

**R. Dinesh Kumar Vs. Collector of Customs**

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**Court :** Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

**Decided On :** Dec-07-1993

**Reported in :** (1994)(52)LC418Tri(Delhi)

**Judge :** S Bhatnagar, Vice-, G B Deva

**Appellant :** R. Dinesh Kumar

**Respondent :** Collector of Customs

**Judgement :**

1. This appeal arises out of and is directed against the Order-in-Original No. 55/88 dated 8.3.1988 passed by the Additional Collector of Customs and Central Excise, New Delhi.

2. FACTUAL BACKGROUND: On 7.10.1985, acting on an information the officers of Directorate of Revenue Intelligence, New Delhi proceeded to New Delhi Railway Station and identified two steel trunks covered by R.R. No. 104402 dated 4.10.1985 New Delhi in the name of Sushil Damani from Madras Central Railway Station, addressed to self, which had already been sealed earlier with D.R.I. Seal No. 4. On a watch, Officers found that a person who disclosed his name as Sushil Damani approached the Railway Authorities with the original R.R. to claim the goods and after paying the charges took the clearance of the goods from Railway Authorities claiming that he was Sushil Damani. The said Sushil Damani was intercepted by D.R.I. Officers and was asked to open the trunks. He could not produce the keys of the trunks and, therefore, the trunks were broken open and

were found to contain 24000 pcs. of zip fasteners of YKK brand of foreign origin. The zip fasteners were of assorted colours and were in brand new condition. Since he could not produce the relevant documents in support of the goods and he denied having any such documents in his possession required under Rule 4(ii) of the Notified Goods (Prevention of Illegal Import Rules, 1969) issued under Section 11C, of the Customs Act, 1962, the goods along with two steel trunks were seized under Section 110 of the Customs Act, 1962. In the statement given under Section 108 of the Customs Act on 7.10.1985, the said Sushil Damani revealed that his name is actually Dinesh Kumar and was using the name of Sushil Damani as bogus name. According to the Department, Shri Dinesh Kumar alias Sushil Damani had produced three sales bills which the said Dinesh Kumar claimed to be transport voucher for transporting in all 5900 dozen zip fasteners. Details of these sales bills are as follows: (i) No. 1/85 dated 4.10.1985 for 2000 Dozen of zip fasteners issued in the name of M/s. Dinesh Kumar, camp at Delhi.

(ii) No. 2/85 dated 4.10.1985 for 2000 Dozen of zip fasteners issued in the name of M/s. Sushil Damani, camp at Delhi.

(iii) No. nil dated 5.10.1985 for 1900 Dozen of zip fasteners issued in the name of M/s. Dinesh Kumar, Camp at Delhi.

The above mentioned sales bills have not been authenticated by proper officers of Customs and also do not bear the requisite informations as required under the Rule 4(ii) of the Notified Goods (Prevention of Illegal Import Rules, 1969).

3. Further, said Dinesh Kumar produced two more R. R.s which were in his real name Dinesh Kumar. One consignment of two steel trunks covered by R.R. No. 104461 dated 5.10.1985 had arrived at New Delhi Railway Station from Madras addressed to self and two other steel trunks had arrived at Delhi Junction from Madras under R.R. No. 104396 dated 4.10.1985 addressed to self. The consignments containing two steel trunks each containing 22,800 pcs. of zip fasteners and 24,000 pcs. of zip fasteners respectively of YKK Brand of assorted colours were recovered. In all 6 steel trunks with 70,800 pcs. of zip fasteners were seized as the goods were neither supported by valid documents nor produced by Shri Dinesh Kumar alias Sushil Damani.

4. During investigation the D.R.I. Officers searched Room No. 5 of Hotel Venus, Paharganj, New Delhi where Dinesh Kumar was staying and also searched premises of one Shri K.L. Daga and recovered from his residence four sales bills (No. Nil dated 12.7.1985, No. nil dated 3.9.1985 and No. 1 of 1985 dated 9.8.1985 together covering 3800 zip fasteners and No. 2/85 dated 9.8.1985 for 300 pcs. of Sakura Photofilms) in the name of Shri Sushil Damani.

4A. In the statement recorded under Section 108 of the Customs Act, 1962 dated 7.10.1985 Shri Dinesh Kumar @ Sushil Damani stated, inter alia, that he is a notified dealer and deals in zip fasteners; that he had purchased zip fasteners three times in auction from Central Excise Collectorate, Madras; that the total quantity thus purchased was 12,300 dozen; that he did not remember the exact date of purchase. Regarding source of acquisition of 5,900 dozen zip fasteners, Shri Dinesh Kumar mentioned that he had purchased these 5900 dozen zip fasteners from different shopkeepers of Narayan Mudali Bazar, Madras. However, Shri Dinesh Kumar's father Shri Ram Rattan has produced a register showing unauthenticated entries which show that an exact number of zip fasteners viz., 5900 dozens were purchased in 1983 from M/s. Murray & Company, 164 Thambu Chibli Street, Madras in a Central Excise auction.

5. The case of the Department is that sales bills produced by Dinesh Kumar have also been alleged to be fake in as much as some sales bills No. 1 of 1985 was used for transporting zip fastener on two different dates (9.8.1985 and 4.10.1985) with different quantities (800 dozen and 2000 dozen) for different consignees (Shri Sushil Damani & Dinesh Kumar) and further sales Bill No. 2/85 was used for transporting the goods (300 photo films and 2000 dozen zip fastners) on different dates (9.8.1985 and 4.10.1985) for Shri Sushil Damani. Accordingly, show cause notice was issued to the appellant framed with various charges and the show cause notice was duly answered by the appellant denying all the charges.

6. Additional Collector who adjudicated the proceedings has come to the conclusion that 5900 dozen of YKK zip fasteners seized by the D.R.I, are not established to have been duly acquired by the appellant as he failed to produce any authentic document to prove its licit import/acquisition. The entry purported to

cover this transaction made in the stock register is also not authenticated as it does not bear the endorsement of the Customs. Secondly, the appellant has failed to observe the provisions of Chapter IV-A of the Customs Act in respect of said 5900 dozen zip fasteners. Sales bill turned transfer vouchers are also not genuine as these have not been authenticated by the Customs.

In the view he has taken, he ordered for absolute confiscation of the goods, i.e..., 5900 dozen YKK zip fasteners valued at Rs. 2,83,200/- under Section 111(d) as well as 111(p) of the Customs Act, 1962. He also imposed personal penalty of Rs. 25,000/- under Section 112(a)/(b) of the Customs Act.

7. The appellant was represented by Sri N. Ramratan, father of the appellant and Department was duly represented by Sri G. Bhushan, learned SDR.8. Shri Ramratan submitted that it is not correct to say that documents were not produced at the time of seizure. Since transfer vouchers were already recovered at the time of search the question of production of documents at the time of seizure does not arise. Recovery of the documents was mentioned in the earliest statement on 7.10.1985 and in view of that first time reference was cited in the impugned order observing that the entire dispute centers around the authenticity of records in the stock register and the corresponding sales bills-- turned transport vouchers recovered from the noticee. In fact, the requisition for cross-examination of the concerned officials was not acceded to by the Adjudicating Authority before passing the order.

He said that an advance intimation about the transportation of 5900 dozens of zip fasteners was given to Assistant Collector Rummaging, Custom House, Madras on 4.10.1985 and it was rightly received. Instead of calling for the report as requested by the appellant, the Collector has come to the conclusion that there is no evidence of receipt of this intimation by Assistant Collector, Madras. But the truth has come out in view of the direction given by the CEGAT on his application and report of the Assistant Collector is clear that it was received and further stated in his letter dated 16.11.1990 that either at the stage of investigation or at the time of adjudication the Delhi Custom or D.R.I. did not approach this Custom House regarding intimation about the transportation of zips.

9. It was contended by him that for the first time it was introduced in the Show Cause Notice that seized goods are of foreign origin and brand is also of new, but the same was not mentioned either in the complaint for prosecution filed earlier or in the Panchanama. Specific request was made for re-examination but it was turned down by observing that no purpose will serve at this stage to re-examine.

He said that observation made by the Collector that appellant produced the stock register to the D.R.I, only on 25.10.1985 is far from truth since it was produced by the father of the appellant before the competent authorities as early as on 11.10.1985 and 16.10.1985 and photostat copies were also handed over to the respective authorities, but original register was surrendered to D.R.I. on 25.10.1985. He said that this fact can be verified from the bail application moved before the Magistrate Court on 11.10.1985, statement of father dated 16.10.1985 and in the bail order dated 21.10.1985 as it was recorded by the Additional C.M.M. that it is further submitted that the accused is a notified dealer for the purpose and sale of zip fasteners and in support he has filed the photocopy of the declaration made to the Customs and have also shown the original Register.

10. He argued that confessional statement cannot be relied upon as it was recorded under pressure and duress and in spite of the fact that this plea was taken at the earliest and same was recorded in the order of the Magistrate, still the Collector relied upon the confessional statement without any corroborative evidence. But retraction of statement was not taken into consideration. He also urged that copy of the statement of father of the appellant was not supplied during the adjudication proceedings in spite of specific request.

11. As regards authenticated stock register and purchase entries he said that stock register was endorsed on 5.10.1984 and purchase entries from M/s. Murray & Company was also endorsed by the Superintendent of Customs. Investigation report reveals that appellant purchases from M/s. Murray & Company who is an authorised firm to auction on behalf of the CCE, Madras and in the report it was stated that father of the appellant produced the original stock register and ledger copies of the account showing the entire transaction and hence there is no justification in observing that purchase entries were not authenticated since 1983.

He contended that so long as a person has delivered a statement with reference to notified goods about the acquisition/possession, there is no statutory obligation on the part of the dealer that each and every entry of sale and purchase should be authenticated one as envisaged under Section 11C of Chapter IV-A of the Customs Act. He said that the Collector proceeded to pass an order with mere assumption and presumption that this stock could not have remained unsold till 1985. Further the Adjudicating Authority erred in arriving at the conclusion that 3800 dozens of zips were already sold from the original stock of 5900 dozens in spite of the documentary evidence to show that 3800 dozen zips were different from this 5900 dozens. He said that when the D.R.I. found the transaction as genuine one, has omitted deliberately to investigate but anyhow the D.R.I. Madras has investigated and found the stock tallied after sale of these 3800 dozens. Hence, there is nothing on record to correlate the 2 lots is misleading, and non-entry of stock into register goods are not confiscable and has referred to the decision of *Kanungo & Company v. Collector of Customs, Calcutta* 12. He submitted that the appellant was forced to sign as Sushil Damani on the luggage receipt and on the panchnama recorded at New Delhi Railway Station and summons issued under Section 108 in the name of Dinesh Kumar itself is sufficient proof that appellant has not disclosed his name as 'Sushil Damani'.

13. He said that there is no basis for determining the value of the goods at Rs. 2,83,000/- as against the value of Rs. 1,65,200/- as indicated in the transport voucher.

14. He lastly contended that goods are not liable to be confiscated either under Section 111(d) or under Section 111(p) of the Customs Act since the goods were purchased from M/s. Murray & Company and goods in question were duly supported by valid documents by complying with the provision of Section 11-C and Section 11-D and 11-E of the Act.

Non-compliance with reference to Section 11(f) would not justify for confiscation under Section 111(d) relying upon the ratio of the judgment in the case of *Bhoormal v. Collector of Customs, Madras*, reported in AIR-1967 (Madras) Page 39 and in the case of *Misritnal Hansraj v. Union of India* reported in 1975 Criminal

15. Shri G. Bhushan, learned SDR, arguing for the Revenue submitted that there is no suppression of documents recovered/seized by the D.R.I, at the time of seizure and what was purported to be a transport voucher was not a transport voucher as required under Rule 4(1) of the Notified Goods (Prevention of Illegal Import Rules, 1969) issued under Section 11-C which requires furnishing of various details as per para 1 of the impugned order.

16. He said that notice of intimation dated 4.10.1985 was received by the Assistant Collector Rammaging, Madras on 16.10.1985 as can be seen from the letter dated 16.11.1990. He contended that mere intimation is not sufficient unless the said intimation is accompanied with copies of railway receipt, transport voucher and other documents and the goods could be transported only after prior permission and necessary verification of notified goods/stock register as provided under Section 11-C(3). Hence, this intimation is of no use as neither this can be called 'intimation' nor can be relied upon. He submitted that Adjudicating Authority is justified in not considering the stock register since the entries in the register were never verified by the proper officer of the Customs as required under the law. The register was verified in 1984 and the only authentication available in the register is regarding number of pages but no entry regarding balance stock as on 20.7.1984 which clearly shows that there were no entries in the register in 1984 and the same were fabricated after the seizure. He said that during the course of search at K.L. Daga's place, it resulted in recovery of three bills covering transport of 4100 dozens of zip fasteners transported by the appellant prior to the seizure which clearly shows that the appellant has been procuring fresh stock from the illicit market at Madras and regularly transporting them to Delhi giving these purchases a cover of legal purchases from M/s. Murray & Company, Madras. In fact, it was clearly admitted in the statement of the appellant that he used to purchase zip fasteners from agent in open market at Madras and never used to have bills as they were illegal transactions.

He said that confessional statement was never extracted by force and retraction is only an after-thought as statement was duly recorded under Section 108 of the

Customs Act. Since the statement of father has not been relied upon by the Department, the same was not supplied, but, however, handed over to the appellant during the pendency of the hearing before the Tribunal as directed by the Bench. He said that valuation is neither an issue nor can be raised at the late stage as appellant submitted to the jurisdiction of North Regional Bench and furthermore proper value was determined on the facts and figures as per findings given in the order. He justified the action of the Department in ordering for absolute confiscation of the goods under Section 111(d) and 111(p) of the Customs Act and imposing penalty of Rs. 25,000/- under Section 112(a)/(b) of the Act since the appellant has been indulging in procuring/smuggling in contravention of the provisions of the Customs Act in respect of notified goods.

17. In reply Sri Ramratan submitted that neither seizure was proper as was not done in the presence of two witnesses nor all the seized documents were placed before the adjudicating Authority. Transport voucher produced all the major particulars prescribed for transporting the goods. He said that notice of intimation was sent in advance but date of receipt is misleading since it was not mentioned either on intimation or in the letter dated 16.11.1990. He also said that stock register was duly verified by the Superintendent on 25.10.1984. It was contended by him that he is not disputing the value for duty purpose, but value determined without any basis and particularly without mentioning the cif value before arriving at the market value.

18. We have considered the arguments advanced on both sides and perused the records including detailed written submissions filed by both sides.

We find that statement of the appellant recorded on 7.10.1985 is under Section 108 of the Customs Act. Statement under Section 108 cannot be considered to be a statement taken under force or duress unless it is proved contrary. There is no evidence to show that confessional statement was recorded under force or duress nor Magistrate passed an order with reference to duress or coercion as it was pointed out by the Adjudicating Authority in the impugned order. But, however, taking into consideration that the appellant had retracted the statement at the earliest point of time by sending telegram and by sending various letters and

further the appellant had retracted the statement even before the Magistrate, it is not just and proper to solely rely upon the confessional statement without corroborative evidence as it was rightly argued by the appellant's representative. During the pendency of the appeal before the Tribunal the Representative of the appellant filed an application under Rule 23 of CEGAT (Procedure) Rules to direct the respondent to produce the following documents on the ground that they are vital to decide the issues arising out of the appeal and to take them as additional evidence in deciding the issues.

(ii) Statement of Shri Ramratan, father of the appellant, said to have been recorded on 16.10.1985, and On hearing both sides and on seeing the copies of the relevant documents, we felt that the above documents are necessary to decide the issues and, accordingly, they were taken on record as additional evidence including reports dated 11.10.1985, 22.10.1985 and the letter dated 16.11.1990 from Assistant Collector of Customs, Madras. It is obvious that these documents were not considered by the Adjudicating Authority on the plea that there is no evidence of receipt of this intimation by Assistant Collector, Madras and father's statement was not relied upon in the Show Cause Notice. Since these documents throw some light on receipt of intimation and production of stock register, we feel these documents and contentions with reference to these documents have to be reconsidered by the Adjudicating Authority.

19. As regards authenticity of the records in the stock register and the corresponding sale bills-turned transfer vouchers the contention of the party is that the seized goods were acquired in 1983. i.e., prior to notification of goods on 20.7.1984 and since the goods were supported by purchase invoices and necessary entries in the stock register, nothing to be proved further in respect of the notified goods. The transport vouchers produced before the seizure contained substantially the information required under Chapter IV-A of the Customs Act.

20. The zip fasteners are specified under Notification No. 205/84-Cus.

F.No. 394/4/84-Cus (AS) dated 20th July, 1984 issued under Section II(b) Chapter IV-A of the Customs Act, 1962 as the goods with respect to which special measures for the purpose of checking the illegal import, circulation and disposal

and facilitating the detection thereof shall be taken. Their transportation without a valid voucher required under Section 11(F) of the Customs Act, 1962 render them liable to confiscation under Section 111(F) of the Customs Act, 1962.

21. The zip fasteners are also notified under Notification No.204/84-Cus. F.No. 394/4/84-Cus (AS) dated 20th July, 1984 issued under Section 123 of the Customs Act, 1962 which provides that where any goods to which this section applies are seized under the reasonable belief that they are smuggled goods, the burden of proving that they are not smuggled goods shall be on the person who claims to be the owner of the goods so seized. Hence, it is for the party to prove that not only these goods were legally purchased prior to notification but continues to remain unsold even after notification till the date of seizure. Mere endorsement of the Superintendent that stock Register containing 92 pages for zip fasteners does not mean that entries therein have been authenticated by the Customs unless stock has been taken note of or entries has been authenticated by the Customs. Further similar sales bill No. 1/85 and 2/85 have been used for transporting zip fasteners on two different dates with different quantities and for different consignees. The burden lies on the party not only to prove that 3800 dozen zips were different lot from this 5900 dozens but also to show with relevant documentary evidence as regards purchases and sales. Since we are remanding the matter, the party may make use of this opportunity to prove that 3800 dozen zips were different lot and 5900 dozen zips continues to remain in stock on the date of seizure.

The Adjudicating Authority may readjudicate the entire matter afresh in the light of above observations and to pass an appropriate order in accordance with law after giving an opportunity to the appellants.

Per Shri S.K. Bhatnagar.--With due respects to Hon'ble Judicial Member, my views and orders in the matter are as follows: 2. I observe that the appellant is correct in pointing out that he had sent an intimation to the Assistant Collector of Customs, Madras, regarding despatch of zip fasteners to Delhi vide his letter, dated 4.10.1985. The learned Additional Collector has erred in disbelieving this as evident from the letter of the Assistant Collector, Madras, dated 22nd October,

1985 produced in the Court, which indicates the receipt of the aforesaid communication. I also observe that the appellant was correct in pointing out that there is no reference to the transfer vouchers mentioned by him in the panchnamas and the show cause notice also does not indicate as to how they were obtained by the Department. The show cause notice however refers to these documents whereas panchnama does not indicate recovery of any such documents at the Railway Station or in the Hotel.

3. The appellant is also correct in pointing out that there was difference between saying that no documents were produced and in observing that the document produced were not exactly in conformity with the Departmental requirements and that the statement was retracted at the earliest opportunity.

4. It is also not clear as to why a copy of the statement of the appellant's father which was recorded during the course of investigation was not supplied.

5. It is also not clear as to why the Department shied away from verification of the condition of the goods once its version that they were brand new, was challenged and why the learned Additional Collector did not order physical examination of the goods in the presence of both the sides. It is also not clear as to why the cross-examination requested for was not allowed. This is a case in which a question of identity of the person was involved and an important question had arisen whether Dinesh Kumar was impersonating as Sushil Damani or Dinesh Kumar and Sushil Damani were really two persons? In these circumstances, if the cross-examination of the officials and witnesses was requested for (and the correctness of the seizure and panchnama had also been challenged), the Additional Collector ought to have allowed their request for cross-examination in the interest of justice.

6. I also observe that the investigation report of the Madras officers was also required to be taken into account, but there is no indication whether it was looked into by the Additional Collector.

7. I consider that these amount to very serious infirmities in the proceedings and rejection of the request for the cross-examination in the circumstances of this case amounts to denial of an effective opportunity to the appellant to defend himself

properly. As neither the principles of natural justice nor of the procedural justices have been duly observed and the Department has ignored the documents in its possession including reports of its own officers for reasons which have not been satisfactorily explained, the order is liable to be set aside on this ground alone. Further I notice that nearly 10 years have passed since the date of seizure and some of the defects pointed out above are now irremediable. The remand may only end up as an exercise in futility. Therefore, I see no point in remanding the matter at this stage.

8. At the same time, it is also clear that the appellants had given the intimation right at the nick of time. They had sent it on the same date on which the goods were to be despatched leaving no room for verification and the Department has claimed that the intimation was received only subsequent to the despatch.

9. Further the appellant and his father have themselves stated that they deal in notified goods and regularly participate in auctions.

Therefore, there is some force in Department's contention that it was hardly probable that the goods procured in 1983 remained unsold till 1985 (particularly as zip fasteners are really a fast selling item). It is also noticed that some transactions were conducted in 1985 and some vouchers were recovered from the premises of Shri K.L Daga and these include two vouchers having the same No. 2/85. All this goes to show that the appellants were not keeping their records properly. (It was of course a fault of the officers and the appellants could not be blamed if their registers and records were not inspected for years together. All the same they were required to maintain the records properly and issue proper vouchers). In view of the above position, looking at the case as a whole, I consider that the appellant was in any eventuality entitled to the benefit of doubt in so far as the case relates to the seized goods. I, therefore, set aside the order of confiscation and direct that the goods may be released and in case they have been auctioned or disposed of otherwise, the value which might have been recovered may be returned.

10. Some penalty was however justified. Hence the order is only modified in so far as it relates to the penalty and the amount imposed on the appellant is reduced from Rs. 25,000/- to Rs. 20,000/- (Rupees twenty thousand only).

In view of the difference of opinion between the Hon'ble Member (Judicial) and the Vice-President, the matter is submitted to the Hon'ble President for reference to a third Member: Whether in the facts and circumstances of the case and in particular, the additional evidence allowed to be taken on record, the case is required to be remanded as proposed by the Hon'ble Judicial Member or the matter could be finally decided and the order modified as proposed by the Vice President.

TN THE CUSTOMS, EXCISE AND GOLD (CONTROL) APPELLATE TRIBUNAL, NEW DELHI C/Misc./515/90-NRB in appeal No. C/1734/88-NRB Shri JR. Dine\$h Kumar v. Collector of Customs, New Delhi The point of difference is referred to Shri S.D. Mohile, Member Technical.

Whether in the facts and circumstances of the case and in particular, the additional evidence allowed to be taken on record, the case is required to be remanded as proposed by the Hon'ble Judicial Member or the matter could be finally decided and the order modified as proposed by the Vice-President.

2. The present appeal has been filed against the impugned order indicated above absolutely confiscating 5900 dozens of YKK zip fasteners and imposing a penalty of Rs. 25,000/- on the ground that these were being transported without the cover of a valid transport voucher or a document showing their lawful import.

3. Shri N. Ramratan, father of the appellant appeared for personal hearing. He reiterated the grounds taken before the lower authority and which have been mentioned in the Order-in-Original.

4. Briefly his plea is that the said goods were validly acquired from M/s Murrey and Co. in Central Excise auction and were also entered in the stock register. It is claimed that the fact of transportation of the said ,5900 dozen zip fasteners was intimated to AC (Rummaging) Madras. It was, however, admitted that the vouchers were not authenticated by the Customs Officers and that there was no serial number, as per the practice prevailing in Madras Custom House. It was also admitted that the sale bills-cum-transport vouchers in respect of the said goods were issued from the general goods bill register instead of from notified goods bill.

It was also claimed during the hearing that the impugned goods have already been disposed of.

5. The learned SDR reiterated the findings of the lower authority. It was contended that the 5900 dozen zip fasteners said to be acquired in Central Excise auction had been acquired in 1983 and thereafter on 12.7.1985, 3.8.1985 and 9.8.1985, 3800 dozen zip fasteners have been disposed of. Hence, it was claimed that 5900 dozen zip fasteners being transported on 7.10.1985, that is, the date of seizure were not the same as those acquired in 1983 in Central Excise auctions. It was also claimed that the stock register showing the entry of 5900 dozen zip fasteners being transported to Delhi was produced 18 days after the seizure and the same therefore appear to be a subsequent interpolation.

6. Considered. As regards the last plea on behalf of the Department, namely, regarding the entry in the stock register regarding the transport of 5900 dozen zip fasteners, it was for the Department to immediately seize the stock register to prevent any interpolation. In view of their failure to do so, the burden of proving that the said entry was an interpolation or an after-thought was on the Department which they have not discharged. However, there is a force in the argument of the Department that after acquisition of the 5900 dozen zip fasteners in the Central Excise auctions in 1983, a quantity of 3800 dozen zip fasteners had already been sold. Hence, out of seized goods numbering 5900 dozen zip fasteners, 3800 dozen zip fasteners appear, prima facie, to be other than those acquired in the Central Excise auctions. It is seen from the Order-in-Original apart from 5900 dozen zip fasteners acquired in the Central Excise auctions, the appellant had allegedly acquired 3800 dozen zip fasteners from Shaw Ram Rattan vide sales Bill No. 125 dated 15.5.1985. The appellants have claimed that it is this quantity of 3800 dozen zip fasteners which had been disposed of by him earlier and that the quantity of 5900 dozen zip fasteners acquired in the Central Excise auctions had remained undisposed and the same was being transported on 7.10.1985 when the same was seized.

7. As the Department has not conclusively disproved this contention by giving the detailed specifications of 5900 dozen zip fasteners acquired in the Central Excise

auctions and those disposed of vide three sales bills/transport vouchers during 1985 and also those of the 5900 dozen zip fasteners seized on 17.10.1985 and later ordered to be confiscated; the benefit of doubt has to be given to the appellant instead of remanding the case as proposed by learned Member (J).

8. However, the appellants have admitted that the wrong vouchers had been used for transporting the zip fasteners; and to that extent the charge that the goods were not covered by valid transport documents, is established of their own admission. But this is a technical violation which does not warrant confiscation of the goods, as also held by learned Vice-President.

9. In view of the foregoing, I agree with the learned Vice-President that the confiscation of the zip fasteners is required to be set aside and the Penalty reduced marginally from Rs. 25,000/- to Rs. 20,000/-.

In view of the majority opinion the confiscation of goods is set aside and the penalty is reduced from Rs. 25,000/- to Rs. 20,000/-.

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