

**M.K. Industries Vs. Collector of Central Excise**

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

**Decided On :** Jul-03-1995

**Reported in :** (1995)LC282Tri(Delhi)

**Appellant :** M.K. Industries

**Respondent :** Collector of Central Excise

**Judgement :**

M/s. Punjab Bottling Company is a registered partnership firm carrying on business of manufacture and sale of aerated waters for its small scale unit at Amritsar. It consists of three partners namely Sh. Charanjit Singh. Sh. S.S. Dhanjal and Sh. Pritam Singh.

Sh. S.S. Dhanjal has a separate business interest as a partner in two other firms carrying on business at Delhi under the name and style of M/s. M.K. Industries and M/s. Breweries Engg. Corporation and in addition, he is also the Managing Director of M/s. Amrit Beverages Pvt. Ltd., a trading concern with its registered office in Delhi. During the material period of dispute, the day to day work of aerated water factory was being looked after by Sh. Charanjit Singh while their partner was looking after his business interest at Delhi. The appellants' unit had started manufacture of aerated waters falling under erstwhile Tariff item No. ID under the brand names '77', 'Tingler' etc. since June 1981. The unit was initially exempt from licensing control. However, in March, 1982, an L-4 licence was taken out and the appellants started maintaining all the requisite statutory records. On 19-5-1985, a consignment of 693 crates of aerated water originating from the

factory premises of M/s. Punjab Bottling Company was intercepted by officers of the Central Excise at Beas Bridge on the G.T. Road and was allegedly found to be moving under cover of a fake Central Excise gate pass No. 148, dated 19-5-1985 and removed without payment of duty. In follow-up action, the officers visited the above factory premises and two trucks standing there loaded with a total quantity of 353 crates of aerated water which allegedly was intended to be removed without payment of duty. Furthermore, another quantity of 142 crates of aerated water was also found lying in the filling and capping section of the factory which had not yet been entered in the RG-1 record. On checking of records, the officers detected several consignments of aerated water having been removed from the factory under cover of fake gate passes on which proper payment of duty had not been made. Discrepancies were also noticed in the maintenance of personal ledger account inasmuch as credit and debit entries for 20-5-1985 were found already made in advance on 19-5-1985 itself.

The officers seized the above goods alongwith the three trucks.

Subsequently, the residential premises of Sh. Charanjit Singh, partner at Amritsar as also the business premises of M/s. Amrit Beverages (P) Ltd. Delhi were searched by the Central Excise authorities who took into possession certain documents and records.

Enquiries were also made from the customers of the appellant firm at various places like Amritsar, Jalandhar and Beas and certain documents were also recovered from them. During the course of post-seizure investigations, the statements of inter alia of Sh.

S.S. Dhanjal, and Sh. Charanjit Singh the partner incharge of the factory were also recorded.

2. A show cause notice dated 9th November 1985 was served upon Sh.

Charanjit Singh and Sh. S.S. Dhanjal proposing confiscation of seized goods under Rule 173-Q, levy of duty of Rs. 4,86,987.77 P. and imposition of penalty. The adjudicating authority passed the impugned order as under - (a) confiscating

1188 crates of seized aerated water with option to redeem on payment of fine of Rs. 2,000 together with duty.

(b) levying duty of Rs. 4,51,264.80 P. on Sh. Charanjit Singh and Sh. S.S. Dhanjal individually as well as collectively.

(c) confiscating Truck No. DEL-1377 seized in transit with an option to redeem on payment of fine of Rs. 6,000/-.

(d) imposing personal penalty of Rs. 10 lakhs each upon Sh.

Charanjit Singh and Sh. S.S. Dhanjal.

3. We have heard Smt. Archana Wadhwa, learned Advocate and Shri V.C.Bhartiya, learned DR.4. There is no doubt that a substantial quantity of aerated water was not entered in the RG-1 and was cleared without payment of duty by use of unauthorised duplicate gate passes in which the Central Excise Inspector's signatures were forged. The Adjudicating Authority has dealt with the aspect of evasion of duty in detail in the impugned order, relying also upon the statements of Sh. Charanjit Singh and the learned Advocate has not seriously contested the levy of duty and has also given up the claim of benefit of Notification No. 31/92 and we see no reason to interfere with the finding regarding evasion of duty by the appellants. We accordingly uphold the confiscation of 1188 crates of aerated water, Truck No. DEL-1377 and the levy of duty.

5. On the penalty aspect, we see great force in the contention of the learned Counsel that in the absence of any notice to Shri Charanjit Singh Anand and Shri S.S. Dhanjal to show cause against imposition of penalty, the penalties imposed upon them are not sustainable. The show cause notice called upon Punjab Bottling Company, Amritsar to show cause against imposition of penalty (para 18). It has been held by the Tribunal in the case of Mukha Mal Gokal Chand v. Collector of Customs and Central Excise, New Delhi.- [1987 (32) E.L.T. 163] that the issue of show cause notice to a person concerned prior to imposition of penalty is not an empty formality but a mandatory requirement and the fact that a copy of the show cause notice was also sent to the appellant firm, does not

improve the case of the department regarding the penalty imposed upon the firm because merely sending a copy of the show cause notice to a person without making any allegation against him or without proposing any penalty upon him is of no consequence. In the present appeals, the show cause notice calling upon the firm to show cause against imposition of penalty has not even been issued to the firm. In the case of Kallatra Mahin v. Collector of Central Excise, Bangalore - [1984 (16) E.L.T. 622], the Tribunal has held that non-issue of show cause notice against a partner of a firm who has been subjected to a penalty in his individual capacity, is a serious infirmity vitiating the order of adjudication against such person. The penalty imposed upon the partners of the firm was set aside on the ground that the show cause notice was issued only to the firm which alone was called upon to show cause against the proposed confiscation and penalty in the case of Jayantilal V. Patni & Co. v. Collector of Customs [1990 (46) E.L.T. 249]. Following the ratio of the above decisions, we hold that the penalties imposed upon Shri Charanjit Singh Anand and Sh. S.S. Dhanjal cannot be sustained and accordingly [we] set aside the penalties.

6. In the result, we confirm the duty demand and confiscation of goods and truck but set aside the penalties The appeals are disposed of in the above terms.

7. While I agree with Hon'ble Member (J) in so far as the levy of duty and confiscation of 1188 crates of seized aerated water (as mentioned in para 4) are concerned. However, in so far as the other aspects are concerned my views and orders are as follows :- In so far as Mr. Charanjit Singh Anand & Shri S.S. Dhanjal are concerned the main contention of the appellants is that the notice dated 9th November, 1985 issued in these cases does not amount to a show cause notice to Shri Charanjit Singh and Shri S.S. Dhanjal (partners of the firm M/s. Punjab Bottling Company Amritsar) inasmuch as the notice is addressed to the firm M/s. Punjab Bottling Company Amritsar and it is this concern which has been asked to show cause and not the appellants.

8. However, on perusal of the show cause notice dated 9-11-1985, it is seen that it was endorsed to Shri Charanjit Singh as well as Shri S.S.Dhanjal showing them as partners of the above concern. They were thus put on notice about alleged

omissions and commissions. Both have in turn replied to the Show Cause Notice. In their reply dated 24-12-1985 it is mentioned inter alia, as follows :- "Please refer to the Show Cause Notice C.No. IV (HQRS) Prev/12/17/85/4706-77 issued by the Assistant Collector Preventive, Central Excise Collectorate, Chandigarh to Shri Charanjit Singh Anand, partner and Shri S.S. Dhanjal, partner of M/s Punjab Bottling Company Jandiala Guru (Amritsar)..." 9. The Show Cause Notice also refers to alleged contravention by M/s Punjab Bottling Company Jandiala Guru and records the action taken in the presence of Shri Charanjit Singh Anand also. The statement of Shri Charanjit Singh Anand was also recorded and it is mentioned, inter alia, in Show Cause Notice that :- "Shri Charanjit Singh admitted that he has himself made these entries in the PLA in advance as he was not to attend the factory on 20-5-1985. He also maintained that he himself was maintaining the records required to be maintained under Central Excise Law. He also admitted the fact that two trucks were being loaded in the factory premises at the time of Preventive Staff visited on 20-5-1985 after 10.00 hrs." [para 6] "Shri Charanjit Singh admitted that original copy of gate pass No. 148 bearing printed number was removed from gate pass book by him and was sent to Delhi with Truck No. 1377 for 593 crates [220 Double Seven (Orange) and 475 Tingle] booked for delivery to M/s. Amrit Beverages (P) Ltd. 626 Lone Road, Delhi. The Truck left the factory premises at 17.30 hrs on 19-5-1985 and no duty has been paid for this load. He admitted the fact that he used a Rubber Stamp for stamping the Serial No. on Gate pass No. 148 dated 20-5-1985 prepared out of the duplication blank and unauthenticated gate pass book to evade Central Excise duty. He also admitted that he himself authenticated the blank copies of the gate pass book after Rubber Stamps were got prepared from the local market for the said purpose." [para 7] "He further admitted that he has already utilised 19 leaves of blank and unauthenticated gate passes from the duplicate blank and unauthenticated gate pass book, embossed and authenticated them after affixing numbering as well as stamps of Inspector, Central Excise Department. This was being done by him to evade Central Excise duty leviable on the goods already cleared on the original gate passes. After drawing blank gate pass leaves from the blank and unauthenticated duplicate gate pass book, he prepares three copies of the gate passes for clearance of less quantity and debited less duty in the PLA. He

admitted this modus operandi was adopted by him since 13-5-1985. He handed over the two Rubber Stamps i.e. one for embossing gate pass numbers and one for authenticating the same by affixing it and initialling the same as having been initialled by the Central Excise Inspector (Gold Range-Amritsar)." [para 7] "Further gate pass No. 149, dated 19-5-1985 for 620 crates valued at Rs. 1905/- was taken into possession which Shri Charanjit Singh admitted, was to be sent alongwith Truck No. PBN 125. The duplicate and triplicate copies of the gate pass No. 149 were found blank in the gate pass book for preparing another gate pass after removing blank gate pass from the duplicate blank unauthenticated gate pass book as per his modus operandi to evade Central Excise duty." [para 8] "He admitted that the Raw Material Account i.e. form IV Register was written upto 18-4-1985 and the 12 packets containing 100 gross each of crown corks and 320 packets containing 50 gross each of crown corks were not found entered anywhere in the Raw Material Account Register. The production slips were written upto 17-4-1985. For this he explained that he himself enters the production in the RG1 Register after actual verification of the production.[para 5] "The following such copies have been resumed from the residence of Shri Charanjit Singh, partner of the firm M/s Punjab Bottling Company, Jandiala Guru (Amritsar). The scrutiny of these copies shows that against the PLA entry Nos. mentioned on these copies, no duty has been debited in the PLA." [para 15] "Four chits dated 20-6-1984, 25-9-1984, 27-3-1985 and 17-5-1985 and letters dated 11-3-1985 and 18-3-1985 resumed from the Residential premises of Shri Charanjit Singh, partner of M/s Punjab Bottling Company Jandiala Guru (Amritsar) show that this firm has sent 570, 625, 130, 650, 700, 700 and 610+284 crates of Aerated Water Bottles to M/s Amrit Beverages Pvt. Ltd., Delhi without issuing any gate pass and without debiting the duty in the PLA." 10. These paragraphs are illustration of alleged personal involvement and liability of Shri Charanjit Singh. Of course they have to be read in the context of the preceding ones and also with reference to the following ones. And when the Show Cause Notice is read as a whole, it appears that the case has been made out both against the firm as well as the partners particularly Shri Charanjit Singh.

This aspect coupled with the fact that this Show Cause Notice was issued to Shri Charanjit Singh Anand and Shri S.S. Dhanjal by name, has to be taken into

consideration.

11. Ld. DR has submitted that the show cause notice read as a whole brings out the fact that Shri Charanjit Singh Anand was personally evading the duty for the assessee firm over a period of time by forging documents, by filling fake debit entries, using unauthenticated G.P.Is and forging them in gross and brazen misuse of SRP system which reposes confidence in the assessee. Further it is hard to believe that Shri S.S. Dhanjal another partner to whose firm M/s Amrit Beverages (P) Ltd. Company New Delhi majority of the goods cleared without payment of duty, were sent was not aware of the systematic evasion of duty perpetrated by Shri Charanjit Singh Anand as observed by the Collector.

And it is significant that the assessees had accepted the show cause notice as intended for them and replied accordingly and submitted to the adjudication proceedings, against them.

12. The appellants on the other hand have cited the case law in support of their contention that in view of the fact that the appellants have not been asked to Show Cause by name in the main body of the Show Cause Notice no penalty could be imposed on them.

13. In this,connection I find that a reading of Show Cause Notice as a whole discloses the offences allegedly committed personally by Shri Charanjit Singh Anand in particular (these offences have been mentioned specifically and described in detail). This fact coupled with the endorsements and the issue of Show Cause Notice to Shri Charanjit Singh Anand and Shri S.S. Dhanjal by name as well as designation amounts to issue of the Show Cause Notice to the firm as well as Shri Charanjit Singh Anand and Shri Dhanjal partner. As the alleged offences have been connected by Shri Charanjit Singh personally with reference to the stocks and accounts of the assessee firm as the partner incharge at Amritsar and the goods alleged to have been illegally sent by him are said to have been received, without ensuring payment of duty by the firm by the second partner Shri S.S. Dhanjal at the receiving end, therefore this notice dated 9-11-1985 is a Show Cause Notice to M/s.

Punjab Bottling Company as well as Shri Charanjit Singh Anand and Shri S.S. Dhanjal personally by name and designation (As partners) notwithstanding non-reiteration of their names in the last few paragraphs.

14. But even if it is considered that since the last few paragraphs mention only M/s Punjab Bottling Company as a firm and ask the firm to Show Cause (and do not reiterate the appellants' name) and this amounts to an infirmity a question arises whether the infirmity was such as to invalidate the notices in respect of the appellants or vitiate the entire proceedings and render the penalty liable to be set aside? In the case of *Kallatra Mahin v. C.C.E., Bangalore* - [1984 (16) E.L.T.622] in which penalty was imposed on a partner although Show Cause Notice was issued to the partnership firm, although the Tribunal held it to be a serious infirmity it also added that the question of de novo readjudication after issue of Show Cause Notice does not arise as the person is no more and significantly 12 years have already passed from the seizure of goods. In other words if the person was alive de novo adjudication could be resorted to after issue of a fresh notice. *Mukha Mal Gokal Chand v. Collector of Customs and Central Excise, New Delhi* - [1987 (32) E.L.T. 163] the Show Cause Notices were issued to all the partners of the appellants firm but the Collector did not impose any penalty on any of the partner but only on the firm and thus the case was distinguishable. In fact the situation was just the reverse of the one in the present case; And the observations of the Bench (that the case is not concerned with individual persons) were in a different context.

16. In the case of *Jayantilal V. Patni & Company v. Collector of Customs* -[1990 (46) E.L.T. 249]. it was found that "from the contents of the Show Cause Notice, it is clear that it was issued only to the licensed dealer namely M/s Patni Jeweller who was asked to Show Cause against the imposed penalty. In the light of notice, no allegation has been made against any of the partners of the firm and none of the partners have been called upon to Show Cause".

17. In the present case, as already noted allegations regarding omission and commissions by the appellants personally or otherwise are very much contained in the Show Cause Notice and the notice has been endorsed to them. Hence the

cases were distinguishable.

18. Looking to the position as a whole I feel that non-mention of the appellants by name in the last few paragraphs, although the names appear in the preceding paragraphs and also in the endorsements to the Show Cause Notice which has been actually issued to both of them by name and designation (both) amounts to issue of a Show Cause Notice to them but even if it was construed as an infirmity it was a curable or redeemable one. However all said and done the Show Cause Notice is a bit vague in this respect and therefore is liable to be set aside on this ground alone but after such setting aside the Collector would be at liberty to issue a fresh notice and readjudicate (particularly in view of the fact that there is no time limit for imposition of penalty).

19. In view of the above discussion I agree that the order was required to be confirmed in respect of the seized goods. However in so far as it related to the question of penalty it was required to be set aside. But the matter was required to be remanded for de novo consideration after issue of fresh notice. It is ordered accordingly.

20. In so far as M/s. M.K. Industries are concerned I find that the main Show Cause dated 9-11-1985 does not bring out any specific charge against them nor the Show Cause Notice was originally issued to them.

The main Show Cause Notice dated 9-11-1985 has not been endorsed to them at all whereas the corrigendum dated 13-11-1985 which asks them to Show Cause as to why the truck No. DEL 1377 should not be confiscated for having used the same for transportation of contraband excisable goods and why action under Rule 173Q should not be taken against them.

Therefore they come into picture by virtue of the description of facts and events as contained in the original Show Cause Notice dated 9-11-1985 read with the charges made in the corrigendum dated 13-11-1985. Hence it cannot be said that no Show Cause Notice was issued to them. However in so far as the question of confiscation of truck and imposition of penalty were concerned that was a different matter to be considered on merits.

21. In their appeal memo and the hearing they have not disputed the fact that the goods in question were loaded in their truck when it was intercepted but have pleaded that they had employed Shri Gurdip Singh as a driver for plying the Truck on hire and had no knowledge that the gate pass covering the consignment was not genuine and the Collector had therefore not imposed any penalty on the driver or the appellants.

22. Ld. DR reiterated the department view point but has not been able to show any specific evidence regarding connivance or even knowledge.

And mere suspicion was not enough either for confiscation, fine or penalty. Hence I consider that it has not been proved beyond doubt that the truck was being knowingly used for carrying contraband goods and the appellants were in any eventuality entitled to the benefit of doubt.

23. I therefore set aside the order in so far as it relates to the confiscation of the truck and appropriation of security of this appellant and accept the appeal with consequential relief. Sd/- In view of the difference of opinion between Hon'ble Member Oudicial) and the Vice President, the matter is submitted to the Hon'ble President for reference to a third Member on the following points :- 1. Whether in the facts and circumstances of the case, the Show Cause Notice as issued, amounts to a notice to the firm only or to the firm as well as Shri Charanjit Singh Anand and Sh. S.S. Dhanjal, Partners? 2. Consequentially, whether the penalties imposed on Sh. Charanjit Singh Anand and Shri S.S. Dhanjal were liable to be set aside or the matter was required to be remanded? 24. I have perused the order written by Shri S.K. Bhatnagar, Vice President my learned brother and Ms. Jyoti Balasundaram, Member Judicial my learned sister. The following points of difference have been referred to me :- "1. Whether in the facts and circumstances of the case, the show cause notice as issued, amounts to a notice to the firm only or to the firm as well as Shri Charanjit Singh Anand and Shri S.S. Dhanjal, Partners.

2. Consequentially, whether the penalties imposed on Shri Charanjit Singh Anand and Shri S.S. Dhanjal were liable to be set aside or the matter was required to be remanded My learned brother as well as sister both have narrated the facts and as

such, I need not reproduce the same.

25. Mrs. Archana Wadhwa, the learned advocate appeared. She pleaded that no show cause notice was issued to the partners. The learned Advocate relied on the order passed by the Member Judicial and in particular referred to para No. 5 of the order passed by the Member Judicial. She also referred to para No. 7 of the order passed by the learned Vice President. She pleaded that show cause notice has been issued to the firm, but the penalty has been imposed on the partners.

She argued that before the penalty can be levied there has to be a specific show cause notice issued to the partners. She read the learned Vice President's order and pleaded that the order passed by him is not correct. She referred to the show cause notice which is annexure T' of the paper book and in particular referred to paras No. 17 and 18 of the show cause notice. She further pleaded that a perusal of the show cause notice shows that M/s. Punjab Bottling Co., Jandiala Guru, had evaded central excise duty fraudulently and wilfully and had contravened the provisions of Rules 9(1), 52,53,173G, 226 and 173Q of the Central Excise Rules, 1944 and as such, Punjab Bottling Company, Jandiala are hereby required to show cause notice to the Collector, Central Excise, Chandigarh as to why the goods under seizure and the truck should not be confiscated under Rule 173Q of the Central Excise Rules and also why penalty should not be imposed on them under Rule 9(2) of the Central Excise Rules. She pleaded that the body of the show cause notice shows that no show cause notice was issued to S/Shri Charanjit Singh Anand And S.S. Dhanjal, partners, whereas the adjudicating authority has imposed penalties of Rs. 10,00,000.00 each (rupees ten lacs) on them.

In support of her arguments, she cited this following decisions :- (1) 1984 (16) E.L.T. 622 (Tribunal) - Kallatm Mahin and Ors v. Collector of Central Excise, Bandore.

(2) 1990 (46) E.L.T. 249 (Tribunal) - Jayantilal V. Patni & Co. v. Collector of Customs (Prev).

(3) 1987 (32) E.L.T. 163 (Tribunal), Mukha Mal Gokal Chand v. C.C.E. New Delhi.

She pleaded that the order passed by the Member Judicial is correct and further argued that the difference of opinion may be answered accordingly.

26. Shri Sanjeev Sachdeva, the learned SDR who has appeared on behalf of the respondent pleaded that the show cause notice has been issued to the firm and partners implicitly. He pleaded that the order as to the imposition of penalty should be upheld and the matter should be remanded as ordered by the learned Vice President. He referred to paras 8, 9, 10 and 11 of the order of the learned Vice President. He argued that the goods were loaded in the truck and the truck has been rightly confiscated and the learned Vice President has duly distinguished the case law in his order. He argued that the findings of the learned Vice President should be agreed to.

27. Mrs. Archana Wadhwa, the learned Advocate in reply pleaded that the remand is not justified. She also cited another decision reported in 1987 (27) E.L.T. 515 (Tribunal) in the case of Nunna Venkatarao v. Collector of Central Excise, Guntur.

28. I have heard both the sides and have gone through the facts and circumstances of the case. I have looked into the orders recorded by my learned brother Shri S.K. Bhatnagar, Vice President as well as my learned sister Ms. Jyoti Balasundaram, Member Judicial. In para No. 4 of her order she has mentioned that the levy of duty and claim of benefit of Notification No. 31/92 is not seriously contested and had upheld the levy of duty part and also upheld the confiscation of truck No. DEL-1377. No argument has been advanced before me as to the confiscation of the truck. The only argument advanced by the learned Advocate is as to the levy of penalty on S/Shri Charanjit Singh Anand and S.S. Dhanjal of Rs. 10 lacs each. The show cause notice appears in annexure 'F' of the paperbook. For the proper appreciation of the legal position and facts whether the show cause notices had been issued to the partners or not reproduction of paras 16 to 21 and the parties to whom the show cause notice has been issued is very essential. Paras 16 to 21 of the show cause notice are reproduced below :- "16. The examination of the documents/records resumed from various dealers of M/s. Punjab Bottling Co., Jandiala Guru (Amritsar) as well as the residential premises of Shri Charanjit Singh, partner of the firm shows that the party M/s. Punjab

Bottling Co., Jandiala Guru (Amritsar) has been evading Central Excise duty by adopting modus operandi detailed above. Financial year-wise figures of evasion have been drawn out since 1982-83 to 1985-86 and are enumerated in annexure E attached. From this it has been seen that the firm M/s. Punjab Bottling Co., Jandiala Guru has evaded duty to the tune of Rs. 4,86,987.77 P. 17. From the above it will be thus clear that the party M/s. Punjab Bottling Co., Jandiala Guru (Amritsar) have evaded Central Excise duty fraudulently and wilfully by adopting the above-mentioned modus operandi. Thus they have contravened the provisions of Rules 9(1), 52, 53, 173Q of the Central Excise Rules.

18. Now, therefore, the said M/s. Punjab Bottling Co., Jandiala Guru (Amritsar) are hereby required to show cause to the Collector Central Excise, Chandigarh within 30 days of the receipt of this notice as to why the goods under seizure and the trucks all valued at Rs. 3,78,747.00 should not be confiscated under Rule 173Q of the Central Excise Rules, 1944, (ii) the duty on the goods found to have already been cleared without payment of Central Excise duty amounting to 4,86,987.77 be not demanded under Rule 9(2) of the Central Excise Rules, 1944 read with Section 11-A of the Central Excises and Salt Act, 1944, (iii) penalty be not imposed upon them under Rule 9(2), 226 and 173Q of the Central Excise Rules, 1944 in respect of which the offence appears to have been committed by them.

19. M/s. Punjab Bottling Co., Jandiala Guru, Amritsar are further directed to produce at the time of showing cause all the evidence documentary or otherwise upon which they intend to rely in support of their defence.

20. M/s. Punjab Bottling Co., Jandiala Guru (Amritsar) should also indicate in their written explanation whether they wish to be heard in person before the case is adjudicated so that a date and time may be fixed for the same. If no mention about this is made in their written explanation, it will be presumed that they do not want to be heard in person.

21. The said M/s. Punjab Bottling Co., Jandiala Guru (Amritsar) should note that in case no cause is shown against the action proposed to be taken within 30 days of the receipt of this notice or they do not appear in person or through their legal

representative before the adjudicating authority when the case is posted for hearing, the case will be decided ex parte.

A perusal of paras 17 and 18 of the show cause notice shows that show cause notice for levy of penalty has only been mentioned in the case of Punjab Bottling Co., Jandiala Guru. In paras 17 and 18 there is no mention of issue of show cause notice to the partners, S/Shri Charanjit Singh Anand and S.S. Dhanjal. A perusal of page 9 of the show cause notice shows that copy of the show cause notice has been sent to the partners. It is a settled law that penalty proceedings are quasi-criminal proceedings before the penalty can be levied. There has to be a specific charge. There is no specific charge in the case of Shri Charanjit Singh Anand as well as Shri S.S. Dhanjal. The Tribunal in the case of Mukha Mal Gokal Chand v. Collector of Customs and Central Excise, New Delhi reported in 1987 (32) E.L.T. 163 (Tribunal) has held as under :- "From a plain reading of Section 79 of the Gold (Control) Act, 1968, it is clear that no order of adjudication of confiscation or penalty shall be made unless the owner or other person concerned is given a notice in writing, informing him of the grounds on which it is proposed to confiscate the goods or to impose a penalty, and giving him a reasonable opportunity of making a representation against the proposed confiscation or imposition of penalty. From the show cause notice in the instant case, it is clear that no allegation regarding the contravention of any provision of the Gold (Control) Act was made against the appellant firm, no penalty was proposed against the firm and the firm was never asked to show cause. In the circumstance, the imposition of penalty on the appellant firm or finding it guilty is without jurisdiction and illegal." The Tribunal in the case of Kallatra Mahin and Ors v. Collector of Central Excise, Bangalore reported in 1984 (16) E.L.T. 622 (Tribunal) had held as under :- "Non-issue of the show cause notice against a partner of the firm, who in his individual capacity has been subjected to a penalty under Section 112(b)(i) of the Act, is a serious infirmity which would vitiate the order of adjudication against the appellant. The question of de novo readjudication after issue of a show cause notice to him does not arise as the partner is no more and secondly twelve years have already passed from the date of seizure of the goods. The penalty imposed on the partner is, therefore, set aside on this technical point alone." 29. In view of the above discussion and keeping in view the fact that there is no charge as to levy of

penalty in the body of the show cause notice on S/Shri Charanjit Singh Anand and S.S. Dhanjal, I am of the view that penalty levied on S/Shri Charanjit Singh Anand and S.S.Dhanjal is invalid penalty in the eyes of law. I agree with the views expressed by Member Judicial.

(i) Accordingly, the point of difference No. 1 is answered to the effect that no show cause notice to S/Shri Charanjit Singh Anand and S.S. Dhanjal for levy of penalty was issued as there is no specific clause.

(ii) The penalties imposed on Shri Charanjit Singh Anand and Shri S.S. Dhanjal are liable to be set aside and as such, there is no question of remand.

(iii) No argument whether the truck is to be confiscated or not has been advanced before me by either side. Accordingly, I confirm the findings of the learned Member Judicial.

30. Registry is directed to place the matter before the Bench which had passed the order originally for passing appropriate orders in accordance with law.

31. In view of the majority opinion, the demand of duty and the confiscation of the goods and the truck is confirmed, but the penalties imposed on Shri Charanjit Singh Anand and Shri S.S. Dhanjal are set aside.

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