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

Date of Decision: 21st October, 2019

\+ CEAC 50/2018

CCE DELHI -1 (NOW PRINCIPAL COMMISSIONER OF GST DELHI NORTH) ..... Petitioner

Through: Mr. Pratap Singh Ahluwalia, Adv.

versus

JINDAL NICKEL AND ALLOYS LTD & ORS. ..... Respondents

Through: Ms. Priyanka Goel & Mr. A.K. Prasad, Advs.

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE C.HARI SHANKAR

JUDGMENT

% 21.10.2019

D.N. PATEL, CHIEF JUSTICE (ORAL)

CM APPL. No. 42624/2018

This application has been preferred for condonation of delay of 127 days in filing the appeal.

Having heard the counsel for both sides and looking into the reasons stated in the application, there are reasonable grounds for condonation of delay. We hereby condone the delay of 127 days in filing the Central Excise Appeal.

The application is allowed and disposed of.

CEAC No. 50/2018

1. This appeal has been preferred by the Department – Union of India

against the order dated 9th October, 2017 passed by CESTAT, New Delhi.

2. It appears from the facts of the case that the respondent No.1 is a manufacturer of SS Ingots. Thereafter, the goods are given to re-rolling mills and thereafter to the cutters and thereafter it was converted into SS flats. Thus, the final product - SS flats was manufactured by outsourcing to another manufacturer. Moreover, it appears that show cause notice was issued by this appellant to the respondent on 19th August, 2005. Thereafter, the Order-in-Original was passed by the officers of this appellant on 9th December, 2009. The same was decided against the respondnet and hence the respondent had preferred an appeal before CESTAT, New Delhi.

3. That the CESTAT allowed the appeal by way of remand, vide final order dated 28th September, 2011, with the directions, to the respondents, to:-

i. Allow the cross examination of the witnesses as sought by the respondents,
ii. Ascertain the production capacity of the respondents,
iii. Match the actual production with electricity consumption and fuel consumption and
iv. Seek technical opinion to support its finding that, with one control panel, could both the furnaces simultaneously produce Stainless Steel Ingots.

4. The relevant portion of **paras 9 to 11** of the aforesaid final order dated 28th September, 2011, of the CESTAT, may, in this context, be useful to reproduce as under:

> "9. We have gone through the detailed submissions from both the sides and perused the

records. We are of the view that prima facie the Commissioner did not observe the principles of natural justice and gave certain findings, especially, on the capacity of production, without giving fair opportunity to the parties. We do not agree with the findings of the Commissioner, wherein, he has justified the refusal of grant cross-examination of various co-noticees and others. A Co-noticee has a right to refuse cross-examination. But when no such refusal was made, Commissioner should not have rejected cross-examination on his own. Although, we agree the submissions of the authorized representative that cross-examination is not a matter of right, the same would, however, depend upon the facts of each case. We find that in the present batch of appeals, the whole case of the Revenue is based upon documents seized from the premises of a third party and on statements recorded on the basis of such documents. Hence, in the facts of the present case, cross-examination is absolutely necessary to test the veracity of the various statements. Shri Verma's reliance on the judgment in the case of M/s Kanungo & Co. cited supra is also misplaced. In that case, the Hon'ble Apex Court had held that principles of natural justice are not violate, if the person giving information was not allowed to be

cross-examined, whereas the present case M/s. Jindal has not made such type of request. They are requesting cross-examination of only those persons, whose statements were recorded under Section 14 of the Central Excise Act and are being relied upon against them. Hence, there is no justification to deny them such cross-examination. Further, the Hon'ble Supreme Court in various judgments has clearly laid down that an affected party has a right to cross-examine a witness:

i) Godrej Pacific Tech. Ltd. vs Computer Joint India Ltd. 2008 (228) E.L.T. 507 (S.C.).

ii) Shalimar Rubber Industries vs. Collector of Central Excise, Cochin – 2002 (146) E.L.T. 248 (S.C.).

iii) Aryan Abhushan Bhandar vs. Union of India – 2002 (143) E.L.T. 25 (S.C.).

iv) Lakshman Exports Ltd. vs. Collector of Central Excise – 2002 (143) E.L.T. 21 (S.C.).

v) Swadeshi Polytex Ltd. vs. Collector of Central Excise, Meerut – 2000 (122) E.L.T. 641 (S.C.).

We, therefore, are of the view that cross-examination of the following whose statements have been relied upon in the order is necessary in this case:

i) Shri S.K. Sahu,

ii) Four Re-rollers,

iii) Cutters of the SS Flats,

iv) Various scrap dealers, who stated that they were supplying scrap to M/s. Jindal, at the request of its Directors, Shri Ajay Gupta.

The Commissioner is, therefore, directed to produce the aforesaid witnesses during the remand proceedings and thereafter proceed to adjudicate the matter afresh. The learned counsel for M/s. Jindal had submitted that they had offered to the Commissioner to produce the Chartered Engineer Shri R.K. Aggarwal for his examination. But the Commissioner has given no finding on this offer of M/s. Jindal. We give liberty to the Commissioner to examine the said Chartered Engineer during the remand proceedings, to confirm the production capacity of M/s. Jindal.

9.1 With regard to production capacity of M/s. Jindal, we agree with the learned counsel's submission that the Commissioner has not properly appreciated the facts available on record. The Commissioner has erroneously proceeded to hold that M/s. Jindal had the capacity to manufacture the SS Ingots, which were allegedly sent to the four re-rollers for conversion into SS Flats, on which, he has confirmed the duty demand. He was supposed to determine the capacity on the basis of invoice of the supplier of the furnaces or by

obtaining the expert opinion. No technical opinion has been brought on record in support of his finding that with one control panel both the furnaces simultaneously were capable of producing SS Ingots. We have also gone through the Panchnama, dated 22.11.2007 (RUD No. 1) drawn at the factory premises of M/s. Jindal. It has clearly been noted therein that they had only one transformer available in their factory on the date of visit of the officers in their factory. The officers made no attempt to find out the production capacity of M/s. Jindal. They did not record any statement of production staff to find out the said capacity. No statements of any employee/worker was recorded to find out the number of shifts M/s. Jindal was operating. No attempt was made to match the actual production with electricity consumption or fuel consumption. The Commissioner has also not controverted or displaced the evidence furnished in the Chartered Engineer's Certificate, dated 01.07.2008. He has rejected the Chartered Engineer's Certificate on the ground that it was obtained subsequent to the period covered in the show-cause notice and further, that the Central Excise had recorded a finding that only one transformer was found installed on the date of his visit on 30.06.2008,

whereas at the time of the visit of the officers (on 22.11.2007), five transformers were found installed. We have already observed hereinabove that even on the date of visit of the officers, only one transformer was found to be installed. It would, therefore, mean that the Central Excise correctly recorded all the equipments installed in M/s. Jindal's factory. The annual production capacity determined by the Central Excise was, therefore, based upon the same plant and machinery found by the officers on 22.11.2007. Hence the Commissioner should not have simply brushed aside the evidentiary value of the Central Excise's Certificate. When the annual capacity production has been determined by the Central Excise on the basis of the same plant and machinery found installed on 22.11.2007, the mere fact that the plant was visited by the Central Excise about seven months subsequent to the above date cannot be sufficient ground to reject the said certificate, especially when the Revenue did not take any steps to obtain any expert opinion on the annual capacity production of M/s. Jindal. We are, therefore, of the view that documents seized from a third party could advance the case of the department only if it is conclusively proved by the department that M/s. Jindal had capacity to

manufacture six times more than its installed capacity. We, therefore, direct the Commissioner to take a holistic view on the capacity of manufacture of M/s. Jindal also considering the technical literature of the type of furnace installed in the factory before arriving at any definite conclusion.

9.2 The learned DR has strenuously argued that there are incriminating documents as well as statements of Shri S.K. Sahu, two Directors of M/s. Jindal, scrap dealers, transporters, re-rollers cutters and buyers of SS Flats. In the first place, except scrap dealers and buyers of SS Flats, all others have been made co-noticees in the present case. It is well settled law that evidence of one of co-noticee cannot be relied upon against another co-noticee, unless it is corroborated by independent evidence. Further, merely because incriminating oral evidence is recorded the same is not sufficient to establish a serious charge of clandestine production and removal of excisable goods. Further, these statements have yet to be tested on cross-examination. We are, therefore, of the view the actual scenario would be clear only when the witnesses/co-noticees are cross-examined and actual production capacity of M/s. Jindal is examined by the learned Commissioner.

9.3 We also, prima facie, agree with the submissions of the learned counsel that computer printouts are hit by the provisions of Section 36B(2) of the Central Excise Act. The genuineness of other loose slips is required to be established with corroborative evidence.

9.4 The learned counsel has strenuously argued that the duty demand on SS Flats is misdirected against them as they have admittedly never manufactured SS Flats but they are the manufacturers of SS Ingots only and there is no duty demand on SS Ingots. He has relied upon two judgments of this Tribunal in support of his submissions. Since we are remanding this matter back to the Commissioner on other issues, this issue and other issues raised by M/s. Jindal and others are left open.

10. We, therefore, set aside the impugned order and remand the matter to the Commissioner for defendant novo adjudication in the light of the aforesaid directions and observations. M/s. Jindal and other appellants are at liberty to produce any fresh evidence in support of their various submissions.

11. The appeals are thus allowed by way of remand and stay applications are also allowed. The miscellaneous application for adducing

additional evidence is dismissed as not required in view of our direction that the Commissioner is also to consider the technical literature of the type of furnace installed in the factory of the assesses before passing fresh orders."

5. In accordance with the directions of the CESTAT, the Commissioner (Adjudication) dropped the proceedings against the respondents; vide Order-In-Original dated 10th October, 2013. **Paras 107.1, 108 to 112** of the said Order-In-Original may be reproduced thus:

"107.1. During the cross examination, Sh. Raj Kumar Gupta, denied when asked if he could provide the evidence that he had sold 5-6 tons of scrap to M/s. Jindal Nickel and Alloy at the interval of 2-3 months by justifying that the scrap were sold on cash basis. He submitted that he did not maintain any book of accounts showing sales to S.S. Scrap to M/s. Jindal nickel and Alloy at any point of time. He had no knowledge of the transporters who transported the said scrap to M/s. Jindal Nickel and Alloy. Similarly, Sh. Mohammad Rizwan, Sh. Vinod Kumar and Sh. Devinder Jindal, during their cross examination, submitted that they did not keep any records of sale of scraps to M/s. Jindal Nickel and Alloy and they recorded the statement on the basis of their personal estimations. They had no evidence to

corroborate that the scrap were supplied to M/s. Jindal Nickel and Alloy. In the absence of any evidential records, I find that their statement cannot be relied upon to conclude that M/s. Jindal Nickel and Alloy received those scraps from the alleged Scrap Dealers.

xxx xxx xxx

108. As per the CESTAT directions, Central Excise authorities, those who booked and case were requested to offer their comments on the following issues raised in para 9.1 of the Hon'ble CESTAT order.

i. No technical opinion has been brought on record in support of the finding that with one control panel both the furnaces simultaneously were capable of producing SS Ingots.

ii. Also no attempt was made to find out the production capacity of M/s. Jindal Nickel & Alloys Ltd. and to match the actual production with electricity consumption and fuel consumption.

iii. The Commissioner had also not controverted or displaced the evidence furnished in the Chartered Engineer's Certificate dated 01.07.2008 furnished by M/s. Jindal Nickel & Alloys Ltd.

109. They submitted the para-wise comments on the points referred points which inter-alia reads as under:

Para (i) – The issue had been adequately dealt in paras 106.2 & 106.3 of the Order-in-Original No. 60/PKJ/CCE/Adj/09 dated 9-12-2009 and it was observed that "Dual Track Induction Power and Control unit permitted use of both the crucibles. The catalogue of M/s. Inductotherum (India) Pvt. Ltd. Clearly mentioned that "Track Induction Power and Control Unit lets you apply melting power to one furnace and holding power to second furnace simultaneously and continuously without mechanical or electronic furnace switching or a second power supply".

Para (ii):- In para 106.4 of the adjudication order it was mentioned that the unit was capable of producing around 40-50 tons of ingots per day. Further in his voluntary statement dated 25.04.2008 recorded under Section 14 of the Central Excise Act,1944, Sh. Mangat Rai, Director M/s. Jindal Nickel and Alloys Ltd., stated that one single batch of production contained 20 moulds; that one single batch of production took around 120 minutes; that the plant was running round the clock subject to periodical shut down and repair

and maintenance; that based on the above notional production in three shifts per day comes to about 39.6 tonnes per day. They also enclosed the calculation chart as below:

As per para 54 of SCN two crucibles were being used for manufacturing of ingots and 20 ingots were manufactured within two hours. Assuming that the unit ran all the three shifts, 240 ingots would be manufactured in a day. Assuming 25 working days in a month the production capacity is follows:

Period	**No. of working days**	**No. of Ingots manufactured in one day**	**Total**
April	25	240	6000
May	25	240	6000
June	25	240	6000
July	25	240	6000
August	25	240	6000
September	25	240	6000
October	25	240	6000
November (18 days)	18	240	4320
Total			46320

Para (iii):- On perusal of the Order-in-Original No. 60/PKJ/CCE/Adj/09 dated 9-12-2009 dated 9-12-2009 which was not accepted by the Hon'ble CESTAT and which according to it was based on assumptions as it was not duly substantiated by documentary evidences. Therefore, it had remanded back the case and directed to re-determine the production capacity and therefore the concerned authorities were further requested to offer specific comments in the matter. Subsequently, they furnished a reply which inter-alia reads as under:

I. The basis of production capacity determination of ingots by M/s. Jindal Nickel & Alloys was derived from the data fed into the computer by Shri Sushant Kumar Sahu, Accountant on the basis of kacha parchis provided by Shri. Ashwani Jindal, Director of the firm and not on technical aspect whether one control panel can support the working of both the furnaces simultaneously. This fact was corroborated by the voluntarily statement made by Shri. Mangat Rai, Director of the firm under section 14 of the Central Excise Act, 1944 dated 25-4-2013. Therefore no technical opinion was warranted.

II. Productive capacity of the party was based upon the investigations conducted in the case and as arrived at after taking on record the admissions made by Sh. Mangat Rai, Director and other of the firm, who was

responsible for production. Further it was held by various courts that the electricity consumption was not the sole criteria for determining the production capacity/output of the finished product. Admissions made by the Director of the party concomitant factors suggested the production as contained in the sheet annexed. Further it was submitted that the unsculpious activities by tax evaders were always done in a manner so as not to leave a trace or trial for proving their violations. These were not required to be proved with mathematical precision as held by Hon'ble apex court in the case of Collector of Customs Madras and others vs. D. Bhoormull (1983) (13) ELT 1546 (SC).

III. It was clearly brought out in the Order-in-Original itself that certificate of the Charted Engineer could not be relied upon, to decide the production capacity for a period much earlier to the date of visit of the Chartered Engineer in the factory. The said certificate was not provided during the course of investigation as such no comments could be offered.

111 In view of the above, I find that the comments offered by the concerned Central Excise authority was not satisfactory as they had not obtained any technical opinion on the aforesaid issues and furnished their comments on the basis of available records. The production capacity could have been determined on the

basis of invoice of the supplier of the furnaces or by obtaining expert opinion. It is evident that if the said authorities have had gone through the invoices of the supplier; there could not be any other conclusion that the notice did not have capacity to manufacture of 13,000/- MTs of Ingots during a period of eleven months. Further, no technical opinion was sought to corroborate the fact that with one control panel both the furnaces simultaneously were capable of producing SS Ingots. The CESTAT had given the liberty to examine the said Chartered Engineers certificate to confirm the production capacity of M/s. Jindal in the Denovo proceedings. Therefore, the concerned authorities were requested to obtain a technical/expert opinion:

- To substantiate the findings that both the furnaces can be operated simultaneously with one control panel to produce SS Ingots.
- To find out the production capacity of M/s. Jindal Nickel & Alloys Ltd. on the basis of machinery installed on 22.11.2007 through expert opinion and to match the actual production with electricity consumption and fuel consumption so that Chartered Engineers certificate supplied by the party can be countered.

Further, the Chartered Engineer had determined the annual production capacity considering that M/s. Jindal steels were working only for one shift. As such

evidence was to be placed on record that M/s. Jindal Steels were working for more than one shift. Further comment whether five transformers were installed in the factory premise of M/s. Jindal Nickel & Alloys ltd. on 22.11.2007 or only one transformer was installed as mentioned in the CE certificate/Panchnama to controvert the CE certificate. But no supportive comments could be furnished by the department.

111.1 On going through the Panchnama, dated 22.11.2007 drawn at the factory premises of M/s. Jindal, it was clearly noted therein that they had only one transformer available in their factory on the date of visit of the officers in their factory. The officers made no attempt to find out the production capacity of M/s. Jindal. They did not record any statement of production staff to find out the said capacity. No statements of any employee/worker were recorded to find out the number of shifts M/s. Jindal was operating. Neither any substantial evidence was put on record to prove that M/s. Jindal operated more than one shift nor attempt was made to match the actual production with electricity consumption or fuel consumption. The evidence furnished in the Chartered Engineer's certificate dated 01.07.2008 were neither displaced nor controverted. I find no merit in its rejection on the ground that it was obtained subsequent to the period covered in the

impugned show cause notice and further, that the Central Excise had recorded a finding that only one transformer was found installed on the date of his visit on 30.06.2008, whereas at the time of the visit of the officers (on 22.11.2007), five transformers were found installed. It was observed that even on the date of visit of the officers, only one transformer was found to be installed. It would, therefore, mean that the Central Excise correctly recorded all the equipments installed in M/s. Jindal's factory. The annual production capacity determined by the Central Excise was, therefore, based upon the same plant and machinery found by the officers on 22.11.2007. But the Central Excise's certificate was brushed in the previous adjudication proceedings. When the annual capacity production was determined by the Central Excise on the basis of the same plant and machinery found installed on 22.11.2007, the mere fact that the plant was visited by the Central Excise about seven months subsequent to the above date cannot be sufficient ground to reject the said certificate, especially when no steps were taken to obtain an expert opinion on the annual production capacity on M/s. Jindal. Therefore, I find that the documents seized from a third party could advance the case of the department only if it was conclusively proved by the department that M/s. Jindal had capacity to manufacture six times more than its installed capacity.

112. I find that there were incriminating documents as well as statements of Shri S.K. Sahu; two Directors of M/s. Jindal, scrap dealers, transporters, re-rollers, cutters and buyers of SS Flats. But except scrap dealers and buyers of SS Flats, all others were made co-noticees in the present case. It is well settled law that evidence of one of co-noticee cannot be relied upon against another co-noticee, unless it is corroborated by independent evidence. Further, merely because incriminating oral evidence was recorded, therefore in the absence of substantial documentary records, the same was not sufficient to establish a serious charge of clandestine production and removal of excisable goods. It was contended that the computer printouts were hit by the provisions of Section 36B(2) of the Central Excise Act as the computer from which the printouts were taken was not in the control of M/s. Jindal. The genuineness of other loose slips was required to be established as the scribe of them could not be identified. However, no substantive evidences were provided to corroborate the genuineness of the same. The investigation officers had seized some records from the residence of Shri S.K. Sahu and subsequently retrieved the computer printouts and concluded that quantity of the ingots which found mention in the said records were manufactured in the factory of the notices. The department was required to prove that what was source of procurements of Ingots to

enable the Re-Rollers to manufacture a quantity of around 11125.7555 MT quantity of SS Flats. There could be a possibility that in the absence of notice having requisite facility to manufacture such a large quantity of ingots, might have procured from some other source, meaning that M/s. Jindal may have procured their Ingots from the market and may have send it to the job workers for the manufacture of SS Flats because it has not been proved by the department that M/s. Jindal was having the capacity to manufacture such huge quantity of Ingots by the installed machinery and further failed to prove that they were running in three shifts. Further, non-availability of attendance register of the labourers, no records of electrical consumption, no statements of the workers regarding working hours and the number of shifts, has been furnished by the department and neither any inquiries or investigations has been carried out regarding sourcing of such huge quantity of ingots from the market. It also proved that department has failed to prove their case regarding corroboration of the computer printouts alleging that manufacturing was done at the doorstep of M/s. Jindal. Therefore, I find that the various documents seized from the residence of Shri S.K. Sahu and computer printouts retrieved from a CPU ipso facto, could not be treated to be clearance of ingots allegedly manufactured by the noticee. Hence duty demand from the notice is not

sustainable."

6. Being aggrieved and dissatisfied by the Order-in-Original dated 10th October, 2013, the Revenue preferred an appeal before CESTAT, New Delhi. The CESTAT, New Delhi dismissed the appeal preferred by this appellant *vide* the impugned order dated 9th October, 2017. **Paras 6 to 9** of the final impugned order, passed by the CESTAT, may be reproduced thus:

> "6. Revenue in the present appeals has argued that M/s. Jindal had the capacity to manufacture S.S. Ingots much more what has been certified by the Chartered Engineer. They have submitted that from the invoice issued by M/s. Inductotherm, the manufacturer of the induction furnace used by M/s. Jindal, that the furnace in M/s. Jindal factory is equipped with two crucibles and if both crucibles are used simultaneously for manufacture in more than one shift, the production can be as high as required to manufacture the quantum of ingots as per show cause notice.
>
> 6.1 In this regard, we have perused the invoice issued by M/s. Inductotherm (India) Pvt. Ltd., for the induction furnace as well as the clarification issued by the manufacturer wherein it has been clearly stated that only one crucible can be used for production at a time and not both. This clearly proves that the Revenue's projection of the

production capacity is hugely inflated.

7. M/s. Jindal has been sending S.S. Ingots/flats to their rerollers and cutters for manufacture of S.S. Flats on job work basis under Notification No. 214/86. In respect of such ingots, M/s. Jindal had also discharged the duty payable on the S.S. Flats cleared directly to customers from the premises of job workers. In this regard, we find that the claim of M/s. Jindal is reasonable inasmuch as they are not liable for payment of excise duty on the quantity of S.S. Flats cleared by the job workers, over and above the quantity manufactured making use of the ingots received from the appellant on job work basis. In this regard we sustain the findings of the adjudicating authority.

8. Computer print outs were retrieved from the residence of sh. S.K. Sahu during the search. M/s. Jindal has claimed that such documents are not admissible as evidence since the conditions specified in Section 36B have not been satisfied. The conditions specified therein are that the CPU was under the control of M/s. Jindal and the data was entered in the same regularly over the earlier period when the computer was regularly used to store the information. The adjudicating authority

has rightly held that there is no evidence to the effect that these conditions have been satisfied.

9. In view of the above discussions, we find no reason to interfere with the impugned order. The same is upheld and appeals filed by the Revenue are dismissed."

7. Aggrieved thereby the Revenue has moved the present appeal, before this Court under Section 35H of the Central Excise Act, 1944 (hereinafter referred to as "the Act").

8. Looking to the facts and circumstances of the case, it appears that there are allegations about production capacity of the respondent. As per Department – appellant, production capacity of the respondent of SS Ingots is 13,580 MT per annum whereas as per respondent and the evidences led by the respondent with the help of Engineer Certificate dated 1st July, 2008 the production capacity of the respondent of SS Ingots is 1963 MT per annum.

9. Over and above the aforesaid aspect of the matter, there are allegations and counter allegations about the DG Set transformers and the crucible furnaces. Be that as it may, the fact remains that the order passed by the CESTAT is on appreciation of the evidences on record and this appellant is in search of re-appreciation on record. Hence, it cannot be said that any substantial question of law is involved.

10. Much has been argued out by the counsel for appellant about the procurement of the documentary evidences like a *kutcha* receipt of sale from the computer which was found in custody of Mr. Sahu.

11. This aspect of the matter has been discussed in the order dated 9th October, 2017 passed by CESTAT at length. The statement of Mr. Sahu was retracted. Moreover, there is already an appreciation of facts done by CESTAT while pointing out that this appellant has failed to prove the production of SS Ingots, sale of SS Ingots and procurement of the raw material. So far as procurement of the raw material is concerned, there is no convincing evidence on record, as stated by CESTAT which requires interference by CESTAT to the Order-in-Original dated 10th October, 2013 and therefore, we see no reason to re-appreciate those evidences on record.

12. Moreover, by the order dated 28th September, 2011 passed by CESTAT, several aspects of the matter have already been settled by CESTAT, New Delhi. There is no appeal preferred by the Department against the order dated 28th September, 2011 passed by CESTAT.

13. Counsel for the appellant submitted that certificate of the Chartered Engineer was obtained after the premises was searched. This argument is of no help to the appellant because the capacity of the furnace has nothing to do with the date of raid. If there is a particular capacity of the furnace, the same remains as it is even prior to the search and after the search also.

14. Thus, this appellant has failed to prove the clandestine removal of the final product. Even otherwise, all the arguments of this appellant is based upon re-appreciation of the evidence by the CESTAT. The CESTAT is the final fact finding authority, and in matters such as this, an appeal lies, from the final order of the CESTAT, to this Court, only on substantial questions of law. Matters involving appreciable evidence ordinarily, would not involve substantial question of law, as this Court, in exercise of its powers

conferred by Section 35H of the Act, is not empowered to reappreciate evidence, which has already been appreciated by the CESTAT. It is only where the appreciation of evidence by the CESTAT is perverse, to the extent that no reasonable man conversant with the facts of the law, would arrive at the said conclusion, that this Court could interfere, under Section 35B of the Act. We are not convinced that the manner in which evidence has been appreciated by the CESTAT, in the present case, suffers from such perversity, as would justify interference, by us. Prior to the matter reaching the CESTAT, the findings of the Commissioner are exhaustive and comprehensive, and we would be loath to interfere therein.

15. Mr. Ahluwalia, learned counsel appearing for the appellant also sought to find fault with the observations, by the CESTAT, that it was not permissible to proceed on the basis of the computer printouts, in view of Section 36B of the Act. We are, however, not persuaded to disturb this finding. The provisions of Section 36B of the Act are mandatory. Subsections 1 and 2 of Section 36B of the Act may, for ready reference, be reproduced thus:

> "**36B. Admissibility of micro films, facsimile copies of documents and computer print outs as documents and as evidence.** —
>
> (1) Notwithstanding anything contained in any other law for the time being in force,—
>
> (a) a micro film of a document or the reproduction of the image or images embodied in such micro film (whether enlarged or not); or
>
> (b) a facsimile copy of a document; or

(c) a statement contained in a document and included in a printed material produced by a computer (hereinafter referred to as a "computer printout"), if the conditions mentioned in sub-section (2) and the other provisions contained in this section are satisfied in relation to the statement and the computer in question, shall be deemed to be also a document for the purposes of this Act and the rules made thereunder and shall be admissible in any proceedings thereunder, without further proof or production of the original, as evidence of any contents of the original or of any fact stated therein of which direct evidence would be admissible.

(2) The conditions referred to in sub-section (1) in respect of a computer printout shall be the following, namely:—

(a) the computer printout containing the statement was produced by the computer during the period over which the computer was used regularly to store or process information for the purposes of any activities regularly carried on over that period by the person having lawful control over the use of the computer;

(b) during the said period, there was regular supply to the computer in the ordinary course of the said activities, information of the kind contained in the

statement or of the kind from which the information so contained is derived;

(c) throughout the material part of the said period, the computer was operating properly or, if not, then any respect in which it was not operating properly or was out of operation during that part of period was not such as to affect the production of the document or the accuracy of the contents; and

(d) the information contained in the statement reproduces or is derived from information supplied to the computer in the ordinary course of the said activities."

16. There is nothing to indicate compliance with the strict stipulations contained in subsections (1) and (2) of Section 36B of the Act in the present case. We, therefore, find no reason to interfere with the findings of the CESTAT regarding non-compliance of Section 36B of the Act either.

17. We found no perversity of the evidences on record by CESTAT, New Delhi of the order dated 9th October, 2017 passed by the CESTAT. Hence, no substantial question on law is involved in this Central Excise Appeal and the same is, therefore, dismissed.

CHIEF JUSTICE

C.HARI SHANKAR, J.

OCTOBER 21, 2019
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