CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHANDIGARH

REGIONAL BENCH - COURT NO. I

Excise Appeal No. 50461 of 2015
Excise Appeal No. 50304 of 2015
Excise Appeal No. 50305 of 2015
Excise Appeal No. 50406 of 2015
Excise Appeal No. 50462 of 2015
Excise Appeal No. 50463 of 2015

[Arising out of Order-in-Original No. 43-44/CE/CHD-II/2014 dated 14.10.2014 passed by the Commissioner of C.E, Chandigarh-II]

Lachhman Dass Amar Nath **......Appellant**
(Bathinda Peori Byepass Road, Giddarbaha,
Distt Mukatsar, Punjab)
Jitndra Enterprises,
Harish Kumar Sachdeva,
Ghanshyasm Lalwani Proprietor
Desh Raj Dhingra and Sons
Shree Balaji Traders

VERSUS

C.C.E. & S.T., Chandigarh-II **......Respondent**
Presently Commissioner, Ludhiana at F Block, Rishi Nagar, Ludhiana

APPEARANCE:

Present for the Appellant: Shri Vikrant Kackria, Advocate

Present for the Respondent: Ms.Swati Chopra, AR

CORAM: **HON'BLE MR. ASHOK JINDAL, MEMBER (JUDICIAL)**
HON'BLE MR. C.J.MATHEW, MEMBER (TECHNICAL)

FINAL ORDER NO60018-60023/2022

DATE OF HEARING: 04.01.2022

DATE OF DECISION: 04.01.2022

PER ASHOK JINDAL:

The Ld. Counsel for the appellant submits that Shri Harish Kumar Sachdeva has been expired on 18.4.2021 and his death certificate is filed on record. Therefore, the appeal of Shri Harish Kumar Sachdeva be abates.

2. With regard to other appellants, he argued the matter on merits.

3. Brief facts of the case are that an intelligence was gathered by DGCEI that the appellant, namely, M/s. Lachman Das Amar Nath (LDAN) is involved in clandestine manufacture of tobacco snuff without payment of duty. It was also indicated LDAN clearing the goods through railways, by declaring as "Mehandi" under fictitious name of buyers and sellers. It was also indicated that in the intelligence that for the manufacture of unrecorded quantity of snuff, the appellant is purchasing tobacco through one M/s. Roshan Lal Pawan Kumar, it was indicated that in actual, the tobacco is unloaded at Giddarbaha directly at the factory of the appellant and used in manufacture of snuff which is sold without payment of duty. Acting on the said intelligence, various premises were searched, the records were seized and statements various person were recorded, namely, Sh. Roshan Lal and Sh. Pawan Kumar of Roshan Lal Pawan Kumar, who stated that they were engaged in the retail business. Their gross sale is being less,

they approached Shri Vikash in 2007-08 through their relative residing in their neighborhood who the relative of Sh, Amar Nath. As they were poor people, they agreed to purchase tobacco for Sh. Amar Nath, in return, they were receiving commission @ 10% of bill amount. All the purchases were made on the direction of LDAN as actually they were not placing any order of any material. M/s LDAN was purchasing the tobacco in their name and sale was shown to M/s LDAN. On the basis of statement of Roshan Lal Pawan Kumar and various statements of transporters and other suppliers, it was alleged that the appellant is procuring the tobacco by using name of Roshan Lal Pawan Kumar without payment of duty which was used in the manufacture of snuff which was ultimately cleared without payment of duty. On the basis of these facts, a show cause notice was issued to the appellant and various suppliers of raw material for confiscation of goods, demand of duty from the appellant along with interest and to impose penalties on the appellant and other co-appellants. The matter was adjudicated, the demand of duty along with interest was confirmed and penalties were imposed on all the appellants. The appellants filed appeals before this Tribunal, this Tribunal vide Final Order No.55442-55447/2013 dated 28.1.2013 remanded the matter back to the adjudicating authority to decide afresh after affording the opportunity of cross examination of Sh. Roshan Lal and Sh. Pawan Kumar. The impugned order has been passed after confirming demand of duty along with interest and imposing penalties on all the appellants. Against the said order, the appellants are before us.

4. Ld. Counsel for the appellants submits that as Shri Harish Kumar Sachdeva has been expired on 18.4.2021 and his death certificate is filed on record. Therefore, the appeal of Shri Harish Kumar Sachdeva abates. He further, submits that the impugned order has been passed without considering the direction of this Tribunal vide order dated 28.1.2013. As the appellant had asked for cross examination of Sh. Roshan Lal and Sh. Pawan Kumar and some other person whose statements were discussed in the show cause notice but disallowed the cross examination of various other persons except these two people namely, Sh. Roshan Lal and Sh. Pawan Kumar. The adjudicating authority has admitted that there is no relevance of the statement of any other person except for the statement of Sh. Roshan Lal and Sh. Pawan Kumar.

5. He further submits that the adjudicating authority has violated the principles of natural justice by denying cross examination of Sh. Pawan Kumar despite specific direction of this Tribunal. He also submits that Sh. Roshan Lal has retracted his statement vide hand written letter dated 30.7.2011 stating that the statement was recorded under coercion he again stated subsequently his retraction was not correct. He submits that Sh. Roshan Lal was not authorized signatory of the firm then it is not understood than how his statement has been relied upon to demand duty of such huge amount from the appellant.

6. He further submits that the cross examination of Shri Pawan Kumar was fixed on many dates on which the appellant and their

advocate were present but Shri Pawan Kumar did not appear on those dates for cross examination. Lastly, when Sh. Pawan Kumar appeared on 25.09.2014 for cross examination, Shri Vikash Grover, partner of the appellant was present on the said date and categorically mentioned that since the mother of Counsel was hospitalized and Shri Vikash Grover on behalf the appellant sought adjournment but the Adjudicating Authority has disallowed the same and the matter was decided without giving any opportunity of cross examination. In that circumstance, the statement Sh. Pawan Kumar cannot be relied upon.

7. Further, the cross examination of Sh. Roshan Lal is contrary to the statement given during the investigation and there is no evidence on record and for procuring raw material by the appellant. He further submits that apart from tobacco, other ingredients are also required for manufacture of snuff. None of the suppliers of these items has been investigated, in the absence of any evidence of procurement of other raw materials, the allegation of clandestine removal of snuff remains unproved.

8. He further submits that during the course of investigation nothing adverse was found from the appellant nor any incriminating statement was recorded. It is his submission that there is no evidence with regard to the transportation of finished goods or raw materials to the appellant's factory. There is no statement on record that the supplier of goods supplied the goods to the appellant. There is no evidence of packing of raw material. Therefore, the entire case has been made out on the basis of assumption and presumption.

9. He also submits that neither transporter nor M/s Roshan Lal Pawan Kumar were made party to the show cause notice who stated during investigation in their statements that they were acting on behalf of the appellant which means that a false case has been made against the appellant. Therefore, the impugned order is to be set aside.

9. On the other hand, ld. AR submits that cross examination of Sh. Roshan Lal was granted and conducted by the appellant on 15.4.2014. As regards cross examination of Shri Pawan Kumar, who appeared for cross examination on 25.9.2014. His Examination-in-chief was conducted on the said date. Shri Vikash Grover had appeared on the said date and he was requested to conduct cross examination. The adjudicating authority conducted the examination-in-chief in the presence of Shri Vikash Grover. After conducting the examination- in- chief, it was held that the cross examination of Shri Pawan Kumar would not change the position as latter had retracted, in the presence of Vikash Grover.

10. Further, she relied on various statements of transporters to say that telephone numbers of Shri Arun Grover, Sh. Vikash Grover and Sh. Jagdish, an employee of the appellant mentioned on the billties issued by M/s. Punjab Transport Co, Saharanpur in respect of consignments of raw tobacco supplied to M/s. Roshan Lal Pawan Kumar, he stated that the same could not be explained by the person who had written the same.

11. She also heavily relied on the statement of Shri Roshan Lal dated 26.5.2011 wherein he stated that he was looking after the work

of M/s. Roshan Lal Pawan Kumar and they used to show purchase of raw tobacco from various firms and sell the same in retail. The whole of the material was procured by the appellant and they were given cash to make payments in cash/drafts in the name of the suppliers.

12. She further submits that as regards seizure of 25 bags from M/s. Jitendra Enterprises, Khandwa on 29.1.2010, Shri Ghanshyam Mohani, in his statement stated that they had taken the delivery of 25 boras on the instruction of Shri Harish Sachdeva of Shree Balaji Traders. Further, on enquiry with the Railway Parcel office, it was found that the said consignment booked on 21.1.2010 at their Bathinda office was declared as Mehandi by a Neeraj Kumar in the name of Sh. Satish Kumar Khandwa. Both the said persons were found to be fictitious. Further, 43 consignments of snuff/Mehndi were found to have been booked from Bathinda and Ferozepur railway stations for Khandwa in the name of fictitious firms during investigation. Therefore, in view of above these reasonable doubts which they failed to rebut the same. She relied on the decision of Hon'ble Supreme Court in the case of D. Boormull-1983 (13) ELT 1546 (SC) to say that once the department casts a reasonable doubt, it is for the respondent to answer the allegations. Accordingly, she supported the impugned order.

13. Heard the parties and considered the submissions.

14. It is the second round of litigation. In the earlier round of litigation, this Tribunal vide its order dated 28.1.2013 remanded the matter back to the adjudicating authority with following direction: -

6. "We make it clear that we have not expressed any opinion on the merits of the case and impugned orders are set aside only on the basic principle of violation of natural justice. The adjudicating authority is free to decide the matter afresh, based upon the outcome of cross examination of various persons."

15. In remand proceedings, the appellant sought cross examination of various people but the adjudicating authority has rejected the request of the appellant by holding that *"I further find that the Noticee on the basis of statements of S/Shri Roshan Lal and Shri Pawan Kumar of M/s. Shri Roshan Lal and Shri Pawan Kumar, cross examination of which has been allowed it is S/Shri Roshan Lal and Shri Pawan Kumar of M/s. Shri Roshan Lal and Shri Pawan Kumar who had deposed that raw tobacco purchased by them was actually received by the notice in their unit at Gidarbaha, since, the statement of the aforesaid varaious other persons did not relate to the allegations of receipt of raw tobacco in the manner as stated by S/Shri Roshan Lal and Shri Pawan Kumar, the cross examination of such other various persons was not allowed.:* Further, the adjudicating authority also concluded the cross examination by holding that " *have considered this submission. I find that the cross examination Sh.Pawan Kumar was fixed for 17.07.2014 and 04.09.2014 but on both these occasions Shri Pawan Kumar intimated that he was not able to attend the office as he was ailing. Shri Pawan Kumr submitted that medical certificate issued by the Dr. P.K.Dhuria, Dhuria Clinic, Mukatsar. On both the above dates, the Advocate Shri G.S.Sandhe had attended the office to conduct cross examination. The cross examination of Shri Pawan Kumar was again fixed for 25.09.2014 and on that date, the said Shri Pawan Kumar presented himself for his cross examination. Shri Vikash Grover, partner of the noticee also attended the office and intimated that his advocate was not available for conducting the cross examination of Shri Pawan Kumar since his mother was admitted for medical treatment at Ludhiana. Shri Vikash Grover was requested to arrange his advocate till the office hour on 25.09.2014 so that they could conduct cross examination of Shri Pawan Kumar. He was also informed that in case fails to conduct the cross examination, no further opportunity shall be*

allowed since the cross examination of Shri Pawan Kumar was earlier also fixed on two different dates. The said Shri Vikash Grover was persuaded by the adjudicating authority to conduct the cross examination. When he expressed his total inability to do so, the examination-in-chief of Shri Pawan Kumar was conducted in the presence of Shri Vikash Grover and a copy of the proceedings drawn was handed over to him under his proper receipt. During the examination-in-chief of Shri Pawan Kumar stated that he had tendered his statement dated 08.02.2010 before the DGCEI officers without any duress or pressure and that his statement was factually correct the best of his knowledge and belief. In view of these depositions of Shri Pawan Kumar, I am convinced that the position was not going to change even if the advocate of the noticee would have conducted the cross examination of Shri Pawan Kumar. As all these proceedings were conducted in the presence of Shri Vikash Grover, partner of the noticee, I feel that no further cross examination of Shri Pawan Kumar was warranted. "

16. As per the observations made in para3.5 hereinabove of the impugned order, wherein it has been held that the allegation of receipt of raw material of tobacco in the manner – and denied cross examination of other persons clearly indicated the whole case is made out on the basis of statement of Sh. Roshan Lal and Sh. Pawan Kumar. Further, the cross examination of Sh. Pawan Kumar was concluded by the adjudicating authority holding that the examination-in-chief has been conducted in the presence of Shri Vikash Grover and no further cross examination was warranted as the position will not be going to change even if the appellant would not have conducted the cross examination of Sh. Pawan Kumar which clearly violats the principle of natural justice by denying the cross examination of Sh. Pawan Kumar. The cross examination of Sh.

Roshan Lal was conducted and for better appreciation of the contents, the same is extracted below:-

"3.1 As per direction contained in CESTAT final order No. A/FO/5542-5547/2013-EX(Br) and No. SO/55911-55916/2013 EX-(Br) both dated 28.01.2013, cross examination of Sh. Roshan Lal of M/s Roshan Lal Pawan Kumar, Mukatsar (Punjab) was conducted on 15.04.2014 by Sh. Gurudev Sandhe, Advocate of the Noticee. The extracts of the cross examination are as under:-

Q.No.1 What is the constitution of firm M/s Roshan Lal Pawan Kumar, Mall godown Road, Mukatsar?

Ans. This is proprietorship concern and Sh. Pawan Kumar S/o Sh. Roshan Lal is the sole proprietor of the said firm.

Q. No.2 In what capacity you are working with the said firm. Did you Have any authority letter from Sh. Pawan kumar, proprietor of the firm?

Ans. As a father of my son Sh. Pawan Kumar, I looked after the Entire business of the said firm. But I don't have any authority Letter.

Q.No.3 Who was signing the sale bills and Income Tax Returns, Sale Tax Returns of the firm?

Ans. The sale bills were signed by me in the name and style of my Son Pawan Kumar. The Income Tax/Sales Tax Returns were signed by Sh. Pawan Kumar, Proprietor.

Q.No.4 Were you getting any salary or other perks for working in the said firm, If yes, whether the same has been reflected in the records of the said firms?

Ans. I was getting food and tea and medicine for my son Sh. Pawan Kumar.

Q.No.5 Were you authorized to tender statement to any govt. department on behalf of the said firm?

Ans. Since I was looking after the entire work of the firm, I gave the statement. I have no specific permission to do so from the proprietor of the firm.

Q.No.6 In what business the said firm was engaged?

Ans. The firm was engaged in the business of purchase and sale of

Raw Tobacco.

Q.No.7 Did the said firm had any business with M/s Baldev Raj & sons, Mukatsar. Have you ever supplied material to them?

Ans. We have supplied Raw Tobacco to M/s Baldev Raj & sons Mukatsar.

Q.No.8 Who were the main suppliers of Raw Tobacco to M/s Roshan Lal Pawan Kumar, Mallgodown Road, Mukatsar?

Ans. The main suppliers of Raw Tobacco were M/s Shri Traders, kaimganj (UP), M/s Ishaq Tobacco Store Kaimganj (UP), M/s Styanarain Aggarwal & Co., Kaimganj (UP) etc. I don't remember at present the exact type of raw tobacco received from these firms.

Q.No.9 Do you have any business relationship with M/s Lachchman Dass Amarnath, Giddarbaha?

Ans. Yes, I issued all the bills through cash to unknown persons as adviced by Sh. Jagdish, an employ of M/s Lachchman Dass Amarnath, Giddarbaha.

Q.No.10 Why you were issuing cash bills on being advised by Sh. Jagdish, of M/s Lachchman Dass Amarnath, Giddarbaha?

Ans. I was adviced and assured by Sh. Jagdish that I should issue the bill of cash to unknown person and in return he will give me 2% cash of the bill value.

Q. No.11 You have stated above in Answer No.10 that Sh. Jagdish was paying 2% commission to you. Do you have any evidence or have you reflected the same in your records ?

Ans. No, Sh. Jagdish used to give me commission by cash.

Q. No.12 Have you ever sold Raw Tobacco to M/s Lachchman Dass Amar Nath, Giddarbaha ?

Ans. No, I have not sold any Raw Tobacco to M/s s Lachchman Dass Amar Nath, Giddarbah.

Q.No.13 Did you know Sh. Vikas Grover and Sh. Arun Grover before January, 2010 ?

Ans. Yes, as Sh. Vikas Grover and Sh. Arun Grover are married in my locality and therefore, both of them are known to me.

Q.No.14 Did they ever ask you to purchase Raw Tobacco on behalf of their firm ?

Ans. I don't Know from where they purchased the goods. Sh. Jagdish used to bring purchase bills to me and deposit the payments in PNB Bank, Sadar Bazar, Mukatsar in the Multipurpose Account of Sh. Pawan Kumar, Sole proprietor of M/s Roshan Lal Pawan Kumar, Mallgodown Road, Mukatsar, Now the Multipurpose account is closed.

Q.No.15	Whether Sh. Arun Grover or Sh. Vikas Grover of M/s Lachchman Dass Amarnath, Giddarbaha ever approached you or your son Sh. Pawan Kumar for any payment of cash ?
Ans.	No, Sh. Arun Grover or Sh. Vikas Grover of M/s Lachchman Dass Amarnath, Giddarbaha never approached us for any payment of cash.
Q.No.16	Is it correct that M/s Roshan Lal Pawan Kumar, Mallgodown, Mukatsar ordered and purchased Raw Tobacco in bulk from M/s Shree Traders, Kaimganj (UP), M/s Ishaq Tobacco Store, Kaimganj (UP), M/s Styanarain Aggarwal & Co. Kaimganj (UP) etc. ?
Ans	No.
Q.No.17	Do you maintain the record of purchase and sale of Raw Tobacco correctly and submitting the Returns with Sale Tax Department Correctly ?
Ans.	Yes.
Q.NO.18	Who issued the C-Forms in respect of M/s Roshan Lal Pawan Kumar, Mallgodown Road, Mukatsar ?
Ans.	Sh. Pawan Kumar used to sign and issue C-Forms in respect of all purchase of M/s Roshan Lal Pawan Kumar, Mallgodown Road, Mukatsar.
Q.No.19	Do you have any sale/purchase entry in your account books in respect of M/s Lachchman Dass Amarnath, Giddarbaha ?
Ans.	No.”

17. We find that during cross examination of Shri Roshan Lal, Sh. Roshan Lal has retracted his own statement and the Revenue has relied on cross examination. In the statement, during investigation, Shri Roshan Lal stated that they were not procuring any goods and the goods were procured by the appellant whereas during the cross examination, he stated that they were engaged in the purchase and sale of raw tobacco. He also admitted that he is not the authorized person to give statement on behalf of M/s Roshan Lal Pawan Kumar whereas Shri Pawan Kumar in his statement stated that his father is correct. During the examination, he also mentioned the name of one

Shri Jagdish, who used to give commission @2% in cash. Shri Jagdish used to supply the cash and the purchase documents on behalf of the appellant. Shri Roshan Lal in his statement stated they have not sold raw tobacco to the appellant and he admitted that they supplied raw material to other parties in open market whereas in his statement during investigation he has stated that he is procuring entire goods on behalf of the appellant. The entire case is based on the statement of Sh. Roshan Lal and Sh. Pawan Kumar against the appellant. As there are lot of contradiction in the statement and cross examination of Shri Roshan Lal, therefore, the statement of Shri Roshan Lal cannot be relied upon to allege that the appellant was receiving the goods through M/s Roshan Lal Pawan Kumar directly through suppliers. Further, we find that to manufacture snuff of huge quantity, other raw material/packing material also required but no such evidence of procurement of other raw material/packing material on record. We hold that without evidence on record from where quantity of other raw material/packing material has been procured by the appellant used in manufacture of snuff which has been cleared without payment of duty, the charge of clandestine removal of snuff against the appellant is not sustainable.

18. In view of above, we further hold that the entire proceeding was based on the statement of Shri Roshan Lal and which is without any cogent evidence on record. Therefore, the charge of clandestine removal of goods on this ground is not sustainable.

19. In the result, the impugned order is set aside and the appeals are allowed with consequential relief, if any.

(Dictated and pronounced in the open court)

(C.J.MATHEW) **MEMBER (TECHNICAL)**	**(ASHOK JINDAL)** **MEMBER (JUDICIAL)**

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