

**Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench At Ahmedabad**

REGIONAL BENCH-COURT NO. 3

Excise Appeal No. 1018 of 2009- DB

(Arising out of OIO-31/BVR/COMMISSIONER/2009 dated 31/03/2009 passed by
Commissioner of Central Excise-BHAVNAGAR)

Ranchhoddas Zinabhai Dholakia

.....Appellant

(mahasugandhi Snuff Works),
Niranjanbhai Dholakia Marg,
Sihor, Gujarat

VERSUS

C.C.E. & S.T.-Bhavnagar

.....Respondent

Plot No.6776/B-1...Siddhi Sadan, Narayan Upadhyay Marg,
Beside Gandhi Clinic,
Near Parimial Chowk,
Bhavnagar, Gujarat- 364001

WITH

Excise Appeal No. 1019 of 2009- DB

(Arising out of OIO-31/BVR/COMMISSIONER/2009 dated 31/03/2009 passed by
Commissioner of Central Excise-BHAVNAGAR)

Navinchandra Purushottambhai Dholakia

.....Appellant

Niranjanbhai Dholakia Marg,
Sihor, Gujarat

VERSUS

C.C.E. & S.T.-Bhavnagar

.....Respondent

Plot No.6776/B-1...Siddhi Sadan, Narayan Upadhyay Marg,
Beside Gandhi Clinic,
Near Parimial Chowk,
Bhavnagar, Gujarat- 364001

AND

Excise Appeal No. 1020 of 2009- DB

(Arising out of OIO-31/BVR/COMMISSIONER/2009 dated 31/03/2009 passed by
Commissioner of Central Excise-BHAVNAGAR)

Jayeshbhai Niranjanbhai Dholakia

.....Appellant

Niranjanbhai Dholakia Marg,
Sihor, Gujarat

VERSUS

C.C.E. & S.T.-Bhavnagar

.....Respondent

Plot No.6776/B-1...Siddhi Sadan, Narayan Upadhyay Marg,
Beside Gandhi Clinic,
Near Parimial Chowk,
Bhavnagar, Gujarat- 364001

APPEARANCE:

Shri, Paresh Dave, Advocate for the Appellant

Shri, G. Kirupanandan, Assistant Commissioner (AR) for the Respondent

CORAM: HON'BLE MEMBER (JUDICIAL), MR. RAMESH NAIR

HON'BLE MEMBER (TECHNICAL), MR. C L MAHAR

Final Order No. A/ 11199-11201 /2023

DATE OF HEARING: 21.02.2023

DATE OF DECISION: 07.06.2023

RAMESH NAIR

All these appeals have been filed against the impugned Order-in-Original dated 31.03.2009 passed by the Learned Commissioner, Central Excise, Bhavnagar.

2. Briefly stated, the facts of the case are that a specific intelligence was gathered that the Appellant was indulging in large-scale evasion of Central Excise Duty by way of clearing snuff manufactured by them, without payment of duty. The officers of DGCEI, carried out searches at the various premises. During the course of search, some unexplained cash, rolled into bundles and attached with certain chits were found lying in the drawer of the cabin of Shri Navinchandra Purshottambhai Dholakia, Partner of Appellant's firm. The physical verification of finished excisable goods lying at the Appellant on the day of the search revealed that goods were lying unaccounted and in excess of the recorded balance appeared in the statutory daily stocks account viz. RG-1 Register, maintained up to 13.06.2006. Search was also conducted at the premises of employee and department also conducted inquiry with buyers and at the end of the Job-workers. Statements of persons were recorded. On the basis of investigation carried out by the Department, a show cause notice dated 11-12-2006 was issued wherein it was alleged that the appellant had evaded payment of duty by clandestinely clearing fully manufactured snuff in the guise of clearance of semi-processed snuff to various Job-workers, from their registered factory premises. The Ld. Commissioner adjudicated the SCN vide impugned order and confirmed the demand of Rs. 1,19,92,836/- as excise duty, confiscated cash of Rs. 48,500/-, confiscated 4866.42 Kgs. of Snuff with redemption fine of Rs. 1 Lakhs and imposed penalty of Rs. 1,19,92,836/- on the appellant firm, with personal penalties of Rs. 1,20,000/- each on

Partners Shri Navinchandra P. Dholakia and Shri Jayesh N. Dholakia. Being aggrieved by the impugned order Appellants filed the present appeals.

3. Shri, Paresh Dave appearing for the appellant submits that the commissioner has acted unreasonably and without justification in holding that 318 chits recovered from Appellant's premises contained details of the Qty. of snuff clandestinely removed in guise of clearances of semi-finished snuff to Job worker's premises though it stood established on record that these chits contained details of finished goods snuff received back in the Appellant's factory from the Job worker's premises and thus they did not relate to any clearance of goods from Appellant's factory. The evidence on records including payment made by the Appellant to the Job Workers indicated that these chits were for the quantities of ground snuff received from the Job workers and therefore, Commissioner had no Justification to discard the evidence establishing this fact in the adjudication proceedings.

3.1 He further submits that Statements of Shri Navinbhai P. Dholakia (a partner) and that of Shri Vimalbhai G. Mavani (Accounts clerk) were recorded on 14.06.2006. Shri Navinbhai Dholakia has retracted the statement on 01.07.2006, and the retraction affidavit was submitted before the Additional Director on 13.07.2006 under a covering letter. There was no delay in retraction. After the retraction affidavit, no further statement of this partner was recorded; and statement of another partner viz., Jayesh Dholakia was recorded but nothing significant was asked to him. The only confessional statement in this case has been that of Shri Navinchandra P. Dholakia dated. 14.06.2006, which stands retracted by virtue of affidavit sworn on 01.07.2006. In the statement of Shri Vialbhai Mavani recorded on 14.06.2006, he has stated that entries of the chits were made in the Grinding and Drying register maintained in their godown. He has also stated that he did not have any information regarding the purpose of the chits, and only Navinbhai could give explanation in this regard. Shri Mavani has not stated or admitted that the chits were for recording fully manufactured snuff which was illicitly sold or removed from the factory.

3.2 He also submits that Shri Babubhai Chavada one of the Job workers was cross-examined and he has clearly stated that the chits were for work of grinding done by him and other person, and the goods ground by them and mentioned in the Chits were sent back to the main factory. Shri Vima IMavani (Accounts Clerk) was also cross examined. He also clarified that the Chits were for grinding snuff returned by the job workers from Kandviwala Ghar, and the Chits were maintained for payment to Job Workers at the end of each month. He also clarified that these chits were for recording receipts of materials after job work, and not for removing any material or snuff from Mahasugandhi Snuff Works.

3.3 He argued that, factually, the only evidence that 318 Chits were for removal of fully manufactured snuff from the Appellant's factory without payment of excise duty was the statement of Shri Navinbahi P. Dolakia recorded on 14.06.2006; and this statement was retracted with full details of the method of grinding, Job works etc., and the facts explained by Shri Dholakia in retraction affidavit as well as the covering letter correlate and match with the depositions of the Job workers as well as the accounts clerk. Affidavit submitted by the appellants cannot be brushed aside solely on the ground of delay. In case of doubt, the deponent could be called for cross – examination or allowed to be cross examined by the department. The evidence on affidavit cannot be dismissed straightaway as afterthought without a proper enquiry and examination of the deponents. He placed reliance on the following judgments:-

- Parle Beverages V/s Collector of Central Excise – 1998(98)ELT 585(SC)
- Kulbhushan Jain Vs. Commissioner of Customs – 1999(111)ELT 906(Tribunal)
- Metro (India) Woodcrafts Pvt. Ltd. Vs. Collector of Central Excise- 2016(333)ELT 418(Tri.-Kolkata)

3.4 He further submits that the details of the Chits were fully recorded in the Job Work registers seized on 13.6.2006 from the Appellant's premises, and the quantum of tobacco ground by the Job Workers recorded in such register was fully correlated to the payment particulars for monthly payment made to the Job Workers. After verifying the details of February 2005 during personal hearing held on 26.03.2009, the Commissioner wanted to have such correlation for all

318 chits, and therefore such correlation was submitted on 30th March 2009. Thus corroborative evidence was submitted by the Appellant for establishing beyond a reasonable doubt that 318 Chits were for the Job work done by the Job Workers in the nature of grinding of tobacco, and these Chits were for receiving (by way of inward receipts) ground tobacco from the Job Workers, and the payment of such Job work was also made by the appellant in duly accounted manner. All the chits are recorded in the Dalat Register meant for the Job Work and all the details like the date, the job worker's name, quantity in terms of bags etc. appearing in the chits also fully correlates with the corresponding details in the register, and the payment to the Job Workers on monthly basis is also established on the basis of the documents recovered from the appellant during the investigation. These document are in the nature of unimpeachable corroborative evidence for establishing that the chits were not quantity of fully finished snuff illicitly removed by the Appellant.

3.5 He also submits that the department has not located a single buyer for delivering 2,96,220 Kgs. Of Snuff; there is no evidence of receiving payment of Rs. 1.78 Crores (rounded of) by the appellant as price of snuff allegedly removed clandestinely; there is no instance of actual removal of unaccounted finished goods without payment of duty; there is no discovery of such finished goods outside the factory; there is no statements of any buyers nor any proof of actual transportation of the goods cleared without payment of duty; the statement of a partner stand retracted with full details whereas no subsequent statement of any confessions has been recorded after the retraction; and the chits forming basis of the revenue's case do not support any clandestine removal of fully finished goods. In absence of any such evidence, the case of clandestine removal of fully finished snuff weighing 2.96 laks Kgs. Valued at Rs. 1.78 crores (rounded of) is not at all established by the revenue. He placed reliance on the following Judgments:-

- Mahesh Silk Mills Vs. Commissioner of Central Excise – 2014(304)ELT 703 (Tri. Ahmd)
- Commissioner Vs. Mahesh Silk Mills – 2015(319)ELT A52(Guj.)
- Balajee Structural (India) Pvt. Ltd. Vs. Commissioner of Central Excise – 2016(341)ELT 457 (Tri. Del.)
- Kumar Cotton Mills (P) Ltd. Vs. Commr. Of C.Ex. Ahmedabad - 2008(229)ELT 273(Tri. Ahmd.)
- Denna Paints Vs. CCE, New Delhi -2001(43)RLT 805

- Ashwin Vanaspati Industries Pvt. Ltd. Vs. Collectors of Central Excise – 1992(59)ELT 175.
- T.G.L .Poshak Corporation Vs. Commissioner of Central Excise, Hyderabad- 2002 (140) ELT 187. \
- Shakti chemicals Industries Vs. Collector of Central Excise, Baroda – 1995(176)ELT 410
- Rajasthan Foils Pvt. Ltd. Vs. Collector of Central Excise, Jaipur – 2005(183)ELT 101
- M.T.K. GurisamyVs. Collector of Central Excise, Madurai -2001(130)ELT 344.
- Gurpreet Rubber Industries Vs. Collector of Central Excise, Chandigarh – 1996(82)ELT 347.
- Commissioner of Central Excise Vs. Universal Polythelene Industries – 2001(130)ELT 228 (Tri. Kolkata)
- Bharat Cottage Industries Vs. Union of India – 1992 (59)ELT 30(Bom.)
- Premium Packaging P.Ltd. Vs. Commissioner of C.Ex., Kanpur – 2005(184)ELT 165 (Tri. Del.)
- Resha Wires Pvt. Ltd. Vs. CCE, Bangalore -2006(74)RLT 184 (CESTAT-Ban.)

4. Shri G. Kirupanandan, Learned Authorised Representative appearing for the department reiterates the findings of the impugned order and submits that the contention of the Appellant is far from the truth. It is normal trade practice that a document related to goods is created by the person who deals with the said goods. In the present case the Appellant has dealt with the goods by clandestinely removing it without payment of duty vide 318 chits. These 318 Chits seized from the premise of the Appellant were prepared by Shri Vimal Mavani, working for the Appellant. He has in his statement stated that eventhough the chits showed clearance of semi processed raw materials however no raw material was delivered under the said chits. This statement has not been retracted. Therefore if the chits contained details of semi-finished goods received back from the Job worker then Shri Shri,Vimal Manvani could have very well deposed the said fact before the investigating officers.

4.1. He also submits that when Shri Vimal Mavani was shown the Chits seized from the premises of the Appellant during the course of recording of his statement, he stated that the same were mostly prepared by him and that even though the chits showed clearances of semi processed raw materials, no raw material was delivered under the said chits. Shri Vimal Mavani was not in any

way prevented at that time from clarifying, if the said chits reflected about the semi-finished goods received from the job workers. Subsequent clarification after almost a month is nothing but to circumvent the law. The affidavit submitted by the Appellant vide their letter dated. 10.07.2006 is nothing but an afterthought which has been clearly brought out by the Commissioner in his order. Shri Vimal Mavani who had prepared chits had never retracted his statement. His deposition was further endorsed by the Partners of the Appellant Shri Navinchandra Dholkia and Shri Jayesh N Dholakia.

4.2. He also placed reliance on the following Judgments:-

- A Shaud Ali Vs. CC., Madurai – 2001 (133) ELT 554 (Mad.)
- CC., Madras -1 Vs. Govindasamy Rahupathy – 1998(98) ELT 50 (Mad)
- Bhanabhai Khalpabhai Vs. CC – 1994 (71)ELT 3 (SC)
- Devender Exports Vs. CCE, Ludhiana – 2007(219) ELT 533 (Tri. Del)
- CCE, Ahmedabad –I, Vs. Gopal Textiles Mills Pvt. Ltd. – 2007(215) ELT 558 (Tri. Ahmd)
- CCE, Surat-I Vs. ND Textiles – 2004 (168)ELT 381
- Ludhiana Foods Products Vs. CCE – 1989(43) ELT 648(Tri.)
- MitexImpex Vs. CCE – 2017(349)ELT 567(Guj)
- CCE Vs. Kay Bee Tax Spin Ltd. – 2017(349)ELT 451 (Guj)
- S M Steel Ropes Vs. CCE, (Adj) Mumbai – 2014(304) ELT 591 (Tri. –Mum)
- Umesha Textiles Pvt. Ltd. Vs. CCE, New Delhi – 2014(314) ELT 176 (Tri. Mum)
- Haryana Steel & Alloys Ltd Vs. CCE, New Delhi – 2017(355) ELT 451 (Tri. Del)
- Haryana Steel & Alloys Ltd. Vs. CCE, New Delhi – 2017 (355) ELT 451 (Tri. Del.)
- Pradeep Master Batches Pvt. Ltd. Vs. CCE (Export), Mumbai – 2017(348)ELT 692 (Tri- Mum)
- Sarla Polyester Ltd. Vs. CCE, Surat-II -2008 (222) ELT 376 (Tri.-Ahmd.)

5. We have carefully considered the submissions made at length by both sides and perused the records and also considered the case laws quoted by both sides.

5.1 We find that the entire case of the Revenue is totally based on 318 chits recovered from the premises of the Appellant on the day of the Visit of the Officers of DGCEI. It is the case of revenue that these chits contain details of snuff cleared clandestinely, whereas appellant contended that these were

prepared for the purpose of payment to the Job-workers. The appellant's main contention is that in the entire case, the only evidence that 318 Chits were for removal of fully manufactured snuff from the Appellant's factory without payment of duty was the statement of Shri Navinbhai P. Dholakia recorded on 14.06.2006 and the this statement was retracted. There is no independent corroboration to the said statement. The appellant have strongly contested that inasmuch as the said statement was retracted, subsequently, the same cannot be made the basis for arriving at a finding against them. Similarly, the entries made in disputed chits, cannot be held to be adverse to the appellant's case in the absence of any evidence to show that the same reflected clandestine activities.

5.2 We, however, do not find any merit in the above contention of the Id. Advocate. Firstly, we find that Shri Vimalbhai Mawani, the Appellant's Accounts clerk, prepared these disputed Chits and categorically in his statement dated. 14.06.2006 stated that no raw materials were delivered under the above Chits to any Jobworker. Secondly, we also gone through the statements of Shri Navinchandra Dholakia dated. 14.06.2006 wherein he stated that snuff mentioned in the Chits found from their factory premises were cleared without payment of central excise duty. During the search excess qty. of finished goods viz. snuff also seized by the department from the premises of Appellant and their Job Workers. During the investigation Appellant also paid the duty amount of Rs. 40,00,000 towards their liability. As such, it is seen that there is enough evidence on record to sustain the charge of clandestine removal against the appellant.

5.3. We find that the learned counsel has referred to the affidavit as clarificatory. Any clarificatory statement should have been given, without delay, to the authority which recorded the original statement. In the present matter admissions have been made in the statements recorded under Section 14 of the Central Excise Act. The retraction of any statement, in our opinion, should be made to the authority before whom the statements were given. Thus, it is between the person who gave the statement and the person before whom the statement was given. Any communication addressed to others can only be considered as representation or compliant. It is not their case that any retraction was given to the officer, who has recorded the statements. It is also not their case that they made any representation to the senior officers, who supervise the work of the officers, who recorded the statements alleging any threat or compulsion on the part of the officers while recording the statements. The

affidavit filed by the appellant cannot be considered as retraction of statements given under Section 14 of the Central Excise Act. Further, it is noticed that the Appellant deposited a sum of Rs. 40,00,000/- lakh during the investigation of the case towards disputed duty liabilities. Therefore the view taken by us with regard to the evidentiary value of the Partner's original statement remains intact. Considering the evidence relating to excess unaccounted stock found in the factory, seizure of cash on the date of visit and admission in statements of partners and employee of appellant it is reasonable to conclude that the clandestine clearances has taken place.

5.4. We also noticed that In the case of *CC, Mumbai v. Shamshuddin M.A. Kadar* - [2010 \(259\) E.L.T. 44](#) (Bom.), Bombay High Court observed that the retraction made after delay of one and a half months was an afterthought and the statement is a material piece of evidence. In the case of *K.G. Augustine v. CC* - [1997 \(89\) E.L.T. 625](#) (Tri.), it was held that the statement made by person to be considered voluntary and true even if retracted when circumstances not showing any use of threat or coercion and also when corroborated by statements of other persons. In the case of *K.I. Pavunny v. Assistant Collector (HQRS), Central Excise Collectorate, Cochin* - 1997 (18) RLT 641 (SC) = [1997 \(90\) E.L.T. 241](#) (S.C.), the Supreme Court held that confessional statement under Section 108 of the Act, 1962 is admissible as person giving statement is not an accused and voluntary statement is not to be characterised to have been obtained by threat, inducement or promise and further, that the burden is on the person to prove that his statement was obtained by threat inducement or promise. The Hon'ble Supreme Court further observed that there is no prohibition under the Evidence Act to rely upon the retracted confession to prove the prosecution case or make the same basis for conviction of the accused. In the case of *Collector of Customs v. Mahindra Chandra Dey* = [1997 \(89\) E.L.T. 478](#) (Cal.), Calcutta High Court held that principles relating to inadmissibility of confessions under Cr P.C. 1973 are not applicable to confessions made under Section 108 of the Customs Act. Incidental reference can also be made to the case of *CCE, Chandigarh v. Nabha Steels Ltd.* - [2004 \(169\) E.L.T. 345](#) (Tri.-Del.) where CESTAT held as under:

2. "I have heard both the sides. The bare perusal of the record shows that the factory premises of the respondents was visited by the Central Excise officers on 25-7-2000. On verification of the stock of the raw material and finished goods, shortage of 8.835 MTs of non-alloy steel ingots was detected. Similarly, some shortage of runners and risers was also detected at the spot. These shortages were admitted by Shri Ajay Goyal, Director of the respondents and the entire duty involved on both the shortages was debited by the respondents. The plea of the respondents that no actual weighment was done for arriving at the correct shortage of the goods detailed above and that the quantity has

been arrived at, on estimation basis has been wrongly accepted by the Commissioner (Appeals) for setting aside the duty demand. This plea could not be allowed to be taken by them in the face of the confessional statement of Ajay Goyal, Director of the respondents before the Excise staff at the time of checking. The respondents are bound by the admission made by their Director and could not later on complain that the shortage was not properly arrived at. Even at the time of signing of the panchnama prepared at the spot, the Director of the respondents or any other representative never took exception to the mode of verification adopted by the officers for arriving at the quantity of the goods found short. Therefore, the impugned order of the Commissioner (Appeals) setting aside the duty payable by the respondents on the goods found short, cannot be sustained and is set aside."

5.5 We also find that in the present matter Appellant's claim that disputed Chits were fully recorded in the 'Dalat Register' is also not tenable. It is on records that when the officers of revenue searched the premises of the Appellant and recovered the said chits under Panchnama, Shri Vimalbhai Mavani, Accounts Clerk of the Appellant, who have prepared these Chits, stated that these were prepared as per the direction of the Shri Navinchandra Dholakia, Partner of the Appellant and that no goods were delivered under these Chits to their factory. We agree with the argument of revenue that if the contention of the Appellant has to be held true then these chits should have been prepared by the Job-workers returning the semi-finished goods back to the Appellant and copy of the same should have been also available with the said Job-workers. Also no Job-worker has in their statement stated that they had delivered goods to the Appellant as mentioned in the chits. Co-relation with payment made to Job-workers has no basis as the Appellant had regular business dealings with the Job-workers and which included payment being made to them. If the transactions were over the board then the Appellant should have cleared goods to the Job-workers under proper Job-work challans and received back the same from the Job-workers under said challans. However no such challans were there to support the contention of the Appellant that the said Chits reflected semi-finished goods received back from the Job Worker. Admittedly, on sending of goods for Job -work and receipt of processed goods from Job-workers, the goods are required to be entered in the statutory records i.e Job Work records, Job Work Challans, raw material accounts, finished goods accounts etc. Non-entry of the same in the statutory documents would admittedly lead to appellant's *mala fide* that same were meant for clandestine clearance.

5.6 We also find that Ld. Commissioner in his Order-in-Original after analysing all the statements recorded during investigation, cross-examination of persons and examination of documents on records clearly came out that the claims of

appellant that 318 Chits were prepared for payment of Job work charges cannot be accepted as it was an afterthought and concocted on basis of cross-examination of persons. We also find that Statements tendered by a Job Worker Shri, Jaswantray Vora confirmed that no goods had been received in these chits. Further, if dalat register could be maintained at the Job-workers end to show receipts of the goods at their place then the appellant could also have maintained register for showing receipts of goods from the Jobworker Place. If they had maintained the register there was no need for keeping transaction recorded on Chits. The contention of the appellant that they had recorded the movement of goods shown in the chits in their register does not hold that good as there was no job-work challans issued for such movements. Also no such register containing the transaction were recovered from the Appellant's premises. As such, we find no justifiable reason to interfere in the impugned order of the Id. Commissioner.

5.7 We also find that the 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. The facts of those cases are totally different from the facts in this case are different. 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 exist sufficient evidence to sustain the said finding against the appellants.

6. Though it is well settled law and does not require the support of any decision of the judicial or quasi-judicial courts to observe that the activities of clandestine nature are required to be proved by sufficient, tangible and positive evidence. However, the facts present in each and every case are required to be scrutinized and examined independently. As already observed, in the present case, the department has not simplicitor relied upon the 381 Chits recovered from the factory premises of Appellant. Statements of various persons stand recorded. No doubt the outcome of cross examination has to be given due importance but keeping in view the overall facts and circumstances of the case including the fact of seizure of cash and snuff at the time of visit of officers, and the fact of deposit of duty, has to be taken into consideration which lead only to one and one fact of clandestine removal of the appellant's final product. In this connection, Hon'ble Supreme Court's decision in the case of *CCE, Mumbai v. Kalvert Foods India Pvt. Ltd.* [[2011 \(270\) E.L.T. 643](#) (S.C.)] can be referred to.

7. In view of the foregoing, we find no merits in the appeals of Appellants. Accordingly, all three appeals are rejected.

(Pronounced in the open court on 07.06.2023)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(C L MAHAR)
MEMBER (TECHNICAL)

Raksha