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

\+ CEAC 10/2018 & C.M. No. 7817/2018

PRINCIPAL COMMISSIONER OF CENTRAL TAX..... Petitioner
Through: Mr. Harpreet Singh with Ms. Suhani Mathur, Advs.

versus

JAIN & COMPANY ..... Respondent
Through: Mr. Naveen Mullick, Adv.

\+ CEAC 11/2018 & C.M. No. 7818/2018
PRINCIPAL COMMISSIONER OF CENTRAL TAX, GST DELHI

NORTH NEW DELHI ..... Petitioner

Through: Mr. Harpreet Singh with Ms. Suhani Mathur, Advs.

versus

ANIL SALES CORPORATION ..... Respondent
Through: Mr. Naveen Mullick, Adv.

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI
HON'BLE MS. JUSTICE REKHA PALLI

ORDER
% **10.12.2019**

1. We have heard learned counsels. The following substantial questions of law arise for our consideration and are framed:

"A. Whether the learned Tribunal did not err in holding that statements of noticees recorded u/ s 14 of the Central Excise Act, 1944 were not admissible in evidence since the same did

not bear the signatures of the officials who recorded the statements despite the fact that the same noticees had confirmed their statements in their subsequent statements also recorded under Section 14 of the Central Excise Act, 1944?
B. Whether the learned Tribunal did not err in holding that the charge of clandestine removal needed to be set aside since the same was based on statements which did not bear the signatures of the officers recording those statements despite the fact that the charge of clandestine removal was sustainable in view of the various other corroborative and independent evidences collected during the course of investigations such as kachhi parchis, balance sheets and ledger statements?"

2. The Tribunal, while passing the impugned order has placed reliance on the order passed by the learned ACMM, while dealing with the bail application of the accused in bail proceedings of Shri. Pawan Kumar Jain, wherein the learned ACMM examined the file and noticed that several statements did not bear the signatures of the Officer who recorded the same. The fact that certain statements did not bear the signatures of Officer who recorded the same is not in dispute. In fact, this submission had also been raised before the Adjudicating Authority who dealt with the same in the following manner:

"59. The noticees have also argued that some of statements relied upon by the Department in the impugned show cause notice do not bear the signatures of the authorized officers of Central Excise. The noticees have further argued that it has already been held in the various case laws that the statements not recorded by the Gazetted Officers either under the Central Excise or under the Customs Act are not admissible and cannot even be used against any person. Therefore, reference and reliance on such statements, in spite of there being a clear observation in the form of an order, in the investigations conducted in the present case and which were even examined by Learned ACMM, observing about the statements not

recorded before the Gazetted Officer, needs to be demolished.

60. After carefully looking at the statements referred as above by the noticees, it is seen that seven out of the thirteen statements referred as above by the noticees indicate that these have been recorded before a Central Excise officer. Out of the remaining statements also it is observed that statement dated 7-1-10 of Shri Pawan Kumar Jain which was in response to the summons dated 14-12-09 has been seen and admitted again in the statement dated 12-04- 2010 (which has been tendered before a Central Excise officer). Similarly vide letter dated 31-08-20 l 0 addressed to the Superintendent Central Excise Delhi-I, Shri Sunil Kathuria has stated that he has erroneously mentioned the date as 26-02-2010 and that it should be read as 26-03-2010. He has nowhere mentioned in that letter that his statement was never recorded before a proper Central Excise officer. The remaining two statements (statement dated 31-08-2010 of Shri Vazir Singh and statement dated 10-09-2010 of Shri Naresh Jain) said to be not bearing signatures of any Central Excise officer have in fact not been relied upon in the impugned show cause notice. Moreover it is not the case of the noticee firms that the statements were recorded by a Central Excise officer other than an officer authorized under section 14 of the Act ibid. Thus I do not find force in the argument of noticees that all the above referred statements should be treated as not having been recorded under section 14 of the Act ibid. 61. I also find that Shri Pawan Kumar Jain had during the investigations alleged that force and coercion were used by Central Excise officers while recording his statements. This allegation was reiterated by Ms Anita Jain and also by Sh Chote Lal. However it is seen that this retraction was made on 27-10-2010 i.e more than a year after tendering of first statement on 28-11-2009. I therefore find that the belated retraction is an afterthought not meriting acceptance. Further the observations made by Courts in the case of Vinod Solanki Vs Union of India, 2009(13) S.T.R. 337(S.C.) to be relevant. The Hon'ble Supreme Court has interalia held in this case as under:

' 34 . ... With a view to arrive at a finding as regards the voluntary nature of statement or otherwise of a confession which

has since been retracted, the Court must bear in mind the attending circumstances which would include the time of retraction, the nature thereof, the manner in which such retraction has been made and other relevant factors. Law does not say that the accused has to prove that retraction of statement made by him was because of threat, ·coercion, etc. but the requirement is that it may appear to the court as such.' 62. The Hon'b1e Tribunal in the case of K.K. Saidalavi vs. Commissioner reported in 2006 (199) ELT 813 has held that:

" ... belated retraction inconsequential in absence of evidence to show that the same were given under duress'.

63. In view of the above, I thus find that in the present case except a sweeping statement questioning the voluntary nature of statements that too made after more than a year of recording first statement, there is nothing on record to suggest that the statements were under duress. Further the facts disclosed by Shri Pawan Kumar Jain have also been corroborated with the disclosures made by other persons such as buyers, suppliers etc. in their independent statements under section 14 of the Act ibid. As such I hold that the statements relied upon in the present case were voluntary statements.

64. It is also seen that during the course of searches conducted in the present case, the delivery challans (i.e. the kacha parchies) were resumed from the premises of M/s Jain & Company and M/s Anil Sales Corporation . Documents were also resumed from the premises of M/s Suraj Transport Co. (the transporter of the goods for M/s Anil Sales Corporation, Narela). In respect of these delivery challans, the statements of the respective supervisors of M/s Jain & Company and M/s Anil Sales Corporation reveals that the clearances were made under these delivery challans . The buyers have, in their independent statements, also stated that they were receiving the goods without bills from M/s Jain & Company and M/s Anil Sales Corporation . It is also on record that the 6000 kgs of M.S.Wire seized from the premises of M/s Shakti Industries was received from M/s Jain & Company and M/s Anil Sales Corporation under the cover of kacha parchies. Moreover Shri Pawan

Kumar Jain has in his voluntary statements before the investigating agency stated that the goods were in fact cleared sometimes under delivery challans (kacha parchies)as well as under invoices . In view of all these material evidences (various inculpatory statements corroborated with the seizure of consignment that was delivered in the manner as admitted in the statements) on record, I do not find force in the argument of the noticee firms that the figures arrived at in the impugned show cause notice are based on surmises alone and I find that the evidences on record are strong enough to prove that the value of clearances arrived at in the impugned show cause notice on the basis of kacha parchies, on the basis of resumed records and on the basis of invoices/balance sheet are correct."

3. The submission of Mr. Harpreet Singh, learned senior standing counsel is that the Tribunal failed to appreciate that the findings returned by the learned ACMM were only of *prima facie* nature, and in respect of statements which were recorded by officers of Central Excise, the Tribunal did not undertake any enquiry to find out, as to whether, or not, they were recorded by the Central Excise Officer of the rank of Superintendent or above. Merely because the rank was not mentioned by the Central Excise Officer who recorded the statements, did not vitiate the statements, since the Tribunal could have determined, by calling upon the appellant, to disclose as to whose signatures are appended on the statements and what rank was held by them on the date on which the statements were recorded by them.

4. He further points out that statements which were recorded without the signatures of the Central Excise Officer, and which were affirmed in the subsequent statement stood incorporated in the subsequent statement and, if the subsequent statement was before an authorised Central Excise Officer in terms of Section 14 of the Central Excise Act, the earlier statement too

became admissible. He submits that this aspect has not been examined by the Tribunal.

5. Learned counsel for the respondent, on the other hand, has argued that the statements were either recorded without the signatures of the Officers, or even whether they were so recorded with the signatures of the Central Excise Officers, there was nothing to show that they were recorded by duly authorised Officers, namely such Officers who hold the rank of Superintendent, or higher.

6. Having heard learned counsels, we are of the view that the Tribunal should have undertaken a more thorough scrutiny of the statements of the parties and other witnesses recorded by the officers of the appellant. The Tribunal being the last fact finding authority could have called upon the appellant to disclose as to which of the Officers has recorded the statements under Section 14 and to ascertain, as to whether or not, they were authorised to record such statements. The Tribunal should have also appreciated the reasoning given by the Adjudicating Authority that the earlier statements – though not bearing the signatures of the Officer who recorded the same, stood incorporated in the subsequent statement made by the same person when he affirmed the fact that his statements was so recorded.

7. Accordingly we allow the present appeal by answering the questions in favour of the appellant and remand the matter back to the Tribunal for re-appreciation of the evidence on the aforesaid aspect.

8. The Tribunal shall also consider the plea of the respondent with regard to denial of opportunity to cross examine the witnesses and shall deal with the findings returned by the Adjudicating Authority in that regard.

9. The Tribunal shall also consider the detailed legal submissions of the

parties. The parties shall appear before the Tribunal on 18.03.2020.

10. The appeal stands disposed of in the aforesaid terms.

VIPIN SANGHI, J

REKHA PALLI, J

DECEMBER 10, 2019
N.Khanna