Modesto Corpn. and ors. Vs. Cc

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jun-27-2003

Reported in : (2003)(89)ECC656

Judge : N T C.N.B., P Chacko

Appellant : Modesto Corpn. and ors.

Respondent : Cc

Judgement :

1. Pursuant to information that Shri Ishwar Panjabi, owner of M/s.

Modesto Corporation , Delhi was fraudulently importing and selling various goods in the guise of diplomatic cargo, the Customs Officers intercepted one Maruti Van No. DID-7306 in Sanik Farm, New Delhi of the morning of 8.11.88. Shri G.D. Mehta was driving the said van and he was the sole occupant. The van contained five cardboard cartons. Upon opening the said cartons, they were found to contain 4600 rolls of Konica DX Colour film of Japanese origin valued at about Rs. 3.0 lakhs in the Indian market and Rs. 92,000 GIF. Since Shri Mehta failed to show any document evidencing lawful import or possession of the films they were seized under Section 110 of the Customs Act, 1962. So was the Maruti Van No. DID-7306. Upon enquiry, Shri Mehta disclosed that these goods were obtained from Shri Ishwar Panjabi and were collected from 201 Sanik Farm, New Delhi. Thereupon, Customs Officers searched those premises. The search resulted in the recovery of 676 pieces of video cassette recorders, 357 pieces of video cassette players, 59500 colour film rolls of foreign origin collectively having market value of over Rs 1.5 crores and a CIF value of about Rs. 55 lakhs. These goods were ascertained to be part of a consignment imported through Calcutta Port in the name of Liberian Embassy and that the remaining goods were lying in the godown of M/s Amritsar Bombay Carriers (M/s ABC). That godown was searched on 20.11.98. This search led to recovery of VCRs/VCPs and photographic colour films of foreign origin having market value of Rs. 2.3 crores and a CIF price of about Rs. 80 lakhs. Further enquiry also showed that these goods were imported at Calcutta Port in the guise of construction materials and that they had been cleared without payment of any customs duty under a certificate issued by Ministry of External Affairs for duty free clearance of construction materials. As a part of investigations, the Customs Officers also searched the office and residential premises of Shri Ishwar Panjabi, which led to seizure of Indian currency of less than Rs. 3.0 lakh etc. The Officers also recovered a diary and some business papers from Shri Ishwar Panjabi.

Shri Ishwar Panjabi explained the entries in the diary and papers as relating to the transactions with various parties in Bombay etc. who had purchased from him air-conditioners, photocopiers etc. which has been obtained as imports by various Embassies. At the end of investigations Show-cause notice C.No. VIII(SB) 10/230/88/3804 dated 12.5.1989 was issued by the Additional Collector of Customs proposing to confiscate the goods under seizure and to impose penalties on 32 persons. This Show-cause notice was partly adjudicated vide Order-in-Original No. 326/91 dated 23.12.91 passed by Additional Collector of Customs and goods under seizure were by the Collector of Customs. This adjudication order stated that the issue relating to penalty on the 32 noticees will be decided separately. This order became final with the disposal of appeal filed against it by this Tribunal. The issue of penalty was adjudicated subsequently vide Order-in-Original No. 98/A&R/V.S/97 dated 31.10.97 by Commissioner of Customs, Delhi imposing penalties on many parties. All the present appeals are directed against penalties imposed under that order. Since all the appeals are directed against the same order of adjudication and issue are interconnected, these appeals were heard together and are being disposed by this common order.

2. We have perused the records and considered the submissions made by both sides.

3. As already noted the penalties are in connection with the role of present appellants in the import, transport, purchases, possession, distribution etc. of the goods under seizure as well as the goods mentioned in the transactions recorded in the diary and other papers kept by Shri Ishwar Panjabi. The appellants fall into two main groups (1) persons connected with the confiscated goods (i.e. goods imported in the name of the Liberian Embassy) and (2) persons who are mentioned in the diary of Shri Ishwar Panjabi. We proceed to take up the appeals under these two headings.

4. According to the adjudication order Shri Ishwar Panjabi, who was conducting business in the name of Modesto Corporation in the central figure in the case. He was obtaining orders from the embassy and arranging for the import of goods on behalf of embassy. The finding is that goods so imported were clandestinely sold in the domestic market without being handed over to the embassy for which they were imported, with the collusion embassy officials. With regard to the goods under seizure, the finding is that these goods were ordered from Dubai and sent to Monravia and from there imported to Calcutta Port and cleared through the "Customs after producing false certificates which described them as construction materials. The finding with regard to clearance 01 goods from Calcutta Port is that Shri Ishwar Panjabi came to an understanding with the Liberian embassy officials to import and sell the goods and to share the profit. Accordingly, George Masah, First Secretary in the Liberian Embassy in India visited Dubai and placed orders through Jagdish Panjabi (brother of Shri Ishwar Panjabi) at Dubai and pursuant to that order goods were shipped to Calcutta. Now we take up individual appeals for consideration.

5. SL. No 1 & 2 - M/S MODESTO CORPORATION. DELHI AND M/S MODESTO CORPORATION, BOMBAY The seizure was in 1988, part adjudication (confiscation of goods) was in 1991 and final adjudication (imposing penalties) was in 1977. Delay has taken the string out of the penalty proceedings, as during the pendency of the adjudication proceedings, Shri Ishwar Panjabi, the central

figure and main accused, passed away in 1995. Presumably for this reason, the impugned Order has dropped proceedings against late Ishwar Panjabi. However, penalties have been imposed on his proprietary concern M/s Modesto Corporation, New Delhi and Modesto Corporation, Bombay. The submission on behalf of M/s. Modesto Corporation is that the Commissioner was in legal error in imposing penalty on the proprietary firm, as they had no separate existence from their proprietor and in view of the demise of their proprietor before the adjudication of the case, penalty proceedings against them should have been closed. This submission is required to be accepted. Accordingly, Appeals No. C/193 and 194/98-NB(DB) are allowed.

6. In Appeal No. C/152/98-NB (DB) Shri Manohar Panjabi, son of Shri Ishwar Panjabi is in appeal against the imposition of a penalty of Rs. 15 lakh on him. The contention of the appellant is that the import business was the proprietary business of his Late father Ishwar Panjabi and he was working as Manager there and staying with his parents. It is contended that even as it is true that he assisted his father in running the business, he has no worthwhile personal role with regard to import to the seized consignment imported in the name of the Liberian Embassy. The conspiracy to commit the offence was among his father and the officials of Liberian Embassy. Subsequent steps in the execution of fraud was also taken by his father and Liberian Embassy officials. It has been submitted that there is no evidence implicating the appellant.

It is the appellant's contention that, in these facts and circumstances, imposition of penalty on him was not justified and such an action would be more in the nature of punishing a son for the fraudulent activities of his father, though the son is also an important employee of his father. The records of the case do not bring out any active role of Shri Manohar Panjabi in regard to clandestine import of consumer goods in the guise of construction materials for the Liberian Embassy. In fact, the order only mentions in para 90 (i) that "Shri Manohar Panjabi, son of Shri Ishwar Panjabi was knowingly attending to the import, clearance, transportation, storage, sale and all other miscellaneous works such as going to Embassies for seeking orders, going to foreign countries for business purposes and contacting the buyers for sale of smuggled goods." The findings are thus in very general terms of assisting in the business of his father, we are, therefore, of the view that imposition of penalty on Shri Manohar Panjabi is not justified in the absence of any specific charge and finding against him. Therefore his Appeal No. C/152/98-NB (DB) is allowed.

8. As has already been noted, the goods were transported from Calcutta by M/s A.B.C. Carriers and stored partly in their godown at Delhi from where they were seized. Penalties have been imposed on Shri Sukhbir Singh and ABC Carriers. While admitting that they were regularly transporting goods for various Embassies as ordered by Shri Ishwar Panjabi, it was their contention that a carrier has no concern with what he is carrying. It is their case that they had no idea when they undertook to transport the goods that they were carrying the goods, which had been fraudulently imported, that they were under the bona fide impression that the goods had been legally imported and cleared through Customs. It has been emphasised that nothing on evidence suggests to the contrary. The impugned Order has held that "It was a duty casted upon them to verify from the embassy whether the goods belong to them or not". The order also observes that" If their reasoning is accepted that only simply a letter delivered to them by Shri Ishwar Panjabi they stored goods on behalf of embassy without verification. Every smuggler will adopt the same modus operandi and will hand over the godown owner's forged letter and store the goods, it will have a wide ramification and facilitate smuggling". We are not able to approve this finding. A carrier normally carries its transport business based on the orders placed on it and the document handed over.

For the goods in question, M/s A.B.C. Carriers had been handed over the document showing clearance of the goods to the importer by Customs authorities. There was nothing in the circumstances of the case which would have evoked suspicion in the carrier, so as to necessitate further enquiry. We are of the opinion that penalty imposed is unjustified and their appeals merit acceptance. Accordingly, Appeals C/170/98-ND(DB) and C/171/98-ND(DB) are allowed.

SL. Nos. 4. 5 AND 6 - M/S SH. JAGDISH PANJABI. M/S TACKY'S INTERNATIONAL. DUBAI and M/S JACKY'S ELECTRONICS (HK) LTD.8.

Appeals No. C/195/98-NB (DB), No. C/196/98-NB (DB) and Appeal No.C/197/98-NB (DB) are filed by the foreign supplier of the goods i.e.

Mr. Jagdish Panjabi, M/s Jacky's International, Dubai and M/s Jacky's Electronics (HK) Ltd. The substance of the charge against these parties is that they have abetted the smuggling of the goods into India and are liable to penalty on account of that. The defence of the appellants is that Shri Jagdish Panjabi is a foreign national (of Belize citizenship) and his business are carried out abroad and the sale of the goods abroad on the orders of Liberian Embassy constituted no offence under the Indian Customs Act. The defence has two limbs -- one is that a sale transactions abroad is not covered by the Customs Act of India and the other is that Customs Act is limited in the jurisdiction to the territory of India and sale transactions carried out abroad do not come within the purview of the Act. Reliance has been placed in support of this proposition on the decision of this Tribunal in the case of C.K.Kurhammed v. C.C., 1992 (43) ECR 260 (T). As against this, the contention of the revenue is that Shri Jagdish Panjabi, brother of Late Ishwar Panjabi was supplying the goods with the knowledge that these goods were going to be smuggled into India. It is pointed out that these goods were supplied on credit at the request of Shri Ishwar Panjabi and that they had been misdeclared as construction material to facilitate their smuggling. We are not able to find merit in the contention of the appellants. There could be no dispute that an offence took place within the jurisdiction of the Customs Act, 1962, inasmuch as goods were smuggled into India through the Port of Calcutta.

Further, Section 112 of the Customs Act makes it clear that any person involved in improper importation of goods becomes liable to penalty.

Section 112(a) specifically covers persons involved in abetment. As already noted the confiscation of the VCR and other, smuggled items has become final with the rejection by this Tribunal of the appeal filed against the confiscation of these items. Therefore, any person who has done or committed to do any act including abetment, which rendered the goods liable to confiscation becomes liable to penalty. The evidence is clear in the present case that the supplier of the goods had misdeclared the goods in the import document in order to facilitate the smuggling of the goods. This is a clear act of abetment. The supplier therefore, rendered himself liable to penalty. The decision of this Tribunal in the case of C.K. Kurhammed has no application to such a case. This legal position remains settled by the decision of the Apex Court in the case of Union of India v. Sampat Raj Dugar, 1992 (38) ECC S3 (SC) : 3992 (2) SCC 67. In para 24 of the judgment, the Supreme observed as under: "24. It is also significant to notice that it is not the case of the appellants that respondent 1 was a party to any conspiracy or other fraudulent plant hatched or sought to be implemented by respondent 2. If that were the case, different considerations would have arisen.

It is clear from the evidence that Jagdish Panjabi was a party to the conspiracy of his brother and others to smuggle electronic goods into India in the guise of construction material. By supplying electronic goods, after falsely describing them as construction materials in import documents, Shri Jagdish Panjabi and his Dubai firm played a crucial role in carrying out the fraud. The ratio of the decision of the Apex Court is therefore, clearly attracted in the facts of this case. Therefore, we confirm the penalty imposed under the impugned order on Shri Jagdish Panjabi and reject his Appeal C/195/98-NB (DB).

It is of no relevance that he is located abroad or that he is an alien holding another country's citizenship. He had played his role in implementing the conspiracy and that makes him liable to penalty.

Customs Act, 1962 makes no distinction between citizens of India and foreigners. However, imposition of separate penalty on the supplier firms and their owner Shri Jagdish Panjabi is not justified. Further, the Hong Kong firm had no involvement since the goods were supplied from Dubai. Therefore, the appeals of these two firms, i.e. C/196/98-NB (DB) and C/197/98-NB(DB) are allowed.

9. Both the appellants are employees of External Ministry. Penalty of Rs. 50,000 each has been imposed on them on the ground that they abetted smuggling of the seized and subsequently confiscated the electronic goods through Duty Exemption Certificate issued by the Ministry of External Affairs. The relevant findings are in paras 114 to 117 of the impugned Order. These paragraphs are reproduced below for discussion of the case: "114. Shri K.K. Arya in his statement under Section 108

of the Customs Act, 1962, inter alia stated that the signatures on the exemption certificate on which the said consignment on the disguise of diplomatic goods were cleared from Calcutta Port, were appeared to be of his own. Shri Ram Naresh Jayant in his statement also admitted that the official seal appearing on the said exemption certificate was the impression of the official seal of the Ministry, The said seal was in his custody, Smt. Aparna Kundu, LDC of the said Ministry that the number allocated to the said Exemption certificate was not in her handwriting. She also explained the reasons as to why this number was not in her hand as to normally the numbers was allocated by her at a particular place.

115. The matter was referred to Ministry of External Affairs.

Ministry of External Affairs vide their letter DVT/451/4(9)88 dated 28.11.88 intimated that the said exemption letter was not issued by the said Ministry, 116. Shri K.K. Arya appeared for personal hearing and stated that he has closely scrutinized the said exemption certificate and stated that the said document was not signed by him and it was not processed in the Ministry. I am not in agreement with this. This is a serious matter. His statement was recorded on 7.12.88. If on a second thought, if he had found that this certificate does not bear his signatures, he would have certainly approached this office to clarify the same. In the light of this, I am not in agreement with the said submissions and hold that he was concerned in abetting the smuggling of goods and has rendered himself liable to penal action under Section 112 of the Customs Act, 1962.

117. Shri Ram Naresh Jayant has admitted that the seal was in his official custody. I do not agree with his contention that it might have been used by someone else, in view of this, I hold that he was concerned with the smuggled goods and has rendered himself liable for penal action under Section 112 of the Customs Act, 1962." It is the submission of the appellants that certificate's issue itself has been denied by the Ministry and in such a case, the occasion for signing or affixing the seal cannot arise. It is also submitted on behalf of Shri K.K. Arya that while he had denied signing the exemption certificate, there is also no evidence in the nature of opinion of handwriting of expert to show that he had actually signed the exemption certificate. Shri Ram Naresh Jayant has submitted

that he has been found guilty merely on the ground that he was the custodian of the seal during the relevant time. There is no evidence that he had affixed the seal on a false document in order to abet smuggling of goods.

10. A perusal of the finding itself shows that there is no positive evidence to support the findings. The document itself has been repudiated by the Ministry. That repudiation is not rejected in the adjudication order. The only question that remains is whether the appellants has signed a forge document or affixed stamp on it. It is their contention that there is no positive evidence showing their involvement. In these circumstances, the findings against them and penalty imposed on them cannot be sustained. Appeal No. C/168/98-NB (DB) filed by Shri Ram Naresh Jayant and Appeal No. C/279/98-NB (DB) filed by Shri K.K. Arya, are allowed.

11. Penalty has been imposed on Shri H.N. Sawhney, proprietor of M/s S.D. Refrigeration for two reasons. The first reason is that it is on evidence that Shri Sawhney's name figured in the document seized from Late Ishwar Panjabi and Ishwar Panjabi had stated that Shri Sawhney who was having a shop in the name of S.D. Refrigeration near New Delhi Railway Station had bought old and new refrigerator of foreign origin from him. The other reason is that from the residence of Shri Sawhney, 9 bottles of liquor of foreign origin valued at Rs. 3150 had been seized and Shri Sawhney was not able to explain the legal acquisition of the same. The appellant's submission is that his is a repairing business and there is no documentary or other evidence that the had purchased any smuggled goods from Late Ishwar Panjabi. It is also pointed out that the allegations are very vague and they are lacking in particulars. With regard to seizure of liquors of foreign origin it is submitted that the quantities and value involved are negligible and in respect of such quantities for personal consumption, evidence regarding legal acquisition is not required under Section 11A of Customs Act, 1962. The appellant has also relied on the decision of this Tribunal in the case of Tapan Ch. Sen Rai and Ors. v. C.C. (P), W.B., 2001 (47) RLT 856. It is also pointed out in appeal that there is no evidence about any involvement of the appellants with the smuggling activities. It is further stated that even late Ishwar Panjabi had not implicated the appellants in dealing with the smuggled goods inasmuch as he had only stated that "Shri

Sawhney had purchased old and new airconditioners of foreign origin from him." It is clear that there is no evidence of the appellant knowingly purchasing or in any way concerning himself with the smuggled goods; that statement of Late Ishwar Panjabi which has been relied upon by the Revenue, does not say that Shri Sawhney had purchased smuggled goods from him. It only states that Shri Sawhney purchased old and new airconditioners of foreign origin from him. We find merit in the contentions raised. The quantity and value of imported liquor recovered during seizure are so small that an individual cannot be expected to preserve documents proving legal acquisition. This Tribunal's decision reported in 2001 (47) RLT 856 covers the issue in favour of the appellants. The evidence on purchase of foreign air-conditions also is not clear or definite. The statement of Late Ishwar Panjabi says that goods ought were old/new. Accordingly, Appeal No. C/186/98-NB (DB) filed by M/s S.D. Refrigeration and C/187/98-NB (DB) filed by Shri H.N. Sawhney are allowed.

12. A penalty of Rs. 10 lakhs has been imposed on the appellant Shri Jiwat Nawani. This has been done with observation as under: "104. Jiwat Nawani said that on 16.11.88 three packages containing photographic film rools (sic) of foreign origin were kept in his Maruti Van No. DID-2255 by Bhagwan Dass." The contention in the appeal is that the appellant was an Export Manager in the firm of M/s Modesto Corporation of Delhi of Late Ishwar Panjabi and. It is the appellant's contention that apart from statements of various persons about his transporting and handling of smuggled goods, there is no tangible evidence against him. Shri Jiwat Nawani was an employee of M/s Modesto Corporation and in that capacity he was dealing with the goods for the firm. There is no specific evidence of his being involved directly with smuggling. In these circumstances, the imposition of penalty on him is required to be set aside. Appeal No. C/166/98-NB(DB) filed by Shri Jiwat Nawani is allowed. SL. No. 16 - SHRI HARISH N. MEHTA 13. The impugned order has found as under with respect of Shri Harish N. Mehta : "95. Shri Harish Mehta was the main dealer at Bombay on behalf of Ishwar Panjabi. Shri Harish Mehta has admitted in his statement that he had received orders worth Rs. 1.5 crores from Ishwar Panjabi through Girdhari Panjabi. He had also purchased twentytwo photocopying machines of foreign origin from Shri Ishwar Panjabi but the same were returned back. For these purchases, he was not given

any bill or receipts. He also admitted entries in his books maintained by Ishwar Panjabi showing outstanding balance towards him but denied the balance of Rs. 1,49,37,300 shown by Ishwar Panjabi as outstanding as he had paid this amount back to Ishwar Panjabi in instalments. Statement of Harish is corroborated by the statement of Ishwar Panjabi as such the contention of the Harish Mehta i.e. he is not concerned with the smuggling activities is wrong and baseless, in view of above position, he has rendered himself liable for penal action under Section 12 of the Customs Act, 1962." Based on the observations, penalty of Rs. 10 lakhs has been imposed on Shri Harish N. Mehta. It is the appellant's submission that penalty was imposed on him only based on the statement that he was purchasing foreign goods from Late Ishwar Panjabi and selling them to various parties at Bombay. It is the appellant's contention that there is no evidence other than the statement. It is also pointed out that based on the uncorroborated statement of fellow-accused, penalty cannot be imposed. It is also pointed out that the photocopiers etc. purportedly purchased and resold by the appellant were not notified goods.

Imposition of penalty in the present case under Section 112 of the Customs Act is on the ground that appellant acquired possession of goods and engaged in their selling. However, there is no evidence forthcoming to show that the appellant was aware that the goods were smuggled and they were liable to confiscation. The particulars about transaction are also not proved. Entry in the diary of Late Ishwar Panjabi and his statement are the main evidence. There is no proof beyond some cryptic entry in Late Ishwar Panjabi's register and his statement. It has, therefore, to be held that the finding in the impugned. Order is not based on acceptable evidence. Accordingly, Appeal No. C/269/98- NB (DB) filed by Shri Harish N. Mehta is required to be allowed. We do so. SL. No. 17 - JAWAHAR CURBAXANI 14. Penalty of Rs. 10 lakhs has been imposed on Shri Jawahar Gurbaxani on the ground that his name figured as Guru in the diary of Late Ishwar Panjabi and that entry of Rs. 1.6 crores is found against him. Further, Late Ishwar Panjabi explained that he had been selling old as well as new airconditioners on his own cash payment. The impugned order observes as under: "97. Evidence against Guru, alias, Jawahar Gurbaxanai is in the form of entry of Rs. '1.67 crores found in the documents seized from the residence of Sh. Ishwar Panjabi. Sh. Ishwar

Panjabi explained that he had been selling old as well as new air-conditioners to him on cash payments. In reply to the Show cause notice Sh. Guru has not challenged these entries. His contention is that the department has not produced any evidence of purchase of goods from Ishwar Panjabi.

I am not in agreement with this contention of the noticee. Statement of a co-noticee is a substantive piece of evidence as held by Hon'ble Supreme Court in case of Naresh J. Sukhwani (supra). The other contention is that when Commissioner of Customs has already sanctioned his prosecution then it is mockery of justice if the case is adjudicated by the Commissioner of Customs. The sanction for prosecution was granted by then Collector of Customs which has since been transferred. I am adjudicating this case afresh on merits after giving proper personal hearings and on appraisal of the evidence. As such this contention is without merits. From the evidence on record, I am of the view that Sh. Guru was dealing with the goods which were liable for confiscation under Section 111 of the Customs Act, 1962 and rendered himself liable for penal action under Section 112 of the Customs Act, 1962." The submission of the appellant is that the allegation is sought to be sustained based on the diary entry and statement of Late Ishwar Panjabi, without any corroborative evidence. The appellant submitted that the finding cannot be sustained as it is settled law in the light of the judgment of Delhi High Court in the case of L.K. Advani v. CBI, 1997 (2) CCC 41 (HC) that entry in a private diary cannot be treated as books of accounts. It is pointed out that there is no recovery of goods . Apart from the legal position about admissibility of the diary entry and statement, it is seen that the inculpatory statement itself is to the effect that the appellant was purchasing old and new refrigerators etc. from Late Ishwar Panjabi. There could be no allegation that old refrigerators are liable to confiscation or that dealing with such items was with the knowledge that they were liable to confiscation. It is, therefore, to be held that imposition of penalty has been done based on vague and unreliable materials. Appeal No. C/07/99-NB (DB) filed by Shri Jawahar Gurbaxani is therefore, allowed. SL. No. 14 - SHRI C.P. MALIK 15. Penalty of Rs. 50,000 has been imposed on Shri C.P. Malik the following observations in the impugned order: "102. Shri Ishwar Panjabi while explaining the documents seized from his residence stated that Shri Malik was dealer of airconditioner in the name of M/s coolways in Vasant Vihar who had been buying old and new airconditioners and refrigerators of foreign origin from him.

Shri C.P. Malik also admitted his dealing in the sale and purchase of airconditioners. I do not find any force in the arguments by his counsel Shri M.L. Sobti that simple mention in the statement of Shri Ishwar Panjabi that Mr. Malik was an airconditioner dealer and he sometimes had been buying old and new airconditioners from him does not mean that his client was involved in the smuggling, as no evidence has been produced that the new air-conditioners were not smuggled one. It is evident from the statement of Sh. Ishwar Panjabi wherein he had stated that he had been supplying refrigerators and air-conditioners of foreign origin to Sh. Malik. As such, I find that Sh. Malik was concerned with the smuggled goods which were liable to confiscation under Section 111 of the Customs Act, 1962 and rendered himself liable for penal action under Section 112 of the Customs Act, 1962.

The appellant's contention is that the entire finding is not sustainable. It is pointed out that the appellant's business is called Coolmaster and not Coolways. The statement of Late Ishwar Panjabi about Coolways therefore, does not apply to him. It is also contended that no offence was involved in the buying and selling of old and new airconditioners. In the case of old airconditioners, the question of their being liable to confiscation did not arise at all. It is also pointed out that there is no recovery of any offending goods from the appellant. According to the appellant, their business concerned itself with procuring second-hand, written-off machines of foreign embassies through open auction or tender and reselling them and this is a completely legitimate activity. The evidence relied upon by the adjudicating authority itself mentions that the appellant purchased old and new airconditioners and refrigerators. In the circumstances, it has to be held that there is no evidence to support allegation that appellant was dealing in any offending goods with the knowledge that those goods were liable to confiscation. Appeal No. C/188/98- NB (DB) filed by Shri C.P. Malik is accordingly allowed.

16. Penalty of Rs. 50,000 has been imposed on Shri Ravinder Singh in view of the following observations in the impugned order: "100. While explaining the

documents seized from his residence, Sh.

Ishwar Panjabi has stated that Sh. Ravinder (Sardarjee) had purchased from his old and new air-conditioners and refrigerators.

Sh. Ravinder Singh in his statement has also admitted that he had purchased air-conditioners from Ishwar Panjabi. He was in contact with Ishwar Panjabi because Ishwar Panjabi used to get work for him from Embassies. He further stated that S/Sh. H.N. Sawhney and J.D. Dhawan, partners of S.D. Refrigeration had been purchasing new airconditioners and refrigerators of foreign origin from Ishwar Panjabi of Modesto Corporation, Delhi. In view of this, I find that Shri Ravinder Singh was concerned with the goods for which he was knowing that the same were liable for confiscation under Section 111 of the Customs Act and has rendered himself liable to penal action under Section 112 of the Customs Act, 1962." The appellant's contention is that he had been purchasing old airconditioners and refrigerators and not new ones at all and that there is no offence involved in the purchase of old and used airconditioners. The evidence against the appellant also is diary entry and the statement of Late Ishwar Panjabi and that appellant was purchasing old and new airconditioners and refrigerators of foreign origin. As already noted in support of other appellants, there could be no offence involved in purchasing and selling of old machines from Embassies inasmuch as those goods cannot be stated to be liable to confiscation. There is no specific evidence that the appellant bought and sold refrigerators and airconditioners which he had reason to believe to be liable to confiscation. This appeal is required, to be allowed in the absence of any specific and clear evidence against the appellant. Accordingly, Appeal No. C/192/98-NB (DB) filed by Shri Ravinder Singh is allowed.

17. In the result, Appeal No. C/195/98-NB (DB) filed by Shri Jagdish Panjabi is rejected and all other appeals are allowed.