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H.A. Ansari Vs. Collector of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jul-11-1994

Reported in : (1994)(73)ELT545TriDel

Appellant : H.A. Ansari

Respondent : Collector of Central Excise

Judgement :

1. These are the appeals against the order of Additional Collector, Meerut No. 36 dated 11-10-1985.

2. According to the learned Advocates, the Department has alleged that the appellants were concerned inter alia with illegal export of hashish and charas concealed in wooden and brass handicrafts which were sent to various parties in America and Canada.

3. Learned Counsels stated that according to the show cause notices the Customs and Excise Officers raided business-cum-residential premises, amongst others of Capt. H.A. Ansari, Proprietor M/s. Trade Flankers, Moradabad on 3-5-1976 and recovered and seized therefrom Rs. 1 Lac Indian currency in the steel almirah and contraband goods valued at Rs. 53,250/- and some documents.

4. Learned Counsel further stated that according to the Department the statements of Capt. H.A. Ansari were recorded and revealed modus operandi and the involvement of other persons accused in the show cause notices including Sh.

M.C. Goel and the foreigners mentioned therein.

5. The Department has alleged that Capt. Ansari was engaged in illicit smuggling and procurement of foreign blue films and had also acquired the foreign made articles mentioned in Annexure 4 to the Panchnama like projectors, transistor radio with tape recorder and movie light reflector for which he could not produce any Customs Duty receipt.

6. According to the Department Capt. Ansari had admitted in his statement dated 2-6-1976 given before A.C., D.R.I., Lucknow that Rs. 1,00,000/- Indian Currency was unaccounted money and sale proceeds of the smuggled goods i.e. hashish and charas which he had realised from one John Godinho of C-25, Greater Kailash Enclave-I, New Delhi as associate and accomplice, who in turn had acquired it from Joe De'Silva and Henry le Fabvure both of New Delhi and the main persons concerned in the conspiracy to smuggle out hashish and charas concealed in wooden and brass handicrafts to the parties concerned in America and Canada as mentioned hereunder. The balance as shown in the account book seized from Capt. Ansari as on 20-3-1976 as Rs. 1,01,000/- out of which Rs. 1000/- was spent on personal expenditure by Capt. Ansari and the rest was kept concealed in the steel almirah which was seized by Customs Officers on 3-5-1976. The total amount received between the period 21-4-1975 to 16-6-1975 amounting to Rs. 1,72,000/- was realised by Capt. H.A. Ansari from John Godinho towards illicit smuggling of 810 kgs of charas stuffed in the articles and exported to Canada and America. It also appeared to the department that there was corroborative evidence of such illicit export of charas and hashish in consignments despatched by Capt. Ansari's firm M/s. Trade Flankers, Nai Basti, Moradabad to fake firms in Canada and America during the period after the terms were arrived at between John Godinho in April, 1974 at the instance of Henry H. Le Fab'vure, who was desirous of getting better 'stuff' in view of the complaints from recipients of the stuff in America and Canada.

7. As per the department's view in the statement dated 3-6-1976 before the Assistant Collector, D.R.I., Lucknow under Section 108 of the Customs Act, 1962, Capt. Ansari had stated that after his retirement from Indian Army in the year

1970, he had started the firm in the name of Trade Flankers, with sole proprietorship and carried on till 31-3-1971 whereafter the firm was changed into partnership concern which besides Capt. Ansari, there were two other partners viz., Sh.

Shamsul Rehman and Sh. Mohammad Shamim. Sh. Shamsul Rehman is the son of Sh. Habeebur Rehman Hakimji. The arrangements continued till 31-7-1971. During the period the firm supplied brass art wares to exporters only The firm also supplied some brass samples to one Mr.

M.C. Goel of M/s. Oriental Handicrafts, Saharanpur. Later on Sh. M.C.Goel approached Hakimji, the father of Shamsul Rehman, a partner of the firm and Hakimji in turn directed him to see Mr. Rehman, one of the partners of Trade Flankers at that time. The aforesaid Sh. M.C. Goel who then contacted Mr. Shamim and told Sh. Shamim about stuffing of charas in brass items which were to be exported to one Mr. Lewis in Canada. Sh. Ansari has further stated that Shamim did not agree to the proposal of Sh. M.C. Goel. Sh. Goel then contacted Capt. Ansari at Moradabad at the later's residence and gave him idea of sending charas in brass items to Mr. Lewis in Canada. Capt. Ansari has further stated that prior to the aforesaid visit of Sh. Goel in Moradabad as aforementioned persons namely Mr. Henry H. Le Fab'vure, Mr. John Godinho and Mr. De Silva had visited Mr. M.C. Goel's place at Saharanpur and contacted one Shamshed Ahmad, who was working with Mr.

M.C. Goel for stuffing the charas in wooden items and Shamshad had agreed to their proposal with this background and planning Mr. Goel had come to Moradabad and talked to Capt.. Ansari regarding illicit export of charas to Canada. Thereafter, Mr. M.C. Goel took Capt. Ansari to his sister's place in Bengali Market, New Delhi and gave him 1 kg of charas which was in the shape of small balls which Capt. Ansari carried to Moradabad and filled in a round brass kettle, the mouth of which was sealed. This consignment was air freighted by post parcel at a local post office in Moradabad through fictitious firm and was consigned to Mr. Lewis in Canada. Capt. Ansari Hamid had further stated that the address of Mr. Lewis in Canada and the name of the fictitious firm confirming having despatched

the aforesaid consignment gave the postal receipt to Mr. M.C. Goel and the later paid him Rs. 700/- in cash for the illicit export of the consignment as his share. Capt. Ansari has further stated that as it was a number two or unaccounted dealing, he had not kept any receipt of this transaction and also did not remember the name of the fictitious firm in India as well as the address of Mr.

Lewis in Canada as the receipt was given to Mr. M.C. Goel and that the addresses of the two viz. the fictitious firm in India and the address of Mr. Lewis in Canada, a friend of Mr. Henry H. Le Fab'vure was given by Henry to Mr. M.C. Goel.

8. According to the department Capt. Ansari has further admitted that he was actively engaged in the smuggling of four consignments of charas of approximately 50 kgs. each during the period 1-8-1971 to 31-3-1972 for which he had received Rs. 25,000/- except for Rs. 5,000/- which have not been paid to him so far. Capt. Ansari had further stated that consequent to the consignment which was air freighted as referred to in the preceding paragraph, Sr. M.C. Goel had brought him to Delhi and introduced him to Mr. John Godinho, Mr. Joe De Silva and Mr. Henry at the premises located at 1st Floor S-B/20, Lajpat Nagar-II, New Delhi where Mr. John was running his office in the name of M/s. Eastern Export Agency. Capt. Ansari has further stated that according to the arrangement worked between him and the above three persons, the office expenses relating to smuggling of charas were to be borne by all the persons excluding Sh. M.C. Goel and Mr. Joe De'Silva. The charas, which was to be smuggled was stuffed in screens, tables and panels, which were packed in the wooden crates with iron strips. Capt. Hamid Ansari while giving his statement on 14-6-1976 before the Assistant Collector, D.R.I., Lucknow produced a file marked 'A' and stated that on page 5 of the said file was the Invoice of Trade Flankers for wooden handicrafts stuffed with charas sent to M/s. Asian Imports, 314 No. Robertson Blvd.

Los Angeles, California, 90018 U.S.A. under instructions and orders of Sh. M.C. Goel and Jo De Silva. The stuffing of charas in wooden handicrafts was done by Mr. M.C. Goel in the factory under his own supervision then the goods were stuffed with charas were given to him for export to abovesaid firm. Capt. Ansari was paid Rs. 123/- per kg.

of charas which was stuffed in wooden handicrafts appears on against 213 to 218 of the said Invoice. Mr. Godinho, it appears, used to prepare the Invoice and other papers for sending the consignment to Canada. Capt. Ansari was to sign the documents as per instructions from Mr. Godinho and to take delivery of goods from Railways and hand over the goods and documents to Shipping Agents viz. M/s. Jeena and Co. New Delhi for air freighting the consignments. As per the department's view besides the deposition of Capt. Hamid Ahmad aforesaid, there appears to other corroborative evidence to confirm the visit of the aforesaid persons to Mr. M.C. Goel's factory at Saharanpur, Capt. Ansari's visit to Delhi and meeting with Henry alongwith M.C. Goel separately and with John Godinho De'Silva and Henry at 2-B/20, Lajpat Nagar, New Delhi decision on respective shares on account of smuggling of charas through exports. Henry giving the names of U.S.A. and Canadian firms to whom consignments containing concealed charas was to be sent etc.

9. According to the department there was evidence to indicate that consignments exported by M/s. Trade Flankers and M/s. Joesonary Exports of Joe De'Silva were busted by American Authorities who found 38 kgs of Hashish concealed into wooden tables exported in these consignments in February, 1973. The consignee firm in these cases was M/s. Asian Imports, 314 No. , Robertson Boulevard, Los Angeles, California, 90048.

This American firm belonged to one Charlesand Leonard Stanlay Charles and Joe De'Silva continues to have business relationship with the aforesaid Charles Cuguzzoni, who is running the firm styled in his own name of Charles Cuzzon.

10. Sh. John Godinho had visited Moradabad to meet Capt. Ansari on 15th March, 1974 but in his absence from the city left a slip for him to collect samples and coming to Delhi for discussing about details of rates etc. and whereas it appears that Joe De'Silva had also visited Moradabad on 28-3-1974 and in Capt. Ansari's absence from the city he also left a chit mentioning about the business of hashish and char as.

11. The charas concealed in various items like tables, candle stands, panels and screens etc. was exported to firms in Canada through M/s.

Trade Flankers, Nai Basti, Moradabad and the charas was sometimes supplied to Capt. Ansari at Moradabad and sometimes at Delhi by men like Mohd. Ahmad Pahalwan of Dhampur and Abdul Saleem of M/s. A.S.Cottage Industry, Mohalla AH Shangran, Saharanpur. The charas appears to have been brought from Nepal by Mohd. Ahmad Pahalwan of Dhampur and Shamshad Ahmad through certain persons like Doola Khan and Majid Khan of Rampur. Mohd. Ahmad Pahalwan and Shamshad Ahmad appear to have had contacts with one person in Mahender Nagar, Nepal.

12. Further that the stuffing of charas was done by Sh. M.C. Goel of Saharanpur, Sh. Mohd. Ahmad Pahalwan of Dhampur and Mr. Saleem of M/s.

Cottage Industries, Saharanpur in the factory through artisans like B.D. Sharma, Chhotte and Shamshad. The consignment containing concealed hashish was sent from time to time to firm like M/s. Asian Imports, California aforementioned (during the period August 1971 to January, 1972) M/s. Morgan forwarding Imports 1540 Shamchenko 4760 Custeean Montreal Quebec and M/s. Tina Import and Forwarding 675, 16th Avenue Lachine, Quebec, Canada.

13. Capt. Ansari had exported yet another consignment containing concealed hashish in the name of fake firm M/s. Vanguard Brass Art Emporium, Nai Basti, Moradabad to M/s. Matic Imports, 5226 Mountain Sighted, Montreal, Quebec, Canada about which he did not state before the investigating officers and which was subsequently found out of the enquiry made in this concern.

14. It was the contention of the Advocate for Ex. Capt. H.A. Ansari that the Appellant Sh. H.A. Ansari had not committed the alleged offences and his statements were not voluntary but had been extracted under duress and therefore could not be relied upon. It was also his contention that the show cause notice was not issued by the adjudicating authority as required by law and therefore it was not a proper show cause notice.

15. It was also his submission that no reason was recorded for the seizure made on 3-5-1976 in the PANCHNAMA or otherwise.

16. The money found at Capt. Ansari's premises was his own and his mother's and was not earned from any illegal activity. But no statement of his mother was recorded at the time of seizure.

17. It was also his submission that once he had claimed that the confession was obtained under torture the adjudicating authority should have allowed examination of the concerned officers.

18. It was also his submission that the show cause notice was not issued within the prescribed period of six months and the period was extended unilaterally and without hearing; therefore, such an extension was not lawful or proper. Hence, the goods seized were liable to be returned.

19. It was also his submission that there were multiple personal hearings in Allahabad in 1978 and in Meerut in 1982 and 1984 extending over a period of 9 years and the penalty of Rs. 5 Lacs was imposed under Section 114 without any charge or notice to show cause.

20. Ld. Counsel filed a list of dates and the case law cited by him and requested that it may be taken into account.

21. The learned Advocate for Sh. M.C. Goel mainly contended that the appellant was the Proprietor of M/s. Oriental Handicrafts at Saharanpur and is a Merchant Exporter of wood carvings.

22. During the course of his business activities he had come in touch with some foreigners and Capt. H.A. Ansari but in 1972 the appellant and Capt. Ansari had a dispute on a matter of commission and since then they were not on speaking terms till today nor did they have any business dealings thereafter. It was their submission that he has been implicated in the present case on the basis of the statement of Capt.

H.A. Ansari and who was in turn tortured to give the statement and the role of appellant was shown to be that of the person responsible for stuffing charas in wooden handicrafts which were supposed to have been exported.

23. On the basis of the statement of Capt. H.A. Ansari, the DRI Officers forced the appellant to admit what all Capt. H.A. Ansari had stated and his statement was thus extracted under duress and was not a voluntary one and therefore should not be relied.

24. It is also his Submission that in the show cause notice they were asked to show cause as to why they should not be proceeded against for contravention of Section 135 of the Customs Act for exporting large quantities of charas. The notice did not ask any of the Noticee to show cause as to why penalty should not be imposed on them for export of charas nor did it make it clear as to whether the appellant was to show cause in respect of alleged export of charas during 1971-72 only or for subsequent periods till 1975 including the alleged export of 810 kg. No mention was also made as to how the appellant Was involved in subsequent exports till 1975 including the export of 810 kg. The Notice however, appears to confine itself only to the alleged export of 810 kgs. of charas with which the appellants had no connection at all. The show cause notice also did not make any mention that the statements of the appellants and of the persons implicating him are being relied upon.

25. It was also their submission that the notice was vague and confusing and gives no opportunity to the appellant to make a proper representation.

26. The case was adjudicated by the Additional Collector, Meerut without observing the principles of natural justice after fixing a date for hearing for which neither he nor his Counsel received any notice and the entire case including investigation, issue of show cause notice and adjudication suffer from non-application of mind. It was his submission that the show cause notice does not contemplate any penal action against Sh. M.C. Goel and hence no penalty could be imposed on him. (The penalty has been contemplated only against Capt. H.A. Ansari and that too only in respect of miscellaneous goods seized from him).

27. The proposal in the notice for action under 135 has no relevance and bearing on the instant adjudication proceedings.

28-29. Assuming but not admitting the voluntary nature of all the statements they did not in any way indicate that the appellant was involved in respect of the export of 810 kg. of charas.

30. That the Respondents have been denied the opportunity of cross-examination of investigating officers on flimsy grounds and the principles of natural justice have not been duly observed. The entire case of the department rests only on statements which were not only involuntary but had been retracted. No charas was recovered from any of the Noticees. To penalise a person merely on such involuntary, retracted and uncorroborated statements was unwarranted.

31. He would like to submit that while all other co-noticees were prosecuted, no prosecution was launched against the appellant. Even other co-noticees, except Capt. H.A. Ansari, were discharged by the Court.

32. Learned DR strongly defended the department's action and stated that it was a very serious case of illegal export of charas and hashish concealed in other articles or handicrafts and exported to Canada and America.

33. The department's case was based on the intelligence received from Canadian Authorities and the appellant Capt. H.A. Ansari was prosecuted and convicted by the Magistrate's Court on the basis inter alia of the evidence of the Canadian Officers whose statements were recorded and revealed in details the method and manner of illegal export. The discovery of these facts by the American Authorities coupled with the details revealed by Shri Ansari's statement prove the department's case. The money recovered during the search of business-cum-residential complex of Capt. H.A. Ansari was the sale proceeds of the smuggled goods and the raid also resulted in recovery of various contraband goods including blue films and other foreign article. Shri Ansari was prosecuted and convicted by the Court of Addl. Chief Magistrate, New Delhi. He would also like to draw attention to the judgment of Hon'ble Magistrate in which he has given detailed reasons for relying on the evidence produced by the customs and convicting Capt. H.A. Ansari. In particular he will draw attention to the statement of Mr. Walter Wafer Member of the Royal Canadian Mountain Police, Montreal, Canada and the findings recorded in the judgment of the Court of Addl. Chief Metropolitan

Magistrate, New Delhi. It was his contention that as rightly noted by the learned Magistrate also, the statements of Capt.

H.A. Ansari and others recorded by the Customs are voluminous and contained wealth of information beyond the figment of imagination of the Customs Officers and by no stretch of imagination it can be held that they were concocted by some Customs Officer and there was no evidence to show that they were extracted under torture.

34. It was submitted that show cause notice need not be issued by the adjudicating authority itself but can be issued by lower authority.

35. It was also his submission that even if a show cause notice was issued after six months it still remained a valid show cause notice.

36. Therefore, while he accepts that the notice was issued after six months without notice and without granting a hearing to the appellants it was his contention that it still remained valid and the adjudicating officer could proceed on its basis. Similarly, merely an addendum or corrigendum without changing the main basis does not amount to a second show cause notice. It was also his submission that merely a mention of a wrong rule does not invalidate the show cause notice.

37. It was also his submission written brief dated 17-5-1994 indicating the citations in support of above contentions may also be taken into account.

38. The Learned Counsel for Capt. H.A. Ansari stated that prosecution proceedings in a Magistrate's Court are independent proceedings and cannot be relied upon during adjudication proceedings. Furthermore, he would like to adopt the arguments of the Advocate for Sh. M.G. Goel, Sh. Aggarwal in so far as they relate to the defects in the show cause notices pointed out by him and the violation of the principles of natural justice and non-application of mind were concerned. He also stated that the case law listed by him in support of his main contention may also be taken into account.

39. We have considered the above submissions. We observe that first and foremost it is an admitted position, conceded by the department, that the time for

issuing the show cause notice was extended without notice and without hearing the appellants. Therefore, the goods, including currency, which were seized were liable to be returned in terms of the settled position in Law evident from various cases cited by the learned Advocate. It is really a tragedy that because of this negligence on the part of the concerned officers the goods will have to be returned in the manner. Since these goods include blue films and obscene photographs, it would however be open to the authorities concerned to inform the other authorities competent to take action with reference to such goods before their release to enable them to take such action under law as may still be open in this regard. But the Indian currency seized from Capt. H.A. Ansari and said to belong to him and his mother will have to be returned straightaway to the appellant from whose premises it was seized.

40. The issue of show cause notice after six months however, does not bar continuation of adjudication proceedings with reference to the various allegations and imposition of penalty. But, once again the departmental officers concerned have made a mess of the case and even committed what may be called absurdities as it would be evident from the fact that the appellant has been asked to show cause with reference to Section 135 CA 62. Section 135 of the Customs Act provides for punishment by Court of Law for evasion of duty or prohibition. Thus, this section is the authority under which the persons are prosecuted before Magistrate's Court and the punishments are awarded by the Court.

Therefore, Para 14 of the Show Cause Notice does not make any sense when it asks the appellants to show cause as to why they should not be proceeded against for contravention of Section 135.

41. But even if this is ignored, there is no end to other acts of omission and commission and indeed negligence by the officers inasmuch as while a reading of the show cause notice shows that the main thrust of the case relates to illegal export of hashish and charas (concealed in other articles), the principal accused Capt. Ansari and others have not been asked to show cause with reference to sections relating to such export and Section 114 which deals with the penalty for attempt to export goods improperly has not been invoked at all.

Capt. Ansari has only been asked to show cause with reference to the seized Indian currency and the imported foreign goods found in his premises. Thus, it is seen that the main thrust of the case is virtually lost sight of in the operative part of the show cause notice.

Again the second appellant Sh. Goel, although treated as one of the persons concerned in the illegal export of hashish and charas and alleged to have played a role in concealing the same, has not been asked to show cause with reference to any Section of the Customs Act or any other Act (except Section 135 CA 62).

42. While it is true that a show cause notice has to be read as a whole and merely incorrect or erroneous citation of sections and rules does not necessarily invalidate it, but it is also to be borne in mind that a show cause notice is a serious and an important document which makes allegations and asks the persons to show cause. And as a consequence of its issue the adjudication proceedings get launched and may result into confiscation of goods or penalty on the persons concerned, and even if they are found not guilty ultimately they have to undergo a lot of suffering, expenses or at least inconvenience during the pendency of the proceedings. As such it is not expected to be either lightly or carelessly drafted. On the contrary all care and caution is required to be exercised to see that it brings out the facts of the case and charges clearly, unambiguously, and specifically indicates the relevant Acts, sections and rules etc. and does not contain anything which is palpably wrong or irrelevant ex facie. But such a case is conspicuous by its absence.

43. As if this was not sufficient, the adjudication officer further compounds the blunder by ordering absolute confiscation of Indian currency seized under Section 121 CA 62 which has not been mentioned in the show cause notice and imposing penalty under Section 114 which had again not been invoked but even if it is presumed that he is inferring the invocation of these provisions from the show cause notices, the horrors of horrors is that, in his finding portion, the Collector rests his order even upon Acts which have not been mentioned. He refers to the Dangerous Drugs Act forgetting that none of its provisions have been invoked in the show cause notice; And forgetting again that Section 11 CA 62 gives powers

to Government to prohibit importation and exportation of goods and links the Customs Act with allied Laws but it is the exact provisions under relevant Acts and Sections which were also required to be cited and invoked before action could be taken with reference to them.

44. Even if we ignore, for arguments sake, all these defects and deficiencies the show cause notice read as a whole mainly relates to the allegations of illegal export of hashish and charas concealed in other articles and of acquisition by Capt. H.A. Ansari of imported goods seized from his premises and seizure of currency said to represent the sale proceeds of the smuggled goods. Even then so far as the seized goods are concerned there was no point in examining their liability to seizure and confiscation any further in view of the time bar due to late issue of show cause notice and therefore the requirement of the return of these goods to Capt. H.A. Ansari. Of course in so far as the allegations relating to his involvement in the illegal export of charas and hashish is concerned, there is no reason to disbelieve the evidence of the Canadian Customs and the learned DR's argument that the wealth of information contained in the statements which was beyond the figment of the imagination of the local Customs Officers is corroborated by the action and statement of the Canadian authorities and the Hon'ble Magistrate himself has taken this evidence into account and relied upon the same in his judgment to pronounce Capt. H.A. Ansari guilty.

45. While the Learned Counsel is correct in stating that the prosecution proceedings are independent of adjudication proceedings, the fact remains that the same material or evidence has been relied in both the proceedings and if anything, it has passed the stricture test of burden of proof required to be discharged by prosecution in criminal cases. Therefore this evidence cannot be lightly brushed aside or disregarded.

In so far as Shri M.G. Goel's case is concerned, it is true that he has been involved mainly on the basis of the statement of Capt. H.A. Ansari but once Shri Ansari's statement was held to be one which could be relied upon, it has implications for Mr. Goel.

However, the learned Counsel for Shri Goel is correct in pointing out that Shri Goel has not been charged with reference to any Section and has not been asked to show cause with reference to Section 112,113 or 114 Customs Act, 1962.

46. The mention of Section 135 is not merely irrelevant but in so far as Shri Goel was concerned, it does not have even remotest connection as he was not prosecuted. Again Section 112 has been invoked with reference to the imported goods seized from Capt. H.A. Ansari and has no relation in so far as Sh. Goel was concerned.

47. As already noticed the Collector has also taken Dangerous Drugs Act into account while it is not even as much as mentioned in the show cause notice. In fact neither any case has been made with reference to this Act nor the appellants have been asked to show cause with reference to it and this cannot be excused or overlooked as a minor error. It constitutes a serious negligence on the part of the officers if the intention of the department was to make out a case with reference to this Act as well, but was not so made out and the Act itself was not invoked.

48. Looking to the totality of the facts and circumstances while it appears that appellant Capt. H.A. Ansari was one of the persons concerned in the illegal export of charas and hashish concealed in other articles which he managed to do with the assistance of others including the second appellant Shri Goel, no penalty could be imposed on anyone under the Acts or Sections which had not even been invoked and with reference to which they were not asked to show cause.

Therefore, while the penalty imposed under Section 112 Customs Act, 1962 imposed on Capt. Ansari is upheld. The penalty imposed with reference to the provisions which had not been invoked (including Section 114 Customs Act, 1962) is set aside.

Again, as already mentioned above, the goods seized from Capt. Ansari's premises are required to be returned due to time bar coming into play on account of improper extension of time.

The entire penalty which has been imposed (with reference to the uninvoked provisions) on Shri Goel is set aside for the reasons already stated above.

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