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(2021) 06 CESTAT CK 0001

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Customs Appeal No. 50105, 50106, 50107, 50108, 50109, 50112, 50117, 51350 Of 2016

Shahid Ali And Ors. — APPELLANT

Vs

Principal Commissioner, Customs (Import) New Delhi (ICD TKD) — RESPONDENT

Date of Decision : 02-06-2021

Acts Referred:
Customs Act, 1962 — Section 14, 28, 28(a), 108, 112, 144AA, 138, 138C
Customs Valuation (Determination of value of Imported Goods) Rules, 2007 — Rule 3(1), 3(2), 4, 5, 6, 12
Indian Evidence Act, 1872 — Section 3, 3(1), 3(2), 30

Citation : (2021) 06 CESTAT CK 0001

Hon'ble Judges : Rachna Gupta, J;Raju, Technical Member

Bench : Division Bench

Advocate : Akhil Krishan Maggu, Vikas Sareen, Rakesh Kumar

Final Decision : Partly Allowed

Judgement

S. No.,Appeal No.,Appellant,Respondent

1.,C/50105/2016,Shri Shahid Ali,"Commissioner of Customs (Import) New

Custom House, New Delhi.

2.,C/50106/2016,M/s. Jaskaran Enterprise,"Commissioner of Customs (Import) New

Custom House, New Delhi.

3.,C/50107/2016,M/s. SES Enterprise,"Commissioner of Customs (Import) New

Custom House, New Delhi.

4.,C/50108/2016,Shri Rashid Ali,"Commissioner of Customs (Import) New

Custom House, New Delhi.

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5.,C/50109/2016,M/s. Kamlin International,"Commissioner of Customs (Import) New

Custom House, New Delhi.

6.,C/50112/2016,M/s. Mondeo Overseas,"Commissioner of Customs (Import) New

Custom House, New Delhi.

7.,C/50117/2016,M/s. Fox International,"Commissioner of Customs (Import) New

Custom House, New Delhi.

8.,C/51350/2019,Shri Sunny Gujral,"Commissioner of Customs (Import) New

Custom House, New Delhi.

has taken more than 8 years from the date of issuance of Show cause notice. Since the show cause notice has been issued under section 28 of the,,,

Customs Act, 1962, limitation prescribed therein section 28(a) should have been followed.",,,

6. Learned Counsel has placed reliance on the case of Siddhi Vinayak Syntex Pvt Ltd. vs Union of India reported as [2017 (352) ELT 455 (Guj)] with,,,

the mention that the Department had filed SLP against the said decision, but the same was dismissed by Honâ??ble Apex Court. Relying upon this",,,

submission, learned Counsel has submitted has prayed that the impugned appeals may be dismissed in limine on the ground of limitation alone.",,,

7. While arguing on merits it is submitted that the Bill of Entry were prepared relying upon declared transaction value which was accepted by the,,,

department. There was no discrepancy found in the manner of description and quantity of goods and even in the value of goods/ food supplements at,,,

the time of clearance. The Bill of Entry was assessed and finalised without any objection in terms of declared transaction value. The said order of,,,

assessment cannot be rejected except by way of appeal. Learned Counsel has placed reliance upon the decision of Tribunal in the case of Khemka,,,

Travels vs. CC Kalinga Gases vs CC Lucknow - [2004 (170) ELT 252].,,,

Learned Counsel further impressed that otherwise also there is no market inquiry done by the department with respect of seized goods nor there is,,,

any evidence of undervaluation produced by the department either in the form of NIDB data or of contemporaneous price of import. Learned Counsel,,,

laid emphasis that the declared value has to be accepted and the burden to prove alleged under- valuation rest heavily on the Department. In the,,,

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absence of any such evidence as mentioned above, the original Adjudicating Authority has wrongly confirmed the impugned demand. Sole reliance for",,,

confirming the demand is the statement of Shri Sunny Gujral which was actually got extracted by the officers of DRI under threat. Such statements in,,,

the absence of any corroborative evidence to support the departmentâ??s allegation can have no evidentiary value. Learned Counsel has placed,,,

reliance upon the decision of Tribunal in the case of Commissioner of Customs, Calcutta vs. Hemani International reported as [2001 (137) ELT 254",,,

(Tri-Kolkata)].,,,

Learned Counsel also submitted that even methodology followed in determining enhanced value is totally faulty and cannot be sustained for the reason,,,

that same has to be arrived in accordance of the Customs Valuation (Determination of value of Imported Goods) Rules, 2007. Rule 3 sub rule 2",,,

mentions that the transaction value cannot be rejected except under special circumstances. There is no such circumstance brought forth by the,,,

department except solely relying upon the statements recorded during investigations which otherwise are nothing but the result of coercion and,,,

pressure of the department.,,,

Learned Counsel further submitted that the transaction value as declared under Section 14 of Customs Act, 1962 as mentioned in Bill of Entry has to",,,

be accepted and in case there is no circumstances as mentioned in Rule 3(2) is present, the value can be re-determined only based upon the value of",,,

contemporaneous import of goods under Rule 4 of the Customs Valuation Rules, 2007 or at the value of cotemporaneous import value of similar",,,

imports. Since no such value has been obtained by the department the alleged manipulation and or re-determination of value of the food supplement,,,

quantifying at the duty and demand thereof cannot be sustained.,,,

Department is also denied to have followed Rule 6 of Customs Valuation Rules, 2007 as no market enquiry was conducted in the in the matter of sale",,,

price of the imported goods. Resultantly the valuation and re-determination of differential duty is not based upon any of the Rules /provisions of,,,

Customs Valuation Rules, 2007. The said fact has absolutely been ignored by the Original Adjudicating Authority. Learned Counsel has relied upon",,,

the decision of Tribunal Chennai in the case of Nitee Trading Company vs. Commissioner of Customs (Sea) Chennai [2003 (161) ELT 279 (Tri-,,,

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Chennai). Decision of Honâ??ble Apex Court in the case of Commissioner of Customs, Bomay vs. Nippon Bearings (P) Ltd. reported as [1996 (82)",,,

ELT 3 (SC)] has also been relied upon.,,,

Further, it is submitted that even the documents since they admittedly are the extracts of the computer data, no compliance of section 138 C of the",,,

Customs Act, 1962 has been made by the Department. None of these recovered documents can, therefore, be read against the appellants. Learned",,,

Counsel has relied upon the decision of Honâ??ble Gujarat High Court in the case of Ambica Organics Vs Commissioner of Central Excise &,,,

Customs, Surat I reported as [2016 (334) ELT A 67]. It is also submitted that the payment of duty during investigation does not amount to admission",,,

of guilt as the possibility of said payment to be the result of coercive measure by the Department cannot be ruled out. Decision of Honâ??ble High,,,

Court of Mumbai in the case of Vodafone Essar South Ltd. vs. Union of India reported as 2009 (237) ELT 35 (Bom) has been impressed upon.,,,

Finally it is emphasised that the Original Adjudicating Authority has wrongly imposed penalties on the importing firm/ proprietorship firms as well as /,,,

proprietor thereof under section 112 and 114AA of the Customs Act, 1962 which amounts to double jeopardising the appellant. Penalties are,",,,

therefore, liable to be set aside on this score itself. With these submissions, learned Counsel has prayed that the Order-in-Original is liable to be set",,,

aside and the appeal to be allowed.,,,

8. While rebutting these arguments, the learned Departmental Representative mentions that the submissions made by appellants are incorrect both on",,,

facts as well as on law points that too with an intent to mislead the bench. It is further submitted as follows:-,,,

(i) The allegation against the appellants are that of forgery, misrepresentation, undervaluation of goods (food supplements) to the extent of more than",,,

50 percent of the actual invoice values by suppressing the actual invoices and submitting forged / bogus invoices before the assessing Authorities by,,,

the appellant. Hence, plea of limitation can not be the defence as fraud vitiates everything.",,,

(ii) To elaborate it is submitted that the ground of limitation as raised is not available to the appellant for the reason that there has been amendments in,,,

the provisions fixing limitation vide Finance Act, 2018 dated 29.03.2018; also for

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the reason that the appellant had deliberately avoided personal",,,

hearing as were required before passing of Adjudication Order and the delay was rather on the part of the appellant.,,,

(iii) The actual / original invoices were recovered in the form of CD and documents from the laptop of the appellant Shri Sunny Gujral on which he,,,

had appended his signatures of having been verified and accepted. Hence, the same are duly admissible in evidence.",,,

(iv) The appellant had also forged the actual MRP stickers based on which the abatement in the MRP is allowed as per Norms and they have also,,,

sold the goods in the open market to various dealers without any Invoice / Bill and the transactions were in cash and the price mechanism was not,,,

maintained as per the MRP declared before Customs Authorities. Learned Departmental Representative has laid emphasis on para 10.1.3 of the,,,

Order under challenge.,,,

(v) The Mastermind Shri Sunny Gujral along with the other appellant have accepted the above said forgery and Undervaluation before the Directorate,,,

of Revenue Intelligence (DRI), Delhi Zonal Unit in all their statements under Section 108 of the Customs Act, 1962.",,,

(vi) It was Sunny Gujral who actually was controlling all the import firms vis-a-vis / Order for purchase / import, clearances of goods, management of",,,

Finances (banking transactions) etc. and the proprietors / directors / Noticees were paid a monthly remuneration of a fixed amount or in kind (free,,,

supply of goods) for the role they had played in the fraud.,,,

(vii) During the course of investigation Shri Gujral voluntarily paid Rs. 12.95 lakhs towards partial discharge of this duty liability vide his letter dated,,,

03.08.2006.,,,

(viii) DRI vide letter dated 11.01.2007 offered provisional release of the goods seized during investigation to the dealer Shri Mardana Singh who,,,

complied with the offer as per the terms and conditions of the offer.,,,

(ix) It was also revealed that SIIB branch of Delhi Customs, New Customs House had also intiated investigations into imports made by Sunny Gujral",,,

in his firm M/s. Mondeo Overseas (one of the appellant above) vide B/E No. 301886 dated 15.04.2006 and had also detained certain food,,,

supplements. The case records were forwarded to the DRI.,,,

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(x) Shri Sunny Gujral also had requested for provisional release and the provisional release of the goods was made after complying with the terms and,,,

conditions of the Provisional release order.,,,

(xi) The period of violation is during the year 2005 & 2006.,,,

Learned Departmental Representative has laid emphasis on para 10.1.3 of the Order under challenge.,,,

It is further submitted that the invoices as recovered from the premises of Shri Sunny Gujral are found to be duly signed by him and two witnesses and,,,

reflects manipulated description of food supplements without any mention of their item code. The quantity and value of the food supplements are,,,

matching with respect to the original invoices No. 128595-IN dated 12/04/2016. Learned Departmental Representative has also exemplified the,,,

observations.,,,

9. Learned Departmental Representative further impressed upon that all the said allegations have duly been admitted by Shri Sunny Gujral himself vide,,,

his statement given not only once but several times dated 02.08.2006, 04.08.2006, 12.08.2006, 14.12.2006 and 05.11.2008. It is impressed upon that",,,

deposition in these statements are corroborating each other and have not even once been retracted till date. These statements receive sufficient,,,

corroboration from the Panchnama and from the statements of other noticees.,,,

It is further submitted that though the copy of invoices / Bill of Entry/ MRP stickers were generated as computer print outs, but in the present case,",,,

these documents do not attract section 138 of the Customs Act, 1962 as alleged by the appellant due to the admission of the appellant himself for the",,,

observed / confirmed manipulation with the intent to evade duty upon the food supplement import. The admission to this extent that Shri Sunny Gujral,,,

himself is owner of the laptops and the CDs and the print outs thereof were generated by him only is sufficient for the admissibility of their documents.,,,

No question of applicability of Section 138 C of Customs Act can at all arise nor any question arises of discharging any burden by the department to,,,

prove the admitted guilt. Learned Departmental Representative placed reliance on the decision of the Tribunal (Delhi) being affirmed by Honâ??ble,,,

Apex Court in the case of Laxmi Enterprises vs Commissioner reported as [2020 (372) ELT A 33 (SC). The earlier decision of Honâ??ble Apex,,,

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Court in the case of Commissioner of Central Excise, Madras vs Systems and Components Pvt Ltd. reported as [2004 (165) ELT 136 (SC)] was also",,,

cited wherein it was held that what is admitted need not to be proved. Hence, neither there is reason for quoting any contemporaneous import data of",,,

identical or similar goods as was required under Rule 4 and 5 of Customs Valuation Rules nor there was any need for obtaining the market survey,,,

about the market value under Rule 6 of Valuation Rules. It is emphasised that once the alleged undervaluation is admitted by the appellant himself,",,,

there remains no need for the department to prove the same and as such, there is no infirmity or illegality on the part of the adjudicating authority while",,,

confirming the impugned demand. Order under challenge is, therefore, prayed to be upheld and appeal is prayed to be dismissed.",,,

10. After hearing both the sides and perusing the entire record, we have observed and are of the considered opinion as follows:",,,

11. The issue involved in the present case is about the transaction value of the food supplements imported by the appellant. We observe that the,,,

valuation of imported goods is required to be done in terms of section 14 of the Customs Act, 1962 read with Customs Valuation Rules, 2007 which",,,

provides that transaction value of the goods shall be the price actually paid or payable for the goods when sold for export to India where the buyer or,,,

the seller of goods are not related and the price is the sole consideration for the same subject to such other conditions as may be specified under the,,,

Rules made in this behalf. The Valuation Rules have been framed in exercise of powers conferred by section 14 of the Customs Act and in normal,,,

course, the declared value i.e. the price which is actually paid for importing the goods has to be treated as the transaction value. This is settled position",,,

law of as being held by Apex Court in the case of NOIDA vs. M/s. Sanjivani Non-Ferrous Trading Pvt. Ltd (Civil Appeal No. 18300-18305/2017),,,

decided on 10.12.2018 wherein it has also been held that the said transaction value / declared price can be rejected only with the cogent reasons by,,,

undertaking the exercise as to on what basis the assessing Authority could hold that the paid price was not the sole consideration of the transaction,,,

value and the burden casts upon the department to prove the same in accordance with the directions given under Customs Valuation Rules, 2007.",,,

We also observe that the said transaction value can be rejected under Rule 12 of Valuation Rules, 2007 which provides that when the proper officer",,,

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has reason to doubt the truth or accuracy of the value declared in relation to any imported goods, he may ask the importer of such goods to furnish",,,

further information including documents or other evidence and if, after receiving such further information, or in the absence of a response of such",,,

importer, the proper officer still has reasonable doubt about the truth or accuracy of the value so declared, it shall be deemed that the transaction value",,,

of such imported goods cannot be determined under the provisions of sub-rule (1) of Rule 3. Explanation in (iii) to Rule 12 provides that the proper,,,

officer shall have the powers to raise doubts on the truth or accuracy of the declared value based on certain reasons which may include any of the six,,,

reasons contained therein, one of which is that there is a significantly higher value at which identical or similar goods imported at or about the same",,,

time in comparable quantities in a comparable commercial transaction.,,,

12. In the present case, no doubt arose on the basis of comparable quantities in comparable commercial transaction nor it was observed at the time of",,,

clearance at the very port. But it is apparent that doubt arose on the basis of intelligence whereafter searches were conducted and recovery of,,,

documents and impugned imported food supplements got effected. Apparently no data or evidence is collected by the department after the said,,,

intelligence and during investigation as is otherwise required under Rule 4, 5 and 6 of the CVD Rules 2007 and is also required under Rule 12. But, we",,,

observe that the present is the case where importer has admitted the entire allegations of alleged manipulation / forgery in the invoices as far as the,,,

price of imported goods are concerned. We also observe that the importer has specifically admitted procurement of food supplements from foreign,,,

supplier by paying significantly higher price than the amount as was declared by him to the department at the time of filing of Bill of Entry. This,,,

admission is not made once but for more than 5 number of times by the importer i.e. Shri Sunny Gujral. Perusal of the statement of importer dated,,,

02.08.2006, 04.08.2006, 12.08.2006, 14.12.2006 and 05.11.2008, shows that in the admissions made, each previous statement of admission has dully",,,

been acknowledged as correct in the subsequent statement. Such corroborative admission with no single retraction thereof till date. No opportunity to,,,

prove the correct transaction value of goods by providing any documents as that of Bank attested generated invoices, as per our opinion, is the",,,

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sufficient admission by the appellant for the guilt as alleged by the Department against the appellant. We are also of the opinion that in such facts and,,,

circumstances there remains no need for Revenue to discharge its burden as that of collecting evidence in the form of contemporaneous imports or to,,,

produce any NIDB data or even any market survey report. In Kackar Singh vs. State of Punjab 1994 (3) SCC 569 guidelines for recording,,,

confessions impressing upon that comfortable atmosphere be provided to the person to volunatarily give the statements. As per decision in State (NCT,,,

of Delhi) vs. Navjot Sandhu [2005 (11) SCC 600] confessions are considered highly reliable because no rational person would make admission against,,,

his interest unless prompted by his conscience to tell the truth. Deliberate and voluntary confession of guild if not unproved are among most effective,,,

proof in law. We also place our reliance upon the decision of this Tribunal in the case of Laxmi Enterprise vs. Commissioner of Customs (Prev) , New",,,

Delhi reported as [2018 (361) ELT 1054]. The Apex Court in the case of Commissioner of Central Excise, Madras vs. Systems and Components Pvt",,,

Ltd. [2004 (165) ELT 136 (SC)] has held that once there is admission of guilt, Department need not to prove the same.",,,

13. We also observe that at the stage of redetermination of value during investigation, the appellant himself had opted to pay the assessed differential",,,

duty. The voluntary payment is sufficient corroboration to his admitted manipulation for evading the duty. Such payment also amounts to the admission,,,

of appellant about re-determining value of the imported goods at lower prices. Though the learned Counsel has placed reliance upon the decision,,,

wherein it has been held that payment of duty at the stage of investigation does not amount to the admission of guilt. But in the present case, the fact",,,

is that the guilt has not merely been admitted once, but it has been admitted in corroboration, at six number of times with no single retraction of either",,,

of these admissions nor there is any protest recorded while making payment in lieu of re-determined value. In the given circumstances we are of the,,,

opinion that the arguments of learned Counsel do not go to the root cause of his appeal. Decision of Honâ??ble High Court of Delhi in Jai Shiv,,,

Trading vs CCE New Delhi [2018 (359) ELT 208] has held that once the importer admitted redetermination of value on record and accepted the,,,

method of such valuation, redetermination of value cannot be challenged on the

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same ground. Earlier Tribunal Delhi in the case of Vikas Spinners vs",,,

Commissioner of Customs, Lucknow reported as [2001 (128) ELT 143] has held that enhanced value uncontested and voluntarily accepted and",,,

accordingly payment of duty made, the same discharges the burden of department to establish the decalred value to be incorrect. It was held in that",,,

case that, since the appellant therein had not established about the lodging the protest, the same clearly amount to acceptance of the enhanced value",,,

by them. Same is the fact of the present case. Tribunal, Mumbai also in the case of Saccha Saudha Pedhi vs. Commissioner of Customs (Import),",,,

Mumbai reported as [2015 (328) ELT 609 (Tri-Mumbai) has held that once the witnesses admitted to undervaluation and accepted actual price of,,,

imported goods mentioned in the purchase orders messages of supplier, then the said admitted price becomes transaction value in which case, there is",,,

no need to resort to contemporaneous import.,,,

14. In the present case, we observe that Sunny Gujral has categorically admitted for having discussed with the Foreign suppliers about the actual price",,,

and that the said actual prices were mentioned on the invoices received from the foreign suppliers. It is thereafter that Shri Sunny Gujral used to,,,

prepare fake invoices in his computer reducing the price of the invoices of foreign supplier to the extent of almost 50% thereof so as to file the same,,,

along with Bill of Entry. He also admitted, categorically that the prices of the fake invoices were used to be given through the valid mode of money",,,

transfer. The balance price i.e. the difference of the price of original invoice as received from foreign vendor and the fake invoice generated by Shri,,,

Sunny Gujral is categorically admitted to be sent to the foreign supplier through his relative based in America. In view of entire alleged guilt to have,,,

been specifically admitted by Shri Sunny Gujral, we hold that there remained no burden upon the Department to prove the allegations against the",,,

appellants nor the department was required to comply with section 138 C of the Customs Act with respect to the documents being the computer print,,,

outs, the data whereof has dully been acknowledged to have been filled in by Shri Sunny Gujral himself.",,,

15. However, we further observe that in addition to the admission as discussed above, there is no similar admission of the alleged under valuation to",,,

have been done by rest of the importers and by the proprietor of the rest of the

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impugned importing firms/ appellants M/s. Jaskaran Enterprises,",,,

proprietor Shri Sunny Gujral himself. The perusal of the statements of remaining proprietors i.e. Shri Shahid Ali, of M/s. Mondeo Overseas, Shri",,,

Rashid Ali of M/s. Kamlin International and Shri Mardana Singh of M/s. General Nutrition, reveals that Shri Sunny Gujral was the controller of all the",,,

imported firm established and maintained by and controlled by him alone. None of them had the knowledge of the activities of Shri Sunny Gujral who,,,

used to take the blank cheques from them. It is also apparent from their statements that at the time of clearance at port and also at the time of,,,

delivery of goods to his dealers, Shri Sunny Gujral personally used to go. The shop keeper of M/s. Total Fitness Shop also deposed about the sole",,,

activity and responsibility of Shri Sunny Gujral about importing and selling the food supplements. As already observed / mentioned above, there is no",,,

apparent evidence by the Department with respect to either of the four importing firms and the respective proprietors about alleged undervaluation and,,,

forgery. In absence thereof the admission of Shri Sunny Gujral cannot be read against Shri Shahid Ali, Shri Rashid Ali, Ms. Ekta Gujral and even",,,

against Shri Mardana Singh, nor it can be read against other importing firms than M/s. Jaskaran Enterprise whose invoice. The law has been settled",,,

law that confession of an accused cannot be read against the other accused.,,,

In Raja @ Ayyappan Vs. State of Tamil Nadu (Appeal No. 1120 of 2010) decided by Honâ??ble Supreme Court, it was held that confession of an",,,

accused cannot be read against another accused unless and until there is cogent corroboration and at least in terms of Section 30 of Evidence Act,",,,

involvement of accused is admitted in the alleged crime by maker of confession as it was also held in Nazir Khan vs. State of Delhi reported as [2003,,,

(8) SCC 46]. The evidentiary value of the confessional statement made by one accused against the other co-accused persons has been,,,

comprehensively discussed in Haricharan Kurmi vs. State of Bihar reported in [AIR 1964 SC 1184]. The Constitution Bench of Honâ??ble Supreme,,,

Court referred to section 3 of the Evidence Act and observed that confession of a co-accused is not evidence within the meaning of said section 3. It,,,

is neither an oral statement which the court permits or required to be made before it as per section 3(1). Nor does it fall in the category of evidence,,,

referred to in section 3(2) of the Evidence Act which covers all documents

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produced for inspection of the Court. However, section 30 provides that",,,

though such a confession may not be evidence as strictly defined by section 3 of the Evidence Act, but it is an element which may be taken into",,,

consideration as against the maker but not against anyone else till the maker has admitted anotherâ??s involvement that too subject to sufficient,,,

corroboration.,,,

16. It is apparent fact on record that there is no admission of Shri Sunny Gujral about involvement of the importing firms and the proprietors of the,,,

other importing firms nor of any of his dealers in manipulating invoices with an intent to evade duty. The department also has not produced any,,,

document with respect to any one else. The only document for doubting the transaction value is the price list. The law is settled that the price list,,,

cannot be the proof of transaction value. In the absence thereof and in view of no admission on part of the remaining importers then Shri Sunny Gujral,",,,

who is the proprietor of M/s. Jaskaran Enterprise, we see no reason for imposition of penalty and demand of differential duty from rest of the",,,

appellant firms and their respective proprietors. Demand against M/s. Fox is also not sustainable despite Shri Sunny Gujral, the admission maker, is the",,,

proprietor thereof because there is no document produced by the department showing imports being made by M/s. Fox by committing evasion of duty.,,,

The documents as produced on record and relied upon by department includes the invoice where M/s. Jaskaran is shown as consignee and Bill of,,,

Entry where M/s. Mondeo Overseas is shown as importer. Though the department has annexed a table along with the Show cause notice containing,,,

number of consignments received with the alleged under valuation of food supplements by other importers including M/s. Jaskaran Enterprises but,,,

there is no document on record proving the same and culpable intent and malafide on the part of the respective proprietors except that the Department,,,

has solely relied upon statement of Shri Sunny Gujral. The said admission cannot fasten the liability on anyone else than Shri Sunny Gujral himself. The,,,

documents admitted by him mentioning another importing firm i.e. M/s. Mondeo Overseas to be the consignee cannot be read against M/s. Mondeo,,,

Overseas nor the liability on M/s. Mondeo Overseas or the proprietor thereof can be fixed based on Shri Sunny Gujralâ??s admission.,,,

17. The statement of Shri Sunny Gujral as was recorded by Customs Officer

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under section 108 though can be a substantive evidence against Shri,,,

Sunny Gujral of alleged offence of under valuating the imported food supplement by making fake invoices but in view of the above discussion, said",,,

admission cannot be read against any other importer, the said statement of Shri Sunny Gujral being the admission of his own guilt and of none else.",,,

18. In view of these observations, we hold that though there is no illegality in the order of the adjudicating authority below while confirming the",,,

allegations of under-invoicing the price of imported food supplement by manipulating the invoices against Shri Sunny Gujral based upon his admission.,,,

But we are of the opinion that in the absence of any document produced by the department to prove their allegation, as against other importers and",,,

proprietors either in the form of Bill of Entry or any invoices either of the foreign supplier or the fake invoices with respect to any of these importers,,,

and that admission of Sunny Gujral cannot be read against the other importer irrespective of the fact that these firms were managed and controlled by,,,

Sunny Gujral himself none else than Shri Sunny Gujral can be penalised. In such circumstances, the order under challenge confirming the demand of",,,

differential duty from the remaining importers other than M/s. Jaskaran Enterprises and imposition of penalty on other proprietors other than Shri,,,

Sunny Gujral is not sustainable in the eyes of law. We further observe that the adjudicating authority has imposed penalty on the importing firm as well,,,

as the proprietor thereof, we are of the opinion that the same rather amounts to the double jeopardy. The penalty cannot be imposed against the sole",,,

proprietor of proprietor ship firm along with the penalty upon said firm.,,,

We rely upon the judgement of Delhi High Court in the case of Anil Kumar Mahensaria vs. Commisioner of Customs reported as [2008 (228) ELT,,,

166(Del)] wherein it was held that only one set of penalty can be imposed either on the appellant or upon his proprietorship firm. Finally, decision of",,,

Honâ??ble Apex Court in the case of Canon IndiatOTAL Ltd. vs. Commissioner of Customs in Civil Appeal No. 1827/2018 as decided on,,,

09.03.2021 is not to be opined to be applicable to the facts and circumstances of the present case where admission of committing fraud has vitiated,,,

everything.,,,

19. In view of entire above discussions, we summarise the findings as follows:",,,

The demand confirmed by the Original adjudicating authority is hereby ordered

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to be modified in terms of the above entire discussion. It is clarified,,,

that the order under challenge is upheld only about Shri Sunny Gujral the proprietor of M/s Jaskaran Enterprise. However, the order of demand and",,,

imposition of penalty on other importing firms and their respective proprietors is hereby set aside. Since the amount of Rs.12.95 lakh has already been,,,

deposited by Shri Sunny Gujral, the same is hereby ordered to be set off. In view of above findings, there remains no further recovery to be effected.",,,

The order under challenge stands accordingly modified. Consequent thereto all the appeals stand partly allowed.,,,

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