



\$~2&3

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Date of Decision: 14.11.2018**

+ **CEAC 45/2018, CM APPL. 35746/2018**

RELIANCE CABLE INDUSTRIES Petitioner

versus

COMMISSIONER OF GST (EAST) DELHI Respondent

+ **CEAC 46/2018, CM APPL. 35747/2018**

RELIANCE CABLE INDUSTRIES Petitioner

versus

COMMISSIONER OF GST (EAST), DELHI Respondent

Through: Mr. Rupesh Kumar, Advocate for the petitioner.
Mr. Harpreet Singh, Senior Standing Counsel with Ms.
Suhani Mathur, Adv. for respondent.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE PRATEEK JALAN

S.RAVINDRA BHAT, J. (ORAL)

1. The question of law sought to be urged by the appellant in these two appeals is whether in regard to the total circumstances of the case, the Customs Excise and Service Tax Appellate Tribunal (CESTAT) was justified in rejecting the appeal without appreciating the facts and evidence before it.

2. The brief facts of the case are that on 08.08.2011, search and seizure proceedings were carried out in the appellant's premises. There is no dispute that it manufactures electricity wires and cables. Based



upon the materials on record and the statements of various individuals – including that of Sh. Lalit Jain- proprietor as well as his brother, a show cause notice was issued by the Revenue on 08.07.2013. The allegations in the show cause notice were briefly that the material included certain loose sheets and diaries, all of which tied up by the statements recorded in the course of the investigation from suppliers of raw materials. The Revenue also relied in the show cause notice, upon the statement of the proprietor as well as his brother. It also relied upon the statement of an employee who worked with the appellant as an Superintendent in the office. The appellant denied allegations of clandestine removal and submitted – besides arguing that the diaries *per se* did not have any evidentiary value, that the materials on record nowhere justified an inference that clandestine removal has been resorted to. The appellant also produced other documents and materials including electricity consumption bills etc. to say that the activity carried on and the returns filed with the excise authorities did not warrant a finding of clandestine removal or attract a duty liability. It was urged that the bills and invoices seized and the statements made by the raw material suppliers in fact established that duty had been paid and that no liability therefore, could arise.

3. The order-in-original of the Commissioner of Central Excise made on 31.07.2014 analyzed the nature of the evidence as well as the statements recorded – of the appellant as well as his brother and several other individuals, including the raw material suppliers located out of Delhi. The Commissioner was of the opinion that the main buyers from whom sale proceeds were received were M/s. Classik Cable Corporation, M/s. Deepak Electricals, M/s Vimal Electricals, etc. In the event, it was



also stated that they were also found that the main suppliers of raw materials were M/s Taparia Polymers, M/s Omex Metal Industries and so on. The Commissioner, thereafter, recorded his findings, from Para 5 to 22 of the order-in-original. On the basis of these findings, the Commissioner directed recovery of ₹1,57,10,335/- together with penalty of equal amount from the appellant. Rs.15 lacs which was deposited by the appellant was directed to be appropriate towards the amounts due.

4. The appellant approached the CESTAT complaining that the order-in-original recorded perverse finding which was based upon the materials on record. The Tribunal rejected the appeal. The material portion of the Tribunal's order is as follows:

“8. The main evidences on which the Revenue's case is based as summarised below.

(i) Unaccounted raw material as well as finished goods were found in the factory at the time of search on 08.08.2011.

(ii) Some loose slips and sale invoices, recovered from the factory at the time of search indicated clearances of finished products by using invoices in the name of M/s Universal Enterprises, Shahdara to various customers. The firm in the above name was found to be not in existence at the address cited in the invoices. This firm was admitted to be a fake firm as confirmed by Sh. Chittaranjan Pradhan, Supervisor cum Operator of the appellant. Invoices of such fake firm was made use of by the appellant as cover for clandestine clearances made without payment of duty.

(iii) Certain loose papers were recovered at the time of search at the residence of Shri Lalit Jain, Prop. These loose sheets contained the details of various raw material suppliers and the quantum of such raw materials procured by the appellant. The main supplier of copper wire was M/s Balaji Metal, Shahdara, Delhi. Sh. Naresh Gupta, Prop. M/s Balaji Metal confirmed in his statement dated 08.08.2011 that raw materials have been supplied to the



appellant by his firm. He also confirmed the total quantity of such raw material supplied to the appellant during the years 2007-10, 2010-2011 and 2011-12.

(iv) The other major raw material i.e. PVC compound was supplied by M/s Ankur Plastic, Shahdara Prop. Vimal Kaparia. He admitted in his statement dt. 24.07.2012 that raw materials were supplied for payment in cash to the appellant. He also confirmed that the quantum of raw materials as was found in the loose papers recovered from residence of Sh. Lalit Jain was supplied to the appellant.

(v) The other suppliers also confirmed the same. During investigation, upon checking the bank account of the appellant, it was found that some of the supplied raw materials found in the loose sheets were paid for by cheque by the appellant.

(vi) Certain books/ diaries were also recovered from residence of Sh. Lalit Jain. In such diaries, the details were found regarding sale of finished products. Such diaries recorded partywise, datewise, running account of sale value, receipt of sale proceeds and outstanding balance, for the period 2008-09 to 2010/2011. Upon verification of the bank account of the appellant, it was noticed that many of the sale transactions were found tallied with the credit entries in the bank account. Further, many of the entries found in the diaries were also duplicated in the loose sheets.

(vii) The investigating officers recorded the statements of Sh. Lalit Jain on 08.08.2011, 10.08.2011, 30.08.2011, 11.04.2013 and 17.05.2013. In these very detailed statements, Shri Lalit Jain has admitted the fact that raw materials were being procured often by cash without accounting. He also admitted that the finished goods were also cleared clandestinely for payments received by cheque and sometimes in cash. It is seen from the RUDs that he has confirmed in details the transactions with each of the raw materials suppliers as well as finished product purchasers.

On the basis of the above main evidences, Revenue has made the case for demand of duty on the basis of allegations of clandestine removal.

9. The main grounds on which the order has been assailed



are summarized below-

(i) Sh. Lalit Jain, Prop. is only standard eight pass and is not comfortable with the use of the English language. Consequently, it has been argued that the statements recorded by him in the firm's computer were obtained under duress and dictated to him.

(ii) The manufacturing capacity of the factory was not enough to manufacture the quantum of goods alleged to have been cleared clandestinely. It has been argued that with only two extruders and winding machine the quantum of production alleged would not have been achieved.

(iii) It has also been argued that the documents recovered from residence of Sh. Lalit Jain do not pertain to the appellant, but pertains to the business of his brother Sh. Prithaviraj Jain who is said to have been working as commission agent.

(iv) The adjudicating authority, in the impugned order, has given detailed findings on all the above grounds. The documents recovered from house of Sh. Lalit Jain clearly indicate the names of various raw material suppliers, quantity of raw materials procured and the period during which the same has been procured. The documents also indicate in detailed the various customers with the details of goods cleared as well as the payments received and pending. Many of the entries found are corroborated by payments made/ received in the bank account of the appellant. Obviously, such transactions are accounted. This leads us to the reasonable conclusion that the documents found are a truthful account of the actual transactions made by the appellant in terms of procurement of raw material as well as manufacture and clearance of the finished products. We also note that in the several statements recorded from Sh. Lalit Jain, he has admitted in detail each and every entry found in such documents. The adjudicating authority has also given detailed findings in para No. 20 on how the appellant factory had the capacity to manufacture the quantum of goods alleged to have been cleared clandestinely. We are convinced on the basis of the Adjudicating authority's finding that appellant had the capacity to manufacture the quantity allegedly cleared



clandestinely.

11. It has been contended that the loose sheet and diaries seized from the residence of Shri Lalit Jain do not pertain to the appellant, but pertains to the commission agent business said to have been run by Shri Prithaviraj Jain, brother of Shri Lalit Jain. This contention has been dealt with in para 16 of the impugned order. The Revenue has sent repeated summons to Sh. Prithaviraj Jain to seek his clarifications in connection with discrepancies in the statements made by Sh. Lalit Jain and Sh. Prithaviraj Jain. Shri Prithaviraj Jain has chosen to disappear from the scene and absent himself. Accordingly, the adjudicating authority rightly did not place credence on the statements given by Sh. Prithaviraj Jain.

12. After considering the totality of facts and circumstances of the present case, we come to the conclusion that in the light of the evidences placed on record by the Revenue in the form of documents as well as various inculpatory statements, we are of the view that the allegation that the appellant has procured raw materials, manufactured wires and cables and cleared the same clandestinely without payment of duty stands established. Consequently, the demand of duty as well as the penalties imposed in the impugned order is upheld. The order for confiscation of seized goods also stands upheld.”

5. Learned counsel urges that the Tribunal omitted to discuss the detailed evidence and besides merely placed its imprimatur on the findings of the Commissioner which is not expected of it. Learned counsel relied upon the judgment reported as *Prabhat Zarda Factory Co. & Ors. v CCE, Delhi*, CEAC No.7-9 of 2018 (decided on 16.5.2018). It was urged besides that the statements of the proprietor and his raw material suppliers were interpreted adversely against them and that the statement of several suppliers, in fact established that there was no element of bias. It was urged that on a totality of evidence and if one



looked into the analysis carried out by the Commissioner - in the order-in-original, it was evident that the Revenue fell prey to glaring discrepancies. In this regard, it was highlighted that as against the total sum of over ₹6.1 crores, allegedly paid, the appellants allegedly had a turnover of ₹5.21 crores. Learned counsel submitted that this was an inherent improbability, which exposes the findings of the Revenue. He submitted that, since the CESTAT did not apply its mind, its findings are perverse.

6. The Commissioner in the order-in-original took note of the fact that the seizures of the documents and other materials (including loose sheets, invoices, diaries etc.) were tied up by the statements of the raw material suppliers. At one stage, the appellant had urged that the material belongs to one Prithvi Raj Jain, his brother. However, the statement of Prithvi Raj Jain did not fully corroborate the version given by Lalit Jain, the proprietor of the appellant. The order-in-original noted importantly as follows:

“14. It is submitted by RCI in defense that the documents on the basis of which demand is raised show only the amount and date; that these nowhere give the description of the goods or the quality or quantity of goods and the amounts mentioned have been assumed to be pertaining to the sale of goods manufactured and cleared clandestinely.

14.1 I find the truth to be otherwise. Infact, Annexure XII specifically refers to page No. 12 (supplied to RCI as relied upon document No. X) of S.No. 15 of Annexure 'A' to Panchnama dated 8.8.2011 drawn at the factory premises of RCI which mentions the name of the item(coil), their quantity, size, amount and name of the party (S.B. Elec., Erode). In this regard, Shri Lalit Jain, proprietor of RCI admitted that they cleared wire and cable valued at Rs. 17,66,345/- to M/s S.B. Electricals, Erode clandestinely in cash during 2011-12 without issuing any invoice. Similarly,



invoices of the fake firm in the name of Universal Enterprises (quantified in Annexure XII) and supplied to RCI as relied upon document No. IX mention the name of the item, size, quantity, rate, value and name of the party. Shri Lalit Jain confessed that M/s Universal Enterprises was a fake firm created by him and sale affected through these invoices had not been accounted for in their books of accounts. Further, the impugned documents (three Scholar Fancy Memo Book) resumed very clearly mention the names of the buyers. These parties are buyers as these very parties are reflected in the sale invoices of RCI. I further find that names of these very buyers are mentioned in the loose pages 1 to 7 of S.No. 6 of Annexure 'A' to panchnama dated 8.8.11 drawn at the residence of Shri Lalit Jain, proprietor of RCI. The clinching evidence is that in these 1 to 7 pages some payment was shown to have been received from these very parties by cheque/DD on various dates. These payments on verification by the Department were found to have been credited in the bank account of RCI, details of which were supplied to RCI as Annexure-III. Similar is the position of payments made to various raw material suppliers by cheque/DD and reflected in these documents (pages 1 to 7) which on verification were found to have been debited in RCI's bank account (Annexure-III of SCN). One of the suppliers of raw material Shri Naresh Gupta of M/s Balaji Metals confirmed in his statement that the entries shown in page 6 and 7 of S. No.6 of Annexure 'A' of Panchnama drawn at the residence in the name of 'Nareshje' pertained to his firm M/s Balaji Metals and he had received the amount mentioned from Shri Lalit Jain for supply of bare copper wire to RCI during in 2009-10 in cash and cheque. Further, the parties mentioned in these documents were also admitted by Shri Lalit Jain to be its buyers and supplier of raw material. He admitted that the resumed three Scholar Fancy Memo Book contained details relating to sale value of wire and cable made by them to various buyers and details of payment received in return. In fact the documents i.e., three Scholar Fancy Memo Book (diaries) contain party-wise and date wise running account which is clearly sale value, receipt of sale proceeds and



outstanding balance. Shri Lalit Jain explained that the entry occurring like 364=25, 482=22, 52771=5S on page 22, 16 and 27 of diary (Scholar Fancy Memo Book) No.1, 2 and 3 were to be read as Rs.36,425/-, Rs.48,222 and Rs. 52,77,158/- respectively; that due to stiff market competition they used to purchase unaccounted raw material from the suppliers in cash and accordingly sale of finished goods i.e. PVC wire and cable was made in cash only and that they did not maintain any record in respect of goods sold without bills. The above goes to prove that the transactions shown in the resumed documents were very clearly related to sale of wire and cables and purchase of raw materials only. Thus, there is sufficient evidence on record to show that the amount mentioned in the resumed documents represented value of the wire and cables clandestinely removed.

16. Relying on statements dated 10.08.2011 of Shri Lalit Jain and dated 14.03.2012 of Shri Prithviraj it is submitted that the statements clearly show that the documents recovered from the residence were written by Shri Prithviraj; that an effort was made by Prithviraj to explain the entries in the records; that the details contain the amount pertaining to purchase and sale done by Prithviraj and that none of the details in those records pertained to RCI. It is further argued that statement dated 11.04.2013 and 17.05.2013 of Shri Lalit Jain are not correct statements.

16.1 I find from records that Shri Lalit Jain stated on 8.8.2011 that his elder brother Prithviraj was unemployed and was dependent on him. However, Shri Prithviraj stated on 4.1.2012 that he was a commission agent and the documents (Scholar Fancy Memo Book) pertained to purchase and sale of household goods to different persons. As Shri Prithviraj appeared to have distorted facts with an obvious motive to help his brother Shri Lalit Jain, he was summoned to appear on 22.10.2012, 31.10.2012, 7.11.2012, and 20.11.2012. However, the summons was received back undelivered with the remarks from the postal authorities that-no such person resided at that address. Further, on 22.03.13 summons were sent through special messenger



who met Smt Jyotsna Jain wife of Shri Lalit Jain who informed that Sh. Prithviraj earlier used to reside with them but since last one and a half year he had shifted to Rajasthan. She could not give the present address of Sh. Prithviraj, Moreover, Sh. Lalit Jain, in his statement dated 11.04.13 had given address of Sh. Prithviraj as Village Bharini, District Jalore, Rajasthan. Again summons was dispatched on the given Rajasthan address on 16.04.13 but the same were also returned back undelivered. Thus, it is apparent that Sh. Prithviraj intentionally avoided his appearance before the department and facts disclosed by him in his statement dated 4.1.12 cannot be treated as truthful as he was assisting his brother Sh. Lalit Jain in his business operations of M/s Reliance as admitted by Sh. Lalit Jain in his statement dated 17.05.13.

16.2 I further find that explaining pages 1 to 7 of S. No.6 of Annexure 'A' to panchnarna drawn at the residence of Shri Lalit Jain, Shri Prithviraj stated that these details were related to commission received against sale of goods by him, cash transactions and details of money financed by him to different parties. He stressed upon that these transactions had no relation with the business of MIs Reliance. I find that untruthfulness of statement of Shri Prithviraj is evident from the fact, that various entries in these documents showing payment/receipt through cheque/DO to raw material suppliers/ buyers of RCI were on verification by Department found to be debited/credited in RCI bank account. Further, these very documents contained details of bare copper wire received from Shri Naresh Gupta of M/s Balaji Metals, who admitted having received the amounts mentioned on page 6 (of loose page 1 to 7) in cash and cheque for supply of bare copper wire was seized both from the factory premises of M/s Balaji Metals and RCI. Thus, the documents were clearly related to RCI and contained details of raw material suppliers and buyers and the monetary value of the raw material received in cash and wire and cables supplied in cash.

17. Referring to typed and in English language statements dated 11.4.2013 and 17.5.2013 of Shri Lalit Jain, it is argued that he could neither type nor had working



knowledge of English and these statements were just placed before him and he was made to put his signatures. I find from statement dated 11.4.2013 of Shri Lalit Jain that he admitted at the start of the statement that "I am 8th pass. I can read and write Hindi and understand English". He also wrote in his own hand "Seen & Read" before putting his signatures in English". Further, on panchnama dated 8.8.2011 drawn at the factory premises of RCI he wrote in English in his own hand "Received copy of Panchnama" and put his dated signatures in English. In his statement dated 8.8.2011 he again in his own hand used and wrote various words in English like "PVC, MIB, Copper Wire, coil, OVEN, MOMENT, LINEMAN, CLASSIK, Industries, Bill No.105- Universal Enterprise, S.B. Electrical, H.D.F.C. BANK SHAHDARA, VISHWAS NAGAR, Bilty, SR.D. Transport" etc. Various English words like "insulated, concern, material, triplicate, entry, operator, enterprises, annexure" have also been written in Hindi while writing statement in Hindi. It is apparent from the above that Shri Lalit Jain is literate, has good working knowledge of English at least sufficient enough to understand the statement tendered/typed in common English language. Further, both statements dated 11.4.2013 and 17.5.2013 are concluded with the-remarks "I have again read the statement before putting my signature and it is recorded as per facts". I further find that the statements were tendered on 11.4.2013 and 17.5.2013 and this is the first time after over a year that an effort has been made to retract from them. Such belated retraction has no meaning.

18. Further argument of RCI is that the statements of the raw material supplies namely Shri Mahesh Kumar Taparia of M/s Taparia Polymers and of Shri Vimal Taparia of M/s Ankur Plastics cannot be used against them. I do not agree. In fact both these suppliers in their unretracted statements tendered under Section 14 of the Central Excise Act, 1944 admitted having sold PVC to RCI on kachi parchi. These statements are corroborated by the fact of seizure of unaccounted PVC made from factory premises of RCI on 8.8.2011 weighing 2920 kg. valued at Rs. 1,31,400/- and are admissible as evidence. Regarding statement of Shri



Naresh Gupta proprietor of M/s Balaji Metals, who admitted having supplied bare copper wire to RCI and also accepted the entries made at page No.6 and 7 of S.No. 6 of Annexure 'A' to Panchnama dated 8.8.2011 drawn at the residence of Shri Lalit Jain, it is submitted that as stated by Shri Prithviraj these entries pertained to trading done by him (Prithviraj). I have already discussed this point in paragraph 16, 16.1 and 16.2 above and come to the conclusion that statement of Shri Prithviraj does not state true facts and these entries are in fact related to unaccounted receipt of bare copper wire from M/s Balaji Metals. Thus, it is apparent that the resumed documentary evidence regarding receipt of excess and unaccounted raw material i.e. bare copper wire, PVC, etc. as reflected in the resumed documents stand corroborated by the statement of the raw material supplier, Shri Lalit Jain of RCI, and seizure of PVC, bare copper wire, master batch and empty boxes at RCI and of bare copper wire at the factory premises of M/s Balaji Metals.

19. RCI has further submitted that the Department conducted investigation at buyer's end as well as from the transporters but did not bring on record the result of such investigation. I find that the Department is at liberty to prove its case by any means consistent with the Central Excise law, The evidence available against RCI has been supplied to them and they have been given an opportunity to rebut the allegations leveled. Further, -copies of all the non-relied upon documents have also been returned to Shri Lalit Jain, proprietor of RCI on 12.12.2103. I note that Shri Lalit Jain stated on 8.8.2011 that the transporter M/s S.R.D. Transport did not issue any bilty for the transportation of goods.

20. Next argument of RCI is that the unit is working on two extruders and maximum capacity of such extruder is not more than 20-25 bundles of cables of size Tffii-riIf the extruders run continuously for 8 hrs that the unit worked in one shift only and did not have Generator Set in the factory.
20.1 I find from record that on 8.8.2011 when the factory premises of RCI were visited by the Department, the unit was found to be working with 10 workers. Two insulation



machines, two mixers for heating and mixing PVC granules, one bunching machine, two lining machines and two coiling addas were also found installed. In his statement recorded on 8.8.2011 itself Shri Lalit Jain explaining the process of manufacture elaborated that with the help of the machines installed 300 cable bundles of 90 metre coil each could be manufactured in 8 hours. Nothing has been brought on record to disprove this part of the statement. Further, the statement stands corroborated by sales account of M/s S.B. Electricals, Erode for the month of July, 2011 resumed as page No. 12 of S. No. 15 of Annexure 'A' attached to Panchnama dated 8.8.2011 drawn at the factory premises of RCI (copy supplied as relied upon document No. X), which shows clearances of 233 bundles on 1.7.2011, 261 on 8.7.2011, 367 on 11.7.2011, 300 on 17.7.2011, etc. The size 1mm cable referred to by RCI in defence, is known as 14/11, as stated by Shri Lalit Jain in reply to question No.2 of statement dated 11.4.2013. Wire and cable of this 1mm (14/11) size is also mentioned in S.B. Electrical, Erode account and 152 bundles were cleared on 1.7.2011 and 207 bundles on 11.7.2011. Further, needless to say that this is clearance made to one party only. Unaccounted raw material collectively valued at Rs. 3,27,960/- was also seized on 8.8.2011. I further observe that though stated to be working for 8 hours only, nothing prevented RCI from working round the clock. In the light of above discussion I find that RCI had the capacity to produce wire and cables of the value alleged in the SCN. It is further contended that their electricity expenses were in the range of Rs. 10,000/- to Rs. 20,000/- per month as per the sub-meter installed in the factory. I find the ledger account of Power & Electricity for the year 2006-07 to 2011-12 submitted along with reply to the SCN to be unauthenticated. In the circumstances, no notice can be taken of it. Moreover, no evidence of use of electricity out of the main connection by others with use of sub-meter and the quantity of goods manufactured by them has been brought on record. Further, for establishing charge of clandestine removal the Department is not bound to prove excess electricity consumption.



21. RCI has further argued that private record/diaries of third party cannot be the solid basis for clandestine removal where the authenticity is doubted or there is absence of corroborative evidence; that charge of clandestine removal must be corroborated by independent and unimpeachable evidence such as purchase of excess raw material/excess consumption of electricity/transport and delivery of goods; that burden to prove charge of clandestine removal is always on the Revenue and that duty demand cannot be based on assumptions and presumptions.

21.1. I have already found above that there is sufficient evidence on record to prove that the documents resumed pertained to RCI, purchase of unaccounted raw material and sale of wire and cable by them and that statement of Shri Prithviraj was untruthful and baseless. I observe that unaccounted receipt of raw material as reflected in the resumed documents stand corroborated as detailed in paragraph 10 to 10.3, 11 to 11.2 and 12 above. Further, clandestine removal is also corroborated in the manner explained in paragraph 13 to 13.6 and discussions and findings above. Reliance has been placed by RCI on a number of case laws. The decisions in these cases appear to have been rendered in the unique facts and circumstances of the case and are, therefore, distinguishable. I have discussed all these points canvassed by RCI as mentioned above and in my humble view there is no merit in the arguments advanced.”

7. It is evident that when the appellant's premises were visited by the anti-evasion team, manufacturing activity was carried out. According to the order-in-original –based upon the inspection report, two insulation machines, two mixers for heating and mixing PVC granules, one bunching machine, two lining machines and two coiling addas were found installed. The statement of the proprietor Lalit Jain explained the process of manufacture and elaborated that with the help of machines installed 300 cable bundles of 90 metre coil each could be manufactured



in eight hours. The Commissioner noted - in our opinion, correctly, that this itself established that the unit had the capacity to produce what was ultimately attributed to it. As far as the facts related to the raw material and the other documents recovered from the appellant are concerned, the Commissioner noted that the statement of the one Vimal Taparia, Proprietor of M/s Ankur Plastics clearly admitted that he had made sales of PVC Compounds to the appellant without issuing invoices and without proper accounting. The Commissioner also compiled the facts gathered on analysis of the loose sheets and the documents. He further noted that certain payments against raw material suppliers namely Naresh, Taparia, Omex and buyers namely Classic, Sasi Elec. Vinayalca, Paras Elec., Vikram Elec., Deepak Elec. were made by cheques/DDs. These were found to have been credited/debited in the bank accounts of the appellants. This according to the Commissioner constituted evidence to establish that purchase of raw material to produce the machinery have been corroborated. Furthermore, the three diaries i.e. the Scholar fancy memo book clearly mention the names of the buyers. The names of these parties were reflected in the sale invoices.

8. Initially, the proprietor Sh. Lalit Jain stated that his brother Prithvi Raj Jain was unemployed and dependent on him. Sh. Prithvi Raj Jain, on the other hand, stated that he was a commission agent and the documents pertain to purchase and sale of the household goods of different persons. The Commissioner deduced that Sh. Prithvi Raj Jain appears to have distorted the facts with the motive of helping his brother. Initially, he had participated during the investigation but did not appear despite repeated summons in the proceedings. The Commissioner in these circumstances held that the statement of the proprietor's brother



was unreliable and that the documents seized revealed a completely different story.

9. No doubt, the CESTAT has not discuss the evidence as greatly as it normally does and is expected to. What is however evident - from a plain reading of paras 6 to 10 is that the main points, which ultimately led the Commissioner to impose penalty and also inflict duty liability were taken into account. It is of course, desirable that the CESTAT as First Appellate Forum should discuss the evidence in some depth.

10. In the facts of this case, this Court is of the opinion that upon a total analysis of the circumstances, especially having regard to the statements made by the various parties including the third parties i.e. the sellers of the raw material, the inference drawn by the Commissioner could not have been faulted. The questions of law urged by the appellant are purely factual. On this ground the appeals are dismissed.

S. RAVINDRA BHAT, J

PRATEEK JALAN, J

NOVEMBER 14, 2018

akv