

(2010) 04 AP CK 0096

In the Andhra Pradesh High Court

Case No : Central Excise Appeal No's. 30 of 2005

Gulabchand Silk Mills Pvt. Ltd.

APPELLANT

Vs

The Commissioner of Customs and Central Excise, Hyderabad-II Commissionerate

RESPONDENT

Date of Decision : 29-04-2010

Acts Referred:

Central Excise Rules, 1944 — Rule 209A
Essential Commodities Act, 1955 — Section 14(1), 14(4), 7A

Citation : (2010) 04 AP CK 0096

Hon'ble Judges : T. Meena Kumari, J;Nooty Ramamohana Rao, J

Bench : Division Bench

Advocate : S.R. Ashok, for B. Srinivas, for the Appellant; C. Appayya Sarma, Learned Standing Counsel for Central Excise Department, for the Respondent

Final Decision : Allowed

Judgement

1. These batch of appeals were directed against the common judgment passed by the Customs, Excise and Service Tax Appellate Tribunal, South Zonal Bench at Bangalore (henceforth called "Tribunal") on 8.3.2005. We prefer to narrate the facts as were set out in Excise Appeal No. 30 of 2005, which was preferred by the company. The Appellant manufactures Man Made Fabrics (for short "MMF"). It also undertakes processing of gray fabrics for conversion into MMF on job work basis, apart from purchasing gray fabric and processing it and converting into MMF. These goods manufactured by the Appellant fall under heading 5406.00 of the Schedule to the Central Excise and Tariff Act, 1985. The Appellant was clearing the goods at its factory gate situated at Shapur village in Shamshabad Mandal, Ranga Reddy District, Andhra Pradesh.

2. On 15.5.1997, the officials of the Commissionerate of Customs and Central Excise, Hyderabad have undertaken search operations at the factory premises, the registered office, godowns, the residence of the Managing Director of the company as well as other business premises and residences of various dealers of

the Appellant company. Several irregularities were said to have been committed such as inaccurately maintained books of account, resulting in shortage/excess of finished products and clearing of the material without payment of duty. On the very same day, truck carrying the finished goods manufactured by the Appellant was intercepted and it was found carrying excess goods which did not suffer the duty. It was further noticed that only the original copy of the invoice accompanied these goods instead of the duplicate. The goods in the godowns of the Appellant were valued at Rs. 9,86,343/- and they were detained. It is further asserted that the search at the registered office resulted in recovery of certain private records containing material particulars indicating as to how the goods are cleared without suffering the duty. Similar search at the residences of two of the dealers of the Appellant is also said to have resulted in recovery of unaccounted for goods apart from incriminating records. During the course of investigation, statements of several persons have been recorded and amongst them, the statements of Sri Gopal Gupta, Managing Director of the Appellant company, Sri Bhavani Kishore, Accountant of the Appellant company and Sri Ashok Kumar Agarwal, Director of the Appellant company are also recorded. The statement of the intercepted truck driver Sri M. Sathaiah has also been recorded.

3. Based upon the findings of these investigations, showcause notices were issued on 7.11.1997 for the willful evasion of duty on the goods cleared by the Appellant and for the related irregularities. The adjudicating authority after due consideration of the material brought before him came to the conclusion that large quantities of MMF clandestinely removed without payment of duty. Therefore, he has passed orders confiscating the fabrics found in excess at the factory as well as those found in excess in the truck. Similarly, the fabrics allegedly manufactured by the Appellant company without suffering duty and found at the business premises and residences of the dealers of the Appellant were also confiscated. Ultimately, in terms of Section 11A(1), a sum of Rs. 31,14,524/- has been demanded towards duty avoided and an equal amount has been imposed as penalty in terms of Section 11A. Further, in accordance with Rule 209A of Central Excise Rules, 1944, Sri Gopal Gupta, Managing Director has been imposed penalty of Rs. 5 lakhs, while the proprietors of the firms who were said to be the dealers of the Appellant were all imposed penalties of Rs. One lakh each. That order was challenged before the Appellate Tribunal. It was importantly contended that the duty has been demanded essentially based on the contents of the statement made by Sri Gopal Gupta, the Managing Director of the Appellant without any corroborative material/evidence gathered. It was also contended that the statement of Sri Gopal Gupta has been obtained in an absolutely surcharged atmosphere and under pain of humiliation and duress. It was sought to be projected that Sri Ashok Kumar Agarwal, Director of the Appellant company has been so shabbily dealt with that he has been virtually paraded naked and hence Sri Gopal Gupta, came under tremendous pressure to give suitable statement as desired by the inspecting officials. It was further pleaded that statements of Sri Bhavani Kishore, the Accountant of the Appellant has been

obtained after subjecting him to tactics of intimidation and that when the Appellant sought to cross-examine both Sri Gopal Gupta and Sri Bhavani Kishore, they were denied the right of cross-examination. It was specifically asserted that Sri Gopal Gupta has clearly resiled from his earlier statement through a sworn affidavit and in fact the apparent contradictions from various parts of the statement of Sri Gopal Gupta when properly construed and considered, would knock down the theory propounded that the manufacturing capacity of the Appellant is 4.5 lakhs linen Mts/month whereas the same Gopal Gupta has clearly mentioned that the installed capacity of the machinery to be 7000 linen Mts/day, which works out to a maximum of 2.1 lakh linen Mts/month, but not 4.5 lakh linen Mts as concluded by the Respondents. Hence, the entire calculations indulged in for arriving at the duty evaded material is purely speculative. It was further contended that in a span of 67 hours time, the stock taking process has been accomplished, whereas for a team of 10 persons deployed for the said purpose would take a minimum of two days. Thus, the very basis of determination of the excess manufactured goods by the Appellant company has been improperly worked out. It was also contended that the material which has been recovered from the business/residential premises of the dealers cannot lend any conclusive proof to arrive at a conclusion that goods manufactured by the Appellant have been cleared without suffering appropriate duty, particularly, when no proper attempt has been made to reconcile the data collected, at both the ends. It was also contended that the investigation was so faulty and perfunctory that no attempt has been made to ascertain the details relating to the man power deployed, the man hours of employment, the quantity of raw materials procured, the electric energy consumption during the relevant period, before concluding the evasion of duty. However, the adjudicating authority has preferred to ignore all these contentions and proceeded to finalise the duty evasion and levied penalties. Even before the Tribunal, the same contentions have been canvassed, but, however, without appreciating any of these contentions, the tribunal dismissed the appeal.

4. We have heard Sri Section R. Ashok, learned Senior Counsel appearing for Sri B. Srinivas, learned Counsel for the Appellant as well as Sri Appayya Sarma, learned Standing Counsel for the Central Excise Department. Sri S.R. Ashok, while reiterating the various contentions noticed supra, submits that when an allegation of duty evasion has been thrown against the Appellant, the burden lies on the department to bring home the said charge and without there being proper corroborative evidence, conclusions cannot be drawn solely based upon statements said to have been made by the Managing Director or the Accountant of the Appellant company. It was further contended that the statement of Sri Gopal Gupta which is full of contradictions is sought to be relied upon without properly and carefully assessing the effect of such contradictions. Further, the statement obtained under extreme duress cannot form the basis for an acute penal action as was done by the Respondents. It was also contended that when a statement has been retracted, it is fundamental that the person who made the

original statement must necessarily be exposed to cross-examination. Only when such an opportunity is provided, it would be a fair and reasonable one. Any failure to make available the authors of such statements for cross-examination amounts to denial of fair and reasonable opportunity to establish the case of the Appellant and consequently the principles of natural justice are violated. Learned Senior Counsel has also pointed out that the allegations of duty evasion are not sustainable in the absence of supporting material in the form of man power deployment data, procurement data of the raw material, electric energy consumption and payments made for transportation of the finished goods etc. Learned Senior Counsel has placed strong reliance upon the judgments rendered by this Court in *Padmavathi Paddy and Rice Co. v. Assistant Commissioner of Commercial Taxes, Anantapur and Anr.*[1971] 27 STC 30 and *Machilipatnam Central Consumers Cooperative Stores Limited v. Commissioner of Commercial Taxes, Hyderabad* [1988] 71 STC 153. In *Padmavathi Paddy and Rice Co.* case (supra 1), it has been held as under:

...However, Section 14(1) does not vest jurisdiction in the Commercial Tax Officer to arbitrarily determine the turnover when he finds that the return is incorrect or incomplete. He must make a genuine effort to estimate to the best of his judgment what the actual turnover of the Assessee might have been. Section 14(1) requires him to make an enquiry which necessarily postulates that he must take all the relevant factors into consideration in determining the turnover. The enquiry contemplated by Section 14(4) cannot be made an empty formality. At such an enquiry the Petitioner must be given a reasonable opportunity to satisfy the Commercial Tax Officer that though the way bills found were not brought to account, there are other factors which ought to have been taken into account before arriving at a conclusion as to whether or not there was similar suppression. It must be pointed out, that especially in the business of purchases and sales of paddy and rice, it is unreasonable to estimate that purchases and sales would be uniform throughout the year. What may have been the turnover of a particular dealer in paddy and rice could be assessed with reference to his previous returns for the previous years and also with reference to the various other records, statements and returns which such a dealer is required to maintain and submit under the several control orders issued under the Essential Commodities Act which were in force during the relevant year....

In *Machilipatnam Central Consumers Cooperative Stores Limited* case (supra), it was held as under:

...It need hardly be said that no conclusion can be reached by the Commercial Tax Officer without giving adequate opportunity to the Assessee to contradict or rebut the information gathered by the department and without also giving an opportunity to show that the statements of persons if any recorded behind the back of the Assessee did not contain truth and should, therefore, be disbelieved. The Commercial Tax Officer failed to do this elementary enquiry. After looking into the evidence placed before him the Commercial Tax Officer rushed to the

conclusion that in terms of Section 7-A of the Act the Assessee did not prove that the tax was paid at the first point of sales and, therefore, the sales effected must be deemed to be the first sales....

...The least that the Commercial Tax Officer should have done in this case was to confront the Assessee with the statements recorded from the persons on whom reliance was placed, tender those persons for the cross-examination of the Assessee and based on such evidence arrive at a proper conclusion.

5. Per contra, Sri Appayya Sarma, learned Counsel would submit that the findings of fact recorded by the adjudicating authority as confirmed by the Tribunal, are not liable to be reagitated before this Court. Learned Counsel would submit that after an elaborate investigation, lot of material has been gathered and the same was also furnished to the Appellant and thereafter the proceedings have been concluded. Sri Bhavani Kishore, was an Accountant of the Appellant company. He furnished the key inputs relating to the modus operandi of duty evasion resorted to by the Appellant. Therefore, the statements of Sri Gopal Gupta and Sri Bhavani Kishore are in the nature of information for the investigating agency. The statement of Bhavani Kishore alone did not form the basis. The information contained in the said statements has been verified which led to further investigation and detections based upon which, the findings of duty evasion have been recorded. Therefore, not making available Sri Gopal Gupta or Sri Bhavani Kishore for cross-examination did not vitiate the proceedings. The corroborative material which has been secured as a result of investigation carried out has been put to the Appellants and they were provided more than an adequate opportunity to rebut the material that has been brought before them. For their failure to rebut the charge, they cannot shift the blame on to the department. The learned Standing Counsel has placed reliance upon the judgments rendered by the Supreme Court in *Kartal Rolling Mills v. Commissioner of Central Excise* (2006) 4 SCC 772 and *Commissioner of Central Excise v. Xerographic Limited* (2006) 9 SCC 556 in support of his contention that it is not appropriate for us to reappraise the entire evidence on record and seek to upset the findings of fact.

6. In our considered opinion, the substantial question of law that requires to be answered is whether the Appellant has been denied a fair and reasonable opportunity, to establish it's case strictly in accordance with the principles of natural justice?

7. Natural justice is a great humanising principle intended to invest law with fairness and to secure justice. But, natural justice, however, is no unruly horse, no lurking landmine, nor a judicial cure-all. If fairness is shown by the decision maker to the man proceeded against, the form, the features and the fundamentals of such essential processual propriety being conditioned by facts and circumstances of each situation, no breach of natural justice can be complained of. The conscience of the matter is that no man shall be hit below the belt. The concept has undergone a great deal of change in recent years, and the

dividing line between an administrative and quasi-judicial function has become totally blurred, if not obliterated.

8. In *Hira Nath Mishra and Others Vs. The Principal, Rajendra Medical College, Ranchi and Another*, the Appellants - male students - entered quite naked into the compound of the girls' hostel late at night. Thirty-six girl students filed a confidential complaint. A Committee constituted for the said purpose recorded the statements of girl students but not in the presence of the Appellants. The photographs of the Appellants were mixed up with 20 photographs of other students and the girls "by and large" identified the Appellants. The Appellants were then called upon by the Committee and they were told about the charges against them. The Appellants denied the charges and stated that they had never left their hostel. The Committee found the Appellants guilty and finally they were expelled from the medical college.

9. The said order was challenged by the Appellants as violative of the principles of natural justice inasmuch as the statements of the girl students were recorded behind their back and that no opportunity was given to them to cross-examine those girl students. The Supreme Court rejected these contentions. According to the Court "the girls would not have ventured to make their statements in the presence of the miscreants because if they did, they would have most certainly exposed themselves to retaliation and harassment thereafter. The college authorities are in no position to protect the girl students outside the college precincts."

10. In *State of Kerala Vs. K.T. Shaduli Yusuff etc.*, the assessment of the Assessee to sales tax for certain assessment years, the returns filed by him on the basis of his books of account appeared to the Sales Tax Officer to be incorrect and incomplete since certain sales appearing in the books of account of one Haji P. K. Usmankutty as having been effected by the Assessee in his favour were not accounted for in the books of account maintained by the Assessee. The Assessee applied to the Sales Tax Officer for affording him an opportunity to cross-examine Haji Usmankutty in regard to the correctness of his accounts, but this opportunity was denied to him and the Sales Tax Officer proceeded to make a best judgment assessment u/s 17, Sub-section (3) of the Kerala General Sales Tax, 1963.

The Supreme Court has held as under:

(2) NOW, the law is well settled that tax authorities entrusted with the power to make assessment of tax discharge quasi-judicial functions and they are bound to observe principles of natural justice in reaching their conclusions. It is true, as pointed out by this Court in *Dhakeswari Cotton Mills Ltd. Vs. Commissioner of Income Tax, West Bengal*, that a taxing officer "is not fettered by technical rules of evidence and pleadings, and that he is entitled to act on material which may not be accepted as evidence in a court of law", but that does not absolve him from the obligation to comply with the fundamental rules of justice which have

come to be known in the jurisprudence of administrative law as principles of natural justice. It is, however, necessary to remember that the rules of natural justice are not constant: they are not absolute and rigid rules having universal application. It was pointed out by this Court in *Suresh Koshy George Vs. University of Kerala and Others*, that "the rules of natural justice are not embodied rules" and in the same case this Court approved the following observations from the judgment of Tucker L.J. in *Russell v. Duke of Norfolk* (1949) 1 All ER 109:

there are, in my view, no words which are of universal application to every kind of inquiry and every kind of domestic tribunal. The requirements of natural justice must depend on the circumstances of the case, the nature of the inquiry, the rules under which the tribunal is acting, the subject-matter that is being dealt with, and so forth. Accordingly, I do not derive much assistance from the definitions of natural justice which have been from time to time used, but, whatever standard is adopted, one essential is that the person concerned should have a reasonable opportunity of presenting his case.

(3) One of the rules which constitutes a part of the principles of natural justice is the rule of *audi alteram partem* which requires that no man should be condemned unheard. It is indeed a requirement of the duty to act fairly which lies on all quasi judicial authorities....

xxx

4. xxx The question debated before us was whether this opportunity of being heard granted under the first part of the proviso included an opportunity to cross-examine Haji Usmankutty and other wholesale dealers on the basis of whose books of accounts the Sales Tax Officer disbelieved the account of the Assessee and came to the finding that the return submitted by the Assessee were incorrect and incomplete.

5. The opportunity to prove the correctness or completeness of the return would, therefore, necessarily carry with it the right to examine witnesses and that would include equally the right to cross-examine witnesses examined by the Sales Tax Officer. Here, in the present case the return filed by the Assessee appeared to the Sales Tax Officer to be incorrect or incomplete because certain sales appearing in the books of Hazi Usmanjuttu and other wholesale dealers were not shown in the books of account of the Assessee. The Sales Tax Officer relied on the evidence furnished by the entries in the books of account of Hazi Usmankutty and other wholesale dealers for the purpose of coming to the conclusion that the return filed by the Assessee was incorrect or incomplete. Placed in these circumstances, the Assessee could prove the correctness and completeness of his return only by showing that the entries in the books of account of Hazi Usmankutty and other wholesale dealers were false, bogus or manipulated and that the return submitted by the Assessee should not be disbelieved on the basis of such entries, and this obviously, the Assessee could not do, unless he was

given an opportunity of cross-examining Hazi Usmankutty and other wholesale dealers with reference to their accounts. Since the evidentiary material procured from or produced by Hazi Usmankutty and other wholesale dealers was sought to be relied upon for showing that the return submitted by the Assessee was incorrect and incomplete, the Assessee was entitled to an opportunity to have Hazi Usmankutty and other wholesale dealers summoned as witnesses for cross-examination. It can hardly be disputed that cross-examination is one of the most efficacious methods of establishing truth and exposing falsehood....

11. In *Kishinchand Chellaram Vs. Commissioner of Income Tax, Bombay City II, Bombay*, the short question which arose for determination is whether there was any material evidence to justify the finding that a sum of Rs. 1,07,350. 00 was remitted by the Assessee from Madras to Bombay and that it represented the undisclosed income of the Assessee. The original assessment of the Assessee was completed long back, but it seems that some information was received by the Income Tax Officer that a sum of Rs. 1,07,350. 00 was remitted by the Assessee from Madras by two telegraphic transfers through the Punjab National Bank Limited. It was pointed out on behalf of the Assessee at the hearing of the appeal that Nathirmal who was supposed to have received the amount of Rs. 1,07,350. 00 sent by telegraphic transfer from Madras and to have signed the voucher in regard to the receipt of this amount as "N.B. Bam" had left the service of the Assessee long back and a grievance was made that it was not known as to who was the person who was supposed to have made the remittance on behalf of the Assessee, because in the absence of this information, it was not possible for the Assessee to meet the case of this Revenue. The Supreme Court in this regard has held as under:

...It is true that the "proceedings under the income tax law are not governed by the strict rules of evidence and therefore it might be said that even without calling the manager of the bank in evidence to prove this letter, it could be taken into account as evidence. But before the income tax authorities could rely upon it, they were bound to produce it before the Assessee so that the Assessee could, controvert the statements contained in it by asking for an opportunity to crossexamine the manager of the bank with reference to the statements made by him....

12. In *K.L. Tripathi Vs. State Bank of India and Others*, the Supreme Court has held as under:

...whether a particular principle of natural justice has been violated or not has to be judged in the background of the nature of charges, the nature of the investigation conducted in the background of any statutory or relevant rules governing such enquiries. Here the infraction of the natural justice complained of was that he was not given an opportunity to rebut the materials gathered in his absence. As has been observed in "on Justice" by J.R. Lucas, the principles of natural justice basically, if we may say so, emanate from the actual phrase "audi alteram partem" which was first formulated by St. Augustine (*De Duabus*

Animabus, XIV, 22, J.P. Migne, PL 42, 110),

(30) IN dealing with particular situation we must formulate the actual principles to be applied in a particular situation. Hence it may be illustrated as J.R. Lucas - "on Justice" has done it, thus:

hence when we are judging deeds, and may find that a man did wrong, there is a requirement of logic that we should allow the putative agent to correct misinterpretations or disavow the intention imputed to him or otherwise disown the action, God needed to ask Adam "hast thou eaten of the tree whereof I commanded thee that thou shouldest not eat because it was essential that Adam should not be blamed or punished unless he had done exactly that deed. If the serpent had planted the evidence, or if he had beguiled Adam into eating it under the misapprehension that it came from another, non-forbidden tree, then Adam had not sinned and should not have been expelled from Eden. Only if the accused admits the charge, or faced with the accusation, cannot explain his behaviour convincingly in any other way, are we logically entitled to conclude that he did indeed do it.

(31) WADE "on Administrative, Law", 5th Edition at pages 472-475 has observed that it is not possible to lay down rigid rules as to when the principles of natural Justice are to apply : nor as to their scope and extent. Everything depends on the subject-matter, the application of principles of natural justice, resting as it does upon statutory implication, must always be in conformity with the scheme of the Act and with the subject-matter of the case. In the application of the concept of fair play there must be real flexibility. There must also have been some real prejudice to the complainant; there is no such thing as a merely technical infringement of natural Justice. The requirements of natural justice must depend on the facts and the circumstances of the case, the nature of the inquiry, the rules under which the tribunal is acting, the subject-matter to be dealt with, and so forth.

(32) THE basic concept is fair play in action administrative, judicial or quasi-judicial. The concept of "fair play in action" must depend upon the particular lis, if there be any, between the parties. If the credibility of a person who has testified or given some information is in doubt, or if the version or the statement of the person who has testified, is, in dispute right of cross-examination must inevitably form part of fair play in action but where there is no lis regarding the facts but certain explanation of the circumstances there is no requirement of cross-examination to be fulfilled to justify fair play in action. When on the question of facts there was no dispute, no real prejudice has been caused to party aggrieved by an order, by absence of any formal opportunity of cross-examination per se does not invalidate or vitiate the decision arrived at fairly. This is more so when the party against whom an order has been passed does not dispute the facts and does not demand to test the veracity of the version of the credibility of the statement.

13. Principles of natural justice are required to be observed by every quasi judicial authority before arriving at a conclusion. The party who is facing a serious allegation particularly of duty evasion has necessarily got to be extended all opportunities which are fair in content and reasonable to enable him to defend properly. The material gathered during the course of investigation has got to be furnished and the explanation offered in response thereto has got to be taken into account and consideration. Principles of natural justice have come to be recognized as forming an integral part of the decision making process itself. Though the exercise of judicial review is not concerned with the ultimate decision per se, but it is certainly concerned with the decision making process. If a quasi judicial agency has concluded the issue or enquiry without following the principles of natural justice, it is but appropriate to term such a conclusion as vitiated. It is now well settled principle of law that opportunity of a fair hearing partakes with it an opportunity to cross-examine any person who makes a statement of fact, which implicates the culpability of the party in question. In the instant case, Sri Gopal Gupta, the Managing Director of the company has made a statement and the same was recorded. Based upon the contents of such a statement, it is sought to be concluded that the installed capacity of the Appellant's plant and machinery to be 4.5 lakh linen metres/month. It was also further sought to be concluded that a particular modus operandi is adopted, by way of shifting the decimal point in the invoices, for securing the clearance of manufactured goods without subjecting them entirely to payment of duty. On both these aspects, according to the learned Senior Counsel Sri S.R. Ashok, Sri Gopal Gupta has retracted from his earlier statement. In such a situation, it becomes inevitable that Sri Gopal Gupta should be made available for cross-examination and the statement made by such an individual during the course of cross-examination has got to be assessed with reference to the contents of the statement made by him originally. Without this exercise being carried out, merely because there were also some other material that has been gathered by the investigating agency which lent support to the statements made by Sri Gopal Gupta, the enquiry ought not to have been concluded. Therefore, we have no hesitation to hold that not making available Sri Gopal Gupta for cross-examination amounts to denying a fair and reasonable opportunity to the Appellant to defend itself against the allegation of duty evasion.

14. But, at the same time, there is merit in the contention canvassed by Sri Appayya Sarma, learned Counsel for the Respondent that in not making available Sri Bhavani Kishore, the Accountant of the Appellant company as his whereabouts are not traced, no prejudice is caused to the Appellant, inasmuch as, the clues furnished by Sri Bhavani Kishore have been got verified and the corroborative material gathered has been made available to the Appellant. In these set of circumstances, it will not be possible for the department to make available Sri Bhavani Kishore for cross-examination. It is therefore for the Appellant company to show to the satisfaction of the Respondents as to how the statement made Sri Bhavani Kishore is not trustworthy and not reliable. The fact

that Sri Bhavani Kishore is not traceable has not been put in issue at all by the Appellant company. Therefore not making available Sri Bhavani Kishore for cross-examination does not render the proceedings any bad.

15. For the reasons that the principles of natural justice have not been fully complied with while concluding the proceedings by the assessing authority, we have no hesitation to remit the matter back for fresh consideration. However, Sri S.R. Ashok, learned Senior Counsel strenuously submitted that for the default of the Respondents, the matter should not be remitted back and he tried to place reliance upon the Division Bench judgment of this Court in Machilipatnam Central Consumers Cooperative Stores Limited, referred to supra. But, one fact which certainly distinguishes the present case from the aforesaid is the interception of the truck which carried the excess material manufactured by the Appellant company, which has not suffered duty. Further, the duplicate invoice was not found accompanying the goods. The explanation offered by the Appellant company was that an error was committed in loading the truck. Whatever be the reason for the mishap, the fact ultimately remains that the truck which has been intercepted by the Respondents did carry the goods, which were not got cleared totally for payment of duty. Therefore, this is not a case where we can accept the plea of Sri S.R. Ashok that the proceedings should be quashed and the Appellant company let go free. Instead the matter deserves to be remitted back to the Respondents for fresh consideration.

16. It is needless to observe that the Respondents would afford a fair and reasonable opportunity to the Appellant to bring home its theory propounded by it with reference to the relevant and cogent material. No observations made by us in the course of this judgment shall be construed as a pronouncement of any opinion on the merits of the case inasmuch as we have specifically confined our scrutiny to the question of violation of principles of natural justice and all other issues are left open. All the appeals are allowed. The order in original passed by the sole Respondent is set aside and the matter is remitted back for fresh consideration and the enquiry may be completed as expeditiously as possible, preferably within six months period from the date of receipt of a copy of this order.