

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Judgment Reserved on: 10/07/2019****Judgment Delivered on : 29/07/2019****Tax Case No. 40 of 2015**

*{Arising out of judgment dated 20.03.2015 passed in Appeal No. E/1650/2008
-EX (SM) by the Customs, Excise & Service Tax Appellate Tribunal, Principal
Bench, New Delhi}*

M/s. N.R. Sponge Pvt. Ltd. Through its Director Shri I.C. Jindal,
Village Bahesar, Near Siltara, Industrial Growth Centre, Phase II,
Raipur Chhattisgarh 110 019

---- Appellant**Versus**

Commissioner of Central Excise, Office of Commissioner of
Customs & Central Excise, Central Excise Building, Dhamtari
Road, Tikrapara, Raipur, Chhattisgarh.

---- Respondent

For Appellant/Assessee : Shri Krishnamohan Menon and Shri Rahul
Tamaskar, Advocates.
For Respondent/Revenue : Shri Maneesh Sharma, Advocate.

Hon'ble Shri P.R. Ramachandra Menon, Chief Justice
Hon'ble Shri Parth Prateem Sahu, Judge

C.A.V. Judgment**Per P.R. Ramachandra Menon, Chief Justice**

1. The appeal is at the instance of the Assessee-Company. The grievance is that the Adjudicating Authority, the Appellate Authority and the

Customs, Excise & Service Tax Appellate Tribunal (*for short 'the Tribunal'*), have not properly assessed the facts and figures and the relevant provisions of law in the light of the relevant judicial precedents with regard to the basic challenge raised against fixing the duty, penalty and interest.

2. At the outset itself, it is to be noted that the appeal, though filed in the year 2015, was pending before this Court without admission. In fact, the Appellant/Assessee had suggested some question of law for consideration in the appeal filed under Section 35-G of the Central Excise Act, 1944, as given below:

"(A) Whether the appellant had manufactured and cleared 1580.950 MT of sponge iron without payment of excise duty in clandestine manner?

(B) Whether the appellant can be held liable under the relevant provisions of the Central Excise Act, 1944 for clandestinely removing the goods without payment of excise duty, just on the basis of circumstantial evidence?

(C) Whether in absence of any corroborative evidence the liability along with penalty can be imposed upon the appellant for clandestinely removing the goods without the payment of excise duty?"

3. Later, on observing that it might not constitute substantial questions of law, permission was sought for to get it amended which prayer was granted. Pursuant to this, the following questions have been suggested as involving substantial questions of law:

"(A) Whether Tribunal is correct in confirming demand of excise duty on clandestine removal of

goods without corroborative evidence relating to such clearances without following the law laid down in this regard that charge of clandestine removal has to be evidenced based on multiple corroborative evidences and not based on indicative evidence?

(B) Whether comparison of internal documents with invoices is evidence enough to establish charge of clandestine removal?

(C) Whether Tribunal is correct in confirming the demand only by placing reliance on statement of director of Appellant and transporters to decide the appeal?

(D) Whether adjudicating authorities acted in accordance with Section 9D of the Central Excise Act, 1944 by admitting unexamined statements of directors and transporters as evidence?

(E) Whether on facts and circumstances of the case, can the findings rendered by Tribunal w.r.t. clandestine removal of goods without corroborative evidence be treated as perverse warranting interference of this Hon'ble Court under Section 35G of the Central Excise Act, 1944 on any ground referable as sustainable question of law?"

4. The matter was heard elaborately in respect of all the points raised by the Appellant/Assessee.

5. The Appellant is a private limited company having registration under the relevant statute (Central Excise Act, 1944/Rules) and is engaged in manufacture of "sponge iron". In the course of business, the authorities under the Respondents/Department conducted an inspection in the premises of the Appellant-Company on 04.10.2006, when it was revealed that the stock register was maintained only upto 30.09.2006. Various incriminating materials were stated as retrieved and the physical verification of the stock

revealed shortage of 2.580 MT of sponge iron as well, which led to recovery/seizure of records/documents for further scrutiny. The authorities under the Respondent-Revenue, besides collecting such materials from the premises of the Company, took the statements of the Shift Supervisors, the Director of the Company, the Transporters and also the Brokers/Commission Agents, besides collecting materials from different sources as above.

6. On the basis of the materials collected on different dates, a show-cause notice was issued to the Appellant-Assessee on 06.09.2007 which was replied by the Assessee on 26.11.2007. After completing the necessary steps and procedural formalities, the matter was finalised by the Adjudicating Officer as per the order dated 31.01.2008, whereby a specific finding was rendered to the effect that there was a clandestine removal of 1574.725 MT of sponge iron and 81.010 MT of Dolochar. Based on the value of the goods, the Appellant-Assessee was slapped with a duty of Rs. 25,67,367/- with equal amount of penalty under Section 11AC of the Act, 1944 and interest under Section 11AB of the Act, 1944. The Adjudicating Officer arrived at a clear finding that the course of action and the modus operandi was with the knowledge of the Director of the Company and in the said circumstances, a penalty of Rs. 5,00,000/- was mulcted upon the Director. The above order was sought to be challenged by the Assessee-Company by filing statutory appeal before the competent authority *i.e.* the Commissioner (Appeals) who declined interference, in turn dismissing the appeal as per the order dated 28.04.2008. Met with the situation, a further appeal was preferred by the

Appellant/Assessee before the Tribunal, who made a threadbare analysis of the facts and figures, the relevant provisions of law and the precedents and arrived at a finding that there was no scope for any interference. Dismissal of the appeal by the Tribunal made the Assessee to approach this Court by filing the appeal, as aforesaid.

7. As mentioned already, the crux of the contention raised in this appeal is more with reference to the facts and the evidence available, though the Appellant, by virtue of the better wisdom acquired years after filing of the appeal, has come up with some modified questions of law, suggesting as involving substantial questions of law, as extracted above. The primary contention put forth by the learned counsel for the Appellant is that there is no evidence to sustain the findings rendered by the Tribunal, the Appellate Authority or the Adjudicating Officer and hence, it is perverse and to be set aside. The next point mooted is that the Tribunal went wrong in fixing the liability merely on the basis of the statement given by the Director of the Assessee-Company before the investigating agency and since no statement of the Director was recorded by the Tribunal directly, it would not satisfy the requirement of Section 9D of the Act, 1944. The final contention is that, time and again, it has been held and reiterated by various Courts that there cannot be any finding on liability, merely on the basis of some 'loose sheets' recovered from the premises of the Assessee and that the same requires corroboration, which is not there in the instant case.

8. The learned Standing Counsel for the Respondent-Revenue/ Department seeks to support the finding and reasoning, stating that it has been rendered on the basis of legally acceptable evidence on record and that the incriminating circumstances brought on record have not been successfully rebutted by the Assessee in any manner. It is also pointed out that the statements were given by the witnesses, including the Director of the Appellant-Company voluntarily and at no point of time, was it effectively challenged or rebutted. The judicial precedents sought to be relied on by the Appellant are stated as not applicable and that the concurrent finding rendered by the Adjudicating Officer, the Appellate Authority and also by the Tribunal does not warrant any interference, as no substantial question of law is involved, as envisaged under Section 35G of the Act, 1944.

9. Going by the materials on record and as discussed above, there were two sets of proceedings. The first one is with regard to the imposition of duty, penalty and interest upon the Appellant/Assessee, and the second one, imposing a penalty of Rs. 5,00,000/- upon the Director of the Appellant-Company. It is also an undisputed fact that the Director of the Company had conceded the liability to satisfy the duty and accordingly, the duty to an extent of Rs. 21,59,770/- with Education Cess of Rs. 43,195/- was remitted voluntarily, before adjudication. However, referring to the conscious design to defraud the Revenue by way of clandestine removal of the goods without raising invoices and suffering excise duty, it was held as with the knowledge and involvement of the Director and accordingly, he was inflicted with penalty

of Rs. 5,00,000/- as mentioned above; which made the Director also to file an appeal (Appeal No. E/1651/2008) before the Tribunal. Both these appeals were considered together by the Tribunal and a common order was passed on 20.03.2015, whereby the appeal (E/1650/2008) preferred by the Appellant-Company was dismissed; whereas the appeal (E-1651/2008) preferred by the Director of the Appellant-Company was partly allowed, modifying the quantum of penalty by reducing it from Rs. 5,00,000/- to Rs. 1,00,000/-. It is stated that no further challenge has been raised by the Director. The matter has become final and the penalty imposed on the Director is reportedly satisfied.

10. The common finding and reasoning given by the Tribunal (ultimately leading to dismissal of the appeal filed by the Assessee-Company) stands in fact in respect of the appeal preferred by the Director of the Company as Appeal No. E/1651/2008, though the quantum of penalty was reduced from Rs. 5,00,000/- to Rs. 1,00,000/-. Since no appeal has been filed against the said finding and reasoning in the connected Appeal No. E/1651/2008, the present appeal filed by the Appellant/Assessee Company in isolation cannot tilt the balance.

11. With regard to the merit of the appeal, it is to be noted that in the course of inspection conducted on 04.10.2006, various incriminating materials were retrieved from the premises of the Appellant-Assessee and the physical verification of the stock reflected a shortage of 2.580 MT of sponge iron, which is not disputed. This led to further scrutiny and the

investigating team collected more materials to assess the situation, as the stock register was maintained only upto 30.09.2006. The said team had also recovered some 'loose sheets' from the factory which related to loading invoices and gate passes, showing removal of exigible goods and on comparison of the entries therein with the Central Excise invoices, it was revealed that 562.130 MT of Sponge Iron and 81.010 MT of Dolochar were removed by the Appellant without issuing invoices and without payment of duty. The investigating team took the statements of two Shift Supervisors on 04.10.2006 and 17.04.2007, leading to the inference drawn that there was suppression of production to the tune of 1580.950 MT of Sponge Iron as revealed from the records mentioned in Annexure B to the Panchnama dated 04.10.2006. Another incriminating fact was the handwritten entries made in the ledger using a 'pencil', indicating the truck numbers and the payment receipts. The entries, on comparison with the Central Excise invoices revealed that large number of entries in the ledger did not tally with the Central Excise invoices; photocopy of the ledger was taken and after authentication by the Appellant-Company, it was taken into custody for scrutiny, later inferring that there was a clandestine removal of 887.560 MT of sponge iron without issuance of Central Excise invoices and payment of duty. The investigating team had recorded the statement of Accountant/Cashier of the Appellant-Assessee Company on 16.03.2007, who authenticated the photocopy of the ledger, adding that the entries therein were correct and were made by him. The statement given by the Director, by name Sanjay Agrawal, on 10.04.2007 was to the effect that the ledger book pertained to

the sale of goods and the entries therein were correct and that he was ready to satisfy the duty on the goods which were cleared without invoices. The fact remains that the duty to the tune of Rs. 22,02,065/-, with Education Cess was cleared by him accordingly. These factual aspects have been specifically adverted to by the Tribunal in paragraph 2 of the order under challenge.

12. It is revealed from the order under challenge that the investigating team had conducted search in the office/business premise of the transporter M/s. Poorvanchal Road Carriers, Raipur and various bilty books were seized; besides recording a statement from an employee of the Transporter on 27.06.2007 revealing removal of 69.180 MT of sponge iron without issue of Central Excise invoices, as referred to by the Tribunal in paragraph 8 of the order. Similarly, scrutiny of the bilty books recovered from another Transporter by name M/s. Giriraj Roadlines, Raipur on 20.12.2006 and the statement of the proprietor of the said establishment taken on 22.12.2006 revealing removal of 55.855 MT of sponge iron without issuing Central Excise invoices, are adverted to in paragraph 4 of the order. Reference is made in paragraph 5 that the investigating team had collected materials as recovered from the factory premises of M/s. Kailash Traders, owned by Shri Kailash Agrawal, a broker/commission agent for iron and steel on 20.12.2006 to the effect that the Appellant/Company had removed large quantity of exigible goods without payment of excise duty. It was accordingly observed in paragraph 6, that the Appellant/Company had removed 1574.725 MT of Sponge Iron valued at Rs.1,57,27,368/- involving Central Excise Duty of Rs.

25,16,375/- and Education Cess of Rs. 50,330/-, besides such other amounts under different heads, suppressing production of goods, with the further observation that the Appellant-Company had deposited the basic Excise duty amounting to Rs.21,59,770/- and Education Cess of Rs.43,195/- prior to adjudication.

13. The submissions made by the learned counsel for the Appellant/ Assessee before the Tribunal are adverted to in paragraph 7 (7.1, 7.2 and 7.3) whereas the version of the Revenue is given in paragraph 8 (8.1, 8.2 and 8.3). Based on the unchallenged materials/evidences brought on record, the Tribunal observed in paragraph 10.1 of the order that the Appellant-Assessee could not reconcile with the facts and figures; observing that when certain entries in the "pencil handwritten ledger", matched with the Central Excise invoices while the other entries did not match, the unmatched entries became testimony of clandestine removal, not supported by invoices. It was in support of the same that the statement of the Shift Supervisors was held as something self-speaking and could not be brushed aside. This was further fortified by the admission of the liability by the Director of the Appellant-Company, expressing willingness to satisfy the duty payable on the goods which were removed but were not supported by excise invoices, in turn, while admitting the entries made by 'pencil' in the hand written ledger. The strange way of making entries in the ledger by 'pencil' (which was to be an authenticated document) could not be explained in any manner, much less satisfactorily, by the learned counsel for the Appellant before this Court. The

Tribunal observed that the clandestine removal was well within the knowledge of the Shift Supervisors/Accountant/Director/Transporters and the Commission Agent/Brokers and that the evidence brought on record correlated with one another, establishing the inextricable link to evasion. It was accordingly held that the Revenue had discharged its onus of proving the allegation; whereas the Appellant/Assessee had miserably failed to discharge its burden of proof and that, it was not a case of some solitary evidence, but of multiple echoed evidence which demonstrated the oblique motive of the Appellant and proved its malafides, in turn leading to dismissal of the appeal filed by the Assessee.

14. The above discussion clearly reveals that the finding rendered was not solely with reference to the contents of some 'loose sheets' recovered from the premises of the Assessee, but on the basis of other incriminating materials traced out and the statements given by different persons including the Director/ Shift Supervisors/ Accountant/ Cashier/ Transporters and the Brokers/ Commission Agent, compared and analysed with reference to the records/ materials seized/recovered. As it stands so, the clear finding rendered on the basis of the facts and evidence on record, concurring with the finding of the Adjudicating Officer and the Appellate Authority is not liable to be interdicted by this Court in exercise of power under Section 35G of the Act, 1944.

15. It is the case of the Appellant that there is violation of Section 9D of the Act, 1944, insofar as no statement of the Director or the witnesses was

ever taken by the Tribunal, to be accepted in evidence, but for relying on the statements given before the investigating team. Reliance is sought to be placed on the verdict passed by a Division Bench of this Court in ***Hi Tech Abrasives Ltd. v. Commissioner of Central Excise & Customs, Raipur***; 2018 (362) ELT 961 (Chhattisgarh) and also the verdict dated 16.10.2016 passed by another Bench of this Court in ***Commissioner, Central Excise, Customs & Service Tax, Raipur, Chhattisgarh v. M/s S.K. Sarawagi & Company Pvt. Ltd.*** (Tax Case No. 117 of 2016).

16. Coming to the latter judgment, it was an appeal preferred by the Revenue challenging the verdict passed by the Tribunal reported in 2018 (12) GSTL 42 (Tri-Del). It is true that the said case was involving an issue as to the clandestine removal of sponge iron. The order passed by the Adjudicating Authority against the Assessee was set aside in appeal by the Commissioner (Appeals) and this was challenged by the Revenue by approaching the Tribunal. After going through the facts and records, the Commissioner (Appeals) observed that the allegation of clandestine removal was not substantiated by the Revenue by adducing any evidence in the form of raw materials, shortage of raw materials, use of electricity, excess or shortage of inputs found in the stock and that mere entries of records of traders and transporters cannot be the basis for proving the charge of clandestine removal. The Tribunal observed that the finding rendered by the Commissioner (Appeals) based on the facts as above, was not liable to be interdicted and hence, the appeal was dismissed. Unlike the factual position

in the said case, various incriminating circumstances have been brought on record in the instant case, including the admitted shortage of 2.580 MT of stock detected on the date of inspection held on 04.10.2006. That apart, various other records including the records seized from the premises of the Assessee and from the Transporters/Brokers/Commission Agents, alongwith the statements taken from different persons/witnesses and also the Director of the Company (who finally agreed to satisfy the duty and effected the payment accordingly, before adjudication) clearly supported the case of the Revenue. It also remains a fact, that the penalty imposed upon the Director of the Appellant-Company (as reduced) is not challenged any further and this has attained finality. As such, the above verdict does not support the Assessee-Appellant in any manner.

17. Coming to the other case considered by the Division Bench of this Court (*cited supra*), it was a case where the liability was fixed by the Adjudicating Officer with reference to the clandestine removal of the goods which came to be interdicted by the Commissioner (Appeals), but restored by the Tribunal. Apart from the question relating to the bar of limitation (which is not involved herein), the substantial question of law considered by this Court was whether the procedure adopted by the Tribunal was contrary to Section 9D of the Act, 1944 insofar as the verdict passed by the Tribunal was based on the statement given by the Director of the Appellant-Company before the investigating team and not any version given before the Tribunal. The question was answered in favour of the Assessee, leading to allowing the

appeal and setting aside the verdict of the Tribunal. The substantial question of law raised in the said case are as given below:

“(i) On the facts and in the circumstances of the case, did the Tribunal act contrary to the law relying on the statement of the Director of the Appellant to decide the appeal against the appellant herein?

(ii) Is the procedure adopted by the Appellate Tribunal contrary to Section 9D of the Central Excise Act, 1944?”

The submission on behalf of the Appellant/Assessee was that the statement of the Director of the Assessee-Company recorded during investigation was inadmissible in evidence and once it was found accordingly, the only material available in the said case was the "unverified note book" containing certain entries which could not be the basis to draw inference of clandestine removal, more so, when the author of the said document was not called to appear before the Adjudicating Officer to give his statement, in turn involving violation of Section 9D of the Act, 1944. The said contention was examined by the Tribunal while rendering the finding on the substantial questions of law at (i) and (ii) as given under paragraph 9 (9.1, 9.2, 9.3, 9.4 and 9.5). As taken note of in the opening portion of paragraph 9, the contention of the Appellant was that the Director's statement was inadmissible and that it could not be treated as 'admission', because in the reply to the show-cause notice, it was pointed out that such statement was obtained 'under duress'.

18. In the instant case, there is no specific case for the Appellant-Assessee before the Adjudicating Authority or before the Commissioner (Appeals) or even before the Tribunal that the statement was obtained under 'duress or coercion' from the Director or from the other persons/witnesses concerned, though, a vague averment has been made in this regard in the present appeal before this Court. If such a case was actually raised before any of the authorities as above and if the same was not considered by the Authority/Tribunal concerned, it was for the Assessee to have the mistake brought to the notice of the Authority/Tribunal concerned. It was with reference to the above vital fact/pleading, as to the element of 'duress/coercion', that the matter was examined by this Court in ***Hi Tech Abrasives Ltd (supra)*** more so, when there was no other evidence, but for the entries in the 'note book'; in turn leading to the interference. This is more evident from the observations made in paragraph 9.5, with reference to the verdict passed by the Apex Court in ***Commissioner of Central Excise v. Kalvert Foods India Private Limited***; 2011 (270) ELT 643 (SC) [as sought to be relied on from the part of the Revenue] holding that the judgment passed by the Apex Court accepting the statement given in evidence was based on its own facts as revealed from 'paragraph 19' of the judgment. The observation of the Apex Court in 'paragraph 19' as aforesaid is relevant in this case as well and hence, it is reproduced as below:

“19. We are of the considered opinion that it is established from the record that the aforesaid statements were given by the concerned persons out of their own volition and there is no allegation of

threat, force, coercion, duress or pressure being utilized by the officers to extract the statements which corroborated each other. Besides the Managing Director of the Company of his own volition deposited the amount of Rs. 11 lakhs towards excise duty and therefore in the facts and circumstances of the present case, the aforesaid statement of the Counsel for the Respondent cannot be accepted. This fact clearly proves the conclusion that the statements of the concerned persons were of their volition and not outcome of any duress ”

19. Coming back to the case in hand, as mentioned already, there was no proper pleading of 'threat/force/duress/coercion or pressure' as being utilized by the officers of the Revenue to extract the statements. On the other hand, statements were given by the persons concerned on their own volition. This being the position, the alleged violation of Section 9D of the Act, 1944 is not at all attracted and the position stands more covered by the ruling rendered by the Apex Court, as extracted just above. Hence, there is nothing wrong on the part of the Adjudicating Officer/Appellate Authority or the Tribunal in having accepted the statements given by various persons including the Director of the Appellant/Assessee-Company to reach the conclusion.

20. It will be worthwhile to make a reference to Section 9D of the Act, 1944 as well, to understand the real scope and extent of the provisions and hence, it is extracted below:

“9D. Relevancy of statement under certain circumstances. -(1) A statement made and signed by a person before any Central Excise Officer of a gazetted rank during the course of any inquiry or proceeding under this Act shall be relevant, for the

purpose of proving, in any prosecution for an offence under this Act, the truth of the facts which it contains, -

(a) when the person who made the statement is dead or cannot be found, or is incapable of giving evidence, or is kept out of the way by the adverse party, or whose presence cannot be obtained without an amount of delay or expense which, under the circumstances of the case, the Court considers unreasonable; or

(b) when the person who made the statement is examined as a witness in the case before the Court and the Court is of opinion that, having regard to the circumstances of the case, the statement should be admitted in evidence in the interest of justice.

(2) The provisions of sub-section (1) shall, so far as may be, apply in relation to any proceedings under this Act, other than a proceeding before a Court, as they apply in relation to proceeding before a Court.”

21. The terminology used in Section 9D(1) of the Act, 1944 clearly reveals the enabling power of the Court to accept a statement made and signed by a person before any Central Excise officer of a gazetted rank during the course of any inquiry or proceeding under the Act, 1944; to be relevant to the extent as mentioned either in clause (a) or in clause (b). In other words, it is not a provision vouched in a 'negative sense' to hold that the statement given by the person concerned shall not be acceptable in evidence for the proceedings concerned. On the contrary, it is in respect of the power and jurisdiction of the “court” to accept the same as relevant. However, by virtue of sub-section (2) of Section 9D of the Act, 1944, such a course/power, as exercisable by the Court, is made applicable to any other proceeding under the Act as well (other than a proceeding before a Court) as they apply in relation to a proceeding before the Court. This clearly speaks about the extent of applicability *i.e.* it can only be to the extent as related to a

proceeding before the Court, as mentioned in sub-section (1), and never beyond.

22. The mandate is crystal-clear from sub-section (1) of Section 9D of the Act, 1944 (to consider the extent and applicability). The statute makes it point blank that, it is for the purpose of proving, in any prosecution for an offence under the Act, before a Court. This clearly means that the statement given by a person can be accepted as relevant by a Court in a 'prosecution proceeding' for an offence either under clause (a) *i.e.* when the person who made statement is dead or cannot be found or incapable of giving evidence or such other circumstances as mentioned therein or under (b) *i.e.* when the person who made the statement is examined as witness in the case before the Court, when the Court having regard to the circumstances of the case, is of the opinion that the statement should be admitted in evidence in the interest of justice. To put it more clear, the rigor is more with regard to the circumstance when it relates to a 'prosecution for an offence' under the Act *i.e.* to punish the guilty. When sub section (2) of Section 9D says that the provisions of sub-section (1) shall apply 'as far as may be' in relation to any proceedings under the Act other than a proceeding before a Court, as they apply in relation to proceedings before the Court, it is explicitly clear that it can have extended application only in relation to an instance of inflicting the punishment for the offence and not for the quantification of the duty or extent of evasion. In other words, fixation of duty evaded is one thing, and mulcting of penalty for the offence in respect of such evasion is a different thing. When

the statement not recorded before the Adjudicating Authority cannot be relied upon to inflict penalty, it may still govern the field (if supported by other materials to reach the conclusion) insofar as fixation of quantum of duty evaded is concerned.

23. The aforesaid distinction is discernible also from the observation made by the Bench of this Court in paragraph 9.5 of the verdict reported in ***Hi Tech Abrasives Ltd.*** (supra), where the Bench has observed that the proceedings are 'quasi-criminal' in nature, because it results in imposition of not only the duty, but also the penalty and in many cases, it may lead to prosecution. Strict interpretation is warranted only in respect of the 'imposition of penalty', which cannot have any automatic application in respect of the quantification of the tax/duty evaded. The said judgment does not come to the rescue of the Appellant/Assessee insofar as the incidence of 'duress/coercion/force' in taking the statements concerned by the investigating team is not specifically pleaded, nor was sought to be substantiated before the Adjudicating Authority/Appellate Authority/Tribunal. Under such circumstance, the position is taken care of by the law declared by the Apex Court in ***Kalvert Foods India Private Limited*** (supra) (paragraph 19) more so, when the duty evaded was agreed to be paid by the Director of the Appellant-Company as given in his statement and proving the word by his deed, the amount of Rs. 21,59,770/- and Education Cess of Rs. 43,195/- was satisfied, before adjudication. Further, the modified order of penalty inflicted upon the Director (as ordered by the Tribunal) has become final, as no

challenge is raised by the Director in the connected Appeal No. E/1651/2008 (against which no appeal has been preferred) and the common finding and reasoning therein stare at the Appellant/Assessee-Company.

24. In the above facts and circumstances, we are of the view that the order passed by the Tribunal is perfectly within the four walls of law and is not assailable under any circumstance. No substantial questions of law is made out by the Appellant to call for any interference under Section 35G of the Act, 1944.

25. The appeal fails. It is dismissed accordingly.

Sd/-
(P.R. Ramachandra Menon)
CHIEF JUSTICE

Sd/-
(Parth Prateem Sahu)
JUDGE