

## Commissioner of C. Ex., Meerut-II - Appellant @HASH Quality Exports and Chemicals

**Court:** SUPREME COURT OF INDIA

**Date of Decision:** April 7, 2015

**Citation:** (2015) 319 ELT 243 : (2015) 16 SCC 675

**Hon'ble Judges:** A.K. Sikri and Rohinton Fali Nariman, JJ.

**Bench:** Division Bench

**Advocate:** S/Shri K. Radha Krishnan, Sr. Advocate, Mrs. B. Sunita Rao, (Arguing Counsel), Ms. Aruna Gupta, Anurag and B. Krishna Prasad, Advocates, for the Appellants; S/Shri S.K. Bagaria, Sr. Advocate, Ms. Manjula Gupta and Kumar Ajit Singh, Advocates, for the Respondents

**Final Decision:** Allowed

### Judgement

@JUDGMENTTAG-ORDER

1. Keeping in view the nature of order which we propose to pass in this appeal, it may not be necessary to state the factual matrix in detail as well

as orders passed by the CEGAT or the High Court.

2. Suffice it is to say that the Department had issued show cause notice dated 3-1-1996 proposing a demand of Rs. 53,55,862/- as Central Excise

duty on clearing goods valued at Rs. 2,71,54,179/-. According to the Department these goods were cleared without payment of excise duty. It

was the case of the respondent that unit was closed. As per the Department, on inspection on premises it was found that the production was still

going on. Some documents particularly certain GRs became the basis of the issuance of the show cause notice. The Commissioner passed the

Order-in-Original confirming the demand and also imposed penalties. The order was affirmed by the CEGAT [1999 (112) E.L.T. 84 (Tri. - Del.)]

which was challenged by the respondent by filing writ petition in the High Court. The High Court remanded the case back to the CEGAT with the

directions to hold the enquiry as to whether those GRs could be the basis of the demand and also gave the opportunity to the respondent herein to

file the documents in support thereof [2000 (122) E.L.T. 361 (All.)]

3. After the remand, when the matter was referred to the CEGAT, the respondent had filed number of documents which included the affidavits

taken from the consignor of the said GRs. Some banking documents in support thereof were also filed. The CEGAT after examining the matter

once over again, dismissed the appeal of the respondent [2001 (135) E.L.T. 430 (Tri. - Del.)]. The respondent again filed the writ petition which

has been allowed by the High Court vide impugned judgment [2002 (140) E.L.T. 362 (All.)].

4. The High Court, no doubt, has remarked that the CEGAT did not look into the various documents which were produced by the respondent and

did not record the statement of the consignors and consignees who had given the affidavit, etc. To this extent, the High Court may be justified.

However, if the matter was not dealt with by the CEGAT affirmatively, without scrutiny of the relevant documents, the only option for the High

Court was to remit the case back to the authorities below for fresh consideration in the light of documents filed by the respondent. On the contrary,

the High Court proceeded to decide the issue on the premise that documents filed by the respondent are authentic and treating the case put forth

by the respondent as gospel truth. That cannot be countenanced.

5. In such a situation, we feel that the matter should be relegated to the Commissioner for holding fresh enquiry after considering the documents

produced by the respondent and recording the evidence wherever it is required.

6. The impugned order passed by the High Court is accordingly set aside and the matter is remanded back to the Commissioner for fresh

adjudication leaving all issues open.

7. The Appeal is disposed of accordingly.