IN THE HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD

TUESDAY ,THE TWELFTH DAY OF DECEMBER
TWO THOUSAND AND TWENTY THREE

PRESENT
THE HON'BLE SRI JUSTICE P.SAM KOSHY
AND
THE HON'BLE SRI JUSTICE N.TUKARAMJI

CENTRAL EXCISE APPEALS NO: 147 OF 2006

Between:

MOHAMMED RIAZUDDIN AHMED, S/o. Sri Mohammed Elias Presently Eemployed as Proprietor M/s.E.K.Agencies Customs House Agent [Under Suspension] R/o.G.No.17-8-419/4/E, Yakutpura, Hyderabad. **...APPELLANT**

AND

1. The Commissioner, Customs and Central Excise. Hyderabad -II, Hyderabad.
2. The Chief Commissioner, Central Excise & Customs Hyderabad -II, Hyderabad.
3. The Customs, Excise and Service Tax Appellate Tribunal, Bangalore The Customs, Excise and Service Tax Appellate Tribunal, south zonal Branch, FICCI, WTC Building, K.G.Road, Bangalore. **...RESPONDENTS**

Appeal is filed under Section 130 of the Customs Act, 1962 against order of the Customs, Excise and Service Tax Appellate Tribunal, South Zonal Bench, at Bangalore in Appeal No. 266 / 2004 dated 18-09-2006 preferred against the order in Original No. 14 / 2003 dated 27-02-2004 on the file of the Commissioner of Customs and Central Excise , Hyderabad – II, Hyderabad.

I.A. NO: 1 OF 2006(CEAMP. NO: 112 OF 2006)

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased suspend the orders of the 3rd respondent in appeal No.Customs/266/2004, dated 18.09.2006 pending disposal of the present appeal

Counsel for the Appellant SRI B. BALAJI, Learned counsel representing Sri SIVARAJU SRINIVAS

Counsel for the Respondents: B NARAYANA REDDY, Senior Standing Counsel

The Court made the following: JUDGMENT

THE HONOURABLE SRI JUSTICE P.SAM KOSHY
AND
THE HONOURABLE SRI JUSTICE N.TUKARAMJI

C.E.A.No.147 of 2006

JUDGMENT: *(per Hon'ble Sri Justice **P.SAM KOSHY**)*

Heard Sri B. Balaji, learned counsel representing Sri Sivaraju Srinivas, learned counsel appearing for the appellant and Sri B. Narayan Reddy, learned Senior Standing Counsel appearing for the respondents.

2. The present is an appeal under Section 130 of the Customs Act, 1962, (for short "the Act,1962") assailing the order, 18.09.2006 passed in Appeal.No.266 of 2004 by the Customs, Excise and Service Tax Appellate Tribunal, South Zonal Bench - Bangalore (for short "the Tribunal").

3. *Vide* the impugned order, the Tribunal has affirmed the Order-in-Original, dated 27.02.2004 passed by the Commissioner of Customs & Central Excise, Hyderabad, (for short "the Commissioner"), so far as the confiscation of 400 foreign marked gold bars weighing 46.680 Kgs, then valued at Rs.2,14,72,800/- and also confiscation of 189 Dairies and 5

books from the consignment. In addition, the Commissioner had also imposed penalty of Rs.20,00,000/- upon the appellant herein.

4. The appellant herein *vide* the appeal under Section 130 of the Act, 1962 assailed two orders, dated 18.09.2006 and 27.02.2004 primarily on two grounds. Firstly, that the entire order of confiscation and the penalty has been imposed relying heavily upon the statements of the co-accused and also relying on the statement of the appellant himself, all of which were recorded in the presence of the respondent - authorities under Section 108 of the Act, 1962. Therefore, the said statements of the appellant as also the co-accused were inadmissible under the provisions of the Indian Evidence Act, 1872 and for the said reason, the order of the Commissioner as also that of the Tribunal is not sustainable. It was also the contention of the learned counsel for the appellant that the two orders are also bad in law in as much as the same has been passed in violation of the principles of natural justice as the appellant has not been provided an

opportunity of cross-examining the co-accused so as to question them on the statements that they have recorded under Section 108 of the Act, 1962.

5. The learned counsel for the appellant relied upon the decision of the Hon'ble Supreme Court in the case of ***Raja @ Ayyapan Vs. State of Tamil Nadu[1],*** where the Hon'ble Supreme Court has categorically held that the confession made before the authorities concerned cannot be treated to be free from doubt or being voluntary and therefore is not admissible in evidence. So also, the learned counsel for the appellant relied upon the judgment of the Division Bench of this Court in the case of ***Commissioner of Central Excise Customs Vs. C. Srinivas[2],*** wherein the appeal of the Department against the judgment of the Tribunal was dismissed.

6. Per contra, the learned senior counsel appearing for the Department opposing the appeal submits that the plain reading of the Order-in-Original would clearly reflect that the

[1] (2020) 5 Supreme Court Cases 118
[2] 2022 SCC OnLine TS 441

contentions which were put forth by the learned counsel for the appellant have been extensively dealt with by the Commissioner by giving specific reasons and grounds for not accepting the contentions of the appellant.

7. It was the contention of the learned senior counsel for the Department that elaborate discussion of the Commissioner has further been affirmed by the Tribunal. The Tribunal while considering the appeal of the present appellant has thread bare considered the evidence which have come before the authorities concerned including the statement of the appellant herein and have elaborately discussed and has given specific findings. Thus, there is hardly any scope of interference left for this Court in the course of exercising its powers under Section 130 of the Act, 1962 where the appeal can be entertained only on the substantial questions of law. According to the learned senior counsel for the Department, all these very grounds which have been raised by the appellant no longer become substantial questions of law as they have already be considered and decided by the

Commissioner first and thereafter by the Tribunal in the appeal.

8. The learned Senior Counsel for the Department referred to the following decisions in support of his contentions; ***Bhana Kalpa Bhai Patel Vs. Assistant collector of Customs***[3], ***Ghulam Hussain Shaikh Chougule Vs. S. Reynolds, Supdt. of Customs, Marmgoa***[4], ***K.I PAvunny Vs. Assistant Collector (HQ) Central Excise Collectorate, Cochin***[5], ***M/s. Kanungo & Company Vs. Collector of Customs and others***[6], ***Surjeet Singh Chhabra Vs. Union of India and Others***[7].

9. Having heard the contentions put forth on either side, it would be relevant to take note of the Order-in-Original, dated 27.02.2004, wherein the Commissioner in paragraph Nos.29 and 30 has given its finding as under:

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[3] (1998) 1 Supreme Court Cases 222
[4] (2002) 1 Supreme Court Cases 155
[5] (1997) 3 Supreme Court Cases 721
[6] (1973) 2 Supreme Court Cases 438
[7] (1997) 1 Supreme Court Cases 508

"29. Now I proceed to examine the case of Riazuddin Ahmed. That he was instrumental in recruiting loaders Sadhamani Srinivas and Sharada Prasad for the purpose of clandestine removal of Gold from the Customs area at Air cargo is proved beyond doubt from the statements dt.31.12.2000 given by Sadhamani Srinivas and Sharada Prasad before the Senior Intelligence Officer, DRI under Section 108 of Customs Act. The statement of Riazuddin Ahmed further corroborates the version of the loaders. These statements were recorded immediately after the recovery of contraband without any lapse of time to allow the persons to think of any excuses or defence. In this regard I find that the Hon'ble Tribunal has observed, "Spontaneous statement deserves consideration since given without premeditation, reflection, ill-will or bias (1986 (25) ELT 413 (Trib)). That the statements recorded under Section 108 have evidentiary value and are not hit by Section 25 of Evidence Act have been repreatedly upheld in various judicial fora including the Apex Court (e.g., 1983 (13) ELT 1408 (SC)). Assuming without admitting, for argument's sake, that the statements are not voluntary, still the evidentiary value of the statements cannot be disputed in view of the fact that the contents of the statements have been proved by follow up investigation that led to seizure of three previous consignments, which were used as cover for the contraband imported and removed in a clandestine manner and recovery of telephone numbers of Riazuddin Ahmed from the residence of Syed Amzad Ali who happened to be the consignor and consignee of one of the cover consignments. In cases of clandestine activities, it is not necessary that all the activities have to be corroborated by evidence. It will suffice if it is proved beyond reasonable doubt and by preponderance of probabilities. As has been held by the Hon'ble Supreme Court in the case-1983 (13) ELT (1467) S.C. direct evidence is not necessary to prove offence in criminal proceedings.

30. As far as the pleas raised by Riazuddin Ahmed in his written reply and during the course of personal hearing are concerned, I am unable to accept them for the reasons herein discussed. The retractions, purported to have been made by him with respect to the statement, do not by themselves extricate him from the offence. A catena of judgments is available on the admissibility of retracted confession as evidence. I find that Riazuddin Ahmed has not shown any material/evidence to prove that the confession was obtained under threat, coercion etc. except making a

statement alleging threat, and coercion. Similarly the belated nature of retraction also casts doubts on such retraction. In the circumstances, basing on judicial pronouncements, to cite a few, 1990(48) ELT307 (T), 1991(52) ELT565 (T), 1987(27) ELT679 (T), 1988(38) ELT 364 (T). I hold that the retractions have no effect on the statement already recorded. The retraction is made only to escape the penal consequences of law. The request of cross examination of Officers/witnesses co-accused etc. has been examined. In this regard also, I have perused the available case laws on the subject. On a reading of the case law, I am clear that there is no absolute right of cross examination provided in the Customs Act and there is no absolute right of cross examination provided in the Customs Act and there is no failure of the principles of natural justice if the cross examination is not allowed. In taking this stand I am guided by the following judicial pronouncements viz., Tapankumar Bisinas Vs. Union of India-1996 (63) ECR 546(Cal), Akai Impex Vs. Commissioner of C.E & C, Surat-2000 (118) ELT610 (T), Shyamlal Vs. Union of India 1993 (68) ELTS548 (All), Liyakat Shah Vs. Commissioner of Central Excise 2000 (120) ELT 556 (Tri), Anil Das Vs. Commissioner of Customs, New Delhi 2002 (141) ELT 135 (Tri), Poddar Tyres Pvt.Ltd. Vs.

Commissioner of Central Excise, Chandigarh 2000 (126) ELT 737 Tri)."

10. A Plain reading of the aforesaid finding of the Commissioner would clearly indicate that the very contentions that the appellant has raised have been elaborately discussed and decided by giving specific reasons supported with legal precedents on the said issues. It was this order which was taken in appeal by the appellant before the Tribunal, where the Tribunal while dealing with the case of the appellant has given the following finding:-

"8. We have gone through the records of the case carefully. The learned Advocate urged the point that excepting the statement of co-accused, there is no other corroborative evidence to connect Mr.Riaz Uddin Ahmed with the seizure of the gold at Hyderabad Airport and also the previous smuggling. He cited a large number of case laws. He also made the point that Shri Mohd. Riaz Uddin Ahmed was not caught in the act of smuggling. Search of his house also did not yield any incriminating documents. The entire allegation against him is based on the statements of the co-accused. The statement of the appellant was recorded under threat, coercion and duress. The investigation was not brought out the person to whom the gold bar was given to the appellant nor his statement was recorded. The gold bars were seized on 31.12.2000. On the same day, the statements of Sadhamani Srinivas, a loader; Sharada Prasad, a loader and Mohd. Riaz Uddin Ahmed were recorded under Section 108 of Customs Act. It should be borne in mind that the statement recorded under Section 108 of Customs Act has evidentiary value and is admissible. We find that the statement of Mohd. Riaz Uddin Ahmed was recorded in his own hand writing. In the said statement, Shri Mohd. Riaz Uddin has admitted the gold smuggling with the help of Sadhamani Srinivas and Sharada Prasad even on three earlier occasions namely, on 10.12.2000, 17.12.2000 and 22.12.2000. On each occasion, he has stated that he has paid Rs.15,000/- to the loaders. He received Rs.70,000/- from one Asif on each occasion. The fact of the concealment of the gold has also been admitted. He has given the details of clearance of the consignments with the help of two loaders. It is very difficult to believe that DRI officers had simply made a story of the involvement of Shri Mohd. Riaz Uddin Ahmed. It may be true that the DRI officers have not nabbed the ultimate recipient of the gold. But the fact cannot diminish the gravity of the offence committed by the appellants. It is seen that Shri Mohd. Riaz

Uddin Ahmed is an educated person and he could not have given this statement under duress. To us, it appears to be volunteer. From the loader Shri Sadhamani Srinivas, the DRI officers recovered a chit containing the numbers in the following manner:

4455/4/4.

He stated that the number represents the last number of the Airways and the Dairies consignment received on that day by Sharjah Flight. For the question, as to from whom he got Airway bill number, he stated that the Airway bill number 4455/4/4 was given to him by Mr.Riaz who is a CHA. Shri Sadhamani Srinivas has explained how he and the co-loader Sharada Prasad were involved in removing the gold. He had also stated the telephone number 4511925 (Residence) and Cell No. 98490-19537 of Shri Riaz. He has admitted to having removed the gold biscuits concealed in the Religious Books as per instructions given by Riaz. He has also stated that Riaz gave a consideration of Rs.7500/- for each consignment. He stated that the amount has been deposited in his Bank account by him. In his person, he had a leather form belt which was meant primarily for keeping the gold. He has narrated the events which took place on 22.12.2000 when they removed the gold concealed in Religious

Books. There is no reason why Sadhamani Srinivas, a loader should implicate Shri Mohd Riaz Uddin Ahmed. The other loader Sharada Prasad has also given similar statement regarding their involvement in the smuggling of gold. He has also implicated Mr. Riaz. There is no contradiction between the versions of the two loaders. Even from Sharada Prasad, a paper chit was recovered which indicated Airway bill number of the consignment which arrived from Dubai, the day on 31.12.2000. A similar chit was found from a person Srinivas. This cannot be a simple coincidence. The telephone number recovered from his pocket was belonging to Shri Riaz. He has also stated that after removal of the gold bars on earlier occasions, they had been handed over to Mr. Riaz and he has paid Rs. 7500/- to each of them for consideration. Further informed that 4 cartoons vide Airway bill No. 4455, 4/4 will arrive from Sharjah on Sunday, 31.12.2000 and each cartoon contains of one packet of gold biscuits. He has also stated that the consideration given by Riaz was deposited in bank account. The officer further identified three previous consignments in which the contraband gold was received and removed from the imports godown of the Air Cargo Complex. All the 5 cartoons were found to be tampered / broken open / disturbed from their normal packing. This identification and examination was done in Panchanama dated 3.1.2001. At the time of examination of above consignments, Shri Prakash, Assistant Manager of APSTC was enquired about the condition of cargo then received for which after referring to the noting of pre-corresponding of IGM, he informed that the cartoons are received in sound condition in their godown. This evidence of previous consignment identified on 2.1.2000 is definitely a corroboration of the statements of Mohd. Riaz Uddin Ahmed as well as two loaders. The officers further checked the weight of the 5 cartoons received vide three airway bills and found that as against the declared weight of 43 Kgs of one packet, the actual weight was found to be 38.800 Ks. In another case, the actual weight of 36.9 Kgs as against the declared weight of 50 Kgs. In the third consignment the declared weight was 50 Kgs, the actual weight was found to be only 40 Kgs. This was also an evidence that the weights of the tampered cartoon is lower than the weight which they booked in Sharjah. The DRI officers searched the residence of Shri Sayed Amjad Ali, the consigner and consignee of one of the cover consignments examined and seized as stated in panchanama dated 2.1.2001. During the search of his residence, one pocket telephone of Amjad Ali was recovered which contained the telephone number of Riaz Uddin Ahmed. The presumption of the Revenue is that Seyed Amjab Ali had lend his name and address to Sri Riaz Uddin Ahmed for illegal importation of contraband goods. The officers could not trace out Shri Syed Amjab Ali. This presumption is not without justification in these circumstances of the case. The Adjudicating authority has observed that the statements of two loaders and Riaz Uddin Ahmed were recorded immediately after the recovery of contraband goods without any lapse of time to allow the persons to think of any excuse or defence. He has further observed that the contents of the statements are corroborated by follow up of investigation which lead to seizure of three previous consignments which were used as cover for the contraband importer and removed in a clandestine manner. We agree with the Adjudicating authority and the contention of the learned Advocate of the appellants that the statements only involve the appellants and there is no other corroborative evidence is not correct. The statement of all the three details the modus operandi of smuggling of the goods by concealing them in Religious books. Three earlier consignments have also been identified. The weight of the consignments were found to be less than the declared weight. It can be safely presumed that this is on account of the gold biscuits which have been removed. Thus it is not correct to say that there is no corroboration. In our view, there is sufficient corroboration of the statements of the concerned persons to indicate the involvement of Shri Mohd. Riaz Uddin Ahmed. We agree with the Adjudicating authority that belated retraction of Shri Riaz is not admissible in the light of the corroborative evidence unearthed by the investigating officers. The Adjudicating authority has rejected the cross examination on the ground that the right of cross examination is not an absolute right. She has relied on a large number of decisions. Further the Adjudicating authority has osbserved that the loaders Sadhamani Srinivas and Sharada Prasad have not even responded to the show cause notice nor did they appear for the personal hearing."

11. The aforesaid discussion of the Tribunal would also clearly indicate that these are the very grounds which were canvassed by the appellant before the Tribunal and the same were elaborately dealt with by the Tribunal.

12. So far as the admissibility of the statement made by the appellant as also of the co-accused under Section 108 of the Act, 1962, the Hon'ble Supreme Court in the ***Bhana Kalpa***

Bhai Patel's case (supra 3) has categorically held that, once, on the plain reading of the statement, if it is found that the statements are given in the absence of threat or inducement and that the relevant provisions of law and its consequences were explained to the persons, further the statements being found to be voluntary and not vitiated in any manner, those statements would be admissible in evidence. The Hon'ble Supreme Court at paragraph No.7 laying to rest the aforesaid question of law has held as under:

> "7. An attempt was made to contest the admissibility of the said statements in evidence. It is well settled that statements recorded under Section 108 of the Customs Act are admissible in evidence. Vide *Ramesh Chandra Mehta v. State of W.B., and K.I. Pavunny v. Asstt. Collector (HQ), Central Excise Collectorate.*"

13. So far as the statement under Section 108 of the Act, 1962, whether it would be admissible or not came up for consideration in the case of ***Ghulam Hussain*** (supra 4), wherein the Hon'ble Supreme Court at paragraph Nos.10 to 15 held as under:-

> "10. In the case of *CCE v. Duncan Agro Industries Ltd.* this Court held that the provision in Section 164 of the Criminal Procedure Code empowers a Judicial Magistrate to record any confession or statement made to him

during the course of investigation. The power conferred by Section 164 of the Criminal Procedure Code to record confessions and statements can be exercised only by a Judicial Magistrate. Even a police officer on whom power of a Magistrate has been conferred is forbidden from recording a confession. Sub-sections (2) and (4) deal with procedure which such Magistrate has to follow while recording inculpatory statements made by persons. Referring to Section 108 of the Customs Act, this Court observed: (SCC p. 58, paras 11-12)

> "*11.* Section 108 of the Customs Act does not contemplate any magisterial intervention. The power under the said section is intended to be exercised by a gazetted officer of the Customs Department. Sub-section (3) enjoins on the person summoned by the officer to state the truth upon any subject respecting which he is examined. He is not excused from speaking the truth on the premise that such statement could be used against him. The said requirement is included in the provision for the purpose of enabling the gazetted officer to elicit the truth from the person interrogated. There is no involvement of the Magistrate at that stage. The entire idea behind the provision is that the gazetted officer questioning the person must gather all the truth concerning the episode. If the statement so extracted is untrue its utility for the officer gets lost.
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> *12.* ... The ban contained in Section 25 of the Evidence Act is an absolute ban. But it must be remembered that there is no ban in regard to the confession made to any person other than a police officer, except when such confession was made while he is in police custody. The inculpatory statement made by any person under Section 108 is to non-police personnel and hence it has no tinge of inadmissibility in evidence if it was made when the person concerned was not then in police custody. Nonetheless the caution contained in law is that such a statement should be scrutinised by the court in the same manner as confession made by an accused person to any non-police personnel. The court has to be satisfied in such cases, that any inculpatory statement made by an accused person to a gazetted officer must also pass the tests prescribed in Section 24 of the Evidence Act. If such a statement is impaired by any of the vitiating premises

enumerated in Section 24 that statement becomes useless in any criminal proceedings."

11. In the judgment this Court quoted with approval the following observations made by Hidayatullah, J. (as he then was) in *Haroon Haji Abdulla v. State of Maharashtra*: (AIR p.835, para 6)

"These statements are not confessions recorded by a Magistrate under Section 164 of the Code of Criminal Procedure but are statements made in answer to a notice under Section 171-A of the Sea Customs Act. As they are not made subject to the safeguards under which confessions are recorded by Magistrates they must be specially scrutinised to finding out if they were made under threat or promise from someone in authority. If after such scrutiny they are considered to be voluntary, they may be received against the maker and in the same way as confessions are received, also against a co-accused jointly tried with him."

12. Reference was made to the decision in *Ramesh Chandra Mehta v. State of W.B.* wherein it was held:

"When an inquiry is being conducted under Section 108 of the Customs Act, and a statement is given by a person against whom the inquiry is being held it is not a statement made by a person accused of an offence and the person who gives the statement does not stand in the character of an accused person."

13. This Court also referred the case in *Percy Rustomji Basta v. State of Maharashtra* and also the three-Judge Bench decision in *Harbansingh Sardar Lenasingh v. State of Maharashtra, Veera Ibrahim v. State of Maharashtra,* and Poolpandi v. Supdt., Central Excise.

14. The conclusions of the Court were summarised as follows:(SCC pp.59-60, para 17)

"17. We hold that a statement recorded by Customs Officers under Section 108 of the Customs Act is admissible in evidence. The court has to test whether the inculpating portions were made voluntarily or whether it is vitiated on account of any of the premises envisaged in Section 24 of the Evidence Act."

15. In view of the position of law enunciated by this Court in the recent decision afore mentioned with which we are in respectful agreement, no exception can be taken against the finding recorded by the High Court on the point."

14. Similar view has also been expressed by the Hon'ble Supreme Court as regards the statement under Section 108 of the Act, 1962 at paragraph Nos.19 and 20 in the case of ***K.I Pavunny*** (supra 5), which read as under:

"19. The next question for consideration is whether such statement can form the sole basis for conviction? It is seen that, admittedly, the appellant made his statement in his own handwriting giving wealth of details running into five typed pages. Some of the details which found place in the statement were specially within his knowledge, viz., concealment of the 200 biscuits in his earlier rented house till he constructed the present house and shifted his residence and thereafter he brought to his house and concealed the same in his compound; and other details elaboration of which is not material. The question then is whether it was influenced by threat of implicating his wife the crime which is the sole basis for the claim that it was obtained by threat by PW 2 and PW 5. In that behalf, the High Court has held that it could not be considered to be induced by threat that his wife will be implicated in the crime and accordingly disbelieved his plea. It is seen that admittedly after the appellant gave his statement, he was produced before the Magistrate though no complaint was filed and was released on bail. He did not complain to the Magistrate that Ex. P-4 statement was given under inducement, threat or duress. It was raised only subsequently making accusations against PW 5, the Inspector of Customs. Therefore, obviously it was only an afterthought. The High Court, therefore, rightly has not given any weightage to the same. It is true that the Magistrate has given various reasons for disbelieving the evidence of PW 3, the panch witness who had also, at one point of time, indulged in smuggling. It is unlikely that PW 3 would bring 200 gold biscuits of foreign marking and conceal them in the compound of the appellant without appellant's knowledge for safe custody. It is not his case that he had facilitated PW 3 in concealing them in his compound. The place of concealment of the contraband is also significant at this juncture. It is just near and visible from the window of his bedroom through which he or his family members could always watch anyone frequenting the place where the contraband was concealed. This fact becomes more relevant when we consider that after concealment of the contraband in the compound one would ensure that others having access to the compound may not indulge in digging and carrying away the same. As soon as the appellant and/or the members of his family had sight of such visitor or movement by others, they would immediately catch hold of such person or would charge them. Obviously, therefore, it would be the appellant who had concealed 200 gold biscuits of foreign marking in his compound at a place always visible from his bed room window. Therefore, the High Court was right in its conclusion, though for different reasons, that Ex. P-4 is a voluntary statement and was not influenced by threat, duress or inducement etc. Therefore, it is a voluntary statement given by the appellant and is a true one.

20. The question then is whether the retracted confessional statement requires corroboration from any other independent evidence. It is seen that the evidence in this case consists of the confessional statement, the recovery panchnama and the testimony of PWs 2,3 and

5. It is true that in a trial and proprio vigore in a criminal trial, courts are required to marshal the evidence. It is the duty of the prosecution to prove the case beyond reasonable doubt. The evidence may consist of direct evidence, confession or circumstantial evidence. In a criminal trial punishable under the provisions of the IPC it is now well-settled legal position that confession can form the sole basis for conviction. If it is retracted, it must first be tested whether confession is voluntary and truthful inculpating the accused in the commission of the crime. Confession is one of the species of admission dealt with under Sections 24 to 30 of the Evidence Act and Section 164 of the Code. It is an admission against the maker of it, unless its admissibility is excluded by some of those provisions. If a confession is proved by unimpeachable evidence and if it is of voluntary nature, it when retracted, is entitled to high degree of value as its maker is likely to face the consequences of confession by a statement affecting his life, liberty or property. Burden is on the accused to prove that the statement was obtained by threat, duress or promise like any other person as was held in *Bhagwan Singh v. State of Punjab (1)* (AIR para 30). If it is established from the record or circumstances that the confession is shrouded with suspicious features, then it falls in the realm of doubt. The burden of proof on the accused is not as high as on the prosecution. If the accused is able to prove the facts creating reasonable doubt that the confession was not voluntary or it was obtained by threat, coercion or inducement etc., the burden would be on the prosecution to prove that the confession was made by the accused voluntarily. If the court believes that the confession was voluntary and believes it to be true, then there is no legal bar on the court for ordering conviction. However, the rule of prudence and practice does require that the court seeks corroboration of the retracted confession from other evidence. The confession must be one inculpating the accused in the crime. It is not necessary that each fact

or circumstance contained in the confession is separately or independently corroborated. It is enough if it receives general corroboration. The burden is not as high as in the case of an approver or an accomplice in which case corroboration is required on material particulars of the prosecution case. Each case would, therefore, require to be examined in the light of the facts and circumstances in which the confession came to be made and whether or not it was voluntary and true. These require to be tested in the light of a given set of facts. The high degree of proof and probative value is insisted in capital offences."

15. So far as the issue of the Commissioner as also the Tribunal being in contravention to the principles of natural justice is concerned, the Hon'ble Supreme Court in the case of ***M/s. Kanugo & Company*** (supra 6), at paragraph No.12 has held as under:

"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. It 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 appellant."

16. Again on the very same issue, in the case of ***Surjeet Singh Chhabra*** (supra 7), the Hon'ble Supreme Court dealing with the provisions of the Act, 1962, its etching question of cross-examination as in paragraph No.3 held as under:-

> "3. ....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."

17. Another contention of the learned counsel for the appellant which needs consideration at this juncture is the contention of the confession statement having been retracted later on, therefore, the confessional statement loses it admissibility. However, on perusal of the findings given by the Commissioner and the Tribunal, it would be evidently clear that the two authorities have also dealt with the same issue have reached to the conclusion that the retraction made by the appellant has been at much belated stage and there is no plausible explanation provided for not having retracted the same earlier.

18. The present is a case where incident was on 31.12.2000 and the statement of the appellant under Section 108 of the Act, 1962 was recorded on the same day i.e., 31.12.2000. Thereafter, after the investigation, the appellant was arrested and he was released only on 21.06.2001. Even after his release from the jail, there was no retraction as such made by the appellant. The retraction has been made for the first time only on 23.09.2002 i.e., almost about 2 years from the date of the first statement made and about 15 months' time from the date he was released from jail on bail. Since the retraction having been done on belated stage, the two authorities below have rightly not accepted the contention of the appellant and have found the statement under Section 108 of the Act, 1962 to be admissible.

19. Another aspect which is noteworthy to be appreciated is that the appellant herein cannot be considered a rustic villager or a layman. He appears to be highly qualified, he has done his graduation in B.S.C., then he took a Diploma and thereafter he has also done L.L.B., as such he is quite

qualified and well aware of his rights, inspite of that the retraction being made by the appellant after so long period does not give strength to the submission made by the learned counsel for the appellant.

20. So far as the statement of confession recorded under Section 108 of the Act, 1962 to be inadmissible for the aforesaid reasons, we are of the considered opinion that no strong case has been made out on the part of the appellant calling for interference of this Court to the impugned order of the Tribunal. The appeal thus fails and is accordingly rejected. There shall be no order as to costs.

Consequently, miscellaneous applications pending if any shall stand closed.

SD/- M.VIJAY BHASKAR
JOINT REGISTRAR

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SECTION OFFICER

To,

1. The Customs, Excise and Service Tax Appellate Tribunal, South Zonal Bench, at Bangalore
2. The Commissioner of Customs and Central Excise , Hyderabad – II, Hyderabad.
3. One CC to SRI. SIVARAJU SRINIVAS Advocate [OPUC]
4. One CC to SRI. B NARAYANA REDDY Advocate [OPUC]
5. Two CD Copies

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HIGH COURT

DATED:12/12/2023

JUDGMENT

CEA.No.147 of 2006

REJECTING THE CEA

WITHOUT COSTS

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