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

+ **CEAC No. 7/2018**

Date of decision: 16th May, 2018

PRABHAT ZARDA FACTORY CO. Appellant
Through: Mr. Manish Panda, Mr.
Avinash Trivedi, Mr. Mrinal Bharat Ram
and Mr. Amit Kr. Bhattacharyya, Advocates.

versus

COMMISSIONER OF CENTRAL EXCISE, DELHI-I
..... Respondent
Through: Mr. Sanjeev Narula, Sr.
Standing Counsel with Mr. Abhishek Ghai,
Advocate.

CEAC No. 8/2018

K. N. MEHROTRA Appellant
Through Mr. Manish Panda, Mr.
Avinash Trivedi, Mr. Mrinal Bharat Ram
and Mr. Amit Kr. Bhattacharyya, Advocates.

versus

COMMISSIONER OF CENTRAL EXCISE, DELHI-1
..... Respondent
Through Mr. Sanjeev Narula, Sr.
Standing Counsel with Mr. Abhishek Ghai,
Advocate.

CEAC No. 9/2018

PURUSHOTTAM KUMAR ARYA Appellant
Through Mr. Manish Panda, Mr.
Avinash Trivedi, Mr. Mrinal Bharat Ram

and Mr. Amit Kr. Bhattacharyya, Advocates.

versus

THE COMMISSIONER OF CENTRAL EXCISE, DELHI-1

..... Respondent

Through Mr. Sanjeev Narula, Sr.
Standing Counsel with Mr. Abhishek Ghai,
Advocate.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE CHANDER SHEKHAR

SANJIV KHANNA, J. (ORAL):

This order would dispose of the aforestated appeals, which arise from a common order dated 20th April, 2017 passed by the Customs, Excise and Service Tax Appellate Tribunal (Tribunal, for short) in Appeal Nos. E/1291/2010, E/1292/2010 and E/1293/2010.

2. These appeals were admitted for hearing vide order dated 23rd February, 2018, on the following substantial questions of law:-

- “(i) Whether the appellant is right that the order passed by the Customs, Excise and Service Tax Appellate Tribunal is contrary to law as it does not examine and discuss the contentions and issues of facts and law as raised and had arisen for consideration?
- (ii) Whether the findings recorded by the Customs, Excise and Service Tax Appellate Tribunal are perverse as they do not meet the mandate and requirement of law?”

3. After hearing counsel for the parties, we feel that we are not required to go into details and merits of factual disputes as we find

that an order to remit is required to be passed for fresh adjudication by the Tribunal.

4. Suffice it would be to notice that search operations were undertaken in the premises of M/s. Rudraksha Marketing on 28th February, 2008 and statements of the sole proprietor Suresh Kumar Garg and his brother Pawan Kumar Garg were recorded. It is a case of the Revenue that the said statements implicate the present appellants as involved in clandestine manufacture and removal of tobacco/*gutkha* without payment of central excise duty and education cess.

5. Factory premises of Prabhat Zarda Factory, the appellant in CEAC No.7/2018, were thereafter subjected to search on 11th March, 2008. Appellants claim and assert that no incriminating material, documents or goods were found. Appellant-Purushottam Kumar Arya, a partner of Prabhat Zarda Factory and K.N. Mehrotra, an employee of Prabhat Zarda Factory were arrested on 7th March, 2008. Appellants have alleged that they were called to the office of the Excise Authority and statements of Purshottam Kumar Arya were recorded on 29th February, 2008, 1st March and 7th March, 2008. Similarly, statement of K. N. Mehrotra was recorded on 29th February, 2008 and 7th March, 2008. Assertion and contention of the appellants is that these statements were recorded under extreme pressure and duress. It is stated that Purushottam Kumar Arya and K.N. Mehrotra had retracted their statement by way of bail applications moved on 8th March, 2008 and subsequently after release from custody vide communication dated 24th March, 2008.

6. The appellants have relied on several judgments in support of the contention that retracted statements cannot be accepted and considered as admission of guilt unless there are other circumstances and corroborative evidence. Reference was made to *A. Tajudeen versus Union of India*. (2015) 4 SCC 435, *Commissioner versus Shakti Zarda Factory (I) (P) Limited* 2015 (321) E.L.T. A210 (SC), *Vishnu and Company Private limited and Others versus Commissioner of Central Excise*, (2016) 332 E.L.T. 793 (Del), *Rakesh Kumar Garg versus Commissioner of Central Excise*. (2016) 331 E.L.T. 321 (Del), *Department of Customs versus Joginder Pal Jain*, (2014) SCC Online Del 4386 and *Commissioner of Customs, Mumbai versus Food Centre Trading Company*, (2008) 225 E.L.T. 193 (Bom).

7. Impugned order does not specifically and elaborately deal with the diverse and different contentions on facts and facts and law. The arguments and contentions have been rejected by reproducing the findings recorded in the order-in-original and thereafter by observing that the said findings are correct. For the sake of convenience, we would reproduce paragraphs 11 and 12 of the impugned order in entirety:-

“11. The Id. Counsel's submission on behalf of the PZFC, Shri Purushottam Kumar Arya, partner and Shri M.N. Mehrotra that there is no independent corroboration for the statements made by Shri Suresh Kumar Garg, authorized signatory of M/s R.M., is not based on facts on record. There is corroboration in the form of statements made by Shri Purushottam Kumar Arya and Shri K.N. Mehrotra, Manager. Further, there has been seizure of incriminating

documents/statements of the accounts (print out of the ledger account of the appellant No. 1 PZFC), from the premises of M/s R.M., who are also one of the beneficiaries of the alleged evasion of duty of Central Excise of the assessee M/s PFZC. In this regard, ..the impugned order on pages 35-36 has observed as under :

"On perusal of the statements tendered by Shri Arya and Shri Mehrotra recorded under Section 14 of Central Excise Act, 1944. I note that Shri Arya tendered his statements on three different dates viz. 29.2.2008, 1.3.2008 and 7.3.2008 and Shri Mehrotra tendered his statement on 29.2.2008 and 7.3.2008 before the proper Central Excise officers. The material details and nature thereof such as pricing policy and discount structure, details of partners, relation with buyers, arrangement of transportation, purchase of raw materials on bills as well as without bills, clearance of goods on bills as well as without bills etc. given by Shri P.K. Arya and Sh. Mehrotra are almost identical to the revelation made by Shri Suresh Kumar Garg under his voluntary statements recorded on 28.2.2008, 29.2.2008 and 3.3.2008. Such minute details do not seem to have been extracted from an unwilling/non-voluntary person. Both the persons had ample opportunity between their different statements, to retract the same but they did not opt for immediate retraction.

The allegation of the noticees, in this regard, that statements have been recorded under threat, duress, confinement and are non-voluntary, have not been substantiated by any evidence except that they retracted their respective statements on 24.3.2008. I note that statements of Shri Arya and Shri Mehrotra were recorded on different dates and they took similar stand in their all statements. If the statements were recorded under threat or duress and the contents of the panchnama were not correct, they could have filed immediate retraction after cessation of the said threat, duress and

illegal confinement. I note that on 7.3.2008 at 12.30 hours when both the noticees appeared before the investigating officers in compliance of summons issued for their appearance in the case, they requested vide letter dated 7.3.2008 for adjournment to attend the summons after their attendance in Delhi District Court, Tis Hazari, Delhi in connection with family dispute matters scheduled at 14.00 hours on 7.3.2008, which was acceded to and accordingly they appeared in the evening hours of 7.3.2008, when their statements were recorded separately. This shows they were not confined to the office during the recording of their statements between 29.2.2008 to 7.3.2008. Further between 29.2.2008 to 7.3.2008, the day they were arrested and from 8.3.2008 to 20.3.2008, the day they were released on bail by the Court, they had ample opportunity and forum to produce evidence for charges of threat, duress and illegal confinement, but they did not produce any such evidence to buttress their allegation.

I also don't find any substance in noticees submissions that there is no independent corroboration of the statements made by them under Section 14 of CEA, 1944. The statements made by Shri Arya and Shri Mehrotra were corroborating the reasonable belief entertained by the officer of the department arising out of confessional and inculpable statements of Shri Suresh Kumar Garg and seizure of incriminating documents/statements of account which are in fact the print out of the ledger account of Noticee No. 1 from the premises M/s R.M. which were also one of the beneficiaries of the alleged evasion of Central Excise duty by M/s PZFC.

I therefore, find that it is not only the statements of Shri Arya and Shri Mehrotra which are the only evidence on record. Disclosure of the modus operandi adopted and internal business/pricing policy followed by M/s PZFC, in the respective statements stood corroborated by the

recovery of documents/statements of accounts, speaking in loud and clear terms the amount received by M/s PZFC against the sale of goods on bills as well as without bills, removal of goods on payment of Central Excise duty as well as without payment of Central Excise duty. Further the statements of Shri Garg, the buyer of the excisable goods (cleared without payment of duty), who also is one of the beneficiaries of the scheme hatched and executed by them for evasion of Central Excise duty, also corroborated the charge of clandestine removal of goods, against M/s PZFC by providing the print outs of the ledger account of Noticee No. 1 containing the details of goods cleared under cover of bills as well as without cover of any bills."

11.1 It is on record that the incriminating documents were recovered under the proper panchnama signed by the independent witnesses and the entries in the documents were explained by the buyer of the excisable goods in his voluntary admittal/statements recorded on different dates. In this regard, the impugned order on pages 36-37 has observed as under:

"The Id. Counsel repeatedly contended in his written as well as oral submissions during the personal hearing that no case is made out against a person on the basis of the statement of accounts procured and produced by the third party from his premises like in the present case from the Noticees No. 4 and 5 and cited the case law of "Rutvi Steel & Alloys Vs. CCE, Rajkot - 2009 (243) ELT 154 (Tri.-Ahmd.) and "CCE, Coombatore Vs. Rajaguru Spinning Mills (P) Ltd. - 2009 (243) ELT 280 (Tri.-Chennai) in their defence. As regards the decision of Hon'ble CESTAT in the Rutvi Steel, I note that the instant case is entirely different from the said case as in the cited case, it was held that third party diary entries and sole statement of their employee is not sufficient as a proof of clandestine removal, whereas in this case the incriminating documents were recovered under proper panchnama signed by competent witnesses, the entries in

the documents were explained by the buyer of the excisable goods in his voluntary admittal/statements recorded on different dates and same was further admitted by the suppliers of the excisable goods as well as their Manager in their voluntary statements recorded on different dates. The decision in the case of Rajaguru Spinning Mills in this respect is also not applicable as in that case the day book showing realisation of higher amounts were allegedly seized from the premises of the assessee who denied its ownership in the first place and did not reveal any intricate information with respect to the documents seized. Whereas in the instant case, the ownership of the documents seized was never denied, rather the details of account were explained and admitted by the owner of the records, i.e. M/s R.M. through the authorised signatory Shri Suresh Kumar Garg as well as the supplier of the goods i.e. Shri P.K. Arya and Shri.K.N. Mehrotra, who also confirmed that the same were supplied without payment of Central Excise duty and admitted Central Excise duty liability in respect of clandestine removal of excisable goods."

11.2 The appellant assessee, their partner, Shri Arya; and Manager, Shri K.N. Mehrotra also argue that their statement was taken under threat and duress. However, the facts on record do not prove so. These appellants are not able to prove that their said statements were not voluntary, and they were recorded under threat and duress. The retractions made later after considerable time. From the circumstances, it appear an afterthought as to avoid consequences of their commissions and omissions under which they are liable for action under the law of Central Excise. On this issue, the impugned order on pages 37-38 observes as under:

"Coming to the retraction of the statements recorded under Section 14 of Central Excise Act, 1944 by Shri P.K. Arya and Shri K.N. Mehrotra vide their letter dated 24.3.2008, I note that the Counsel have heavily relied upon it. Further the counsel also challenged the

admissibility and evidentiary value of these statements under Section 25 & 26 of the Indian Evidence Act, 1872. However, I find that the confession once made by the person before the proper Central Excise officer has to be viewed with enormous evidentiary value. In Assistant Collector of Customs, Madras-I Vs. Govindswamy Raghupathy - 1998 (98) ELT 50 (Mad.), the Hon'ble High Court has held that it is only confession made before the police or in custody in the presence of police which cannot be relied upon within the meaning of Section 25 & 26 of the Evidence Act, 1872, excepting for the specific purposes of Section 27 & 32 of the Evidence Act. Barring the above circumstances no other confession made before any authority or prosecuting, official could be viewed with suspicion and they have enormous evidentiary value and conviction could be based on the evidence of such confession statement alone as before the custom officer. In K.I Pavunny Vs. Asstt. Collector (Head Quarter), Cochin 1997 (90) ELT 241 (SC), it has been reiterated holding that appellant when gave confessional statement under Section 108 of the Customs Act was not a person accused of a offence. It is further contemplated that 'the appellant while giving statement under Section 108 of the Customs Act, was bound to speak the truth with the added risk of being prosecuted if he gave false evidence.' Held further that 'the officer exercising powers under the Customs Act is an authority within the meaning of Section 24 of Evidence Act.' It was further held in the same judgement that 'the confession statement influenced by threat, duress or inducement etc. and is true one.' Confession when retracted has to be tested under Section 24-30 of the Evidence Act- burden is on the accused to prove that the confession was made under threat and only if accused is able to prove that it was not voluntary then the onus shifts to prove that it was made voluntary.' It was further held that 'the burden to prove that it was not voluntarily given by the accused but has been made to

the dictation of the prosecuting officials is heavily on the accused to prove with regard to which there is not a single attempt made on the part of the accused and hence the version of the prosecution has to be relied upon in toto'. The counsel's contention that the statements were recorded under threat, duress, coercion and illegal confinement has not been substantiated by any evidence except the retraction of the noticees given after more than three weeks of recording the first statement. The counsel failed to prove the allegation of threat, coercion and illegal confinement by the Central Excise officers during the recording of the statements. Moreover, I could not find even a single attempt on the part of the counsel in his written as well as oral submission to prove the allegation of threat, coercion and illegal confinement by the departmental officers. The Noticee No. 1 has been engaged in the manufacturing for a longer period and their Manager, Shri K.N. Mehrotra, well conversant with the procedures of Central Excise would be fully aware of the consequences of confessional statements and that's why as an afterthought the Noticees 2 and 3 had retracted the same. However, mere retraction of confessions is not sufficient to make the statement irrelevant. In *Vinod Solanki Vs. UOI - 2009 (233) ELT 157 (SC)*, it was held that if confession is retracted, it must be corroborated by other independent and cogent evidences. In *'Surjeet Singh Chhabra Vs. UOI - 1997 (89) 157 (SC)* it was held that a confession made before Custom officer was held binding even if retracted later."

11.3 In respect of the record resumed during search of the premises of the appellant M/s R.M., it is evident that the goods had been cleared by the assessee M/s PZFC without bills and without payment of duty, and against the said goods, payment was received in cash. The entries of the record resumed was corroborated voluntarily by the partner Shri Purushottam Kumar Arya as well Manager, Shri K.N. Mehrotra of M/s PZFC. When such clandestine removal without payment of duty has been explained in three consecutive statements also

by Shri Suresh Kumar Garg, the defence of retraction later by Shri Purushottam Kumar Arya and Shri K.N. Mehrotra cannot succeed. In this regard, the impugned order on page 39 has observed as under

"I find that the records resumed by the department from the premises of the M/s RM, the ownership of which was never denied by M/s RM and details of the entries made therein were thoroughly explained by Shri Suresh Kumar Garg, the representative of M/s RM in his three consecutive statements, with respect to receipt of the excisable goods without bills and payment of cash against receipt of these goods from M/s PZFC. The entries were also explained by Shri P.K. Arya and Shri K.N. Mehrotra of M/s PZFC and the issue of clandestine clearance of excisable goods without bills and without payment of Central Excise duty to M/s RM and receipt of cash against such sales were admitted by them in their three consecutive statements. Except the defence of retraction filed by Shri Arya and Shri Mehrotra, that too after three weeks of their first statement, the counsel failed to adduce any evidence to prove that the records resumed under the panchnama are not admissible pieces of evidence. I know that the statements of account resumed under panchnama drawn on spot by the Central Excise officer in the presence of independent witnesses are reliable and admissible as evidence. As regards cash payments made to M/s PZFC by M/s RM in the entries of the files seized, with respect to the excisable goods removed from the factory premises M/s PZFC and sold to M/s RM, I find that the Noticees No. 2 and 3 have admitted the same and the department has been able to establish the charge of clandestine clearances of excisable goods without payment of excise duties against the Noticee No. 1 to 3 and receipt of said goods without payment of duty in a fraudulent manner by Noticees No. 4 and 5 by producing these records as evidence, recording the voluntary statements of owner of the records and also by the partner and the manager of M/s

PZFC and the representative of Noticee No. 4, wherein all have admitted the non payment of Central Excise duty on the excisable goods valued at Rs.2,10,26,312/- involving Central Excise amount Rs.1,42,93,687/-. I therefore find that M/s PZFC have removed excisable goods valued that Rs.2,10,26,312/- (MRP Rs.4,20,52,623/-) without payment of Central Excise duty amounting to Rs.1,42,93,687/- to M/s RM without maintaining the statutory records meant for the purpose and without furnishing correct information to the department in ER-1 returns furnished on monthly basis."

(Emphasis supplied)

12. In view of the above discussion, we fully agree with the finding of the impugned order where it was observed that present appellants have no defence against the case made out against them. The case laws mentioned by the appellants are not applicable in the present facts. The same are distinguishable on facts and circumstances.

12.1 The Tribunal in the case of Tanna Electronics (supra) has observed that the case where the voluntary deposit of duty has been made by the assessee, the said fact also reflects upon the fact of acceptance of clandestine activities on the part of the assessee. The Tribunal in the said case observes as under:

"8. We, however, do not find any merit in the above contention of the Id. Advocate. It is not only the statement of Shri M.M. Tanna which is the only evidence available on record. The modus operandi adopted by the said appellants and as disclosed in the said statement stood corroborated by the recovery of duplicate chits from the appellant's factory as also from the distributor's premises i.e. M/s. Moby Enterprises. Further, the statement of their distributor Shri G.S. Advani also corroborates the department's stand of clandestine clearances of goods by M/s. Tanna Electronics. In the said statement, Shri G.S. Advani has clearly deposed and clarified the same modus operandi

adopted for clandestine clearances of the goods which was disclosed by Shri M.M. Tanna in his statement.

Further, the other partner Shri Ashok Tanna has also corroborated the version of Shri M.M. Tanna. As such, it is seen that there is enough evidence on record to sustain the charge of clandestine removal against the appellants. The precedent decisions referred to by the Id. Advocate do not advance the appellant's case inasmuch as in the case of clandestine removal, the appreciation of the evidence available on records of that particular case leads to the findings. It is the cumulative effect of the entire evidence, which is made the basis for arriving at the finding of the clandestine removal. In the instant case, we are satisfied that there exists sufficient evidence to sustain the said finding against the appellants. It is also seen that the appellants had voluntarily deposited duty amount immediately after the search and seizure which also reflects upon the fact of acceptance of clandestine activities on the part of the appellants, though strictly speaking same cannot be made the sole basis for arriving at a conclusion against the appellants".

It is made clear that the mere voluntary deposition of duty may not be the sole basis for arriving at the conclusion against the assessee. In this case however there is sufficient corroboration evidence on record, which prove the case of evasion of duty of Excise against the assessee and other appellants.

12.2 Hon'ble Supreme Court in the case of K.I. Pavuny (supra) has observed that the inculpatory portion of retracted confession, if found to be voluntary and truthful could be relied upon to base conviction. The Hon'ble Supreme Court in the said case further observes that prudence and practice require prosecution to give assurance by way of corroboration from other evidences made available by prosecution and a general corroboration would suffice, and not for each detail

contained in the confessional statement. The Hon'ble Supreme Court in the said case inter alio observes as under:

"21. In Kashmira Singh's case the co-accused, Gurcharan Singh made a confession. The question arose whether the confession could be relied upon to prove the prosecution case against the appellant Kashmira Singh. In that context, Bose, J. speaking for Bench of three-Judges laid down the law that the Court requires to marshal the evidence against the accused excluding the confession altogether from consideration. If the evidence de hors the confession proves the guilt of the appellant, the confession of the co-accused could be used to corroborate the prosecution case to lend assurance to the Court to convict the appellant. The Court considered the evidence led by the prosecution, de hors the confession of co-accused and held that the evidence was not sufficient to bring home the guilt of appellant Kashmira Singh of the charge of murder. The appellant was acquitted of an offence under Section 302 IPC but was convicted for the offence under Section 201 IPC for destroying the evidence of murder and sentenced him to seven years rigorous imprisonment. This decision was considered by a four-Judge Bench in Balbir Singh v. State of Punjab - AIR 1957 SC 216 wherein it was held that if there is independent evidence, besides the confession, the rule that the confession could be used only to corroborate the other evidences loses its efficacy. Therefore, it was held that if the retracted confession is believed to be voluntary and true, it may form the basis of a conviction but the rule of practice and prudence requires that it should be corroborated by independent evidence. Therein also, for the charges of capital offence, the trial Court did not accept the confessional statement of co-accused containing inculpatory and self-exculpatory statement. The High Court reversed the acquittal and convicted the accused, accepting that part of the confessional statement of the accused which was corroborated from other evidence. This Court upheld the

conviction and held that it is not necessary that each item of fact or circumstance mentioned in the confessional statement requires to be corroborated separately and independently. It would be sufficient if there is general corroboration. The ratio in Kashmira Singh's case was referred to."

8. The Tribunal is the final fact finding authority under the Act i.e. the Central Excise Act, 1940. As a final fact finding authority and the first appellate authority against the order-in-original in the present case, the Tribunal was required to examine the statements, documentary evidence, consider the effect of retraction with reference to the legal position and thereupon arrive at definitive and considered decision. No doubt, as the final fact finding authority, the Tribunal can rely upon the reasoning, findings or inferences given in the order-in-original there has to be also fresh and independent application of mind and not a mere reproduction and repetition even if the final conclusion is one of affirmation. In the present case, the impugned order on all aspects and contentions merely reproduces the order-in-original, without specifically and independently examining and dealing with diverse contentions. Reference and independent and exhaustive elucidation of the factual contentions raised by the appellants and consideration of legal issues based upon the said contentions is conspicuously lacking and missing. The impugned order suffers on this account. Supreme Court in ***Kranti Associates Pvt. Ltd and Others. Vs. Masood Ahmed Khan and Others***, 2011 (273) E.L.T. 345 (SC), had examined and elucidated on importance and significance of reasoned and speaking order by quasi judicial authorities. In the said

case, National Consumer Redressal Commission, it was observed, has trappings of civil court and was a high-powered quasi-judicial forum for deciding lis between the parties. Quoting case law on the subject dealing with the question of recording of reasons and thorough and independent application of mind in support of the conclusions by any quasi-judicial authority, it was held as under:-

“**47.** Summarising the above discussion, this Court holds:

(a) In India the judicial trend has always been to record reasons, even in administrative decisions, if such decisions affect anyone prejudicially.

(b) A quasi-judicial authority must record reasons in support of its conclusions.

(c) Insistence on recording of reasons is meant to serve the wider principle of justice that justice must not only be done it must also appear to be done as well.

(d) Recording of reasons also operates as a valid restraint on any possible arbitrary exercise of judicial and quasi-judicial or even administrative power.

(e) Reasons reassure that discretion has been exercised by the decision-maker on relevant grounds and by disregarding extraneous considerations.

(f) Reasons have virtually become as indispensable a component of a decision-making process as observing principles of natural justice by judicial, quasi-judicial and even by administrative bodies.

(g) Reasons facilitate the process of judicial review by superior courts.

(h) The ongoing judicial trend in all countries committed to rule of law and constitutional governance is in favour of reasoned decisions based on relevant facts. This is

virtually the lifeblood of judicial decision-making justifying the principle that reason is the soul of justice.

(i) Judicial or even quasi-judicial opinions these days can be as different as the judges and authorities who deliver them. All these decisions serve one common purpose which is to demonstrate by reason that the relevant factors have been objectively considered. This is important for sustaining the litigants' faith in the justice delivery system.

(j) Insistence on reason is a requirement for both judicial accountability and transparency.

(k) If a judge or a quasi-judicial authority is not candid enough about his/her decision-making process then it is impossible to know whether the person deciding is faithful to the doctrine of precedent or to principles of incrementalism.

(l) Reasons in support of decisions must be cogent, clear and succinct. A pretence of reasons or “rubber-stamp reasons” is not to be equated with a valid decision-making process.

(m) It cannot be doubted that transparency is the sine qua non of restraint on abuse of judicial powers. Transparency in decision-making not only makes the judges and decision-makers less prone to errors but also makes them subject to broader scrutiny. (See David Shapiro in Defence of Judicial Candor [(1987) 100 Harvard Law Review 731-37] .)

(n) Since the requirement to record reasons emanates from the broad doctrine of fairness in decision-making, the said requirement is now virtually a component of human rights and was considered part of Strasbourg Jurisprudence. See Ruiz Torija v. Spain [(1994) 19 EHRR 553] EHRR, at 562 para 29 and Anya v. University of Oxford [2001 EWCA Civ 405

(CA)] , wherein the Court referred to Article 6 of the European Convention of Human Rights which requires,

“adequate and intelligent reasons must be given for judicial decisions”.

(o) In all common law jurisdictions judgments play a vital role in setting up precedents for the future. Therefore, for development of law, requirement of giving reasons for the decision is of the essence and is virtually a part of “due process”.

9. We do not think that the impugned order meets the mandate and legal requirements set out in the aforesaid summarization made by the Supreme Court in ***Kranti Associates Pvt. Ltd.*** (supra). The impugned order, even if assuming the conclusion was justified, would falter on the said account. Reference, in this regard, can be also made to the decision of the Delhi High Court in ***Rakesh Arora Vs. Commissioner of Customs***, 2012 (276) E.L.T. 181 (Del.) and ***Nitesh Kumar Kedia Vs. Commissioner of Customs, Import & General***, 2012 (284) E.L.T. 321 (Del.).

10. In these circumstances, we would hold that the impugned order fails to independently and specifically deal with and examine the contentions raised by the appellants. It fails to meet the parameters required, noticed and summarized by the Supreme Court in ***Kranti Associates Pvt. Ltd.*** (supra).

11. Accordingly, the aforesaid substantial questions of law are answered in favour of the appellants and against the respondent with an order of remand to the Tribunal for fresh decision. However, we clarify that we have not commented on merits or made any observation either in favour of the appellants or the respondent. The

matter would be re-heard and decided a fresh on merits without being influenced by the impugned order.

12. We may note that the appellant-Prabhat Zarda Factory Company has already deposited the entire amount of excise duty and penalty under protest. As far as appellants- Purushottam Kumar Arya and K.N. Mehrotra are concerned, counsel for the appellants has stated that they would be depositing 50% of the penalty amount of Rs.40,00,000/- and Rs.5,00,000/- imposed on Purushottam Kumar Arya and K.N. Mehrotra, i.e. Rs.20,00,000/- and Rs.2,50,000/-, respectively. The said deposits in terms of the said statement would be made within six weeks from today. The said deposits would be treated as pre-deposit made in terms of Section 35F of the Central Excise Act. We may note that in the present case, appeals were preferred before the amendment to Section 35F with effect from 6th August, 2014. We clarify that this order would not enure to the benefit of M/s. Rudrakash Marketing and Suresh Kumar Garg as during the course of arguments, it was stated that the said parties may have accepted the orders. In the facts of the present appeals, there would be no order as to costs.

SANJIV KHANNA, J.

CHANDER SHEKHAR, J.

MAY 16, 2018/NA