



2026:DHC:1525-DB



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 15th January, 2026

+ **CEAC NO. 48/2018**

SHRI HIMANSHU GUPTA

D-21, MODEL TOWN, PART-II,

DELHI-110009

....APPELLANT

Through: **Mr. Prem Ranjan Kumar,**
Advocate (through VC)

Versus

THE COMMISSIONER OF CENTRAL EXCISE,

C.R. BUILDING, I.P. ESTATE,

NEW DELHI-110002.

....RESPONDENT

Through: **Mr. Harpreet Singh, Senior**
Standing Counsel with
Mr. Jatin Kumar Gaur,
Advocate

CORAM:

HON'BLE MR. JUSTICE NITIN WASUDEO SAMBRE

HON'BLE MR. JUSTICE AJAY DIGPAUL

JUDGMENT (ORAL)

NITIN WASUDEO SAMBRE, J.

1. Heard.

2. This appeal is under Section 35G of Central Excise Act, 1944 questioning the legality and sustainability of the final order dated 16th January, 2018 passed by the Custom, Excise & Service Tax Appellate Tribunal (hereinafter shall be referred to as the '**CESTAT**').

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3. One Mr. Chander Kumar Gupta had a son namely Mr. Himanshu Gupta, who is the appellant to the present appeal. Mr. Chander Kumar Gupta was Director of M/s M.R. Tobacco Pvt. Ltd. (hereinafter shall be referred to as '*M/s MRTPL*') and was blessed with three daughters also, namely, Ms. Tripti, Ms. Mahek and Ms. Shraddha, who are married.

4. Alleging that M/s MRTPL was setup jointly by Mr. C.K. Gupta, former Director of M/s MRTPL with Mr. A.K. Gupta in the year 1988, the Central Excise Registration for their factory located at Samaypur Badli, Delhi, for manufacturing of *Gutkha*. It is claimed that manufacturing of *Gutkha* was stopped for domestic market for want of demand in February, 2008 and the machines were accordingly sealed by the department. However, to continue with the export activities, M/s MRTPL sought permission to open the seal and operate the said machines.

5. In the appeal, it is alleged by the appellant that his father Mr. Chander Kumar Gupta had serious health ailments such as brain-stroke, left side being paralyzed, appellant having lost his mother *i.e.* wife of Mr. Chander Kumar Gupta on 1st August, 2009, same led Mr. Chander Kumar Gupta to be bed-ridden as he also suffered from oral cancer.

6. During visit of officers of Central Excise Department on 11th October, 2009 at Plot no.112, *Khasra* No.301, Gali no.6, Master Mohalla, Libaspur, Delhi, it was noticed that manufacturing of *Gutkha* was carried out with the help of two pouch packaging/filling



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machines and two sealing heater plates. The officers of the respondent-Central Excise Department on 11th October, 2009 also visited the factory premises of M/s MRTPL, wherein all 15 packing machines were allegedly found to be in sealed condition.

7. One Mr. Raisuddin submitted a letter to Superintendent, Central Excise (Anti-Evasion) on 15th December 2009 accepting the act of manufacturing *Gutkha* through the unit located at 30/5, Gali No.6, Master Mohalla, Libaspur and offered Rs.25 lakhs towards the duty and other liability under the Central Excise Act, 1944.

8. The said event has culminated into an investigation and a Show Cause Notice on 7th November, 2013 was issued to M/s MRTPL raising propose demand for alleged clearance made from operation of the packing machines at Libaspur, Delhi referred above and also penalty was sought to be imposed under Rule 26 of Central Excise Rules. The clearance was alleged for the period 1st July, 2008 to October, 2009.

9. The present appellant claimed that he sought return of non-relied documents so also the documents relied upon by the respondent through communication dated 18th November, 2013 and subsequent thereto, having received the notice of personal hearing, the appellant submitted his reply to the Show Cause Notice on 29th July, 2014. Accordingly, the Adjudicating Authority proceeded to confirm the demand of duty of M/s MRTPL and imposed penalty of Rs.50 lakhs on the appellant.

10. The appellant, feeling aggrieved, preferred an appeal before



the CESTAT being Appeal No.E/52156-52157/2015, which came to be dismissed vide impugned order and as such, this appeal under Section 35G of the Central Excise Act, 1944.

11. The appellant has raised number of grounds in this appeal and has submitted the written submissions.

12. Amongst other, the question of law which the appellant has tried to canvass are-

- a. Whether the Commissioner, Central Excise, who has passed the order-in-original, so also, the CESTAT erred in failing to appreciate the very statutory mandate and opportunity provided under Section 9D of the Central Excise Act, 1944, thereby denying an opportunity of cross examination of the witnesses;
- b. In absence of specific finding as regards the status of Mr. Chander Kumar Gupta who has resigned w.e.f 15th July, 2009, for which, Form 32 was submitted on 10th October 2009 to the Registrar of Companies, can be held responsible for the liability.
- c. Whether the Authorities below have failed to consider the liability of Mr. Habibullah who was the Director of M/s MRTPL post resignation of Mr. Chander Kumar Gupta and who has voluntarily paid the tax dues.

13. So as to substantiate the aforesaid questions of law, learned counsel for the appellant has invited attention of this Court to the



death of Mr. Chander Kumar Gupta, the then Director, who was seriously ailing and expired post the raid in question *i.e.* on 11th October, 2009. According to him, the reply to the Show Cause Notice, in categorical terms, demanded certain documents which were not supplied to him, which amounts to denial of opportunity of hearing and as such, according to him, in absence thereof, the appellant was handicapped in submitting his detailed submission. He would claim that the reply filed by him, so also, the demise of his father was not at all appreciated before passing the order-in-original as well as by the CESTAT. According to him, the Show Cause Notice, the order-in-original so also, the order passed by the CESTAT are wholly based on the statement of witnesses and the said statements were never supplied to him and such witnesses whose statements are being relied on, if are to be considered in evidence, it is necessary to grant an opportunity of hearing to the appellant as mandated under Section 9D of the Central Excise Act, 1944. He would claim that there is no independent material relied on by the respondent in the matter of imposing tax liability, penalty etc.

14. So as to substantiate the aforesaid contention, learned counsel for the appellant has invited attention of this Court to the contents of the Show Cause Notice, the observations made in the order-in-original, the judgment of the Apex Court in the matter of ***Kranti Associates Pvt. Ltd. Vs. Masood Ahmed Khan***, reported in 2011 (273) E.L.T. 345 (S.C.) so as to urge that to avoid arbitrary exercise of powers by the Authorities and the Tribunals, it is necessary that the reasons in support of decision must be recorded which are not



only cogent, but also sufficient for recording the reasons in the matter of adjudication of liability and as such, it was necessary for the respondent to offer opportunity of hearing.

15. In addition to above, so as to substantiate his claim that the appellant has a statutory right of cross examination of witnesses, support is drawn from Division Bench judgment of this Court in the matter of ***Flevel International Vs. Commissioner of Central Excise [2016 (332) E.L.T. 416 (Del.)]***, particularly, para 45, which reads thus:-

“45. As regards the request for cross-examination of the other witnesses, the adjudication order again dealt with this perfunctorily. It simply stated in para 36 that if the request made by the Appellant in the letter dated 31st January 1985 for cross-examination of “such a large number of persons was granted it would have take the case to a non-ending process.” This cannot be a justified reason within the meaning of Section 9D of the Act to deny that opportunity to the Appellant. Further the CCE proceeds to observe that in their reply dated 3rd February 2002 the Appellant had somehow shortened the list of persons it wanted to cross-examine. This is not borne out from the reading of the reply dated 3rd February 2002.”

16. In addition to above, learned counsel for the appellant has drawn support from the judgment of Apex Court in the matter of ***J & K Cigarettes Ltd & Others Vs. Collector of Central Excise [2009 (242) E.L.T. 189 (Del)]*** so as to substantiate his claim that right to cross examination cannot be denied since there are exceptional reasons or circumstances.



17. That being so, it is urged that both the orders impugned are liable to be quashed and set-aside.

18. As against above, *Mr. Harpreet Singh*, learned Senior Standing Counsel appearing for the respondent has supported both the orders *viz.* order-in-original, so also, the order passed by the CESTAT. According to him, even if in the Show Cause Notice a reference is made to the statement of the witnesses, it is not only that statement of such witnesses are only relied on for passing of the orders impugned. According to him, such statements are further corroborated by independent evidence as could be referred from the orders impugned including the Show Cause Notice. He would further claim that all the witnesses whose statements were recorded are admissible in evidence and same are since corroborated by the other piece of evidence, the exceptional circumstances exist *qua* the denial of opportunity of cross examination.

19. Learned counsel for the respondent would urge that the appellant is trying to take advantage of death of his mother, death of his father post the proceedings initiated so as to evade his liability of payment of tax, penalty etc.

20. Learned counsel for the respondent has drawn support from certain judgments which are as under:-

- i. *Kanungo & Co. Versus Collector of Customs, Calcutta & Ors [1983 (13) E.L.T. 1486 (S.C.)]*
- ii. *Surjeet Singh Chhabra Vs. Union of India [1997 (89) E.L.T. 646 (S.C)]*



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- iii. *Union of India Vs. Rajendra Bajaj [2010 (253) E.L.T. 165 (Bom.)]*
- iv. *Patel Engineering Ltd. Vs. Union of India [2014 (307) E.L.T. 862 (Bom.)]*
- v. *M/s Vallabh Textiles Vs. Additional Commissioner Central Tax GST, Delhi East & Ors. [W.P.(C) no.4576/2025 decided on 9th April, 2025]*

21. As such, dismissal of the present appeal is sought.

22. We have considered the submissions.

23. It is not in dispute that the Firm of which the appellant is a Director, was in the business of manufacture of *Gutkha* of various brands such as '*Pan king*' etc.

24. The said Firm through present appellant was *prima facie* found to be in collusion with Mr. Sharad Kumar Yadav, who was clandestinely manufacturing and removing the Pan king Brand *Gutkha* from Plot no.112, *Khasra* No.301, Gali No.6, Master Mohalla, Libaspur, Delhi, which was taken on rent from relative of one Mr. Jitendra Yadav. The aforesaid act was carried out clandestinely to avoid payment of Central Excise duty. The *Gutkha* packaging/filling machines was being run illegally without filing any declaration and without intimating the respondent, which resulted into the Central Excise (Anti Evasion), Delhi officers carrying out a search on 11th October, 2009. Accordingly, a *Panchnama* dated 11th October, 2009 was drawn in relation to the aforesaid area *viz* Plot no.112, *Khasra* No.301, Gali No.6, Master Mohalla, Libaspur, Delhi and following seizures were made:-



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Sl. No.	Description of seized goods	Quantity	Value (in Rs.)
1.	Panking brand Gutkha (MRP Re.1/-each)	382200 Pouches	3,82,200/- @ Rs.1 per pouch
2.	Ready Mix Masala	437 Kg	2,42,780/- @ Rs.555.56 per Kg
3.	Packing Material Printed Plastic Lamination Rolls	90 Kg	14,400/- @ Rs.160/- per Kg.
4.	Gutkha Pouch Packing Machines	2 Nos.	1,50,000/- @ Rs.75,000/- per machine
5.	Sealing Heater Plate	2 Nos.	10,000/- @ Rs.5,000/- each
		Total Value	7,99,380/-

25. Same has led to the recording of the statements of Mr. Jitendra Yadav on the very same day i.e. on 11th October, 2009, Mr. Vinay, Mr. Gunjan, Mr. Chander Kumar Gupta, Mr. Shrawan Tiwari, Mr. Raisuddin, Mr. Ram Babu Yadav, Mr. Sharad Kumar and Mr. Habibullah under Section 14 of the Central Excise Act, 1944, are part of judicial proceedings within the meaning of Sections 193 and 228 of Code of Criminal Procedure, 1973.



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26. Apart from above, the *Panchnama* were drawn on 11th October, 2009 at D-21 Model Town-II, Delhi and A-6/22, Sector 16, Rohini, *Khasra* No.753 Sirsapur near Hanuman Mandir, Delhi.

27. The stock of the finished goods of *Gutkha*/material/packaging material is drawn as Annexure A to the *Panchnama*, a video recording of the proceedings also took place at the premises and two machines which were engaged in the manufacturing and packaging were seized. The statement of Mr. Jitendra Yadav speaks of that his relative Shri. Naresh Kumar being the owner of the property at Libaspur, Delhi has given the same on rent to one Mr. Sharad and rent was being collected by him. He disclosed about the *Gutkha* packaging work to be in operation. The statements of workers namely Vinay and Gunjan specifically establish the said fact. A pen drive was seized from the premises owned by Mr. Chander Kumar Gupta at D-21, Model Town-II, Delhi so also the documents which are kept in File A and B. The pen drive was found to be containing the material in regard to export of *Gutkha* by M/s MRTPL, which was found to be not connected with the matter in question.

28. The appellant was found to be managing the affairs of the company as the documents which were seized speaks so. At the premises at A-6/22, Sector 16 Rohini, Delhi from the custody of Mr. Sharad Kumar loose papers such as Bank Cheque Books, Income Tax Returns and samples of Gutka were discovered. On scrutiny of said papers, the documents containing electricity bill of the premises at aforesaid property and other documents were also discovered, wherein name of Mr. Himanshu Gupta, S/o Mr. Chander Kumar

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Gupta i.e. the present appellant was found. Besides above, Mr. Sharad Kumar Gupta was having a telephone bill, wherein address was shown to be that of Mr. Himanshu Gupta, the appellant herein.

29. During course of investigation at the premises of M/s MRTPL, a mixing machine, oven and Supari cutting machine (total five in number) were found. The oven was having high temperature and the trays were filled with supari mixture. The material therein was seized as Annexure 8 to the *Panchnama* dated 11th October, 2009 and further enquiry led to recovery of certain incriminating documents viz. the Memorandum of Association of M/s MRTPL, rent agreement between M/s MRTPL and Mr. Himanshu Gupta, list of employees containing names of Raisuddin and Habibullah.

30. All the statistics in relation to the electricity consumption, the summary drawn therefrom discloses that for the period from 14th September 2009 to 22nd October 2009, the consumption was 1,466 unit, whereas preceding said period, it was only 540 units.

31. The consumption bills at other places were also taken into account. A comparative chart of the consumption was also drawn based on the documents received from Energy companies.

32. On the appreciation of above materials, the order-in-original came to be passed, operative part of which, reads thus:-

“i. I determine & confirm the Central Excise Duty of Rs. 5,87,50,000/- (Rupees Five Crores Eighty Seven Lakhs Fifty Thousand Only) [Duties leviable under Central Excise Act, 1944



amounting to Rs. 4,32,10,625/- (Rs. Four crores thirty two lacs ten thousand six hundred twenty five), Addl. Duty of Excise leviable under Section 85 of the Finance Act, 2005 amounting to-Rs. 51,87,625/- (Fifty one lacs eighty seven thousand six hundred twenty five), National Calamity Contingent Duty leviable under Section 136 of the Finance Act, 2001 amounting to Rs. 86,42,125/- (Eighty six lacs forty two thousand one hundred twenty five), Education Cess leviable under Section 91 of the Finance Act, 2004 amounting to Rs.11,39,750/- (Rs. Eleven lacs thirty nine thousand seven hundred fifty only) & Secondary & Higher Education Cess leviable under Section 136 of the Finance Act, 2007 amounting to Rs. 5,69,875/- totaling-Rs. 5,87,50,000/-)] and order recovery of the same from M/s M. R. Tobacco Pvt. Ltd. B-14, Gali .No. 7, Samaypur Badli, New Delhi under proviso to sub-Section (1) of Section 11A of the Central Excise Act, 1944 read with Rule 9 of the provisions of Pan Masala Packing Machines (Capacity Determination and Collection of Duty) Rules, 2008.

ii. I order recovery of interest at applicable rates on the duty not paid and to be recovered from M/s M. R. Tobacco Pvt. Ltd., B-14, Gali No.7, Samaypur Badli, Delhi as above under Section 11AB of the Central Excise Act, 1944 (now Section 11AA);

iii. I impose penalty of Rs. 5,87,50,000/- (Rupees Five Crores Eighty Seven Lakhs Fifty Thousand Only) upon M/s M. R. Tobacco Pvt. Ltd., B-14,



Gali No.7. Samaypur Badli, Delhi under Section 11AC of the Central Excise Act, 1944 read with Rule 17(1) of Pan Masala Packing Machines (Capacity Determination and Collection of Duty) Rules, 2008. If such duty as determined under sub-section (2) of Section 11A. and the interest payable thereon under section 11AB (now Section 11AA), is paid within thirty days from the date of communication of the order. The benefit of reduced penalty of 25% shall be available if the amount of penalty so determined has also been paid within the period of thirty days.

iv. I impose penalty of Rs. 50,00,000/- (Rupees fifty lakhs only) on Shri Chander Kumar Gupta, Director of M/s M.R. Tobacco Pvt. Ltd., B-14, Gali No.7, Samaypur Badli, Delhi under Rule 26 of Central Excise Rules, 2002 for the reasons stated herein above.

v. I impose penalty of Rs. 50,00,000/- (Rupees fifty lakhs only)- Shri Himanshu Gupta S/o Shri Chander Kumar Gupta under Rule 26 of Central Excise Rules, 2002 for the reasons stated herein above.

vi. I impose penalty of Rs. 50,00,000/- (Rupees fifty lakhs only) Sh, Sharad Kumar, Labour Contractor under Rule 26 of Central Excise Rules, 2002 for the reasons stated herein above..

vii. I impose penalty of Rs. .,00,000/- (Rupees five lakhs only) Sh. Rahisuddin under Rule 26 of Central Excise Rules, for the reasons stated herein above.



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viii. I impose penalty of Rs. 5,00,000/- (Rupees five lakhs only) Shri Hazi Habibullah alias Hazi Mullah under Rule 26 of Central Excise Rules, 2002 for the reasons stated herein above.

ix. I impose penalty of Rs. 5,00,000/- (Rupees five lakhs only) Shri Ram Babu alias Ram Babu Yadav under Rule 26 of Central Excise Rules, 2002 for the reasons stated herein above:

x. I impose penalty of Rs. 50,00,000/- (Rupees fifty lakhs only) M/s R. R. Industries, Khasra No. 753, Siraspur, Near Hanuman Mandir, Delhi-110042 under Rule 26 of Central Excise Rules, 2002 for the reasons stated herein above.”

33. The order-in-original, in specific terms, deals with all these issues. Leave apart the confessional statements, the independent material as referred to above is also taken into account by the Authority while passing the order-in-original. The seizure of packaging material and the ready mixture *gutkha* valued Rs.7,99,380/-, total value of other material being Rs.26,82,654/-, the independent stand of the appellant to the Show Cause Notice, the stand of the appellant that appellant and his father Mr. Chander Kumar Gupta were in the manufacture of Pan Masala, seizure of packaging machines, voluntarily payment of tax by employee of the appellant, had led to the only inference that manufacturing operation was being carried out without registration. Consumption of energy as certified by NDPL in view of illegal operation of machines by M/s MRTPL from 14th August 2008 demonstrate that the appellant was in the business of manufacturing of excisable goods without



obtaining Central Excise registration.

34. On the issue of cross examination and the statutory right of the appellant, it has been specifically observed that the statements of the workers/employees, and co-noticee were recorded which are having monetary interest in operation of illegal business and as such, are not expected to support the case of the respondent. It was not that the denial of cross examination is immaterial as apart from the statements recorded, there is independent material to corroborate the very charge against the appellant. Even otherwise, it was noticed that the co-noticee and the employee are directly connected with the appellant and as such, are not expected to take stand of appellant in the cross examination.

35. A similar view, upon appreciation, is expressed by the CESTAT in its order.

36. Though learned counsel for the appellant so as to substantiate his right of statutory right of cross examination of witnesses has relied on the judgment of CESTAT in the matter of ***M/s Surya Wires Pvt Ltd. Vs. Principal Commissioner, CGST Raipur [Excise Appeal No.51148 of 2020]*** decided on 1st April, 2025 by Principal Court No-1, New Delhi with connected matter, we are equally required to be sensitive to the fact that the said judgment of the CESTAT was delivered in the facts and circumstances of the said case.

37. The appellant has specifically relied on the judgments of Apex Court in the matter of ***Kranti Associates Pvt. (referred above)*** and ***J & K Cigarettes Ltd & Others (referred above)***, so also on the



Division Bench judgment of this Court in the matter of ***Flevel International*** (referred above).

38. In the matter of ***Flevel International*** (referred above), this Court has observed that serious attempts were not made to secure the presence of witnesses in the adjudication proceedings. It appears that in the said case, summons were issued to the witnesses upon satisfaction that opportunity of cross-examination has to be afforded to the party therein.

39. It is not that the party has no right of cross-examination of witnesses, however, same depends on the facts and circumstances of each case as in the given convincing circumstances, the right of cross examination can be denied.

40. In the case in hand, it is specifically noted that co-noticee and the employee are related to the appellant having common financial interest either in the form of employer-employee or that of the blood relation. In such an eventuality, it is not expected that the witnesses will dare to depose against the appellant.

41. The Apex Court in the matter of ***Kanungo & Co. Vs. Collector of Customs, Calcutta & Others [1983 (13) E.L.T 1486 (S.C)]*** had made following observations:-

“12. We may first deal with the question of breach of natural justice. On the material on record, in our opinion, there has been no such breach. In the show-cause notice issued on August 21, 1961, all the material on which the Customs Authorities have relied was set out and it was then for the appellant to give a



suitable explanation. The complaint of the appellant now is that all the persons from whom enquiries were alleged to have been made by the authorities should have been produced to enable it to cross-examine them. In our opinion, the principles of natural justice do not require that in matters like this the persons who have given information should be examined in the presence of the appellant or should be allowed to be cross-examined by them on the statements made before the Customs Authorities. Accordingly we hold that there is no force in the third contention of the appellant.”

42. In **Surjeet Singh Chhabra Vs. Union of India [1997 (89) E.L.T. 646 (SC)]**, the Apex Court observed as under:-

“3. It is true that the petitioner had confessed that he purchased the gold and had brought it. He admitted that he purchased the gold and converted it as a kara. In this situation, bringing the gold without permission of the authority is in contravention of the Customs Duty Act and also FERA. When the petitioner seeks for cross-examination of the witnesses who have said that the recovery was made from the petitioner, necessarily an opportunity requires to be given for the cross-examination of the witnesses as regards the place at which recovery was made. Since the dispute concerns the confiscation of the jewellery, whether at conveyer belt or at the green channel, perhaps the witnesses were required to be called. But in view of confession made by him, it binds him and, therefore, in the facts and circumstances of this case the failure to give him the opportunity to cross-examine the witnesses is not violative of principle of natural justice. It is contended that the petitioner had retracted within six days from the confession. Therefore, he is entitled to cross-examine the panch witnesses before the authority takes a decision on proof of the offence. We find no force in



this contention. The customs officials are not police officers. The confession, though retracted, is an admission and binds the petitioner. So there is no need to call panch witnesses for examination and cross-examination by the petitioner."

43. In **Patel Engineering Ltd. Vs. Union of India [2014 (307) E.L.T. 862 (Bom.)]**, the High Court of Bombay observed as under:-

"21. Thus, the consistent view is that may be and only in case of want of Notice to the affected party in all other cases it is not enough to allege breach of principles of natural justice but also demonstrate that prejudice is caused by such breach. This is for the simple reason that any departure or every breach does not necessarily result in miscarriage of justice or gross failure of justice. Further, the principles of natural justice are not a strait-jacket formula. Which principles of natural justice or which facet of the same is applicable, depends upon the nature of the lis, the statute under which an adjudication is undertaken and several other factors. This has been now firmly established in the decision of Bar Council of India v. High Court of Kerala reported in (2004) 6 SCC 311 : AIR 2004 SC 2227. In that case, in the SCC report, this is what is held:—

49. In N.K. Prasada v. Govt. of India [(2004) 6 SCC 299] this Court observed : (SCC p. 308, paras 24-25)

"24. The principles of natural justice, it is well settled, cannot be put into a straitjacket formula. Its application will depend upon the facts and circumstances of each case. It is also well settled that if a party after having proper notice chose not to appear, he at a later stage cannot be permitted to say that he had not been given a fair opportunity of



hearing. The question had been considered by a Bench of this Court in Sohan Lal Gupta v. Asha Devi Gupta [(2003) 7 SCC 492] of which two of us (V.N. Khare, C.J. and Sinha, J.) are parties wherein upon noticing a large number of decisions it was held : (SCC p. 506, para 29)

‘29. The principles of natural justice, it is trite, cannot be put in a straitjacket formula. In a given case the party should not only be required to show that he did not have a proper notice resulting in violation of principles of natural justice but also to show that he was seriously prejudiced thereby.’

25. The principles of natural justice, it is well settled, must not be stretched too far.”

(See also Mardia Chemicals Ltd. v. Union of India [(2004) 4 SCC 311 : (2004) 4 Scale 338] and Canara Bank v. Debasis Das [(2003) 4 SCC 557 : 2003 SCC (L&S) 507].)

50. In Union of India v. Tulsiram Patel [(1985) 3 SCC 398 : 1985 SCC (L&S) 672] whereupon reliance has been placed by Mr Reddy, this Court held : (SCC p. 477, para 97)

“97. Though the two rules of natural justice, namely, nemo judex in causa sua and audi alteram partem, have now a definite meaning and connotation in law and their content and implications are well understood and firmly established, they are nonetheless not statutory rules. Each of these rules yields to and changes with the exigencies of different situations. They do not apply in the same manner to situations which are not alike. These rules are not cast in a rigid mould nor can they be put in a legal straitjacket. They are not immutable but flexible. These rules can be adapted and modified by statutes and statutory rules and also



by the constitution of the Tribunal which has to decide a particular matter and the rules by which such Tribunal is governed.”

22. xxxxxxxxxxxx

23. Therefore, we are of the opinion that it will not be correct to hold that irrespective of the facts and circumstances and in all inquiries, the right of cross examination can be asserted. Further, as held above which rule or principle of natural justice must be applied and followed depends upon several factors and as enumerated above. Even if there is denial of the request to cross examine the witnesses in a inquiry, without anything more, by such denial alone, it will not be enough to conclude that principles of natural justice have been violated. Therefore, the judgments relied upon by Shri Kantawala must be seen in the factual backdrop and peculiar circumstances of the assessee's case before this Court.”

44. In the matter of M/s Vallabh Textiles Vs. Additional Commissioner Central Tax GST, Delhi East & Ors [W.P. (C) 4576/2025 decided on 9th April, 2025], this Court observed as under:-

*“15. While cross-examination can be granted in certain proceedings, if it is deemed appropriate, the right to cross-examine cannot be an unfettered right. This has been so held recently by this Court in **Sushil Aggarwal v. Principal Commissioner Of Customs (2025:DHC:698-DB)**. The relevant portion of the decision reads as under:*

“15. Accordingly, this Court is of the opinion that in order to ensure that there is compliance of Section 138(B) of the Act, though the same cannot be claimed as an unfettered right in all cases, in the facts of the present case, both Mr. Sushil Aggarwal



and Mr. Aidasani are afforded an opportunity to cross examine Mr. Bhalla.”

45. Apart from above, it is not the case of the appellant that each of the witnesses whose statements are relied on, have retracted the same. At least, no material to that effect is placed on record by the appellant. That being so, the denial of cross examination can be said to be justified and appropriate, for which, reliance can be placed on the judgments in the matter of ***Commissioner of Customs Excise, Mumbai Vs. Kalvert Foods India Pvt. Ltd. [2011 (270) E.L.T 643 (S.C.)]*** and ***Sushil Aggarwal Vs. Principal Commissioner of Customs [2025: DHC:698-DB]***.

46. In wake of above, it is apparent that the entire proceedings against the appellant are based on un-retracted statements of the witnesses, corroborative evidence in the form of recovery of material, energy details, employment related documents and rental agreements etc.

47. In wake of above, it cannot be said that while passing the orders impugned, the respondent had failed to understand or consider the very object of Section 9D of the Central Excise Act, 1944 and has illegally denied the opportunity of cross-examination of the witnesses.

48. For the aforesaid reasons, in our opinion, the questions of law which are sought to be canvassed, cannot be answered in favour of the appellant. Rather, we are of the view that there is no question of law involved.



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49. As such, the appeal stands dismissed.
50. Pending application, if any, also stand disposed of
51. A copy of this Judgment be uploaded on the website of this Court.

**NITIN WASUDEO SAMBRE
(JUDGE)**

**AJAY DIGPAUL
(JUDGE)**

JANUARY 15, 2026/ay/ok