee to penalty under Section 112 of Customs Act, 1962.***

5.1 Shri Manoj Shah is the appellant in appeal No. C/252/06 where the duty free imports had been made by M/s Holy Sales, No. C/253/06 where the duty free imports had been made by M/s Micro Metal and No. C/254/06 when the duty free imports had been made by M/s Dinesh International. Gautam Chatterjee is the Appellant in appeal No. C/555/05 where the duty free imports had been made by M/s Rahuljee & Co., No. C/563/05 where the duty free imports had been made by M/s Ashok Metal Industries, No. C/560/05 when the duty free imports had been made by M/s M.B. Non-ferrous Alloys Pvt. Ltd., No. C/561/05 when the duty free imports had been made by M/s R.S. Trade Links, No. C/562/05 where the duty free imports had been made by M/s Kaveri Enterprises, and No. C/65/06 when the duty free imports had been made by M/s Dinesh International. As discussed above, the advance, licences against which the duty free imports of copper/brass scrap had been made are bogus.

5.1.1 Allegation against Shri Manoj Shah is that while Shri Vishvanath Jalan and Shri Bipin Shah fabricate/forged, DEEC

Books and advance licences, Shri Manoj Shah assisted and abetted is forgery and thus abetted in fraudulent import of copper/brass scrap without payment of duty against forged advance licences and thereby attracting the penal provision of Section 112 (a). Shri Manoj Shah has, however, pleaded that he had no role to play in fabrication forgery of DEEC books and advance licences, that he merely forwarded the DEEC books and licences given by Shri Bipin Shah, to Shri Gautam Chatterjee and that he had no knowledge about forged nature of the documents. However in view of the facts that –

(a) Shri Manoj Shah never cooperated with investigating officers as he remained absconding and never appeared before them in response to their summons to appear on 3/2/2000, 16/2/2000, 28/2/2000, 1/4/2000, 12/6/2000 and 24/5/2001;

(b) Shri Bipin Shah has implicated Shri Manoj Shah in his statements saying that the forged licences used to be handed over to Shri Manoj Shah through Shri Tarkar for being delivered to Shri Gautam Chatterjee and Shri Gautam Chatterjee has implicated Shri Manoj Shah saying that it is Shri Manoj Shah who introduced him to Shri Bipin Shah;

(c) The fact that Shri Manoj Shah arranged the meeting between Shri Gautam Chatterjee and Shri Bipin Shah is clear from the letter dated 7/2/2000 addressed by Shri Manoj Shah to investigating officers wherein he has also mentioned that he earned Rs. 75,000/- in cash for delivery advance licences received from Bipin Shah to Shri Gautam Chatterjee;

(d) The forgery of advance licences has not only been admitted by Shri Bipin Shah in his statements, recovery of blank letter heads of various business concerns in India and Hong Kong, rubber stamps/seals of Punjab National Bank officials, stamps with letter "true copy: and "certified true copy" and other similar incriminating documents from his residence also clearly indicates his role in forgery;

(e) Shri Manoj Shah was receiving a number of advance licences from Bipin Shah knowing very well that Bipin Shah is not a licence broker;

(f) it is difficult to believe Shri Manoj Shah's plea that he was not aware of the forged nature of the licences. Moreover one does not earn huge commission just for forwarding/passing on some documents received from one person to another. In view of this, we hold that Shri Manoj Shah had knowledge about forged nature of the licence and he has abetted in duty free import of copper/ brass scrap against forged licences and thereby attracting the penal provisions of Section 112 (a).

5.2 As regards Shri Gautam Chatterjee, he, in his statements dated 1/2/2000, 2/2/2000, 8/2/2000, 24/2/2000, 7/3/200, 27/3/2000 and 30/6/2000 has stated that he was aware that the licences for which he had arranged the customers (importers), are forged, that he used to get commission at the rate of Rs. 0.25 paise per kg. of scrap from importers and same commission from Shri Bipin Shah and that he knew that M/s Uno Enterprises, in whose name the Demand drafts were being collected from the Importers for purchase of licences, is owned by Shri Bipin Shah. It is also seen that on 1/2/2000 Shri Gautam Chatterjee had been apprehended at the Nhava Sheva Custom house by the DRI officers alongwith Shri Manik Chand Tarkar who had come to the Custom house for issue of RAs against bogus advance licences registered in the Custom house. In view of these circumstances we do not find any merit in the plea of Shri Gautam Chatterjee in the appeals filed by him that he was not aware of the bogus nature of the licences. His plea that his statements are not voluntary also merits dismissal as –

(i) Statements of Shri Gautam Chatterjee, recorded under Section 108 of the Customs Act, 1962, have not been retracted by him immediately after the recording of the same and hence are admissible as evidence ; and

(ii) his statements are corroborated by the Statements of Shri Bipin Shah and Shri Manik Chand Tarkar.

5.3 In view of the above discussion, we hold that Shri Gautam Chatterjee having arranged the sale of advance licences which he knew are bogus, has also abetted the illicit import attracting the penal provisions of Section 112 (a).

6. ***Are the Importers – M/s R.S. Trade Links, M/s Ashok Metal Industries, M/s Rahuljee & Co. and M/s Kaveri Enterprises liable to pay duty alongwith interest in respect of imports of copper scrap against advance licences which were found to be bogus/ forged and whether the importers are liable for penalty under Section 114A of the Customs Act, 1962?***

6.1 M/s Ashok Metal Industries, M/s Rahuljee & Co., M/s R.S. Trade Links and M/s Kaveri Etnerprises, while not disputing the forged nature of the advance licence, against which duty free imports of copper/brass scrap had been made, plead that since they were not aware of the forged nature of the licences, neither the proviso to Section 28 (1) of the Customs Act is applicable no penalty on them can be imposed under Section 114A.

6.1.1 As regards the duty liability, since there is no dispute about the fact that the advance licence against which duty free imports of copper/brass scrap have been made by these importers, are forged and had never been issued by DGFT, in view of –

(a) Hon'ble Madras High Court's judgment in case of **East West Exporters vs. AC, Customs** reported in **1993 (68) E.L.T. – 319 (Mad.)**,

(b) Hon'ble Calcutta High Court's judgment in case of **ICI India Limited vs. CC, Calcutta** reported in **2005 (184) E.L.T. – 339 (Cal.)**, the SLP to Hon'ble Supreme Court against which has been dismissed vide order reported in **2005 (187) E.L.T. A-31 (S.C.)**, and

(c) Judgment of Hon'ble Punjab & Haryana High Court in case of **CC, Amritsar vs. ATM International** reported in **2008 (222) E.L.T. – 194 (P&H),** the imports would have to be treated as if made without any advance licence and accordingly the customs duty exemption would not be available and since the goods had been cleared by availing full duty exemption, the imports would be liable to pay the duty.

6.1.2 As regards the applicability of extended period for recovery of duty under proviso to Section 28 (1) of the Customs Act, 1962, the legal position on this point is now very clear in view of Hon'ble Supreme Court's judgment in case of **CC (P) vs. Aafloat Textiles (I) P. Ltd.** reported in **2009 (235) E.L.T. – 587 – S.C.** wherein invoking the principle of Caveat Emptor the Apex Court has held that in such cases the extended period for recovery of duty under Section 28 (1) of the Customs Act would be applicable. In this regard, para 23,24,25,26,27,28 & 29 of this judgment are reproduced below :-

> "**23.** *Caveat emptor, qui ignorare non debuit quod jus alienum emit*. A maxim meaning "Let a purchaser beware; who ought not to be ignorant that he is purchasing the rights of another.
>
> **24.** As the maxim applies, with certain specific restrictions, not only to the quality of, but also to the title to, land which is sold, the purchaser is generally bound to view the land and to enquire after and inspect the title-deeds; at his peril if he does not.
>
> **25.** Upon a sale of goods, the general rule with regard to their nature or quality is *caveat emptor*, so that in the absence of fraud, the buyer has no remedy against the seller for any defect in the goods not covered by some condition or warranty, expressed or implied. It is beyond all doubt that, by the general rules of law there is no warranty of quality arising from the bare contract of sale of goods, and that where there has been no fraud, a buyer who has not obtained an express warranty, takes all risk of defect in the goods, unless there are circumstances beyond the mere

fact of sale from which a warranty may be implied.

26. No one ought in ignorance to buy that which is the right of another. The buyer according to the maxim has to be cautious, as the risk is his and not that of the seller.

27. Whether the buyer had made any enquiry as to the genuineness of the licence within his special knowledge. He has to establish that he made enquiry and took requisite precautions to find out about the genuineness of the SIL which he was purchasing. If he has not done that, consequences have to follow. These aspects do not appear to have been considered by the CESTAT in coming to the abrupt conclusion that even if one or all the respondents had knowledge that the SIL was forged or fake that was not sufficient to hold that there was no omission of commission on his part so as to render silver or gold liable for confiscation.

28. As noted above, SILs were not genuine documents and were forged. Since fraud was involved, in the eye of law such documents had no existence. Since the documents have been established to be forged or fake, obviously fraud was involved and that was sufficient to extend the period of limitation."

6.1.3 In this case, not only M/s Ashok Metal Industries, M/s Rahuljee & Co., M/s R.S. Trade Links and M/s Kaveri Etnerprises did not take the precaution of ascertaining the genuineness of the advance licence from DGFT's licence bulletin or DGFT's website, the following facts indicate that they were aware of the forged nature of the licences -

(a) The import licences have been purchased through Shri Gautam Chatterjee, an employee of a CHA. No prudent importer would purchase such high value advance licences through a petty employee of a CHA instead of a regular licence broker ;

(b) Licence premium was paid by demand draft in favour of M/s Uno Enterprises, while the licence holder were different persons - like M/s Super Abrasive Tooling, M/s Supric Chemicals, M/s Oriental Containers etc. which should have raised suspicion.

(c) The licence premium in these cases is 50% to 75% as against normal premium of around 98% of the duty foregone. The premium was payable only after the clearance of the goods.

In view of the above, we hold that not only extended period under proviso to Section 28 (1) is available to the Department for recovery of duty, the importers being guilty of deliberate evasion of duty, are also liable for penalty under Section 114A of the Customs Act.

7. ***Are the consignments of copper scrap imported duty free against forged advance licence liable for confiscation under Section 111 (d) & 111 (c) of Customs Act, 1962 and whether Shri Anil Goel of M/s Rahuljee & Co. and M/s B.M. Non-ferrous Pvt. Ltd. and Sanjiv Khurana of M/s R.S. Trade Links liable for confiscation under Section 12 of Customs Act, 1962?***

7.1 It has been pleaded that since the copper/brass scrap was freely importable, the imported consignments are not liable for confiscation under Section 111 (d) and since no post import condition has been violated, the provisions of Section 111 (o) are not attracted and since the imported goods are not liable to confiscation, there is no question of penalty under Section 112 (b) on Shri Anil Goel, Executive Director of M/s Rahuljee & Co. and M/s B.M. Non-ferrous Pvt. Ltd. and Shri Sanjiv Khurana, person incharge of M/s R.S. Trade Links. We do not agree with these pleas of the Appellants. The goods had been imported free of duty by declaring in the Bills of entry that the same are being imported against advance licences, the details of which had been given in the Bills of entry. The importers, as discussed above, however, all along knew that the advance licences against which duty free imports have been made are forged. The importers, have, thus, made a declaration in the Bills of entry, which they knew is false and thereby contravening the provisions of Section 11 (1) of Foreign Trade (Development & Regulation) Act, 1992 readwith Rule 14 of the Foreign Trade (Regulation) Rules, 1993. Since the goods have been imported in contravention of the prohibitions imposed under Section 11 of the Foreign Trade (Development & Regulation) Act, 1992, the same would be liable for confiscation under Section 111 (d) of Customs Act, 1962, which is attracted in cases where the import is contrary to any prohibitions imposed under Customs Act, 1962 or any other law for the time being, in force. Hon'ble Supreme Court, in case of **Om Prakash Bhatia vs. UOI**, reported in **2003 (155) E.L.T. –**

423 (S.C.) has held that the goods imported in violation of the provisions of Section 11 of the Foreign Trade (Development & Regulation) 1992, readwith Foreign Trade (Regulation) Rules, 1993 would be liable for confiscation under Section 111 (d) of Customs Act, 1962. Since, these imports against forged advance licences were not possible without the knowledge and connivance of Shri Anil Goel, Director, M/s Rahuljee & Co. and Shri Sanjiv Khurana, person incharge of M/s R.S. Trade Links, they have actively abetted their illicit imports and therefore penalty under Section 112 (a) has been rightly imposed on these persons.

8. ***Is redemption fine in lieu of confiscation under Section 125 of the Customs Act, 1962 imposable even in the cases where the goods are not available for confiscation***.

8.1 Thus question is relevant in appeal No. C/354/05 filed by M/s Rahuljee & Co., appeal No. C/350/05 filed by M/s R.S. Trade Links, appeal No. C/357/05 filed by M/s Ashok Metal Industries and appeal No. C/356/05 – filed by M/s Kaveri Enteprises. The law on this issue is now very clear. As per the judgment of the Apex Court in case of **M/s Weston Components vs. CCE** reported in **2001 (115) E.L.T. – 278 (S.C.)** redemption fine in lieu of confiscation of the imported goods can be demanded from the importers under Section 125 of the Customs Act, 1962 even if the goods are not physically available for confiscation, if at the time of import, there was dispute/doubt regarding their importability and the same had been allowed to be cleared against a bond or undertaking, but subsequently the goods are held to be liable for confiscation. However as per the judgment of Hon'ble Punjab & Haryana High Court in case of **CC, Amritsar vs. Raja Impex** reported in **2008 (229) E.L.T. – 185 (P&H)**, which has been affirmed by the Apex Court vide judgment reported in **2008 (184) E.L.T. A-36 (S.C.)**, if initially the goods are allowed to be cleared unconditionally without any objection, and subsequently the same are held to be liable to confiscation, the redemption fine under Section 125 of Customs Act cannot be imposed if the same are not physically available for confiscation.

8.2 The question of redemption fine will be decided keeping in view the law laid down by the Apex Court and Hon'ble Punjab & Haryana High Court, as discussed above.

8.2.1 In appeal No. C/357/05 filed by M/s Ashok Metal Industries against order-in-original No. 13/05 dated 17/3/05, out of 183.013 MT of copper scrap valued at Rs. 1,01,20,057/- held as liable for confiscation, 162.203 MT had been clearing without any objection and only 20.81 MT of scrap had been seized, which had been provisionally released against bond. The Commissioner has imposed fine of Rs. 2 lakhs on 20.810 MT of provisionally released scrap and has not imposed any fine on the remaining quantity of scrap allowed to be cleared without any objection and which is not available for confiscation. The Commissioner's order, being in accordance with the law laid down by Hon'ble Supreme Court in case of Weston Components vs. CCE (supra) and Hon'ble

Punjab & Haryana High Court in case of CC, Amritsar vs. Raja Impex (Supra), is upheld.

8.2.2 In appeal No. C/354/05 filed by M/s Rahuljee & Co. against order-in-original No. 12/05 dated 26/2/05, appeal No. C/350/05 filed by M/s R.S. Trade Links against order-in-original NO. 15/05 dated 17/3/05, and appeal No. C/356/05 filed by M/s Kaveri Enterprises against order-in-original No. 16/05, dated 17/3/05, the goods held to be liable for confiscation and on which redemption fine under Section 125 has been imposed, are those which had been cleared without any condition/bond/undertaking and the same are not available for confiscation. Since in these cases the goods had been unconditionally released and as such are not available for confiscation, in view of the law laid down by Hon'ble Punjab & Haryana High Court, as discussed in para 7.2 above, no redemption fine is imposable, and accordingly, the orders imposing redemption fine in lieu of confiscation under Section 125 of the Customs Act, 1962 is the goods not available for confiscation is set aside.

9. In view of our above discussion, -

(a) Appeal No. C/355/05 and C/353/05 filed by Shri Anil Goel, appeal No. C/351/05 filed by Shri Sanjiv Khurana, appeal No. C/252,253 & 254/06 filed by Shri Manoj Shah, appeal No. C/555, 560, 561, 562 & 563/05 and C/65/06 filed by Shri Gautam Chatterjee, and appeal No. C/357/05 filed by M/s Ashok Industries Ltd. are dismissed, and

(b) Appeal No. C/354/05 filed by M/s Rahuljee & Co., appeal No. C/350/05 filed by M/s R.S. Trade Links and appeal No. C/356/05 filed by M/s Kaveri Enterprises, except for setting aside of redemption fine on the goods which had been allowed to be cleared without any objection or condition/bond/undertaking and are not available for confiscation, are dismissed.

10. In view of final disposal of these appeals, the Miscellaneous application No. 670 of 2009 in appeal No. C/356 of 2005 and Misc. application No. 667 of 2009 in appeal No. C/357 of 2005 for extension of stay are dismissed.

(Pronounced in open court on 30/3/2010

(Rakesh Kumar)
Technical Member

(D.N. Panda)
Judicial Member

PK