IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, KOLKATA
EASTERN ZONAL BENCH: KOLKATA

REGIONAL BENCH - COURT NO.2

Excise Appeal No.75909 of 2018

(Arising out of Order-in-OriginalNo.32/COMMR./CE/Haldia/Adjn/2017 dated28.11.2017 passed by Commissioner of Central GST & Central Excise, Haldia Commissionerate.)

M/s.Rashmi Metaliks Limited, Unit-I,
(Shyamraipur, Kharagpur, Dist-Midnapore(West),
West Bengal-721301.)

...Appellant

VERSUS

Commissioner of CGST & CX, Haldia Commissionerate
.....Respondent
(M.S. Building, Customs House,
15/1, Strand Road, Kolkata-700001.)

WITH

(i) Excise Appeal No.75910 of 2018 (Shri Sanjay Kumar Patwari); (ii) Excise Appeal No.75911 of 2018 (Shri Salil Roy);(iii) Excise Appeal No.75912 of 2018 (Shri Sajjan Patwari);(iv) Excise Appeal No.75913 of 2018 (Shri Surendra Jha); (v) Excise Appeal No.75914 of 2018 (M/s. Rashmi Metaliks Limited, Unit-II);(vi) Excise Appeal No.75915 of 2018 (M/s. Rashmi Cement Limited, Unit-I & II); (vii) Excise Appeal No.75916 of 2018 (Shri Sanjib Kumar Patwari); (viii) Excise Appeal No.75917 of 2018 (M/s. Shri Subhendu Biswas); (ix) Excise Appeal No.75918 of 2018 (M/s. Rashmi Cement Limited, Unit-III);

(Arising out of Order-in-Original No.32/COMMR./CE/Haldia/Adjn/2017 dated 28.11.2017 passed by Commissioner of Central GST & Central Excise, Haldia Commissionerate.)

APPEARANCE

Dr.Samir Chakraborty, Senior Advocate & Shri K.K.Acharya, Advocate for the Appellant (s)
Shri K.Chowdhury, Authorized Representative for the Respondent (s)

CORAM:HON'BLE SHRI P.K.CHOUDHARY, MEMBER(JUDICIAL)
HON'BLE SHRI P.ANJANI KUMAR, MEMBER(TECHNICAL)

FINAL ORDER NO. 75015-75024/2021

DATE OF HEARING : 9 October 2020
DATE OF DECISION: 19 January 2021

P.ANJANI KUMAR:

These appeals are directed against, Order-in-Original No. No. 32/ Commissioner/CE/ Haldia/Adjn/2017 dated 28.11.2017, passed by the Commissioner, CGST & Central Excise, Haldia Commissionerate, on the basis of Show Cause Notice, dated 21.09.2016, issued by the Principal Additional Director General of Central Excise Intelligence, Kolkata Zonal Unit (in short, "DGCEI"), after conduct of an investigation.

2.Brief facts of the case are that the appellants are a Group of companies (i)M/s Rashmi Metaliks Ltd (M/s RML) (ii) M/s Rashmi Mataliks Ltd, Unit-II(iii) M/s Rashmi Cements Ltd (M/s RCL), Unit-I & II and M/s Rashmi Cements Ltd, Unit-III; these units were engaged in the manufacture of 'Pig Iron, MS Billet, TMT Bar, MS Wire Rod, Sponge Iron, Portland Cement etc' ; Shri Sanjay Patwari, Shri Surendra Jha and Shri Salil Roy being Directors of M/s. Rashmi Metaliks Ltd, during the material period i.e.October, 2011 to January, 2013); Shri Sanjib Kr. Patwari, Shri Sunil Patwari, Shri Subhendu Biswas and Shri Dipanjan Mohata were directors of M/s M/s Rashmi Cements Ltd (M/s RCL

3. Based on information about alleged evasion of central excise duty by the appellants by way of suppression of facts and clandestine removal of finished excisable goods without payment of central excise duty and undervaluation of such goods removed during the period 2011-12 & 2012-13,officers of DGCEI conducted searches, in the factory premises of Rashmi Metaliks Ltd., Units 1 & 2 and other premises (like staff mess, alleged back offices and godown etc) in Kharagpur, during 17.01.2013 to 20.01.2013; Physical stock taking was undertaken; several documents and records were also seized.

Further, Searches were conducted at the premises of buyers of Rashmi group; statements of several persons were recorded. On the conclusion of investigation Show cause Notice, proposing recovery of a total amount of Rs. 67,28,17,794/- as duty not paid during the period 2011-12 & 2012-13 due to clandestine removal and under valuation, with interest, under Sections 11A(4) and 11AA of the Act; proposing imposition of equal amount as penalty on the appellant companies under Section 11AC of the Act and proposing imposition of penalty, under Rule 26 of Central Excise Rules, 2002, on the directors/ employees of the appellant companies, namely, Sajjan Patwari, Sanjay Patwari, Sanjib Patwari, Salil Roy, Surendra Jha and Subhendu Biswas. The proceedings concluded with the issue of the impugned order confirming duty and penalties as shown below. The following appeals were filed.

Sl. No.	Appeal No.	Name of Appellant M/s or Shri	Duty confirmed (Rs.)	Penalty imposed (Rs.)
1.	75909/2018	RML Unit-1	33,75,07,475	33,75,07,475
2.	75914/2018	RML Unit -2	10,93,71,399	10,93,71,399
3.	75915/2018	RCL Unit 1 & 2	4,85,80,126	4,85,80,126
4.	75918/2018	RCL Unit 3	17,73,58,794	17,73,58,794
5.	75912/2018	Sajjan Patwari, Director RML-1,&2 and RCL-1&-3	-	12,00,00,000
6.	75910/2018	Sanjay Kumar Patwari, Director RML-1&-2	-	8,00,00,000
7.	75916/2018	Sanjib Kumar Patwari, Director RCL-& 3	-	4,00,00,000
8.	75911/2018	Salil Roy, Director RML-1& 2	-	1,50,00,000
9.	75913/2018	Surendra Jha, Director RML-1, RML-2	-	1,50,00,000
10.	75917/2018	Subhendu Biswas, RCL-1&3	-	75,00,000

4. The appellants submitted the following in grounds of appeal along with the appeals:

- The Show Cause Notice was issued on 21/09/2016; relied upon documents were enclosed; however, the relied upon documents were not supplied within 30 days in violation of Rule 24A of Central Excise Rules, 2002;they requested the Commissioner on

27/10/2016 for supply of non-relied upon documents; without giving the documents PH was fixed on 19/09/2017; subsequent hearings were also fixed without returning the said records.

- Few records were given on 16/10/2017 and PH was fixed on 31/10/2017; after being reminded some more records were return to them on 11/13/20/21-11-2017; however, Central Excise Invoices for the years 2011-12 and 2012-13 have not been returned till date.
- Last PH was fixed on 15/11/2017 and in spite of repeated request no further hearing was granted even though most of the documents were returned after the personal hearing.
- The appellants prepared interim reply to show cause notice on 20/12/2017 and was sent to the respondent's office on the same day; they were informed that no such replies will be entertained; therefore, the reply was sent to by speed post and courier on 20/12/2017 and a letter to this effect were also sent to the Commissioner vide letter dated 20/21-12-2017; no reply came from the Commissioner and the Principal Chief Commissioner was also informed.
- The said order was issued on 20/12/2017 but actual dates of dispatch were 22/23-12-2017; they have reason to believe that the date of dispatch was shown in a mala fide manner as 20/12/2017.
- In spite of their several request non-relied upon documents were not completely given by 15/11/2017 i.e, last PH fixed; this is appositely in proper and incorrect.
- Though the order was shown to been passed on 20/11/2017 and dispatched on 20/12/2017; no opportunity was given to the appellants after they submitted an interim reply after getting most of the documents; they have not been given sufficient time to prepare their reply after getting most of the documents; Commissioner confirmed a demand of 67 crores whimsically and denying Principles of Natural Justice repeatedly; it is to note that

Commissioner himself recorded in Para 9 of the order that the hearings was fixed on 19/9-2017, 11-10-2017, 31/10/2017 and 15/01/2017 even when he was aware that the appellants did not get the records totally.

- DGCEI provided them stock verification sheets without calculation sheets though requested by them.
- The learned Commissioner has alleged that the appellants were adopting a delay in strategy only with intension to postpone the proceedings; Commissioner has ignored the fact that some non-relied upon documents was given after the PH i.e, on 20/21-11-2017 and invoices which are of vital importance have not been return till date; the adjudicating authority has violated Rule 24A of Central Excise Rules, 2002 and CBEC instructions contained in Circular No. 171/5/96-CX.6 dated 02/02/1996, Instruction No. 207/09/2006-CX.6 and Circular No. 42/88-CX.6 dated 24/05/1988.
- They relied upon the decisions of Allahabad High Court in the case of M/s Novamet Industries Vs.UOI,2008(2007) (ELT) 363 (ALL) and the following to contend that non return of non-relied upon documents before PH would lead to serious violation of Principles of Natural Justice:

i. Kanwar Natwar Singh Vs Director of Enforcement2010 (262) ELT 15(S.C.)
ii. Silicon Graphics System (India) Private Limited Vs UOI 2006 (204) ELT 247 (Bom.)
iii. Subodh Kumar Chhajer Vs UOI2016 (331) ELT 559 (Cal.)
iv. Parmarth Iron Pvt. Ltd Vs CCE-I2010 (255) ELT 496 (All.)
v. Selvi Paper Mills (P) Ltd Vs CCE Coimbatore 2014 (301) ELT 641 (Tri-Chennai)
vi. Hindustan Dyeing & Printing Work Vs CCE, New Delhi-II
vii. 2013 (297) ELT 55 (Tri.-Del.)
viii. Lekhraj Vs CCE & ST Allahabad 2014 (310) ELT 381 (Tri. Del.)

5. Dr. Samir Chakraborty, Senior Advocate, along with Shri K.K. Acharya, Advocate appeared for the appellants. Relying upon a “List of Events”, presented in a chart form, it has been contended by Dr. Samir Chakraborty, Sr. Advocate, that the appellants had not received the complete non-relied upon seized documents/records and due to the same, the appellants were unable to reply fully to the SCNs; Learned Commissioner though expressly acknowledged the undisputed fact, kept on fixing dates for personal hearing of the case on 19.09.2017, 11.10.2017, 31.10.2017 and 15.11.2017; ultimately passed the ante dated ex-parte impugned order; Commissioner has even not considered the interim replies filed by the appellants while passing the impugned order; this act being violative of the principles of natural justice, has completely vitiated the impugned order and has rendered the same illegal, invalid and ab initio unsustainable.

5.1. It is an undisputed fact that several un-relied documents, as detailed in the appellants' letter dated 15.11.2017 to DGCEI and intimated to the Commissioner by letters dated 23.11.2017 and 20.12.2017, had not been returned to the appellants by the DGCEI in spite of repeated requests, although more than one (1) year had passed since the issuance of the show cause notice. The Commissioner should have appreciated that such an act on the part of the DGCEI authorities was in blatant disregard of the decisions of the Courts and Tribunal andcirculars of CBEC which are binding on them. The authorities should not have continued with adjudication order without complying with the directions/requirement laid down in the said decisions/circulars as regards return of un-relied upon documents. The appellants were not afforded a reasonable opportunity to submit their complete replies to the show cause notice and attend personal hearing in the matter.

5.2. He relies on the following cases and circulars

(i). Silicon Graphics System (India) Private Ltd Vs UOI 2006 (204) ELT 247 (Bom)

(ii). JVS Food Pvt Ltd Vs UOI 2018 (10) GSTL 291 (Raj)

(iii).CCE Vs Saraswati Rubber Works (P) Ltd 2010 (257) ELT A101 (P&H) affirming 2008 (11) STR 544 (T)

(iv). Engineering Technics (India) Vs CCE 2008 (10) STR 107 (T)

(v). Circular F. No. 224/37/2005-CX.6 dated 24. 12. 2008

(vi). Circular No. 1053/2/2017-CX dated 10.03.2017

5.3. He submits that it was held in *Silicon Graphics System (India) Private Ltd Vs (Supra) that*

> "*14. Vide circular dated 13th June, 1988 issued by the Department of Revenue, Ministry of Finance, Government of India, directions have been issued to the concerned officers in relation to the seized documents and return thereof, that in order to avoid the complaints, ordinarily, the department itself should take initiative to return the documents which are not considered useful from the angle of any proceedings to be initiated against the concerned parties. <u>Unrelied documents in the show cause notice may not be relevant for the purposes of Revenue but may be of some relevance to the affected party in preparation of the reply to the show cause notice</u>. <u>It cannot be said that the request made by the petitioner for return of the unrelied documents to enable them to prepare their reply to the show-cause notice was frivolous</u>. If on 16th December, 2005, the petitioner is told to collect the un-relied documents on any working day, with prior appointment and the petitioner collects the un-relied documents on 21st December 2005 and seeks one month's time to reply to the show-cause notice and for postponement of the personal hearing that was fixed on 26th November, 2005, the request of the petitioner cannot be said to be unreasonable. Even if the Commissioner thought that the request of one month was unreasonable, at least a reasonable time could have been given to the petitioner to enable him to file reply to the show cause notice and then the order-in-original could have been passed.*"

6. Shri K. Chowdhury, Ld. A.R. appeared on behalf of the Department and reiterated the findings of OIO.He submits that the only grievance voiced by the appellants at the time of hearingwas that natural justice was denied to them inasmuch as the Learned Commissioner passed the impugned Order ex-parte without considering the interim reply and without considering the fact that they could not file complete reply to the Show Cause Notice, as they did not receive all the non-relied upon documents from the DGCEI before the impugned Order was passed; the order be set aside on this count.

6.1. Countering the allegation that Natural justice was not denied to the appellants, learned Authorised representative, submits that the Learned Commissioner has given elaborate finding as to why he had to decide the cases ex-parte; Indisputably, learned Commissioner took adequate steps to ensure that the appellants receive the non-relied upon documents so that they could file reply to the show cause notice and present their cases effectively; learned Commissioner accorded the appellants enough opportunity to present their cases by filing reply and attending Personal Hearing; but the appellants did not avail the opportunity and tried to delay the proceedings instead; appellants' grievance about non-consideration of the purported interim reply is unfounded because the impugned Order was passed on 28-11-2017, whereas the purported interim reply was prepared on 20-12-2017; therefore, it cannotbe said that natural justice was denied to the appellants.

6.2. Learned Authorised representative submits that assuming but without admitting that natural justice was denied to the appellants, remand is the proper remedy. He submits that Hon'ble Supreme Court in the case of Uma Nath Pandey vs. State of U.P[2010(20) STR 268(S.C)] held that "*whenever an order is struck down as invalid being in violation of principles of natural justice, there is no final decision of the case and fresh proceedings are left upon. All that is done is to vacate the order assailed by virtue of its inherent defect, but the proceedings are not terminated*." He submits that Bombay High Court in the case of CC (General) [2008 (230) ELT 242 (Bom) and Hon'ble Punjab & Haryana High Court in the case of CCE vs. Azad Engineering Works 2006 (202) ELT 423 (P&H.) held similarly. He further submits that in all the cases relied upon by the appellants during hearing, the Hon'ble Court/Tribunal remanded the matters for de-novo decisions after finding that natural justice was denied.

7. Heard both sides and perused the records. The brief issue that needs to be addressed in the instant case is whether in the facts and circumstances of the case, there has been violation of principles of natural justice and if so the impugned order needs to be set aside on the premise that there has been gross violation of the principles of natural justice or if such violations or defects in the impugned order are curable.

8. We find that learned commissioner records that the Noticees were avoiding to appear the personal hearing; DGCEI were intimated that Adjudication proceedings were badly affected for non-cooperation of the Noticees dueto non-availability of the non-relied upon documents which were lying at DGCEI and that DGCEI were requested to look into the matter on priority so as to prevent any type of further plea taken by the Noticees. Learned Commissioner finds that the Noticees were given last and final of Personal Hearing on 15.11.2017**;** none of the Noticees appeared on that day; noticees, in their reply dated 15.11.2017, have intimated that they have received some documents from the DGCEI office on 11.11.2017; noticees were requested to collect the copies of non-relied upon documents on Monday i.e. on 13.11.2017 from the DGCEI office; noticees informed commissioner that on receipt of non-relied upon documents, they need at least 5 (five) days' time to reconcile as to whether all documents, whether relied upon or non-relied upon have been received and in case the documents were handed over, then they require at least 2 (Two) months' time to go through the notice to submit reply; learned commissioner also that his office received a copy of the letter dt.13.11.2017, issued by the DGCEI addressed to the Noticees, wherein it was intimated that the date was fixed on 09.11.2017 to verify and to receive the Non-relied upon documents by the Noticees from their end. However, the learned commissioner finds that Personal hearing was granted on 19.09.2017, 11.10.2017, 31.10.2017 and 15.11.2017but no one from the Noticees appeared for hearing; looking to the circumstances of the case, no further defence is required from the Noticees as the Noticees have undertaken the delaying strategy only to postpone the adjudicating proceedings by requesting to allow them for a further period of another two months for submission of their reply on flimsy grounds; they have hardly shown any urgency to collect the documents in time to comply with the law of the land; the sole intention as is apparent has been to delay the due process of law to take its own course; appellants require the relied upon documents to prepare their defence and the same have been supplied to them; non-relied upon documents also were supplied by the investigating agency; accordingly, he had no option but to proceed with the adjudication proceedings for deliverance of justice to both sides.

9. Learned commissioner records the following findings with respect to the above.

> ***10.1.*** *I have carefully gone through the entire case, materials available on record, and minutely perused the Noticees' reply against the notice of the personal hearing. I find that eighteen numbers of the noticees did not appear for Personal Hearing though enough opportunities were given to them. Under the circumstances, there appears no option except to proceed to decide the case ex - parte**.** In this regard, I rely upon the case of Saketh India Ltd Vs Union of India 2002 (143) ELT 274 (Del.) of the Hon'ble Tribunal wherein it was held that and to quote; "Thus it is a clear case where a proper opportunity was given to the appellant to reply to show cause notice and to make oral submission, if any. However, fault lies with the appellant in not availing of these opportunities. For this appellant has to blame itself. The appellant cannot turn around and blame the respondents by alleging that the Adjudicating authority violated principles of natural justice or did not give sufficient opportunity to the appellant to present its case."*
>
> ***10.2.*** *I also find that Hon'ble Tribunal in the case of V.K. Thampi V/s CCE, Cochin 1988(33) ELT 424 (Tn.), relying on the decision of the Apex Court reported in (AIR 1962 SC 646 and AIR 1957 SC 842) have held that an adjudicating authority is entitled to proceed ex-parte if the person concerned does not appear before it in response to notice issued by it.*

10. We find that in the instant case investigation was initiated in January 2013 and the show Cause Notice came to be issued in September 2016. It is seen that the appellants have written a letter dated 27-10-2016 to the commissioner requesting for supply of relied upon and non-relied upon documents; commissioner fixed a personal hearing on 12-9-2017; appellants, vide letter dated 18-9-2017, requested that at least two months of time may be given to file a reply after all the documents are supplied. Commissioner wrote a letter dated 26-9-2017 to DGCEI requesting them to hand over non-RUDs to noticees, either in original or photocopies and intimated the appellants that next PH was fixed on 11.10.2017. The appellants, vide letter dated 6-10-2017, intimated the Commissioner that they have not received any communication from DGCEI fixing the date for return of non-RUDs and again requested for at least 2 months' time to file reply from the date of receipt of records and documents. DGCEI, informed commissioner that 9-10-2017 was fixed for return of non-RUDs; Commissioner wrote to DGCEI on 11-10-2017 requesting them to inform as to whether the appellants have received the non-RUDs or not and to supply the documents if not already done. Commissioner fixed next hearing on 31-10-2017; appellants claim to have received only a small part of the non-relied upon seized documents from DGCEI; appellants, vide letter 25-10-2017, informed DGCEI about non-receipt large number of seized non-relied documents and printouts from the pen drive, CPU and CDs and vide letter 30-10-2017, they informed commissioner about non receipt of the same; in spite of the same commissioner fixed personal hearing on 15-11-2017; vide letter dated 8-11-2017 DGCEI informed the appellants to collect the non- relied upon documents from their office on 09.11.2017. Vide letters dated 13/15-11-2017, the appellants informed the Commissioner about receipt of only some documents from DGCEI and submitted that they would require about 5 days to reconcile as to whether all documents have been received or not; they would require another two months to prepare and file their replies after all the documents were received. Appellants again wrote to DGCEI, vide letter dated 15-11-2017 requesting to supply the remaining documents enclosing a complete list. Appellants submit that DGCEI returned only partially the documents contained in 28 seized files and seized copies of DSA of Rashmi Cement Ltd; most of the remaining seized un-relied upon documents, specified in the annexures to the letter dated 15.11.2017, were not returned; out of the 80 files of non-RUD seized s, only 28 files were returned; out of 20 documents detailed, only the ones at Sl. No. 4 were returned; they are not returned till date. Appellants vide letter dated 1-12-2017 submitted interim reply and vide letter dated 20-12-2017, drew the attention of commissioner to the fact of the DGCEI not returning all the non-RUDs and requesting intervention in the matter for return by DGCEI and requesting his intervention in returning the remaining un-relied documents and for according an opportunity of personal hearing thereafter. However, in the meantime the personal hearing was held though not attended by the appellants and order was passed and issued. Whatever be the reasons it appears, the appellants were not given requisite documents and enough time to represents themselves and the order was passed ex-parte.

11. We find that Apex Court in the case of Kanwar Natwar Singh Vs Director of Enforcement held that

> ***24.*** *The concept of fairness may require the Adjudicating Authority to furnish copies of those documents upon which reliance has been placed by him to issue show cause notice requiring the noticee to explain as to why an inquiry under Section 16 of the Act should not be initiated. To this extent, the principles of natural justice and concept of fairness are required to be read into Rule 4(1) of the Rules. Fair procedure and the principles of natural justice are in built into the Rules. A noticee is always entitled to satisfy the Adjudicating Authority that those very documents upon which reliance has been placed do not make out even a prima facie case requiring any further inquiry. In such view of the matter, we hold that all such documents relied on by the Authority are required to be furnished to the noticee enabling him to show a proper cause as to why an inquiry should not be held against him though the Rules do not provide for the same. Such a fair reading of the provision would not amount to supplanting the procedure laid down and would in no manner frustrate the apparent purpose of the statute.*
>
> ***Part V: Duty of adequate disclosure***
>
> ***25.*** *The real question that arises for consideration is whether the Adjudicating Authority even at the preliminary stage is required to furnish copies of all the documents in his possession to a noticee even for the purposes of forming an opinion as to whether any inquiry at all is required to be held. In this regard, learned senior*

counsel for the appellant pressed into service the doctrine of duty of adequate disclosure which according to him is an essential part of the principles of natural justice and doctrine of fairness. A bare reading of the provisions of the Act and the Rules do not support the plea taken by the appellants in this regard. Even the principles of natural justice do not require supply of documents upon which no reliance has been placed by the Authority to set the law into motion. Supply of relied on documents based on which the law has been set into motion would meet the requirements of principles of natural justice. No Court can compel the Authority to deviate from the statute and exercise the power in altogether a different manner than the prescribed one. As noticed, a reasonable opportunity of being heard is to be provided by the Adjudicating Authority in the manner prescribed for the purpose of imposing any penalty as provided for in the Act and not at the stage where the Adjudicating Authority is required merely to decide as to whether an inquiry at all be held into the matter. Imposing of penalty after the adjudication is fraught with grave and serious consequences and therefore, the requirement of providing a reasonable opportunity of being heard before imposition of any such penalty is to be met. In contradistinction, the opinion formed by the Adjudicating Authority whether an inquiry should be held into the allegations made in the complaint are not fraught with such grave consequences and therefore the minimum requirement of a show cause notice and consideration of cause shown would meet the ends of justice. A proper hearing always include, no doubt, a fair opportunity to those who are parties in the controversy for correcting or contradicting anything prejudicial to their view. Lord Denning has added : "If the right to be heard is to be a real right which is worth anything, it must carry with it a right in the accused man to know the case which is made against him. He must know what evidence is given and what statements have been made affecting him: and then he must be given a fair opportunity to correct or contradict them" [see Kanda v. Government of Malaya - [1962] AC 322].

11.2. We also find thatBombay High Court in the case ofSilicon Graphics System (India) Private Limited Vs UOI (supra) held that

> ***14.*** *Vide circular dated 13th June, 1988 issued by the Department of Revenue, Ministry of Finance, Government of India, directions have been issued to the concerned officers in relation to the seized documents and return thereof, that in order to avoid the complaints, ordinarily, the department itself should take initiative to return the documents which are not considered useful from the angle of any proceedings to be initiated against*

> *the concerned parties. Un-relied documents in the show-cause notice may not be relevant for the purposes of Revenue but may be of some relevance to the affected party in preparation of the reply to the show cause notice. It cannot be said that the request made by the petitioner for return of the un-relied documents to enable them to prepare their reply to the show-cause notice was frivolous. If on 16th December, 2005, the petitioner is told to collect the un-relied documents on any working day, with prior appointment and the petitioner collects the un-relied documents on 21st December 2005 and seeks one month's time to reply to the show-cause notice and for postponement of the personal hearing that was fixed on 26th November, 2005, the request of the petitioner cannot be said to be unreasonable. Even if the Commissioner thought that the request of one month was unreasonable, at least a reasonable time could have been given to the petitioner to enable him to file reply to the show-cause notice and then the order-in-original could have been passed.*

11.3. We also find that the ratio of the decision of the above cases and others cited above, establish that non return of documents even though non-relied upon constitutes non observance of the principles of natural justice; it is not for the authority to decide whether such documents requested for are really required for filing their defence. We also find that CBEC, vide Circular issued under F. No. 224/37/2005-CX.6 dated 24.12.2008, has specifically directed that "*After issue of SCN, all un-relied upon documents must be returned to the person from whom it was received, within 15 days of issue of SCN*."

12. We find that while the show cause notice was issued in September 2016, the RUDs and Non-RUDs were not returned to the appellants in clear violation of Rules and Boards instructions cited above. After sleeping over for about a year, the clamour for completing the adjudication proceedings has started. Numerous correspondences were initiated between the appellant, the adjudicating authority and the DGCEI from October 2017. The very fact that personal hearing was fixed 4 times, in a span of about 2 months, even when the adjudicating authority was aware that the appellants did not receive all the documents, is itself a proof that principles of natural justice were not followed. A huge case of evasion of 64 Cr by 4-5 units, involving a number of searches, number of statements recorded and humungous number of documents recovered definitely calls for a more careful and responsible handling by the department in adhering to rules instructions and provisions of law. It is very easy to brush aside the claims of the appellant as delaying tactics. Understandably, the charged appellants would see their interest in getting things delayed. However, department should have taken commensurate steps so that the appellants could not raise such a claim in the first instance. Understandably, replying to such a big case takes some time after receiving the records and to this extent the appellants are within their rights. We find that the revenue erred seriously in sleeping over one year, in rushing through the motions thereafter through a period of mere 2-3 months, in fixing personal hearing on 4 dates while correspondence for handing over documents is going on etc. Consequentially, the fact remains that the appellants were not provided with the RUDs/ Non-RUDs completely or in even time; the appellants were denied a right that was available to them as per Rule 24A of Central Excise Rules, 2002 and CBEC instructions contained in Circular No. 171/5/96-CX.6 dated 02/02/1996, Instruction No. 207/09 /2006-CX.6 and Circular No. 42/88-CX.6 dated 24/05/1988. Therefore, we find that they were not given opportunity to represent themselves. We find that this is a clear case of not following principles of natural justice.

13. Having found that the principles of natural justice have been violated in the instant case, we turn our attention to next course of action. We find that while the learned counsel for the appellants' requests for setting aside the order and allowing the appeals; learned Authorised Representative, while not accepting that there has been any such violation, submits that in case the bench finds that the principles of natural justice have been violated, the next course would be remand of case to the authorities. We find that even in the cases relied upon by the appellants, the appeals were allowed only by way of Remand. We find, as per our discussion above, that the department did not properly adhere to the procedures in a case involving alleged evasion of 64 Cr of duty; the proceedings were rushed through after lying low for about a year of issuance of SCN, even though the adjudicating authority was aware that efforts were on for obtaining the records seized. We find that the appellants were not provided the non-relied upon documents and thus were denied an opportunity to file a written reply to their satisfaction and to represent themselves during the personal hearing. However, we find that the lapse on the part of the Revenue is a curable defect. In the interest of Justice, reasonable opportunity needs to be given to the Revenue to cure the defect and to conduct the adjudication adhering to the principles of natural Justice. Such an opportunity is only possible when the case is remanded back to the adjudicating authority so that the defects are cured and rectified and an opportunity is given to the respondents to file a reply and to attend the personal hearing. Tribunal cannot set aside the order for curable defects and more so when huge evasion of duty is alleged. It is pertinent to note that neither the Appellants and nor the Department have submitted anything in their defence as far as the merits of the case are concerned. Under the circumstances, we find that it would be travesty of justice if the Tribunal decides the matter on merits. The only course, available to us is to send the case back to the adjudicating authority for passing the order after curing the defects i.e. after observing principles of natural justice in letter and spirit.

14. In view of the above, the appeals are allowed by way of remand to the adjudicating authority for *de novo* consideration after observing the principles of natural justice. The concerned authorities are directed to make available documents/copies, a request for which is already made, to the appellants, within 4 weeks of receipt of this order; all the appellants are directed to file their written reply within further 8 weeks of the receipt of documents; the adjudicating authority is directed to complete the adjudication proceedings within further 8 weeks of the receipt of reply from the appellants, as may be practicable. Needless to say that the appellants would cooperate with the Adjudicating Authority and would not seek documents which were not requested for earlier or would not seek unnecessary adjournments.

(Order Pronounced in the open Court on 19 Jan 2021)

SD/
(P.K.CHOUDHARY)
MEMBER (JUDICIAL)

SD/

(P.ANJANI KUMAR)
MEMBER (TECHNICAL)