

Tata Electronic Development Vs. Cce

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SooperKanoon Citation : sooperkanoon.com/14941

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT

Decided On : Jan-05-1999

Reported in : (2000)(89)LC377Tri(Bang.)alore

Judge : S Peeran, A T V.K.

Appellant : Tata Electronic Development

Respondent : Cce

Judgement :

1. This appeal arises from Order-in-Original No. 116/87 dated 18.12.1987 passed by Collector of Central Excise, Bangalore confirming the confiscation of 141 Numbers of PCB assemblies valued at Rs. 6 lakhs under seizure, under Rule 52A/173Q (1) of Central Excise Rules, 1944.

He has granted redemption on payment of Rs. 1 lakh. He has also ordered for confiscation of Tempo bearing No. MED 6612 under seizure, under Section 115 (2) of Customs Act, 1962 read with Section 12 of Central Excise & Salt Act, 1944. However, he has granted redemption of the same on payment of fine of Rs. 5,000/-. He has also demanded duty amount of Rs. 16,85,626/- in terms of various demands raised in the show cause notice dated 10.7.1987 under Rule 9(2) of C.E. Rules, 1944 read with Section 11A of Central Excise and Salt Act, 1944. He has also imposed a penalty of Rs. 2 lakhs.

2. The facts of the case leading to the detection is that the Central Excise Officers attached to Preventive Labhagh Division, Bangalore during the course of their conducting road checks on Hosur Road, stopped a tempo bearing Regn. No. MED-6612 carrying certain central excisable goods on 17.11.1986. The said tempo was found carrying 8 boxes containing PCBs as per documents made available to the occupants of the vehicle by appellants. On examination, they found boxes containing PCB assemblies while the contents of the same had been indicated in the material Gate Pass No. 1947 dated 17.11.1986 issued by the said factory as Printed Circuit Boards packed in 2 boxes and in material Gate Pass No. 1952 dated 17.11.1986 as Printed Circuit Boards in 6 boxes. The Officers found that duty was payable on the said goods.

However, there was no Central Excise Gate Pass evidencing the payment of duty on the said boxes. The documents in possession of the tempo driver were material gate pass No. 1947/17.11.1986 and No.1952/17.11.1986 and Form No. 39 bearing Sl. No. 10109 dated NIL issued by appellants for carrying the said goods and therefore the goods were seized which were valued at Rs. 6 lakhs along with the said tempo valued at Rs. 50,000/- under a Mahazar dated 17.11.1986.

3. In the follow-up action, the officers visited the factory on 17.11.1986. It was found that Shri G. Gopalakrishnan, Manager (Technical) looking after the production and supervision work. On enquiring him about the seized goods from tempo, he had admitted that the goods transported in tempo were the described goods vide Gate Passes above. On being asked as to whether any gate pass for removal of the goods was made, he stated that no such documents had been made. The officers verified the relevant records available in the factory and it was noticed that no duty had been paid on the said goods removed from the

factory. Therefore, the relevant documents were seized as they found to be of incriminating nature in terms of Annexure I to the Mahazar dated 17.11.1986 for further action.

4. The statement of the Driver Shri Nanda Kumar, Sri A. Thomas, Cooliee of Tempo were also recorded. Statement of Shri Gopalakrishnan Manager (Tech.) was also recorded. Further statement of Shri Y.N. Unwalla, Accounts Officer was also recorded. Shri Y.N. Unwalla in his statement clearly stated that these goods were meant for M/s. HAL/BEL, Hyderabad against their orders for supply of TEC-22 and TEC-16D consoles; that they were to make complete supply of the said goods by 31.3.1986; that they felt that they could not supply the goods within the said date and had informed the Range Officer that despatch of goods might not be made before 31.3.1986 even though excise duty was paid on the full value of consoles and spares vide their letters TEDS/F/465, TEDS/F/466 and TEDS/F/467 dated 28.3.1986; that they had also informed in the said letters that subsequent despatches would be under intimation to the Range, without payment of duty, since duty had already been paid; that they had started the factory during 1980-81 in Peenya with Central Excise Licence No. 36/81 and subsequently they had built their own factory at Electronics City with Central Excise Licence No. 3/86 and were also in the process of shifting their factory from Peenya; that their machine shop was still in Peenya and they were following Rule 56B Procedure for completion of their equipment in their new factory; that the spares and equipment were accounted for in R.G. 1 and no separate accounting was made in respect of spares; that their customers were M/s. HAL, BEL, IAF, NSIL, Ministry of Defence etc.; that they were also doing job work for M/s. GCEL, but the goods were cleared on payment of duty; that as far as he knew, they had one order from M/s. HAL, Hyderabad for supply of only spares for TEC-16 consoles; that he was on leave on 17.11.1986 and was unable to say about removal of goods without payment of duty; that excisable good should be cleared on proper excise documents; that they had paid excise duty of Rs. 26,65,837.35 and had no intention to evade payment of duty amounting to Rs. 90,000/- involved in this case.

5. However, the department is not satisfied with the explanation and therefore issued a show cause notice dated 7.5.1987 calling upon them to explain as to why the goods should not be confiscated including the tempo and as to why penalty should not be imposed and also why the duty should not be demanded in respect of these goods.

6. During the course of further investigation, statement of Group Captain, Shri T.D. Tammaiah, (Retd.), Senior Manager of M/s. Tata Electronic Development Service was also recorded. In his statement dated 12.5.1987 he submitted that they had manufactured and cleared 120 HF receivers RG 2003 during 1982-83 and 51 Nos. of similar goods during 1982-83 as also 14 Nos. RRA Power supply devices during 1985-86 to M/s.

BEL without following Central Excise procedures out of raw materials/components supplied by them; that they had cleared certain PCBs under D.C. No. 645 dt. 29.3.1985 which were assembled by them; that they had cleared 4 Nos. VHP Transreceivers N 140000 to M/s. HAL, Hyderabad during 1985-86 and M/s. HAL had supplied 100% raw materials but for 2 Nos. which were for fabrication and supply of V/UHF receivers which were cleared on payment of duty; that they had also cleared certain PCB assemblies and Junction boxes assembled by them under D.C.No. 631/20.4.1985, 665/25.4.1985 and 664/22.4.1985; that during 1986-87 they had cleared 11 Nos. RRA units to M/s. BEL Bangalore out of the components supplied by M/s. BEL Bangalore and had cleared spare PCBs under D.C. No. 1311 dt. 13.8.1986 to M/s. BEL Hyderabad and 1478 dt.

17.9.1986 to M/s. HAL Hyderabad and Material Gate Passes are 1751/22.9.1986,1747/19.9.1986,1745/18.9.1986,1680/28.8.1986, 1904/5.11.1986,1826/18.10.1986,1820/16.10.1986 and 1816/14.10.1986; that PCB assemblies and the spares like Junction Boxes etc. were assembled in their factory. He finally sated that he had given the statement on behalf of their firm as none of the Directors were stationed in Bangalore.

7. On further investigation, it was noticed that appellants had manufactured and cleared certain excisable goods without payment of duty during the period 1983-84, 1984-85, 1985-86 and 1986-87 and they had also misdeclared the actual value of goods cleared in order to avail exemption during 1981-82 & 1982-83. It was

also alleged that they had collected certain extra consideration from M/s. HAL but had not included in the same to the value of the goods cleared without payment of duty. Therefore, a further show cause notice dated 10.7.1987 was issued requiring the appellants to show cause as to why the Central Excise duty amounting to Rs. 16,85,626/- should not be demanded from them under Rule 9 (2) of C.E. Rules, 1944 read with Section 11A of Central Excise and Salt Act, 1944 and also as to why penalty should not be imposed under Rule 9(2)/52A/173Q (1)/226 of C.E. Rules, 1944.

8. Appellants filed their replies which are found in Paras-14, 15.1, 15.2 & 15.3 of the order-in-original which are extracted herein below: 14. M/s. Tata Electronic Development Services, Bangalore in their reply dated 29.6.1987 to show cause notice denied the allegations levelled against them. They further submitted that the goods cleared by them are meant for units like M/s. HAL, M/s. BEL, etc. and utilised by the Ministry of Defence. They further urged that the said units would never receive goods without proper documents; that the goods under seizure were duty paid but not removed clandestinely and therefore, the seizure should not have been made; that there was no mis-declaration of goods as alleged; that they had received orders for supply of electronic equipment from M/s. BEL and HAL and the goods had to be supplied by 31.3.1986; that they could complete only the external formalities of the equipment and sent the same well within the said date, but they had paid duty on the entire value of the contract; that duty on the goods under seizure which were not ready on 31.3.1986 had already been paid on the said date when the external equipment had been despatched; that the remaining internal components were despatched on 17.11.1986 under delivery notes; that this had been confirmed by their customers that the goods under seizure represented to be the internal components short received as evidenced from the copies of Inspection reports enclosed; that they had also intimated the Range Officer in their letter dated 28.3.1986 that certain internal components had been withheld by them for further processing and therefore they could not be supplied along with the main equipments; that as the PCBs were duty paid ones, they had thought that no other formalities was necessary for their supply to their customers and therefore, no separate document had been made out.

15.1. M/s. Tata Electronic Development Services, Bangalore in their reply dated 3.9.1987 sent in response to the Addendum to show cause notice denied the charges levelled against them. They further submitted that they were made available Foreign Exchange of Rs. 16 lakhs from M/s. HAL for import of raw material and component and accordingly, they had imported certain components which were customs duty paid; that from the said components and by using other bought out raw materials, they had made and supplied Display consoles to M/s. HAL; that the invoice value included the cost of imported and bought out components and they had paid duty of Rs. 10,31,250/- on the total value of Rs. 68.75 lakhs; that therefore the charge was without any basis; that there was no question of not including the cost of imported raw material nor they had suppressed any fact to evade duty; that the value of goods cleared during 1981-82 had been misunderstood by the Department since the value of RRA did not relate to that period, as the order was received only on 22-07-84; that they had assembled and delivered only 29 Nos. RG 2003 to M/s.

BEL out of raw material supplied by them free of cost; that the total value of the said goods as ascertained from them worked out to be Rs. 2,43,194/-; that even though they had cleared 2 Nos. video Mappers on 28.3.1981 falling during the year 1980-81, they had raised the invoice only during 1981-82 and therefore the said value could not be aggregated with the value of clearance for 1981-82, that as per the statement furnished for the year 1981-82, the total value came to be well within the exemption limit; that even otherwise, the SCN was received on 18.7.1987 alleging short levies during 1981-82 and the demand was time barred as the same was beyond the period of 5 years and therefore the charge was liable to be dropped.

15.2. As regards the allegation for suppression of value to the extent of Rs. 10,06,320/- relating to clearance of 120 Nos. of HF Receiver RG 2003 as also 51 Nos. HF receiver RG 2003 and for availment of exemption wrongly under Notfn. No. 105/80 dated 19.6.1980, they were received as complete sets from BEL only for assembly and testing and return to them but they had not produced any components or spares; that BEL being a public Sector Undertaking concerned with defence production, M/s. BEL had taken all the precautions for sending the said components and spares for assembly and testing by them; that they had only assembled, tested and

returned the assembled units to M/s. BEL and that they had not done any commercial transaction; that it had been ascertained from BEL that RRA power supply and RG 2003 HF Receiver was mainly supplied to defence and the end product did not suffer duty and no duty was payable as intermediate product also; that they would produce the Material gate passes through which they had supplied the said goods on sub-contract basis; that therefore, they had not manufactured the said goods at all and were therefore not liable to pay duty as held in the case of Narendra Engineering Works By Division Bench of Bombay High Court 1981 ELT 859 Bombay (26) : 1982 ECR 1D (Bom); that they only assembled, and tested the said goods out of materials and components supplied by M/s. BEL as sub-contractors and therefore in reality they had not produced the goods and the question of including raw materials value to the cost of labour charges did not arise.

15.3.As regards allegation for clearance of certain PCB assemblies valued at Rs. 3,19,376.04 during 1984-85 without gate pass and without payment of duty, M/s. CDA (AF), Dehradun had placed orders under their letter dated 27.5.1982 for supply of 3 nos TEC -16 (ATC) console and spares and test equipment, which should have been supplied before 31.3.1984; that they were unable to complete certain internal components such as PCBs which had to be inserted at the appropriate places of the equipment; that after completing external formalities, they packed the equipment for being despatched without the internal components well before the said date itself; that they had paid duty on the entire value of the equipments and they had paid duty initially even on those internal components which could not be supplied along with the main equipment; that the 14 Nos. RRA power supply units valued at Rs. 2,03,980/- were only assembled items, out of components and spares supplied by M/s. BEL and thus they did only assembly and testing work; that they had paid duty on 2 Nos. N 140000 V/UHF Transreceivers valued Rs. 55,000/- each on which they had paid duty under G.P.I No. 9 dated 29.1.1986 copy of which would be produced at the time of personal hearing; that the value of Rs. 4,00,000/- taken by the Department might be on the basis of Bank Guarantee executed by them and they had supplied the goods and billed the same; that they had also been advised by the Department that it was not necessary to follow Rule 56C; that in respect of the said goods, they were eligible for exemption under Notfn No. 105/80 dated 19.6.1980 and the allegation for their availing exemption wrongly under Notfn No. 95/77 could not be sustained; that regarding removal of spare assembly and Junction boxes valued at Rs. 27,90,537.36, they had cleared 9 Nos. display consoles TEC - 16 (ATC) to M/s. HAL, Hyderabad as per the orders placed by them but had cleared part of the goods and paid duty under G.P. 1 No. 10, 11 and 12 dated 27.2.1985, 14.3.1985 and 29.3.1985 respectively; that duty on spare assembly and junction boxes had already been paid which were cleared during 1985-86; that 11 Nos. of RRA Power supply units alleged to have been removed without payment of duty, were made out of raw materials supplied by M/s. BEL and no duty was payable on them as stated above; that regarding goods valued Rs. 39,71,904.40 removed without payment of duty, they had paid duty on them under G.P. No. 14 and 15 dated 31.3.1986 itself as already stated by them in their earlier reply dated 29.6.1987 to show cause notice. They finally requested for dropping the proceedings. They also desired a personal hearing.

9. The Collector after granting opportunity of hearing, rejected all their pleas and upheld the allegations. He has noted their contention about having contracted for M/s. HAL and BEL Hyderabad under G.P.I No.14 dated 30.3.1986 and GP.I No. 15 dt. 31.3.1986 and had paid full duty which includes the duty even on the seized PCB assemblies. He has also noted the prayer of having referred their letters to the Range Officer, Peenya I Range, Bangalore dated 28.3.1986 about not clearing the present goods as they were not ready and they have paid duty on them and seeking permission to remove the same at a later date without payment of duty. However, he has noted that appellants did not indicate in the said letters that they were to send PCB assemblies and spares to the original equipment to their customers. He has also noted that the Delivery Challan No. 1182/30.3.1986 raised on M/s. BEL Hyderabad for despatch of 5 Nos. of TEC 16D Display consoles clear indication is made even for despatch of spares on 30.3.1986 itself and the goods with spares had been received in full as per the endorsement made on the copy of the same by the representatives of M/s. BEL on 2.4.1986. He has noted that the contentions in the said letters were false and the complete contents had been given in the said letters with an ulterior motive. He has noted that the entire goods with spares under Delivery Challan No. 1182/30.3.1986 had been sent to M/s. BEL is the relevant policy No. 2222700134 dated 4.4.1986

for the said consignment as per which insurance had been made for the entire value of the goods and spares for Rs. 1,04,00,000/-. He has noted that if as claimed by the defence, they had not really despatched the spares along with the main equipment, they would not have made insurance for the entire value of goods and spares, thereby paying premium on the spares which were not sent, if they had been really despatched along with the main equipment as claimed by them. He has noted that appellants had despatched the entire goods with spares under D.C. No. 1182/30.3.1986 which is confirmed by their letter No. TEDS/1/Proj/17/35 dated 10.6.1986, wherein they had requested M/s. BEL to amend the delivery schedules of the original-order, as they had despatched all the 5 consoles with spares and test equipment on 31.3.1986 itself. He has also noted that in terms of the relevant purchase orders placed by M/s. BEL, there was an obligation cast on them to supply free warranty spares. Therefore, in his view, appellants were attempting to send warranty spares to M/s.

BEL without payment of duty. He has noted that, if not he finds no reason for describing the goods under Material G.P. No. 1952 dt.

17.11.1986 as "Printed Circuit Boards" which are exempted from duty, even though they were actually sending PCB assemblies. He has noted that the very material GP No. 1952 dt. 17.11.1986 itself describes that the PCB assemblies were spares for installation and warranty replacement. He has noted the declaration made on the said material GP which reads as follows: NOT FOR SALE. SPARES FOR INSTALLATION AND WARRANTY REPLACEMENT FOR TEC-16D CONSOLES SUPPLIED BY US VIDE D.C. No. 1182 DT 30.3.1986.

Therefore, he has noted that appellants were supplying the warranty spares under the guise of spares for original equipment without payment of duty with an intention to evade payment of duty.

10. He has also noticed from the Delivery Challan No. 1184 dt.

31.3.1986 and the relevant G.P. No. 15 dt 31.3.1986 that appellants had sent 3 numbers of TEC 22 consoles with spares for TEC 16ATC valued at Rs. 73,05,190/- and the same had been acknowledged to have been received in full on 2.4.1986. He has noted that appellants had made a false intimation under their letter dated 28.3.1986 which is very clear, in order to make supply of warranty spares without payment of duty under the guise of spares remained to be sent with equipment since they were obliged to make supply of free warranty spares as per the purchase order. He has noted that despatch of the entire goods with spares to M/s. HAL is clearly confirmed by them in their own letter No. TEDS/Proj 21/19 dt. 10.6.1986 wherein apart from confirming the above fact, they have requested M/s. HAL to amend the delivery schedule.

Hence, the Learned Collector rejected their pleas and held that seized goods were liable for confiscation and appellants are liable for penal action.

11. As regards the next allegation that they realised the foreign exchange worth Rs. 16 lakhs and had not included said value for payment of duty, he has rejected their defence that M/s. HAL had provided the said finance for importing certain raw materials and components for being used in making display console TEC-22 (ATC) with test equipment and spares and supply the same to them; that in addition to the said raw materials, they had bought out certain components and manufactured the said goods and cleared the same to M/s. HAL on payment of duty by including value of raw materials and components both imported and bought out ones. He has noted that there is no dispute about HAL having made available the said foreign exchange to the appellants. He has rejected their plea that the value of goods cleared to M/s. HAL as per their Contract No. HAL/HD/GCA/PS/291/1439382 dated 24.1.1985, includes the cost of imported components and indigenous components as it is not based on facts. Therefore, he has held that free foreign exchange provided by HAL to appellants is in extra consideration for supply of goods and hence forms part of the value of the goods and hence they are liable to pay duty on the differential value. He has rejected their plea that they had not suppressed the facts as not having any force as there is no mention made to the effect of having received the foreign exchange in the invoice raised by them. He has held that there is suppression of facts.

12. With regard to the contention that the total value of goods cleared by them during the year 1981-82 is Rs. 15,18,194/- including the value of goods viz. 29 Nos. of RG 2003 cleared to BEL on job work basis, he has held that as per Central Excise Gate Pass No. 1 to 3 raised by appellants the total value of goods cleared during 1981-82 is Rs. 21,25,000/-. They had supplied one power supply unit RRA vide D.C. No.004 dt. 24.4.1981. He has noted that the total value of the said goods is Rs. 14,570/- (raw material is Rs. 10,370/- and the labour charge collected is Rs. 42,000/-). In addition to this, he had noted that they had cleared 29 Nos. RG-2003 valued at Rs. 2,43,194/-. He has noted that they had further cleared 3 Video Mappers valued at Rs. 14,02,5007/-. He has noted that during the period 1981-82 they had exceeded the Rs. 30 lakhs and therefore they are not entitled for any exemption from duty in respect of goods cleared during the subsequent year 1982-83. He has rejected their plea that clearance of 2 Nos. of Video Mappers pertained to the year 1980-81 on the ground that they had not substantiated with documentary proof.

13. The next allegation was with regard to clearance of goods worth Rs. 33,71,320/- during 1982-83 without payment of duty by wrongly availing the exemption under Notification No. 105/80 dt. 19.6.1980 and by not including the value of 120 Nos. HF Receivers RG 2003 valued at Rs. 10,06,320/-. He has noted that the value of the goods cleared by them during 1982-83 as per the Central Excise Gate Passes maintained by them is Rs. 23,65,000/-. Since the total value of goods cleared by them during 1981-82 had exceeded Rs. 30 lakhs, they were not eligible to avail the exemption under notification during the year 1982-83 and therefore the appellants should have cleared the said goods valued at Rs. 23,65,000/- on payment of duty which they have not done. He has also rejected their plea that they were not liable to pay duty on the goods cleared during the year 1983-84 as the work of job worker carried out on receipt of the raw material received under Rule 56C was exempted in terms of explanation dated 19.6.1990 (sic). Likewise, job work done for the period 1984-85 on raw materials under Rule 56C is also exempted. Hence duty for those periods would not be added. These pleas were also rejected by the Collector.

14. The next allegation dealt with by the Collector in the order pertains to clearance of 14 Nos. RRA Power supply units, 2 Nos. V/UHF transreceivers No, N. 140000 and PCB assembly Junction boxes during 1985-86 without payment of duty. The plea was that the manufacture was on job work basis in terms of respective raw materials under Rule 56C and exempted under the notification and rejected by the Collector and held that they were liable to pay duty on these amounts. On overall consideration of facts, he has confirmed the duties and imposed penalties on the appellants as stated.

15. We have heard Shri G. Sampath, Learned Advocate for appellants and Shri R. Victor Thiagaraj, Learned SDR for Revenue.

16. Learned Advocate pointed out that the appellant's unit was providing services for the Defence of the country such as HAL, BEL and other different laboratories and the division was set-up mainly to cater to the several needs of the Indian Air Force. He pointed out that there was no evasion of duty in the entire matter and the pleas raised and the evidences produced have not been considered and the Collector has misread the evidences of the defence leading to non-application of mind and confirmed the demands when no demand is sustainable. He also pointed out that Video Mappers assembly comprising of processing unit and power supply unit which forms part of Radar display unit to be supplied to the Indian Air Force, Ministry of Defence through HAL, Electronic Division was manufactured in terms of Notification No.105/80 dated 19.6.1980 as amended by Notification No. 41/81 dated 1.3.1981. After filing the classification list, they had declared that they would be undertaking processing work under Rule 56(c) and that in respect of excisable goods on which the duty has to be paid, they would be adopting the invoice value in terms of Notification No. 120/75 dated 30.4.1975. Learned Counsel also referred to various dates on which the classification list was filed and the date of approval and in terms of the same, they were carrying out the processing work under Rule 56(c) and after completion of the same, they were returning the goods to the primary manufacturer namely BEL. He gave details of entire value of the clearance for each year and pointed out that clearances for the years 1980-81 to 1985-86 were all declared and the same had been verified by the jurisdictional inspector and endorsements are found in the documents. He pointed out that RT-12 returns were also checked and found

to be correct. He submitted that appellants were carrying out job work of assembling and testing on the understanding that BEL and HAL had sent the component parts for such work only in accordance with the Procedure set out under Rule 56(c) and they had not included their value in the RT-12 returns as no Excise Duty was leviable in such circumstances. Therefore, he pleaded that those cases in which job work was done under the approved classification list and under Rule 56(c) are not be added to the clearance value for the years indicated. He also pointed out that the Collector had made a mistake in taking the clearances of V.P parts of radar system supplied to IAF which were for the financial year 1980-81 and included in the year 1981-82. He referred to page 122 of the Paper Book to show the mistake. He also pointed out that these evidences which were produced were not referred to and the Collector has wrongly held that evidences had not been produced in this regard. He also pointed out that the department could have also verified about the supplies to BEL & HAL and non-consideration of these materials has led to failure of justice.

17. Learned Advocate pointed out that with regard to seized goods, the duty had been paid and cleared and the department had clearly found that few of the parts namely 114 seized PCB assemblies were to be cleared on the subsequent date they were still to be done and the department had been informed that duty thereon has already been paid.

He submitted as duty had already been paid, therefore question of paying duty on the seized goods did not arise. He submits that even in the initial statement it was stated by the Accounts Manager, Shri Gopalakrishnan and the evidence was also adduced to the fact that the supplies made subsequently had already suffered duty. He submits that non-consideration of the pleas was not justified. He also points out that the jurisdictional Superintendent had been informed about the full payment of duty on the goods. Despite such evidences having been produced, the Collector had held that said intimation is false which is not correct. He pointed out that the clearances had been made in terms of procedure laid down in Trade Notice No. 144/85 dated 2.3.1985 which laid down the procedure for removal of goods in such circumstances and that they had fully complied with the said trade circulars. He also referred to the evidences and certificate issued by HAL to the effect that they had not received the 114 PCB assemblies along with the main equipment and that the duty had been paid on the said seized equipment and they were part of the main equipment. He submits that the Collector's finding that they were not part of the main equipment but they were free warranty spares is totally wrong and is against documentary evidence. He also referred to the statement of Shri U.N.Unvalla, Accounts Officer who had clearly stated that PCB assemblies were supplied against the orders for supply of TEC-22 and TEC-16D consoles and that they were to make a complete delivery of the said goods by 31.3.1986 and that they could not supply the goods within the said date and had informed the Range Superintendent that despatch of the goods in complete form may not be made before 31.3.1986, however excise duty could be paid in full on the Consoles cleared without any modules, components in their letter dated 28.3.1986. He had further given statement that they informed subsequently about the despatches that would be cleared without payment of duty since the duty had already been paid. Therefore, Learned Counsel submits that question of evading duty on these items did not arise. He submits that there was only procedural lapse for not issuing fresh GPs indicating that duty had been paid in the fresh GPs. However, for such a lapse, the Collector could not have confirmed duties. He also points out that Collector did not consider all these materials and certificate issued by BEL & HAL in this respect and that non-consideration has led to failure of justice. Therefore, he submits that as there was no clandestine removal the question of invoking Rule 9(2)/52A or invocation of Rule 173Q did not arise and so also imposition of penalty or confiscation and redemption in the matter. He also refers to various allegations made in the Addendum to Show cause notice and submits that all the allegations had been clearly met and shown through documents that there was no violation of any of the provisions of the rules nor there was excess removal for each of the years and that there was no duty liability for those years leading to total claim of Rs. 16,85,626/-. He submits that the inclusion of foreign exchange in the assessable value is totally unknown to the law and totally incorrect.

He submits that foreign exchange received from HAL to the tune of Rs. 16 lakhs was only a permitted

transfer. HAL had obtained foreign exchange permission for Rs. 5 crores and they had been permitted to produce goods to the extent of Rs. 16 lakhs. He points to the evidence adduced by the party to show that only quota was transferred without transferring money. HAL had not given any money. He submits that the goods under import was released after permission was granted and not after the import was released by HAL. He submits that the purchase was made at the cost of the appellant's and that there was no transfer of funds. He submits that there was no iota of evidence at all produced by the department to show that appellants had additional consideration of Rs. 16 lakhs in foreign exchange and he also submits that value used up to only Rs. 3,21,375/- and still Rs. 12 lakhs value has not been utilised in the case. The evidence to this effect was produced but however same was not considered and the Collector had wrongly added the value of Rs. 16 lakhs as additional consideration which is totally incorrect. He also points out that the Collector was incorrect to take clearance of 1980-81 in the clearance for the year 1982-83. He points out that for both the years the clearances were less than Rs. 30 lakhs.

He points out that for the year 1982-83, they were enjoying the exemption notification No. 105/80 and duty had been paid for all clearance in excess of Rs. 30 lakhs and the duty which was worked out excess of clearance was only Rs. 37,132/- and not Rs. 3,71,320/- as held in the order. He points out that clearance made to BEL under Rule 56(c) as existed then was not liable for payment of duty. The appellants had followed all the procedures and records had been checked and verified and there is certificate of verification issued by the Inspector and other relevant documents to show that no duty was leviable on these clearances. He submits that therefore the demands raised on these clearances were also hit by time bar. He submits that this position is same even for the year 1983-84.

18. As regards 1984-85, he submits that the demand is based on the ground that the goods cleared did not suffer duty. He submits that these are all duty paid under GPs...and submits that they were also exempted under Notification No. 105/80 dt. 19.6.1980 which exempts goods received under Rule 56(c) and was not to be added to the total clearance. He submits that all relevant GPs were produced. He submits that all the GPs produced along with certificate dt. 15.7.1988 were issued by the HAL. He submits that the position is same with regard to year 1986-87.

19. He also points out that no payment of duty demanded by issue of addendum show cause notice is sustainable and hence even penalty imposed for this Rs. 2 lakhs is not sustainable. He submits that they had taken permission from HAL Hyderabad under Rule 56(c) and letter had been issued by HAL through the Accounts Manager. He submits that second addendum notice cannot be considered and an addendum without issue of fresh show cause notice and allegations made are totally different. The allegations had no connection with the first show cause notice which dealt with clearances made under GP without payment of duty. He submits that second show cause notice has to be taken as fresh notice and demands are all time barred. As the facts and the pleas have not been considered in the right spirit, and the entire demands have not been appreciated and therefore he submits that the impugned order is required to be set aside.

20. Learned SDR argued that the clearances made through GPs were free warranty spares and the purchase order itself laid down for such supplies. He submits that there was no correlation made and appellants have not proved about the duty paying nature of the goods. He submits that the order passed by the Collector is totally sustainable.

21. On careful consideration of the submission, we are of the considered opinion that the impugned order suffers from various infirmities and requires to be set aside and remanded for de novo consideration. Initially, in this case, the preventive officers attached to the Lalbagh division intercepted the tempo bearing No.MED-6612 carrying certain excisable goods on 17.11.1986. The tempo was carrying 8 boxes containing PCBs as per the documents and on examination, it was found that the goods were having GP Nos. 1947 dt.

17.11.1986 issued by the factory and GP No. 1952 dt 17.11.1986. The Officers took the statement of Shri G. Gopalakrishnan and further statement of Shri Y.N. Unwalla, Accounts Officer and it was contended at the time

of investigation that these goods had already suffered duty and duty had been paid on the main clearance. They also pointed out to the letters addressed to the Superintendent of the range informing him that the entire consignment will not reach by 31.3.1996 and that these goods would be supplied later without duty paying documents as duty would have been paid with the main consignment itself. Appellants have further produced enormous evidences establishing that the seized PCBs had already suffered duty. However, the Collector has disagreed and has confirmed the demand of Rs. 90,000/- on the ground that these goods are nothing but spares. Such a conclusion against the face of the certificate issued by the Superintendent and also certificate issued by HAL is not sustainable. This aspect of the matter requires reconsideration in the light of the records produced by party. The conclusion arrived at by the Collector being contrary to the records and no evidence of clandestine removal has been shown but the goods did carry the GPs and if at all there was any lapse it was only in terms of GPs not covering the goods with supplemental GPs to the effect that duty had been paid on the same, therefore this aspect of the matter requires reconsideration and verification of the records.

22. The department after further investigation found that appellants had cleared excisable goods beyond the exemption limit for the years 1981-82 to 1986-87 and in this regard issued addendum show cause notice raising demands for Rs. 16,85,626/-. On each of these aspects, appellants have replied and stated that they were clearances for each of these years within the exemption limit and some of the clearances were as job work under Rule 56(c) and in terms of procedure laid down therein, they have also taken a plea that there was no utilisation of Rs. 16 lakhs foreign exchange but it was only licence limit was used and that too to an extent of Rs. 3,21,378/-.

23. On careful consideration of these pleas and on examination of the entire material evidences produced by the appellants, there is a case made out by the appellants. However, we notice that the Collector has proceeded on a different footing to give the findings against the appellants. It is seen from the records that the Collector has also taken clearance of 1981-82 for clearances of 1982-83 and held that duty is liable for the period 1982-83 to the tune of Rs. 3,31,132/-. This aspect also requires verification of records by the original authority.

On our own going through the records, we find that there is an error made by the Collector. There is non-consideration of the pleas of entitlement of exemption notification No. 105/80. Even for the year 1983-84, there is claim for exemption for the job work done under Rule 56(c) which has not been considered. So also for the period 1984-85, 1985-86 and 1986-87. On a reading of the Collector's order and on reading of the show cause notice, it is clear that it is afresh ground made out by the department. It has no connection with the earlier show cause notice. Appellants have taken a plea that the addendum show cause notice is barred by time. However, on this aspect, there is no finding given and therefore it is but proper that this aspect is also required to be remanded for reconsideration.

24. On a total consideration of the facts and circumstances in this case, we are of the considered opinion that although the order appears to be lengthy and gives an impression of application of mind but, however, it is seen that it needs verification of records and clearances of each of the years has not been checked thoroughly. Such an exercise could be done only by the original authority. Therefore, we set aside the impugned order and remanded the matter to the original authority for verification of all the original documents produced by the appellants and duty paying nature of the documents and also reexamination claimed for various benefits under the notification. The authority shall also examine the certificates produced by the Superintendent and M/s. HAL to show that duty had been paid on the original equipment and also the certificate obtained from the Range office for carrying out the activity of job work under Rule 56(c) and the existing notification. The pleas pertaining to time bar also shall be taken into consideration and a detailed order shall be passed after hearing the appellants. The appeal is allowed by way of remand.