

(2016) 10 AHC CK 0026

ALLAHABAD HIGH COURT

Case No: Central Excise Reference No. 5 of 2011

Commissioner Of C. Ex.,
Meerut-II

APPELLANT

Vs

Vam Organic and Chemical Ltd.

RESPONDENT

Date of Decision: Oct. 4, 2016

Citation: (2016) 342 ELT 174

Hon'ble Judges: Sudhir Agarwal and Dr. Kaushal Jayendra Thaker, JJ.

Bench: Division Bench

Advocate: Shri R.C. Shukla, CSC, for the Appellant; Shri Nikhil Agrawal, Counsel, for the Respondent

Final Decision: Disposed Off

Judgement

@JUDGMENTTAG-ORDER

1. Heard Smt. Anjana Singh, learned counsel for applicant and Sri Nikhil Agrawal, counsel for respondent.

2. Pursuant to this Court's order dated 30-8-2010 passed in Central Excise Reference No. 5 of 2004, Customs, Excise and Service Tax Appellate Tribunal, New Delhi (hereinafter referred to as "Tribunal"), has referred following questions for opinion of this Court :

"1. Whether the statement recorded under Section 14 of the Central Excise Act, 1944 is admissible when they were found to be given voluntary. Moreover without any coercion or duress.

2. Whether retraction of earlier statement would not amount to detract its acceptability.

3. Whether the party correctly availed the Modvat credit of Rs. 57,60,900/.

4. Whether the shortage of 115218 qtls. of molasses does not amount disposal molasses in a manner other than provided under Rule 57F of Central Excise Rule."

3. So far as first question is concerned, parties at the outset stated that it is covered by a Division Bench judgment of Gujarat High Court in **Commissioner of Central Excise v. Omkar Textile Mills Pvt. Ltd., 2010 (259) E.L.T. 687 (Guj.)**. Therein Court held that statement recorded under Section 14 of Central Excise Act, 1944 (hereinafter referred to as "Act 1944") need not be proved by placing on record corroborative material. In absence of any corroborative material, no demand can be raised merely on the basis of statement recorded under Section 14 of Act 1944, particularly when subsequently Assessee has retracted statement and explained the circumstances of shortage of goods.

4. In the present case also, we find that Sri M.L.N. Shrinivas, Senior Vice-President of Assessee in the statement dated 8-4-1999 recorded under Section 14 of Act, 1944 did not dispute shortage and said that he is not aware of reasons for the said shortage. He voluntarily debited the amount. It is this statement of Shrinivas which has been treated to be a clear admission and merely on that basis liability has been imposed. In our view, when shortage is there the mere factum of shortage cannot justify an inference of clandestine removal of molasses but in order to attribute an act of clandestine removal upon Assessee either there must be a clear admission to this effect on the part of Assessee or its representative or it must be corroborated by further credible evidence that there is clandestine removal of molasses but on mere statement and that too of the kind of statement as we have noticed above, it cannot be said that there is an admission and no further corroboration is required. Question no. 1 is answered holding statement under Section 14 of Act, 1944 is admissible but mere statement will not be sufficient to justify an inference of clandestine removal unless there is some corroborative material or statement contains clear admission of clandestine removal and that is not retracted subsequently or explained. However, if it is subsequently retracted or explanation is furnished then it has to be looked into the said admission and authority must have corroborative material and cannot base its finding under Section 14 of Act 1944.

5. So far as Question 2 is concerned, in the present case as we have already held that there was no admission on the part of official concerned so as to hold that Assessee admitted clandestine removal, it cannot be said that there was any issue of acceptability of retracted statement or change to earlier statement. Question 2 therefore, is also answered in favour of Assessee and against Revenue.

6. In view of answers given to questions 1 and 2, questions 3 and 4 are also answered against Revenue and in favour of Assessee since there is no sufficient evidence to show that there was a clandestine removal.

7. Reference is answered accordingly and stands disposed of.