

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE
TRIBUNAL, MUMBAI
REGIONAL BENCH**

Customs Appeal No. 85235 of 2013

(Arising out of Order-in-Original No. 117/2012 dated 08.11.2012
passed by Commissioner of Customs (Imports), Nhava Sheva)

Shri Kaushal A. Shah

Appellant

3A, Avsar Bldg., 3rd floor,
77/81, Kazi Sayed Street,
Mumbai 400 003.

Vs.

Commr. of Cus. (Imp), Nhava Sheva

Respondent

Jawaharlal Nehru Custom House,
Post Uran, Dist. Raigad,
Sheva 400 707.

WITH

Customs Appeal No. 85236 of 2013

(Arising out of Order-in-Original No. 117/2012 dated 08.11.2012
passed by Commissioner of Customs (Imports), Nhava Sheva)

M/s. Riya Chemicals

Appellant

3A, Avsar Bldg., 3rd floor,
77/81, Kazi Sayed Street,
Mumbai 400 003.

Vs.

Commr. of Cus. (Imp), Nhava Sheva

Respondent

Jawaharlal Nehru Custom House,
Post Uran, Dist. Raigad,
Sheva 400 707.

WITH

Customs Appeal No. 85579 of 2013

(Arising out of Order-in-Original No. 117/2012 dated 08.11.2012
passed by Commissioner of Customs (Imports), Nhava Sheva)

M/s. Krishna Chemicals

Appellant

108, Anand Bldg.,
82/84, Kazi Sayed Street
Mumbai 400 003.

Vs.

Commr. of Cus. (Imp), Nhava Sheva

Respondent

Jawaharlal Nehru Custom House,
Post Uran, Dist. Raigad,
Sheva 400 707.

WITH

Customs Appeal No. 85581 of 2013

(Arising out of Order-in-Original No. 117/2012 dated 08.11.2012
passed by Commissioner of Customs (Imports), Nhava Sheva)

Shri Jiten Shah

108, Anand Bldg.,
82/84, Kazi Sayed Street
Mumbai 400 003.
Vs.

Appellant

Commr. of Cus. (Imp), Nhava Sheva

Respondent

Jawaharlal Nehru Custom House,
Post Uran, Dist. Raigad,
Sheva 400 707.

AND

Customs Appeal No. 85582 of 2013

(Arising out of Order-in-Original No. 117/2012 dated 08.11.2012
passed by Commissioner of Customs (Imports), Nhava Sheva)

M/s. Popular Chemicals & Co.

108, Anand Bldg.,
82/84, Kazi Sayed Street
Mumbai 400 003.
Vs.

Appellant

Commr. of Cus. (Imp), Nhava Sheva

Respondent

Jawaharlal Nehru Custom House,
Post Uran, Dist. Raigad,
Sheva 400 707.

Appearance:

Shri Rohan Balani, Advocate, for the Appellant
Shri A.P. Kothari, Additional Commissioner, Authorised
Representative for the Respondent

CORAM:

Hon'ble Mr. S.K. Mohanty, Member (Judicial)

Hon'ble Mr. Sanjiv Srivastava, Member (Technical)

FINAL ORDER NO. A/**86704-86708/2019**

Date of Hearing: 18.06.2019

Date of Decision: 24.09.2019

PER: SANJIV SRIVASTAVA

These appeals are directed against the order in
original no.117/2012 dated 08.11.2012 of Commissioner
Customs (Import), Nhava Sheva. By the impugned order
Commissioner has held as follows:

- i. "I impose penalty of Rs 9,00,000/- (Rupees Nine Lakhs Only) upon M/s Popular Chemicals under Section 112(a) of Customs Act, 1962.*

- ii. *I impose penalty of Rs 10,00,000/- (Rupees Ten Lakhs Only) upon M/s Riya Chemicals under Section 112(a) of Customs Act, 1962.*
- iii. *I impose penalty of Rs 2,50,000/- (Rupees Two Lakhs Fifty Thousand Only) upon M/s Shlok Chemicals under Section 112(a) of Customs Act, 1962.*
- iv. *I impose penalty of Rs 2,00,000/- (Rupees Two Lakhs Only) upon M/s Rose Chemicals under Section 112(a) of Customs Act, 1962.*
- v. *I impose penalty of Rs 1,00,000/- (Rupees One Lakhs Only) upon M/s Krishna Chemicals under Section 112(a) of Customs Act, 1962.*
- vi. *Since penalty has been under Section 112(a) of Customs Act, 1962 upon above mentioned proprietary firms, I refrain from imposing penalty under Section 112(a) ibid. I also do not impose penalty under Section 114A ibid upon firms*
- vii. *I impose penalty of Rs 25,00,000/- (Rupees Twenty Five Lakhs Only) each upon Shri Jiten Shah and Kaushal Shah respectively under Section 114AA ibid.*
- viii. *I refrain from imposing penalty under Section 112(a)/ 114AA ibid upon M/s Vipul Pranal Doshi and M/s Standard Shipping Agency CHA's .*
- ix. *This order is passed without prejudice to any other action that were being taken under this or any other Act for time being in force."*

1.2 Here we are concerned with the appeals filed by Shri Kaushal A Shah, Shri Jiten Shah, M/s Riya Chemicals, M/s Popular Chemicals & Co and M/s Krishna Chemicals.

2.1 Appellants had imported certain goods and sold the same on high seas to M/s R R Enterprises and M/s R Nandlal & Sons by misdeclaring the value. Thus by misdeclaring the value, appellants had abetted the said two

firms mis-declare the value and short pay the duty. In his statement recorded under Section 108, Shri Jiten Shah has admitted the misdeclaration.

2.2 A show cause notice was issued to this importers (filing the Bill of Entry) and the appellants. The importers who filed the Bill of Entry admitted and paid the differential duty and got the matter settled through the Settlement Commission.

2.3 Commissioner proceeded to adjudicate the case against the remaining noticees and for act of abetting the act of misdeclaration for which goods were liable to confiscation, imposed penalty under section 112(a) of Customs Act, 1962 and also imposed penalty under Section 114AA on the persons responsible for filing or causing the documents to be filed mis declaring the value.

2.4 Aggrieved by the impugned orders appellants have preferred these appeal.

3.1 We have heard Shri Anil Balani, Advocate for the Appellant and Shri A.P. Kothari, Additional Commissioner, Authorized Representative for the revenue

3.2 Arguing for the appellants learned counsel submitted that-

- Section 111(d) and 111(m) could not have been invoked against them as the goods under importation were neither prohibited goods, nor were misdeclared by them. In fact appellants had not even filed the Bill of Entry in respect of the imported goods.
- Just because person filing the Bill of Entry has settled the issue and has admitted and paid the differential duty charge of undervaluation do not get established against them.
- Penalty in case of undervaluation could not have been imposed without referring to Customs Valuation (Determination of Price Of Imported Goods) Rules, 2007

- Penalty under Section 114AA is not sustainable, as this section is applicable only in cases of fraudulent exports to avail the benefit of export promotion scheme (Twenty Seventh Report of Standing Committee on Finance on the Taxation Law (Amendment) Bill, 2005. This view has been expressed by the Tribunal in case of Bosch Chasis Systems India Ltd [2015 (325) ELT 372 (T)], and in Principal Commissioner/ Commissioner orders as follows:
 - Order in Original No 190/2016-17/CC/NS-I/JNCH dtd 9.03.2017.
 - Order in Original No 78/2012/CAC/CC(I)/AB/VI dtd 3.12.2012.
- In the following decisions it has been settled that once the main parties settle the case penalty cannot be imposed on the co-noticee's-
 - S K Colombowala [2007 (220) ELT 492 (T)]
 - Windoors (India) [2009 (246) ELT 345 (T)]
 - Mukesh Garg [2012 (278) ELT 303 (T)]
 - Vijay R Bohra [2010 (260) ELT 290 (T)]
 - Pearl Polymers Ltd [2008 (226) ELT 566 (T)]
 - Radiant Silk Mills (P) Ltd [2013 (288) ELT 311 (T)]
 - Virender Bansal [2015 (317) ELT 796 (T)]
 - Him Logistics [2017 (49) ELT 121 (T)]
- It is also settled law that the penalties imposed on co-noticee could not have exceeded the penalty imposed on main noticee. {Shitala Prasad Sharma [2005 (183) ELT 21 (T)]}

- Also penalty could not have been imposed on the firm as well as proprietor separately.

3.3 Arguing for the revenue learned authorized representative submitted-

- Shri Jiten Shah who is proprietor of M/s Popular Chemicals and power of attorney holder for M/s Krishna Chemicals have in his statement admitted about mis-declaring the value, and has thus abetted in the mis declaration of value. Similarly Shri Kaushal A Shah has admitted about misdeclaring the value.
- The issue in respect of mis declaration of value has been admitted by the importers (person filing the B/E) as they have admitted and got the matter settled through settlement commission.
- Since the charges and role of appellants in the act of misdeclaring the goods has been admitted the penalties imposed on the appellants are justified.
- Tribunal has in case Mamta Garg [2018 (359) ELT 77 (T)] held that penalties could have been imposed on the persons to whom the notice has been issued even if the persons on whom demand has been made settles the issue by approaching settlement commission.

4.1 We have considered the impugned order, submissions made in the appeals and during the course of argument of appeals.

4.2 Once the person who has filed the Bill of Entry has admitted and paid the differential duty on account of misdecalaration of value, the value as determined in the show cause notice and by the settlement commission will become the value under section 14 of the Customs Act, 1962. We do not find any merits in the submissions of the Appellant that the Commissioner should have again considered and re-determined the value, as per the

Customs Valuation (Determination of Price of Imported Goods) Rules, 2007. Once the value has been found declared the goods become liable for confiscation under Section 111(m) of the Customs Act, 1962 and the person misdeclaring or abetting in such misdeclaration is liable to penalty under section 112(a).

4.3 Appellants Shri Kaushal A Shah and Shri Jiten Shah are responsible for issuance of the invoice misdeclaring the value. This invoice was the document which was the basis for filling the B/E misdeclaring the value of imported goods. Once it is established that Shri Kaushal A Shah and Shri Jiten Shah were responsible for filing or causing to file the documents misdeclaring the value of goods, section 114AA gets attracted.

4.4 We are also not in agreement with the submissions made by the appellant by referring to Twenty Seventh Report of Standing Committee on Finance on The Taxation Law (Amendment) Bill, 2007, to state that Section 114AA of Customs Act, 1962 will apply only to the case of fraudulent exports to avail the benefit of export promotion scheme. Hon'ble Supreme Court has in case of Doypack Systems Pvt Ltd. [1988 SCC (2) 299] held as follows:

"In our opinion Sections 3 and 4 of the Act interpreted either on their own language or along with sections 7 and 8, are not ambiguous; so documents are not relevant. It was further urged, that even if to construe the language is not clear and there is need to resort to aids of construction, it is clear that such aids can be either internal or external.

Internal aids of construction are definitions, exceptions, explanations, fictions, deeming provisions, headings, marginal notes, preamble, provisos, punctuations, saving clauses, non-obstante clauses etc. The notings in the files of various officials do not fall in the category of internal aids for consideration. Dictionaries, earlier acts, history of legislation, Parliamentary history, parliamentary proceedings, state of law as it existed when the Act was

passed, the mischief sought to be suppressed and the remedy sought to be advanced by the Act are external aids. Documents which have been required to be produced do not, in our view fall within the category of external aids as indicated. Having considered the facts and circumstances of the case, we are unable to accept the prayer of the petitioner to direct disclosure and production of the documents sought for. In our opinion, the language used in section 4 of the Act, is clear enough read with section 3 of the Act. We have set out the provisions of the said two sections. Section 3 states that "on the appointed day every textile undertaking and the right, title and interest of the Company in relation to every textile undertaking shall stand transferred to and shall vest in the Central Government". Section 4 says that "section 3 shall be deemed to include all assets, leaseholds, powers, authorities, privileges and all properties, movable and immovable ... pertaining to the textile undertakings and all other rights and interests in or arising out of such property".

Francis Bennion in "Statutory Interpretation 1984 Edition page 526 para 238 states that Hansard reports, and other reports of parliamentary proceedings on the Bill which became the Act in question, are of obvious relevance to its meaning. They are often of doubtful reliability however. (emphasis supplied) The documents in question which are sought for do not relate to the enacting history or any past enactment or the present enactment. The notings made in various Departments at various levels by the officers namely, the Under Secretary, Deputy Secretary, Joint Secretary; Secretary etc., whatever their view might be, is not the view of the Cabinet. The ultimate decision is taken by the Cabinet. So the notings cannot and are not guides as to what decision the Cabinet took. See for example the Task Force report referred to in National Textile Corporation Ltd. v. Sitaram Mills Ltd. & others (supra). This Task Force Report demonstrated the irrelevancy of the

documents summoned to be produced. The Task Force Report manifested that certain mills were viable. But from the circumstance under which managements of these mills were taken over, it was clear that the Cabinet had taken the decision contrary to what was contained in the Task Force Report. But it appears that the decision of the Cabinet was different from the views of the Officers at various levels. As Bennion has stated at para 261 (page 560 of the same book) that in interpreting an enactment a two stage approach is necessary. Here there is no real doubt on an informed basis as we shall indicate hereafter about the real meaning of the enactment. There is therefore no question of resolving the doubt. The second stage does not arise here.

This Court in Sanjeev Coke Manufacturing Company v. Bharat Coking Coal Ltd. and another (supra) held that no one may speak for the Parliament and Parliament is never before the Court. After the Parliament has said what it intends to say, only the Court may say what the Parliament meant to say. None else. See also in this connection Dr. (Mrs.) Sushma Sharma and others v. State of Rajasthan and others (supra). The objects and purposes of the person who initiated the Bill are not admissible as aids to construction since it is impossible to contend that such purposes in the minds of some officials of the Government before the matter is discussed by the Cabinet, would at all be relevant. See in this connection State of West Bengal v. Union of India (supra) where this Court reiterated that the Statement of Objects and Reasons, accompanying when introduced in the Parliament cannot be used to determine the true meaning and effect of the substantive provisions of the statute. Such statement cannot be used to show that the legislature did not intend to take over any particular property. See also The Central Bank of India v. Their Workmen (supra).

It has to be reiterated, however that the objects and reasons of the Act should be taken into consideration in

interpreting the provisions of the statute in case of doubt. This is the effect of the decision of this Court in K.P. Verghese v. The Income tax Officer, Ernakulam and another, [1982] 1 S.C.R. 629, where this Court reiterated that the speech made by the Minister over of the Bill explaining the reason for the introduction of the Bill could certainly be referred to for the purpose of ascertaining the mischief sought to be remedied by the legislation and the object and purpose for which the legislation was enacted. It has been reiterated that interpretation of a statute being an exercise in the ascertainment of meaning, everything which is logically relevant should be admissible. See in this connection the observations of this Court in Chern Taong Shang & anr. etc. etc. v. Commander S.D. Baijal & Ors., J.T. 1988 1 S.C. 202. The documents now sought for by the petitioner do not fall within this category. It is neither the object and scheme of the enactment nor the language used therein, that is sought for in the instant case. It is certainly relevant to know the mischief that was intended to be remedied. But in the documents in question which the petitioner is seeking no such correlation has been established. These are, therefore, not relevant. We reiterate that no officer of the Department can speak for the Parliament even after the Act has been passed. This Court has to interpret the Act on the basis of informed basis by applying external and internal aids if the language is ambiguous. In the words of Lord Scarman "We are to be governed not by Parliament's intentions but by Parliament's enactments". See Cross "Statutory Interpretation" 2nd Edition page 22. Blackstone in his "Commentaries on the Laws of England" (Facsimile of 1st edn. 1765, University of Chicago Press 1979) Vol. 1 at 59 suggests "The fairest and most rational method to interpret the will of the legislator is by exploring his intention at the time when the law was made, by signs most natural and probable. And these signs are the words, the context, the subject matter, the effect and

*consequence, or the spirit and reason of the law." The documents whose production is sought for are none of these. So in our opinion these are not relevant. We must further reiterate that the Members of Parliament had before them only the Bill. The notings of the various officials in the files were not before the Parliament. Therefore members could not be attributed with the knowledge of the notings in the files. Therefore, the notings made by the officials are not relevant. In this connection reliance may be placed on the principles of interpretation as enunciated by the Federal Court in *Auckland Jute Co. Ltd. v. Tulsi Chandra Goswami*, [1949] F.C.R. 201 at 244. It is trite saying that the interpreter of the statute must take note of the well known historical facts. In conventional language the interpreter must put himself in the arm chair of those who were passing the Act i.e. the Members of the Parliament. It is the collective will of the Parliament with which we are concerned. See in this connection the observations of the Federal Court in *RM.AR.AR.R.M.AR. Umayhal Achi v. Lakshmi Achi and others*, [1945] F.C.R. 1. We are therefore, of the opinion that the documents sought for are not relevant for the purpose for which they were sought for. In this case we are concerned only with the construction of the statute to determine whether the shares vested in the Government or not. As Lord Reid has said in *Black-Clawson International Ltd. v. Papierwerke Waldhof Aachen A G*, [1975] A.C. 591 at 613 "We often say that we are looking for the intention of Parliament, but that is not quite accurate. We are seeking the meaning of the words which Parliament used. We are seeking not what Parliament meant but the true meaning of what they said." See in this connection the discussion in *Cross Statutory Interpretation-2nd Edition*, pages 20-30."*

Thus in our view when the wordings of the statute are plain and unambiguous, courts and tribunals could not have taken a contrary view, by relying on the external aids as

have been sought to be relied upon by the appellants. In our view the decisions of tribunal and Commissioner having failed to consider the decision of Apex Court as referred above are per-incuam and cannot be binding precedent. Apart from the legal submission made by placing the reliance on the 27th Report, appellant have not been able to counter the finding of facts recorded by the Commissioner for imposing penalty under Section 114AA.

4.5 We are also not in agreement with the submissions made by the appellants relying on the various decisions of tribunal to state that penalties could not have been imposed on the co-noticee when the main appellant has settled the issue. In case of Mamta Garg, referred to by the authorized representative, tribunal has by majority view laid down the law as follows:

“32. To begin with, I note that the Member (J) as well as Id. Counsel for the appellants heavily relied on the decision of the Tribunal in S.K. Colombowala (supra). In the said case, the Tribunal was examining the liability to penalty of co- noticees when the main notice settled the case before the Settlement Commission. The issue involved was that the main notice was in possession of advance licence for duty free import of goods. The broker dealing with advance licence misrepresented to D.G.F.T. and thereafter huge duty free imports were made resulting in loss of revenue. When the proceedings were initiated, the main party along with Director approached the Settlement Commission and got immunity from penalty and prosecution. The Original Authority imposed penalties on the other noticees. It is to be noted that the case dealt with was one composite fraudulent act of misusing advance licence with fraudulent intent, in which certain individuals and CHA and its Director were also imposed with penalty. The Tribunal in S.K. Colombowala (supra) relied on the decision of the Hon’ble Supreme Court in Union of India v. Onkar S. Kanwar - [2002 \(145\) E.L.T. 266](#) (S.C.).

33. *I have perused the said decision of the Hon'ble Supreme Court, para-14 of which clearly shows that the Hon'ble Supreme Court was specifically dealing with KVSS Scheme read with 8-12-1998 order of the Government and clarificatory note dated 16-12-1998 :-*

We have heard the parties. In our view, a "14. reading of the Kar Vivad Samadhan Scheme (Removal of Difficulties) Order shows that where a declaration had been made in respect of a tax arrear and where in respect of the same matter a show cause notice had also been issued to any other person, then the settlement in favour of the declarant has to be deemed to be full and final in respect of other persons on whom show cause notices had been issued. It is settled law that when an appeal is pending there is no finality to the proceedings. The proceedings are then deemed to be continuing. Undoubtedly, at one place the Kar Vivad Samadhan Scheme (Removal of Difficulties) Order seems does state that the show cause notice should be pending adjudication. However, the same order also talks of the show cause notice being in respect of same matter on which the show cause notice has been issued to the main declarant. Then the order provides that a settlement in favour of the declarant will be deemed to be full and final in respect of other persons also. This order has to be read as a whole. If read as a whole, it is clear that a settlement by the main declarant is to operate as full and final settlement in respect of all other persons on whom show cause notice was issued in respect of the same matter. Thus read as a whole the words "pending adjudication" cannot be read to exclude cases where the proceedings are still pending in appeal. Even otherwise the order has to be read along with the Kar Vivad Samadhan Scheme. Under the Kar Vivad Samadhan Scheme a party can file a declaration so long as the proceedings are pending. Thus, even though the show cause notice may have been adjudicated upon and an appeal is pending a party could still take the benefit of the Kar Vivad Samadhan Scheme and file a declaration. The object of the Kar Vivad Samadhan Scheme (Removal of Difficulties) Order is to give benefit of a settlement by the main party (i.e. the

Company in this case) to all other co-noticees. This being the object a classification, restricting the benefit only to cases where the show cause notice is pending adjudication, would be unreasonable. If read in this manner the order would be discriminatory. An interpretation which leads to discrimination must be avoided. An interpretation, as suggested by Mr. Ganesh, would also be against the object of the Kar Vivad Samadhan Scheme (Removal of Difficulties) Order. It is therefore not possible to accept the submissions of Mr. Ganesh. In our view the reasoning given by the High Court of Kerala is correct and needs to be upheld.”

It is apparent that the KVSS scheme and the order issued by the Government clearly provided for settlement by the main declarant to operate as full and final settlement in respect of all other persons, on whom show cause notice was issued in respect of the same matter. Reliance on the said decision of the Hon’ble Supreme Court to hold that the settlement of case by the main noticee before the Settlement Commission in terms of Section 127 (J) of Customs Act, 1962 will conclude that the proceeding against all co-noticees is not legally sustainable. The Tribunal emphasised that the expression “case” refers to any proceedings under Customs Act or any other Act for assessment and collection of customs duty.

34. *First of all, the reliance placed by the Tribunal in S.K. Colombowala (supra) on the decision of the Hon’ble Supreme Court in Onkar S. Kanwar (supra) is not appropriate as the issue dealt with is different in scope and application. The same is very clear from the findings of the Hon’ble Supreme Court reproduced above. Even otherwise, the term “co-noticee” cannot be interpreted in such a manner that all the persons, who received same show cause notice in a combined investigation, will automatically deemed to have been involved in one single case only. Such inference will be factually incorrect in many cases. It is not infrequent that the investigations are conducted against many assesseees and other parties in a combined*

operation involving same or different modus operandi. For convenience, a single show cause notice is issued to various assessees and other connected parties. If one such assessee approached Settlement Commission and settled the case, it does not mean that simply because of that various other assessees involved in the same investigation proceedings and issued with said notices will automatically get immunity. In this context, the term "co-noticee" has to be examined for the legal implications - are they party to the same single offending act or they are party to distinct offending acts, which can be penalized independently without even reference to the other person's role. Examined in this angle, it is apparent that no summary conclusion that all co-noticees of a show cause-cum-demand notices will get immunity from penalty, if one of them gets the matter settled before the Settlement Commission. No such legal provisions are available in the Central Excise Act, 1944 or the rules made thereunder. In other words, no blanket immunity to all the noticees will automatically come into operation when one of the noticees, even if he is the main noticee, approaches and gets the matter settled before the Settlement Commission. It is necessary to examine the role of each of the noticees to appreciate whether they had committed an act, which, independently, is liable for penal action. If their act is directly linked to the main offence as part and parcel of the same offence or they are involved only in abetting the main offence, then they may be covered for immunity based on the ratio followed in S.K. Colombowala (supra). However, on examination, if it is found that any of the co-noticees, who did not approach the Settlement Commission, has committed an offence distinct and is liable for penalty to that offence, then automatic immunity cannot be extended to such co-noticee. Here, it may not be out of place to mention that the appellants in the present case were charged with offence of non-registration with the department, issuing documents showing duty

payment without actual manufacture and clearance of goods, etc. Prima facie, these acts were separate and distinct liable for penal consequences. Accordingly, irrespective of the main noticee, who availed irregular Cenvat credit, getting immunity from Settlement Commission, the appellants herein cannot automatically get their penalty set aside on that ground alone. The merits of the case against the appellants are to be examined separately.

35. *Section 32E of the Central Excise Act, 1944 deals with application for settlement of cases before the Settlement Commission. Section 31(c) defines the scope of term “case” which means any proceedings under this Act or any other Act for the levy, assessment and collection of excise duty pending before an Adjudicating Authority on the date, on which application under sub-Section (1) of Section 32E is made. As already noted, that the proceedings against the appellants are for imposing penalties for various contraventions of the provisions of Central Excise Law. It is not for assessment of duty payable by them. In other words, without there being a case of any short payment or non-payment by the main noticee in the present case, a case against the appellant will stand on its own, based on the allegations made. The merit of the allegations are to be decided in these appeals. To say that all the allegations against various parties in a single notice will abate once the main party gets matter settled, is not applicable in cases where there are distinct violations alleged for different noticees, though the investigation may be common. A reference can be made to the decision of the Hon’ble Supreme Court in the case of S.P. Chengalvaraya Naidu v. Jagannath and Others reported as (1994) 1 Supreme Court Cases 1 :-*

“The principle of “finality of litigation” cannot be pressed to the extent of such an absurdity that it becomes an engine of fraud in the hands of dishonest litigants. The courts of law are meant for importing justice between the parties.

One who comes to the court, must come with clean hands. We are constrained to say that more often than not, process of the court is being abused. Property-grabbers, tax-evaders, bank-loan-dodgers and other unscrupulous persons from all walks of life find the court-process a convenient lever to retain the illegal gains indefinitely. We have no hesitation to say that a person, whose case is based on falsehood, has no right to approach the court. He can be summarily thrown out at any stage of the litigation."

36. *The Hon'ble Bombay High Court in Yogesh Korani - [2003 \(159\) E.L.T. 3](#) (Bombay), as affirmed by the Hon'ble Supreme Court reported in [2004 \(163\) E.L.T. A50](#) (S.C.), held that when the penalty was levied on the petitioner based on the independent and distinct causes of action then they cannot be considered on par with the main noticee. The reliance placed by the Id. Counsel on S.K. Colombowala (supra) and various other decisions, which followed the same, can be distinguished by examining the allegations in notice and role of each person, who was served with the notice. If the cause of action and the offence involved is distinct and can be treated for penal action independently, then no immunity will be extended automatically to such co-noticee even if the main assessee gets the matter settled before the Settlement Commission.*

37. *Ld. Counsel also submits, briefly, regarding non-liability of the appellant for penalty on merits as already noted earlier in this order. Only the legal issue regarding immunity available to the co-noticee (here, "the four appellants") has been examined in the present reference as there is no decision on merit recorded by the Division Bench."*

This decision has been followed by the tribunal in case of A V Agro Products Ltd [2018-TIOL-2015-CESTAT-Del].

4.6 It is not even the case in the adjudication order that the penalties for the same offence and under the same provision has been imposed upon the proprietor and proprietorship concerns. The adjudication order itself

refrains from imposing penalty under Section 112(a), on the proprietors as penalties under the said section have been imposed on proprietorship firms.

5.1 In view of the discussions as above we do not find any merits in the appeals filed by the appellants and dismiss the same.

(Order pronounced in the open court on 24.09.2019)

(S.K. Mohanty)
Member (Judicial)

(Sanjiv Srivastava)
Member (Technical)

tvu