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

REGIONAL BENCH-COURT NO. 1

Excise Appeal No. 12126 of 2018- SMC

(Arising out of Order-in-Appeal No. CCESA-SRT-APPEALS-PS-667-668-2017-18 dated 28/02/2018 passed by the Commissioner, CGST & Central Excise, Surat)

Tarun Polymers **......Appellant**
Survey No. 380/1 (12),
Modern Industrial Estate,
Kachigam, Daman, Gujarat

VERSUS

COMMISSIONER OF Central Excise
and Service Tax- Daman **......Respondent**
3rd Floor... Adarsh Dahan Building,
Opp. Vapi Town Police Station,
Daman, Gujarat- 396191

With

Excise Appeal No. 12127 of 2018- SMC

(Arising out of Order-in-Appeal No. CCESA-SRT-APPEALS-PS-667-668-2017-18 dated 28/02/2018 passed by the Commissioner, CGST & Central Excise, Surat)

Shri Chandrakant Jain **......Appellant**
Partner of M/s Tarun Polymers,
Survey No. 380/1 (12),
Modern Industrial Estate,
Kachigam, Daman, Gujarat

VERSUS

COMMISSIONER OF Central Excise
and Service Tax- Daman **......Respondent**
3rd Floor... Adarsh Dahan Building,
Opp. Vapi Town Police Station,
Daman, Gujarat- 396191

APPEARANCE:
Shri Jagdish Surti, Advocate for the Appellant
Smt. Sunita Menon, Superintendent (AR) for the Respondent

CORAM:
HON'BLE MR. SATENDRA VIKRAM SINGH, MEMBER (TECHNICAL)

Final Order No. 10336-10337/2026

DATE OF HEARING: 10.03.2026
DATE OF DECISION: 13.05.2026

SATENDRA VIKRAM SINGH

M/s Tarun Polymers, Village- Kachigam, Daman (Appellant) are engaged in manufacture of Plastic Bags falling under Chapter 39 of the Central Excise Tariff Act, 1985. The departmental officers searched their unit on 10.01.2012 and recovered certain documents and records such as files containing Lorry receipts (LRs), bank statements, balance sheets, job work challans, private notebooks, invoices etc. After examining the resumed documents, the officers found that some of the LRs matched exactly with duty paying invoice(s) issued by the appellant but against some LRs, no duty paying invoice was issued. After analyzing such lorry receipts, the officers found that the appellant has suppressed taxable turn over in the year 2010-11 and 2011-12 as detailed in para 6.3 of the show cause notice.

1.1 After conducting investigation, Revenue issued them a show cause notice dated 01.10.2015 demanding differential central excise duty of Rs. 5,69,381/- under Section 11A(4) of the Central Excise Act 1944 along with interest under Section 11AA and penalty under Section 11AC of the Central Excise Act, 1944 read with Rule 25(1) of the Central Excise Rules, 2002. The show cause notice also proposed penal action under Rule 26(1) of the said rules against Shri Chandrakant F Jain, Partner of the appellant firm.

1.2 The matter was decided by the Assistant Commissioner vide order dated 30.11.2016, wherein he confirmed the duty demand of Rs. 5,69,381/- along with interest and equal penalty on the company. He also imposed penalty of Rs.5,50,000/- on Shri ChandraKant Jain, (Appellant 2). Aggrieved with this order, both the appellants filed appeals before the Commissioner (Appeals) who vide impugned order dated 28.02.2018 upheld the order of the lower authority and rejected their appeals. Hence, the present appeals before this Tribunal.

2. The Appellant M/s Tarun Polymers took following grounds in their appeal:-

- The learned Commissioner (Appeals) has upheld demand which was based on presumption and assumption and the order was passed without giving proper findings on various contention of the appellant. The entire demand is based on LRs recovered from their premises without verifying their authenticity from the recipient whether or not they had received the final goods. Such demand is not sustainable as held in the case of Aum Aluminum Pvt Ltd Vs. CCE, Vadodara reported at 2014 (311) ELT 354 (Tri.-Ahm.).

- LRs are prepared by concerned clerk of the transporter or handed over to assessee for filling the details of finished goods before it's transportation. If for some reason, order is cancelled at the last moment, clearances are not affected. In such cases, LRs could not be cancelled, due to mistake or ignorance of the dispatch clerk or the transporter's person and kept lying in drawers.
- LRs only contained the quantity of goods whose value has randomly been taken by the Revenue on the basis of value of other goods cleared during the said period without confirming quality/grade/specification etc. The valuation taken on such basis is not sustainable as held by Hon'ble Delhi High Court in the case of Commissioner of C. Ex., Delhi Vs. Bihariji Manufacturing Co. Pvt. Ltd reported at 2015 (323) ELT 106 (Del.) which was also upheld by the Apex Court by dismissing the SLP filed against this order as reported in 2015 (319) ELT A117 (SC). They also rely on the decision in the case CCE, Chandigarh Vs. Saakeen Alloys Pvt ltd. reported at 2015 (319) ELT A117 (SC) and of CESTAT Ahmedabad in Gupta Synthetics Ltd Vs. CCE Ahmedabad-II case.
- While recording the statement, partner was shown copies of LRs and other documents but since these were voluminous, it was not possible for him to check each and every document and thus, demand confirmed on the basis of such statement is not legally correct.
- The Adjudicating authority completely ignored their submissions and therefore, such order passed is not legally sustainable. They rely on the decision of CESTAT Delhi in the case of CCE, Chandigarh Vs. Patran Pipes (P) Ltd reported in 2010 (261) ELT 1173 (Tri.-Del.), wherein it has been held that in absence of evidence showing seized money having direct

nexus with clandestine removal, there cannot be assumption, presumption, surmise or suspicion to hold against assessee. They also rely on following case laws in their support:-

a) M/s. Vijay Packaging Systems Ltd Vs. CCE Hyderabad, 2010 (262) ELT 832 (Tri.-Bang.)
b) M/s Bhagirathi Iron and Steel Pvt Ltd Vs. CCE, Meerut, 2010 (262) ELT 654 (Tri.-Del.)
c) CCE, Pune-I Vs. Rainbow Instruments Pvt Ltd, 2009 (248) ELT 468 (Tri.-Mumbai)
d) K. J. Diesels Pvt Ltd Vs. CCE, Kanpur- 2000 (120) ELT 505 (Tribunal)
e) Suvarna Polymers Pvt Ltd Vs. CCE, Hyderabad- 2000 (120) ELT 148 (Tribunal)
f) Punjab Oil & Silicate Mills Vs. CCE- 1993 (65) ELT 268
g) Rishab Refractories Pvt Ltd Vs. CCE – 1996 (87) ELT 93

- Hon'ble Supreme Court in the case of Ambalal Vs. UOI reported in 1983 (13) ELT 1321(SC) held that burden of proof is on the customs authorities and they have to bring home the guilt to the person alleged to have committed a particular offence under the Acts by adducing satisfactory evidence. They also rely on the decision in the case of Harchand Vs. Additional Collector reported in 1981 (8) ELT 699 (Cal.) and the decision in Kashmir Vanaspati case reported in 1989 (39) ELT 655 (T).
- Hon'ble Supreme Court in Oudh Sugar Mills Ltd Vs. Union of India reported in 1978 (002) ELT (J 172) held that no order can be based on assumptions and presumptions. Following other decisions are also relied:-

a) D. P. Industries – 2007 (218) ELT 0242 (Tribunal)
b) Quality Exports & Chemicals Vs. CEGAT- 2002 (140) ELT 0362 (ALL.)
c) Grauer & Weil (India) Ltd Vs. CCE- 2000 (116) ELT 618
d) CCE Vs. Universal Polythelene Industries – 2001 (130) ELT 228
e) Sharma Chemicals Vs. CCE Calcutta-II- 2001 (130) ELT 271 (T)
f) CCE, Calcutta-ll v Tube Bend (Cal.) Pvt. Ltd., 2001 (136) ELT 839 (T).

g) CCE, Chandigarh v Laxmi Engineering Works, 2001 (134) ELT 0811 (T)

h) Hyderabad Bottling Co. (P) Ltd Vs. CCE, Hyderabad - 1996 (83) ELT. 627 (T)

i) Prism Pigments & Color Pvt. Ltd. reported in 2007 (211) ELT 0427 (T)

- Demand of interest under Section 11AA of the Central Excise Act, 1944 is not sustainable when duty itself is not payable by them. Further, as no clandestine removal of goods is involved, penalty under Section 11AC read with Rule 25 of the Central Excise Rules, 2002 is not imposable on them. They rely on the decision of Hon'ble Supreme Court in the case of CCE Vs. Chemphar Drugs & Liniments reported in 1989 (40) ELT 276 (SC) and Continental Foundation Jt. Venture Vs. CCE, Chandigarh-I reported in 2007 (216) ELT 177 (SC) and the decision of Hon'ble Punjab & Haryana High Court in the case of CCE Vs. Ess Ess Engineers reported at 2011 (23) STR 3 (P&H).

2.1 Shri ChandraKant Jain, Partner of the appellant firm also filed appeal challenging imposition of penalty of Rs.5.50 lakhs on him under Rule 26 (1) of the Central Excise Rules, 2002. He took the following grounds:-

- Penalty on partner is not imposable once penalty has been imposed on the partnership firm. For this submission, he relies on the decision in the case of Saccha Saudha Pedhi Vs. Commissioner of Cus. (Import), Mumbai- 2015 (328) ELT 609 (Tri-Mub.) and decision of Hon'ble High Court of Punjab & Haryana in the case of Vinod Kumar Gupta Vs. CCE - 2013 (287) ELT 54 (P&H). He also relied on the decision of CESTAT Delhi in the case of CCE, Lucknow Vs. Vinay Drawing – 2011 (268) ELT 410 and of CESTAT Mumbai in the case of Metalpress India 2019 (3) TMI 749.
- The demand has been confirmed on the appellant firm on presumptions and assumptions and without giving proper findings on various contentions made by the appellant. He Pleaded for allowing both the

appeals by quashing order passed by the learned Commissioner (Appeals).

3. During hearing, learned Advocate emphasized that the officers neither inquired from the transporters nor from the recipients mentioned in recovered LRs regarding clearance of the goods by the appellant firm. The department has not established procurement of unaccounted raw materials, consumption of excess electricity, use of additional manpower, receipt of unaccounted sale proceeds, etc. to justify unaccounted manufacture and clandestine clearance of finish goods and its clandestine clearance from the factory without payment of duty. He relied on various case laws to plead that the department failed to adduce sufficient evidence to support allegation of clandestine removal, which in this case is missing. He mentions that in the case of Aum Aluminum Pvt Ltd Vs. CCE, Vadodara reported at 2014 (311) ELT 354 (Tri.-Ahm.), it has been held that charges of clandestine clearance are sustainable if there is no evidence of (i) unaccounted purchase, receipt and consumption of raw materials and packing materials, required for manufacturing alleged quantity of final product clandestinely removed from the factory, (ii) freight payment for any such movement, (iii) unauthorized payment for procuring unaccounted raw material & packing material, (iv) disproportionate power consumption, capacity utilization and labour employed and (v) receipt of unaccounted sale proceeds and recovery of substantial cash from factory or office premises or anywhere else in direct control of assessee, backed by any confirmation oral or written from the person giving such cash against goods removed in clandestine manner without payment of duty from the factory. Relying on following case laws, he argues that the Tribunal has taken a consistent stand that corroborative evidence has to be there for sustaining charge of clandestine removal and demand of differential central Excise duty.

a) CCE, Chandigarh-I Vs Laxmi Engineering Works, 2010 (254) ELT 205 (P & H)
b) CCE Vs Saakeen Alloys Pvt. Ltd., 2014 (308) ELT 655 (Guj)
c) Sri Durga Cables Pvt. Ltd. Vs C.C.Ex. & Cus, Bhubanewar-I, 2020 (374) ELT 459 (Tri.- Kol)
d) Crown Ceramics Vs CCE & ST, Rajkot, 2024 (388) ELT 235 (Tri-Ahmd.)
e) Pan Parag India Ltd. Vs C.C. Ex., Nagpur, 2013 (291) ELT 81 (Tri Del)
f) Shree Sidhabali Ispat Ltd Vs. Commissioner of Central Excise, Nagpur reported at 2017 (357) ELT 724 (Tri.-Mumbai)

3.1 To plead that separate penalty is not imposable on partner of the firm, learned Advocate relied on the decision of Hon'ble Gujarat High Court in the case of Pravin N. Shah Vs. CESTAT reported at 2014 (305) ELT 480 (Guj.) wherein it is clearly held that once firm is penalized, separate penalty not imposable upon partner of the firm because partner is not a separate legal entity and cannot be equated with employee or firm if no specific role attributed to partner. He pleaded that since equal penalty has already been imposed on the appellant firm, separate penalty imposed on the partner may be set aside by allowing his appeal.

4. Countering the arguments, Learned AR reiterated the findings of the lower authorities. She submits that during search of the factory premises of appellant on 10.01.2012, officers recovered a file containing LRs used for transport of finished goods from the factory. The partner of the firm in his statement dated 11.09.2015 confessed evasion of duty, which statement was never retracted by him. She relies on the decision of Hon'ble Gujarat High Court in the case of Pooja Tex Prints Pvt Ltd Vs. Additional Commissioner of Central Excise, Surat-I reported in 2019 (365) ELT 42 (Guj.) having similar facts where voluntary statement of the Director was recorded 8 months after the raid, confessing illicit clearance of goods and such statement was held admissible evidence by the Hon'ble Court. During

parallel in this case, she states that statement of the partner was recorded almost 3½ years later who admitted clandestine clearance of finished goods and evasion of duty. The said statement was also not retracted. Therefore, ratio of this decision is equally applicable in this matter. She also relied on the decision of Hon'ble Supreme Court in the case of CCE Madras Vs. Systems and Components Pvt Ltd reported in 2004 (165) ELT 136 (SC) wherein it is held that once party admits the position, no need to prove the same admitted position. She argues that there is no allegation that the statement of the partner was recorded under duress. She also relies on the decision of Cestat Mumbai in the case of S M Steel Ropes Vs. Commissioner (Adjudication), Mumbai reported at 2014 (304) ELT 591 (Tribunal) wherein it is held that confessional statement if given voluntarily, can form sole basis for conviction in the case. Relying on the decision in the case of Surjeet Singh Chhabra Vs. UOI reported in 1997 (89) ELT 646, she justifies penalty on the partner stating that he was overall incharge for operation of the firm and his acts have caused huge loss to government money

5. Heard both the sides. The records show that the officers recovered various documents and records from the factory premises of the appellant which included a file containing various lorry receipts (LRs). It is admitted position that details mentioned in some of the lorry receipts exactly tallied with duty paying invoices on which goods were cleared whereas there was no corresponding duty paying invoice in respect of remining LRs. The officers calculated quantity of so removed goods under the LRs and then, calculated it's value on the basis of value taken by the appellant in invoices issued around that date. The appellant has objected to this method of valuation on the ground that there is no mention of quality of goods in lorry receipts. I find that Shri Chandrakant Jain, Partner of the firm, in his statement dated 11.09.2015, has clearly accepted above valuation method adopted by the department. There is nothing on record to suggest that the said admittal

statement has been retracted by Shri Chandrakant Jain. In view of this, objection being raised now by appellant, is without any basis and hence, rejected.

5.1 Regarding clandestine clearance of goods on the basis of lorry receipts recovered from the factory premises, I find that Shri Chandrakant Jain, Partner, in his statement dated 11.09.2015 has not only admitted recovery of lorry receipts (LRs) under which they had dispatched final goods to various customers during 2009-10 to 2011-12 but also accepted that these LRs contain name of the party, description of goods, quantity dispatched and the amount charged by the transporter. After comparing LRs with the copy of invoices issued by appellant on corresponding dates, he accepted that some sales invoices issued during 2010-11 and 2011-12 completely tally with description shown in LRs, but majority of LRs do not have corresponding central excise invoices issued during above period. In respect of such LRs, he admitted to have cleared goods shown in LRs in a clandestine manner without preparing any invoice and without payment of central excise duty with intent to evade central excise duty. Admittal of guilt by the partner in the firm after a gap of 3½ years from the date of search, which remained un-retracted, is admissible evidence to support clandestine clearance of finish goods without payment of duty.

5.2 I find that learned Advocate has cited some case laws on this issue which also seek various other evidences such as unaccounted production, unaccounted purchase, receipt and consumption of raw materials, freight payment, disproportionate power consumption and labour employment and unaccounted sales proceeds. However, in this case, I find that recovery of some LRs for which there is no corresponding duty paying invoice coupled with admittal statement of the partner in the firm are sufficient evidence to establish charges of clandestine clearance. The show cause notice at para 2.3 and 2.4 clearly mention availability of physical stock of Lay Flat Tubing and sweeping granules in the factory without any stock register maintained by the appellant which also puts question mark on the functioning of the firm. Hon'ble Supreme Court in the case of Surjeet Singh Chhabra (cited supra) has in para 3 held that confession statement made before Customs officers though retracted within 6 days, is an admission and binding since Customs officers are not Police officers. In this case, the partner tendered confessional statement after a gap of 3½ years from the date of search and which was never retracted. Therefore, it is admissible evidence to support the department's charges.

5.3 Hon'ble Gujarat High Court in the case of Pooja Tex Prints Pvt Ltd (supra) has held in para 4 that the entire issue is, thus, based on appreciation of the material on record. No question in this respect arises. The relevant para 4 is reproduced below:-

> *"4. We have heard Learned Advocate for the appellant also perused the document on record. We find that the adjudicating authority, appellate authority and the Tribunal have concurrently come to the conclusion that the allegation of clandestine removal of imported goods, without payment of duty, had been established. The Director of the Company had categorically stated in his two statements that such goods were sold in the market to one Iqbaibhal. The second of these two statements was recorded nearly eight months after the raid. Partial retraction of this statement came much later. In such statement also, the assessee admitted partial diversion of the goods. The details and whereabouts of Iqbalbhai could not be provided by him. Both the Commissioner (Appeals) and the Tribunal were of the opinion that the statements of the Director recorded by the raiding party were in terms of Section 108 of the Customs Act, which was admissible in evidence. The entire issue is, thus, based on appreciation of the materials on record. No question in this respect arises."*

5.4 In SM Steel Ropes case (cited supra) Cestat Mumbai has held that confessional statements if given voluntarily can form sole basis for conviction. Para 5.1 of the said decision is reproduced below:-

> ***"5.1*** *As regards the confirmation of duty demand on the strength of statement alone, we notice that Shri Balkrishna Agarwal had clearly admitted in his statement dated 5-5-1998 that the turnover of his firm during 1993-94, 1994-*

95, 1995-96 and 1996-97 were Rs. 50 lakhs, Rs. 60 lakhs, Rs. 65 lakhs and Rs. 75 lakhs respectively. In this subsequent statement dated 18-8-1998 while confirming his previous statements, he further stated that the turnover for the period 1993-94, 1994-95, 1995-96, 1996-97 and 1997-98 were to the tune of Rs. 50 lakhs, Rs. 60 lakhs, Rs. 65 lakhs, Rs. 75 lakhs and Rs. 94 lakhs respectively and he had also undertaken to pay the duty payable on the said goods cleared voluntarily in terms of the aforesaid submissions. He also made payments of Rs. 1.25 lakhs on 31-3-1998 and Rs. 50,000/- on 20-8-1998. In his statement dated 18-8-1998 he had admitted that he was undertaking three types of sales. In one type of sale he used to prepare sales invoices and delivery challans for sale of goods at the factory gate to the genuine customers and the said sales was duly accounted for in the records. In the second type of sales, they were selling the goods at factory gate to various customers on payment of cash without any sales invoice and bills. In the third type of sales wherever they received orders for supply of goods over phone, the goods were lifted from the factory for delivery under delivery challans made in the name of genuine customers but the goods were sold to needy customers without any sales bills or delivery challans and against payment of hard cash. Thus the modus operandi adopted by the appellant firm stood clearly admitted in the aforesaid statement of Shri Balkrishna Agarwal, who was the Managing Partner of the appellant firm during the relevant period. None of the statements have been retracted at any point of time. Further, in his statement Shri Balkrishna Agarwal had also made a declaration that the statement was made voluntarily without any force, threat or coercion. The adjudicating authority has confirmed the demand only on the basis of figures given in the statements of Shri Balkrishna Agarwal. In the absence of delivery challans which were recovered and seized at the time of Panchanama proceedings, he has not taken the computation of demand based on such delivery challans as reflected in the annexure to the show-cause notice. Therefore, the adjudicating authority has strictly proceeded based on the evidences available which in the present case are the statements of Shri Balkrishna Agarwal. As to the question whether the demands can be confirmed on the strength of confessional statements, this position stands settled by the decision of the Hon'ble Apex Court in the case of K.I Pavunny v. Asstt. Collector (HQ) Central Excise Collectorate, Cochin - 1997 (90) E.L.T. 241 (S.C.) wherein it was held that confessional statement of accused, if found to be voluntary, can form the sole basis for conviction. Only if it is retracted, the Court is required to examine whether it was obtained by threat, duress or promise and whether the confession is truthful. In the present case, we find that there is no retraction of the confessional statement by Shri Balkrishna Agarwal. As regards the lack of corroborative evidence, it is a settled position of law that "admitted facts need not be proved" as held by the Hon'ble High Court of Madras in the case of Govindasamy Ragupathy - 1998 (98) E.L.T. 50 (Mad). In a recent decision in the case of Telestar Travels Pvt. Ltd. - 2013 (289) E.L.T. 3 (S.C.), the Hon'ble Apex

Court held that reliance can be placed on statement if they are based on consideration of relevant facts and circumstances and found to be voluntary. Similarly in the case of CCE, Mumbai v. Kalvert Foods India Pvt. Ltd. - 2011 (270) E.L.T. 643 (S.C.) the Hon'ble Apex Court held that if the statements of the concerned persons are out of their volition and there is no allegation of threat, force, coercion, duress or pressure, such statements can be accepted as a valid piece of evidence. In the light of the above decisions, we are of the considered view that the confirmation of duty demand based on the voluntary statements of the Managing Partner of the appellant firm is sustainable in law. Consequently, the interest and penal liabilities imposed on the appellants would also sustain."

5.5 Here, it would be relevant to cite the order dated 31.03.2026 of Hon'ble High Court of Calcutta in the case of Commissioner of Customs Preventive, Kolkata Vs. Sri Anil Kumar Gaur and others, where one of the issue before Hon'ble High Court was *"whether a confessional statement under Section 108, retracted after a period of two years, loses its evidentiary value?"* Hon'ble Court in para 12.4 (b) has held as under :-

"We reaffirm that a statement recorded in a "deemed judicial proceeding" carries a presumption of truth. A non-contemporaneous retraction, appearing after a staggering 850-day interval, must be discarded as a "calculated afterthought" unless corroborated by independent medical or judicial evidence of duress."

5.6 In Amad Noormamad Bkali Vs. The State of Gujarat & Ors. in criminal appeal No(s). 1000 of 2012, Hon'ble Apex Court vide order dated 23.02.2026 agreed with the findings of Hon'ble Gujarat High Court. Para 20 to 23 of this order is reproduced below:-

"20. At the outset, it would be apposite to note that the contention that the conviction of the appellants could not be founded solely upon the statements recorded under Section 108 of the Customs Act, 1962, was also urged before the High Court in revision. The High Court, upon a detailed examination of the statutory framework and the judicial precedents governing the admissibility and evidentiary value of such statements, rejected the said contention. It was observed that statements recorded under Section 108 of the Customs Act, 1962 by duly authorized Customs Officers are admissible in evidence and do not attract the bar contained in Sections 24, 30, or 34 of the Indian Evidence Act, 1872, provided they are made voluntarily.

21. Placing reliance on judgment of this Court in K.I. Pavunny v. Assistant Collector (HQ), Central Excise Collectorate, Cochin5 , the High Court held that the object of Section 108 of the Customs Act, 1962 is to empower Customs authorities to collect relevant information and evidence relating to contraventions of the Act, and that such statements, if found to be voluntary, are substantive pieces of evidence capable of being relied upon in support of the prosecution case.

22. The High Court further noted that the appellants had failed to establish any material to demonstrate that the statements under Section 108 of the Customs Act, 1962 were obtained under coercion, inducement, or threat, and in the absence of such proof, the statements could not be discarded. The High Court negated the contention that the conviction was based solely on the statements recorded under Section 108, observing that such statements had led to further discovery of incriminating material, including contraband articles and money, duly documented through panchnamas and corroborated by the testimony of Customs Officers. It was held that such discoveries and recoveries constituted independent and relevant evidence within the meaning of Sections 6, 10, and 11 of the Evidence Act, thereby lending corroborative support to the statements made under Section 108. Consequently, it was held that the conviction of appellants was not based merely on confessional statements but in addition thereto, the prosecution provided tangible corroborative evidence. Therefore, the judgment of conviction did not suffer from perversity or legal infirmity.

23. Having considered the matter in its entirety, we find ourselves in agreement with the observations made by the High Court. The findings of guilt recorded by the trial Court, which stand concurrently affirmed by the appellate Court as well as the High Court do not suffer from any perversity, illegality, or manifest error warranting interference by this Court in exercise of its jurisdiction under Article 136 of the Constitution of India."

5.7 I find that the appellant has also relied on certain decisions but the decision of Hon'ble Gujarat High Court in the case of Pooja Tex Prints Pvt Ltd is of a later date. I therefore, hold that the case laws relied by the appellant of various Tribunals are clearly distinguishable in the facts of the case. I further find that during the entire proceedings, no question has been raised about recovery of LRs from the premises of the appellant nor appellant sought for cross-examination of any of the witnesses. Therefore, recovery of LRs from the factory of the appellant for which no central excise invoice was available coupled with admission by the partner of the firm established clandestine removal of finished goods by the appellant. I therefore, hold that the lower authorities have correctly held excise duty payable by the appellant by invoking extended period of limitation. I also uphold recovery of interest and imposition of equal penalty on the appellant under Section 11AC(1)(c) of the Central Excise Act, 1944 read with Rule 25 (1) of the Central Excise Rules, 2002.

5.8 As regards penalty of Rs. 5.50 lakhs on Shri ChandraKant Jain Partner of the appellant firm, appellant 2 has relied on the decision of Hon'ble Gujarat High Court in the case of Pravin N Shah (cited supra). I find that Hon'ble High Court in para 3 of its decision has held that penalty on partner is not imposable when penalty on partnership firm has been imposed. The said para 3 is reproduced below:-

> ***"3.*** *It is not disputed that penalty has been imposed on the firm. The Tribunal [2010 (261) E.L.T. 515 (Tri. - Ahmd.)] has imposed penalty on the partner only on the ground that total amount of duty involved was approximately Rs. 88 lacs and equal amount of penalty has been imposed on the appellant firm. Therefore, penalty imposed on Mr. P.N. Shah, partner of the firm was on the higher side and it has reduced it to Rs. 10 lacs. Penalty of Rs. 87,96,398/- has been imposed on the firm under Section 11AC of the Central Excise Rules, 1944. It has been held by the Division Bench of Gujarat High Court in Commissioner of Central Excise v. Jai Prakash Motwani, 2010 (258) E.L.T. 204 (Guj.) that where no specific Rule is attributed to the partner in the firm, then once firm has already been penalised, separate penalty cannot be imposed upon the partner because a partner is not a separate legal entity and cannot be equated with employee of a firm. From the order of the Tribunal or other orders on record, we do not find that any specific role has been assigned as provided by Rule 26 of Central Excise Rules. The Division Bench of this Court in Commissioner of Central Excise (supra) has held that where penalty has been imposed on the firm, no separate penalty can be imposed on its partner. We agree with the view taken by the Division Bench. Therefore, we find force in the submission of the learned counsel for the appellant and the question is answered in the negative, in favour of the assessee and against the department. The appeal is allowed. Penalty imposed on the appellant is set aside."*

Similar finding was given by Cestat Ahmedabad in the case of D. Jewel Vs. Commr. of C. Ex. & Service Tax, Surat-I reported in 2019 (369) E.L.T. 1244 (Tri. - Ahmd.), wherein it was held that When penalty on partnership firm is imposed, no separate penalty should be imposed on partner as a partnership firm consists of partners. Likewise, CESTAT Ahmedabad in the case of Shah Petroleums Vs. Commissioner of C. Ex. & S.T., Surat-II reported at 2023 (385) E.L.T. 133 (Tri. - Ahmd.) also held that once a case was made out against partnership firm, no separate penalty can be imposed on partner of such firm.

5.9 In view of the above, I agree with the pleading of the appellant 2 and set aside the penalty of Rs. 5.50 lakhs imposed on him under Rule 26(1) of the Central Excise Rules, 2002.

6. Both the appeals are disposed of as per above terms.

(Pronounced in the open court on 13.05.2026)

(SATENDRA VIKRAM SINGH)
MEMBER (TECHNICAL)

Raksha