SUPREME COURT OF INDIA

Commissioner of Customs (Preventive)

Vs.

Vijay Dasharath Patel

(S.B. Sinha and Markandey Katju JJ.)

08.03.2007

JUDGMENT

S.B. SINHA, J.

Leave granted in S.L.Ps.

These appeals are directed against a judgment and order dated 30th January, 2006 passed by the High Court of Gujarat at Ahmedabad in Tax Appeal Nos. 1923, 1924, 1925, 1930, 1928 and 1929 of 2005 respectively, whereby and whereunder the appeal preferred by the appellant herein was dismissed holding that no substantial question of law for its consideration had arisen therein. The factual matrix obtaining herein is not in dispute.

Eight persons including the respondents herein were detained for carrying 551 gold biscuits of foreign origin, the details whereof are as under :

Sr.No.

Name Foreign Mark of gold Quan- tity Nature of possession of gold bars 1.

Sh. Shailesh Ratilal Patel, Proprietor of M/s. S.K. Jewellers ARGOR SUISSE 100 Kept in 4 plastic packets each of 25 bars 2.

Sh. Vijaybhai Dashrathlal Patel, Proprietor of M/s.

Paras Bullion (Respondent herein) CREDIT HERAEUS 90 A small green bag carried by him 3.

Smt. Rasilaben Rathod ARGOR HERAEUS 95 Under her attire tied with a waist belt 4.

Shri Jaswantbhai K.

Patel ARGOR HERAEUS PAMP SUISSE JOHNSON MATHEY 95 09 09 Hidden in sole of the shoes 5.

Bhikhabhai T.K. Patel CREDIT SUISSE 55 Hidden in sole of the shoes 6.

Arvindbhai K.K. Patel ARGOR HERAEUS 55 Hidden in sole of the shoes 7.

Shri Nandubhai Brijlal Soni UBS 51 Hidden in sole of the shoes 8.

Nathubhai @ Nitinbhai B. Patel CREDIT SUISSE 55 Hidden in sole of the shoes Out of the said 551 of gold biscuits, 200 belonged to Shri Vijaybhai Dashrathlal Patel, Proprietor of M/s. Paras Bullion, whereas 351 belonged to Shri Shailesh Ratilal Patel, Proprietor of M/s. S.K. Jewellers. Both of them were arrested. They made their statements under Section 108 of the Customs Act, 1962 ('the Act', for short). Shri Vijaybhai Dashrathlal Patel, respondent herein, allegedly, in his statement disclosed that he had purchased the said 200 gold biscuits from one Ridhi Siddhi Bullion Ltd. who had produced a delivery challan of ABN AMRO Bank issued in its favour.

Other than the said delivery challan, allegedly, he could not produce any other document. The purported letter of ABN AMRO Bank dated 12.11.1999 addressed the Assistant Commissioner of Customs, Ahmedabad is in the following terms :

"We wish to inform you that we had sold 100 Ten Tola Gold Bars and 150 Ten Tola Gold Bars to the captioned company under our invoice numbers 99/BAR/138 dated 25th October, 1999 for Rs.55,53,640/- and 99/BAR/139 dated 25th October, 1999 for Rs.81,49,025/-.

The above Ten Tola Gold Bars were out of the consignment stock of 1000 TT bars imported by us from Credit Suisse First Boston, Zurich under AWB No.085- 1490-2753 dated 20th September, 1999. We had paid the applicable customs duty at the time of clearance of the consignment on 22nd September, 1999. We also confirm that the delivery was effected on our behalf by M/s.

Brinks Arya (India) Pvt. Ltd., Ahmedabad.

This letter has been issued at the request of M/s.

Riddhisiddhi Bullions Ltd. We hope the above information is sufficient and shall be glad to furnish any further information you may require."

According to him, he had sold 200 gold biscuits to one Devangbhai Patel on 23.10.1999, but had no document to establish the same or that he had not received any payment therefor. It was the further statement of the said respondent that he had sold 300 gold biscuits to Shailesh Patel, but again therefor no commercial invoice or delivery challan had been issued. A further statement was made to the effect that out of the said 300 gold biscuits, 130 having UBS marking were purchased from one K.L. Chokshi and remaining 170 were purchased from different parties, but again therefor no payment was made either in cash or cheque. Statement of Shailesh Patel was recorded on 24.10.1999 under Section 108 of the Act when he disclosed that he had purchased 300 gold bars from Paras Bullion but no bill had been issued therefor nor any payment has been made by him. On the said date, statement of Naresh Chokshi was also recorded, wherein, allegedly, he did not make any statement to the effect that he had sold any gold bar of UBS mark to Paras Bullion. The second statement of Shailesh Patel was recorded on 29.10.1999, wherein he reiterated his earlier statement, stating :

"...On being further questioned, I have to state that the details of the receipt/purchase of the said foreign mark gold biscuits are narrated in the prior statement given by me..."

In his statement recorded on 28.10.1999, Vijay Dasharath Patel had made a statement that details of purchases of the gold biscuits could be furnished only upon perusal of his books of accounts.

We need not refer to the other statements made by other persons recorded by the Customs Officers on that date, being not relevant for the purpose of this case. We may, however, notice that

proceedees retracted from their statements on 11.11.1999, alleging that he had the requisite documents to support their contentions that gold seized were not smuggled ones.

However, according to Vijay Dasharath Patel, 300 gold bars were sold to M/s. S.K Jewellers, out of which 201 were purchased from M/s. K.L.

Chokshi and the rest were purchased from other jewellers. According to him, he did not maintain any stock register. He further stated that he had sold 200 gold bars to Patel Bullion on 23.10.1999, although he had not received any payment from the said vendee.

A show cause notice was issued upon the respondents on 1.3.2000 asking them to show cause as to why the seized gold bars should not be confiscated and penalty should not be imposed. Cause having been shown and the matter having been heard, the Commissioner, by his order dated 28.2.2001, inter alia, held :

"....substantial number of foreign marked gold bars i.e.

361 pieces, were found to have been concealed in the shoes, body parts of the noticees.....

* * * * ....In their initial statements recorded before the Customs Officers on 24.10.99 both Shri Shailesh R. Patel and Shri Vijay D Patel admitted that they had no documents for legal importation....

* * * * ....Section 123 of the Customs Act, 1962, which casts the burden in respect of "Gold", on the person from whose possession it is recovered, to prove that it is not smuggled...

....Statements were not recorded under any duress or mental torture."

According to the Commissioner of Customs, the respondents had not discharged their burden of proof in terms of Section 123 of the Act, in support whereof the following findings were recorded :

? The delivery challan issued by ABN AMRO Bank to Riddi Siddi Bullion does not in any way account for the possession of gold bars by Vijay Dashrath Patel.

? Shailesh Patel although stated that he had purchased 300 gold bars from Paras Bullion, no bill was issued in his name by the aforesaid firm nor he has made any payment towards purchase of 300 foreign marked gold bars.

? Statements dated 24.0.1999 were retracted on 29.10.1999 but retractions cannot be relied upon.

? In the absence of any mention of identity or brand specifications of the gold bars and also in face of a clear admission that no payments have been made or received and no bills having been issued, it is fully established that all 500 gold bars were not legally imported or acquired.

? The bills bearing Nos.5877, 5960 and 5936 which have been produced by Vijay Patel to prove his possession of 200 gold biscuits cannot be relied upon at all. The gold biscuits seized are not of the same brand for which the bills have been produced.

? On 24.10.1999, Vijay Dasharath Patel has stated that he had purchased 200 pieces of foreign mark gold bars of "CREDIT SUISSEE" mark from M/s Riddi Siddi Bullion on 23.10.1999. However,

from the statement of Shri Dinesh authorised signatory of M/s Riddi Siddi Bullion did not mention whether the gold biscuits delivered to Mr.

Vijay Dasharath Patel were of CREDIT SUISSEE mark. It was also observed that the alleged Bill No.294/GL/99/2000 dated 23.10.1999 also does not show the markings of the brand name of the gold biscuits.

? Statement of Ashwinbhai Patel is relied upon to show that Bill No.11931 was a complete after thought and it had been in fact prepared on 24.10.1999. Ashwinbhai Patel had stated that his maternal nephew Shri Devang Patel had phoned him on 24.10.1999 and informed him about the recovery of the gold biscuits by police and on being called by him, he had gone to the residence of Shri Vijay Dasharath Patel on 24.10.1999 and he had prepared the Bill No.11931.

? Both Vijay Dasharath Patel, Proprietor of Paras Bullion and Shailesh Patel admitted that no payment has made for the 300 pieces of foreign mark gold bars covered by Bill No.11931.

Further, the alleged Bill No.294/GL/99/2000 purported to be issued by Riddi Siddi Bullion in favour of Paras Bullion for 350 gold bars does not contain the details regarding identity/brand of the gold bars nor the printed or pre-printed Sl.No. of the Bill. Also no evidence of payment made by M/s Paras Bullion to M/s Riddi Siddi Bullion has been produced.

? M/s Riddi Siddi Bullion had relied upon Bill No.2753 dated 22.10.1999 issued by Anjali Exim Pvt. Ltd. in favour of M/s. Riddi Siddi Bullion for 200 gold brars of UBS mark. However, it is found that there are no gold biscuits of foreign origin of UBS brand among the 500 gold biscuits and, therefore, the said bill has no relevance with the gold biscuits under seizure.

? The plea taken by Vijay Dasharath Patel in his statement dated 11.11.2004 regarding the gold biscuits in his possession, is an after thought and the same is not acceptable. In view of the facts which have been initially stated in the statement dated 24.10.1999 and which have been corroborated by Shailesh Patel in his statement dated 24.10.1999, it is established that there was no document to show the source of 300 gold bars sold by Vijay to Shailesh Patel.

? It was found on close scrutiny of the documents that bills, delivery challans, vouchers produced by the notices that none of these is serial numbered or pre-serial numbered. Ad hoc numbers have been given to these documents and hence these do not inspire confidence and hence the documents produced have no credibility.

? Although it was admitted by Vijay Dasharath Patel and Shailesh Patel that no bills, vouchers, delivery challans were issued in respect of the sale of 300 gold bars. Entries have been made and Bill No.11930 and 11931 have been subsequently prepared on 24.10.1999 to legalise the sale.

? 72 entries of purchase and sale have been made in the stock account of M/s Paras Bullion after the alleged transactions of bills No.11930 and 11931.

It is humanly impossible that all these entries can be made within one hour and that the entries in which stock register of M/s Paras Bullion were made with a view to create the impression of legal purchase and sale of 500 foreign mark gold biscuits.

? No man of ordinary prudence will transport legally imported foreign mark gold biscuits in the way notices have been found to be doing. The facts and circumstances of the recovery of the gold bars

by way of concealment in shoes and other body parts of the notice is a positive circumstancial evidence to suggest that the gold was illegally acquired and hence it was transported in a surreptitious and clandestine manner more often adopted by smugglers.

? Satishbhai Patel, who is the accountant of M/s S.K.

Jewellers, was also liable as he had abetted Shailesh Patel in contravention of the various provisions of the Customs Act.

? All the carriers of gold bars had not demanded any document in support of the illicit import/ acquisition of the gold biscuits received by them from Satish Patel and Vijay Dasharath Patel and as such have abetted Shailesh Patel and Vijay Dasharath Patel in committing contravention of law.

? Accordingly, it was directed that the 500 gold bars weighing 58.320 Kgs. valued at Rs.2,70,00,000/- be confiscated under section 111(D) of the Customs Act. Penalties were also imposed on the notices."

Appeals filed by Respondents before the Tribunal, by reason of an order dated 5.6.2003 were dismissed.

Applications for rectification of mistakes were filed alleging that various aspects had not been considered in the original order. Special Civil Application No. 5468 of 2004 was also filed before the High Court of Gujarat at Ahmedabad against the said order of 5.6.2003.

The Tribunal by an order dated 7.1.2004 allowed the applications for rectification of mistakes filed by the respondents.

Against the said order dated 7.1.2004, the Revenue filed Special Civil Application No.2640 of 2004.

The High Court set aside the order dated 7.1.2004 passed by the Tribunal in the applications for rectification of mistakes and on the same day allowed the said Special Civil Application filed by the respondents, in terms whereof the order of the Tribunal was set aside and the matter was directed to be considered afresh.

The Tribunal, thereafter, passed an order on 30.9.2005, wherein, inter alia, it was held :

".....This finding of the Commissioner cannot be upheld since the Appellant has produced documentary evidence of having purchased/procured the 200 bars from RBL who in turn have got the same from M/s. ABL Amro Bank, Ahmedabad, the importers of TT bars at Ahmedabad, one of the permissible route as per the findings of the Commissioner. In any case, the Commissioner and the department do not reject the letter dt.12.11.99 of ABN Amro Bank certifying "CREDIT SUSSE" TT bars to RBL nor does the Commissioner find RBL to have given forged/fabricated delivery challan/invoices to the appellants, ABN Amro Bank or RBL or M/s. K.L. Chokshi or and M/s. Amrapali Industries are not being questioned on their credibility the TT bars supplied by them cannot be found to be non duty paid or and cleared from an unauthorized port without payment of duty and thus liable to confiscation under Section 111(d) of the Customs Act, 1962...

* * * * ...Therefore, there was no reason to believe that gold covered by the ABN Amro Bank document was not duty paid....."

Dealing with the submissions made on behalf of the proceedees, it was held :

"....These submissions have force and discharge the burden of the TT bars to be duty paid and not smuggled...

* * * * ...Further, in their statements recorded on 24.10.1999 itself, everybody i.e. Dinesh C. Jain of RBL, Sh. Naresh K. Chokshi of M/s. K.L. Chokshi and Shri Yeshwant A.

Thakkar of Amrapali Ltd., not only admitted having sold the gold to the appellants but also provided documentary evidence of having purchased the gold from Banks. By not issuing any Show Cause Notice to those persons, we find that the Revenue agrees and were fully satisfied that the gold was legally acquired by them and supplied to the appellants.

* * * * ? Nandubhai Soni, one of the carriers was let off although he was similarly placed as other carriers.

? Transportation of gold in shoes appears to be a normal fashion of transporting gold bars, by carriers in the bullion market, irrespective of the fact whether they have bills or vouchers.

? Satishbhai Patel, the Accountant of S.K. Jewellers cannot be said to have abetted Shaileshbhai Patel by preparing ante dated bills. The proven practice of sales in this market would led us to find nothing amiss in invoices being written/prepared with or without brand marks.

? ABN AMRO Bank letter dated 12.11.99 confirms that the gold was legally imported.

? Although the documents do not show that the gold bars were of a particular origin, there is no statutory requirement which prescribe invoices to describe foreign marks.

? Admitted fact that no payments were made as on the date of seizure in respect of the seized gold bars.

However no adverse inference could be drawn.

? We do not consider anything to be amiss in payments for the 500 bars not having been effected.

? We are arriving at our findings that the entire 551 gold TT bars..... To be duty paid gold....

? Dinesh Jain, Naresh Chokshi and Yeshwant Thakkar of Amrapali admitted having sold gold bars to the Appellants. The Revenue had not issued any show cause to these persons.

? Confiscation order and penalty set aside."

As indicated hereinbefore, on an appeal preferred against the said judgment by the Revenue, the High Court refused to interfere on the premise that no substantial question of law arise for its consideration.

Mr. Mohan K. Parasaran, learned Additional Solicitor General appearing for the Union of India would contend that the High Court committed a manifest error in opining that no substantial question of law arose for its consideration, although, it is evident that the Tribunal had failed to consider the well reasoned judgment of the Commissioner of Customs in its proper perspective. The

learned counsel urged that the High Court failed to notice that the Tribunal had referred to several trade practices in support whereof the proceedees did not adduce any evidence. It was submitted that the Tribunal furthermore failed to consider the question as to whether the proceedees had discharged their burden of proof cast upon them in terms of Section 123 of the Act.

Mr. Joseph Vella Palli and Mr. Anand Narain Haksar, learned Senior Counsel appearing on behalf of the respondents, on the other hand, would submit that from a bare perusal of the order of the learned Tribunal, it would appear that the reasonings of the Commissioner of Customs had been considered in great details therein and, thus, this Court should not interfere therewith. It was urged that no question of law was raised in relation to the specific findings of fact arrived at by the Tribunal and in that view of the matter, having regard to the provisions of Section 130 of the Act, the findings of fact being binding on the High Court, no error has been committed by it in opining that no substantial question of law arise for its consideration.

Section 130E of the Customs Act, as it stood then, provided for an appeal from an order passed in appeal by the Appellate Tribunal, save and except those specifically mentioned therein, only in the event a satisfaction is arrived at by the High Court that the same involves a substantial question of law.

Before the High Court, as also before us, several questions of law have been raised. We, however, in view of the order proposed to be passed, need not deal with all of them in details.

We are not oblivious of the fact that the High Court's jurisdiction in this behalf is limited. What would be substantial question of law, however, would vary from case to case.

Moreover, although, a finding of fact can be interfered with when it is perverse, but, it is also trite that where the courts below have ignored the weight of preponderating circumstances and allowed the judgment to be influenced by inconsequential matters, the High Court would be justified in considering the matter and in coming to its own independent conclusion.

{See Madan Lal vs. Mst. Gopi & Anr. [AIR 1980 SC 1754].} The High Court shall also be entitled to opine that a substantial question of law arises for its consideration when material and relevant facts have been ignored and legal principles have not been applied in appreciating the evidence. Arriving at a decision, upon taking into consideration irrelevant factors, would also give rise to a substantial question of law. It may, however, be different that only on the same set of facts the higher court takes a different view. {See Collector of Customs, Bombay vs. Swastic Woollens (P) Ltd. & Ors. [(1988) Supp. SCC 796]; and Metroark Ltd. vs.

Commissioner of Central Excise, Calcutta [(2004) 12 SCC 505].} Even in a case where evidence is misread, the High Court would have power to interfere. {See West Bengal Electricity Regulatory Commission vs. CESC Ltd. [(2002) 8 SCC 715]; and also Commissioner of Customs, Mumbai vs. Bureau Veritas & Ors. [(2005) 3 SCC 265].} In M/s. Dutta Cycle Stores & Ors. vs. Gita Devi Sultania & Ors.

[(1990) 1 SCC 586], this Court held :

"Whether or not rent for the two months in question had been duly paid by the defendants is a question of fact, and with a finding of such fact, this Court does not ordinarily interfere in proceedings under Article 136 of the Constitution, particularly when all the courts below reached the same conclusion. But where the finding of fact is based on no evidence or opposed to the totality

of evidence and contrary to the rational conclusion to which the state of evidence must reasonably lead, then this Court will in the exercise of its discretion intervene to prevent miscarriage of justice."

We have hereinbefore noticed the judgment of Tribunal as also the one rendered by the Commissioner of Customs. The Commissioner of Customs, inter alia, has gone into the entire materials brought on records by the parties. It has taken into consideration a number of circumstances in arriving at its findings. The Tribunal, however, as noticed hereinbefore, inter alia, not only proceeded on the basis that one of the carriers had been let off but also the purported normal fashion of transport of gold bars for which no evidence was brought on records.

Mr. Joseph Vella Palli would submit that the Tribunal consists not only of judicial member but also of technical member and in that view of the matter the Tribunal could take judicial notice of the trade practice prevailing in a particular trade and, thus, no illegality has been committed thereby. No evidence, however, admittedly, was laid in relation to the purported trade practices. We, therefore, cannot accept the said contention. This Court, in Hukma vs. State of Rajasthan [AIR 1965 SC 476], laid down the law in the following terms :

".....Learned counsel rightly pointed that while S.178-A has the result of placing the burden of proof that the gold was not smuggled on the accused, it is of no assistance to the prosecution to prove that the accused was carrying the gold knowingly to evade the prohibition which was for the time being in force with respect to the import of gold into India. Once, however, it is found, as it must be found in this case, in consequence of the provisions of S.178-A (the accused has not tried to discharge the burden that lay on him that the gold was not smuggled) that he was carrying smuggled gold, the circumstances under which the gold was discovered, the manner in which he was carrying the gold, the considerable quantity of the gold that was being carried and the form in which gold was being carried, namely, blocks and bars in which the major portion of the gold was found, all these circumstances establish beyond a shadow of doubt that the accused was carrying the gold knowingly and with the intention of evading the prohibition that was in force with respect to the import of gold into the country. Mr.

Kapur tried to argue that when gold is carried by persons, they often carry it in this manner in a nouli concealed under trousers. That may well be so. Here, however, there is an additional circumstance that a pointsman of the Railway, not expected to have so much gold in his possession, was carrying the gold which was, as already mentioned, in six blocks and 22 bars apart from some small pieces and one pair of murkees. The total quantity was as much as 286 tolas and 11 annas, that is, about three kilograms. When all these circumstances are taken together, it is not possible to accept learned counsel's suggestion that he might be carrying the gold innocently having purchased it from somebody. In our opinion, the High Court has rightly held that all the ingredients of the offence under S.167(81) of the Sea Customs Act have been established...."

The Tribunal furthermore noticed only the last statements made by the proceedees. The purported subsequent statements, in the light of their earlier statements, were not taken into consideration.

It had furthermore not taken into consideration in regard to the connectivity of the gold bars imported, in respect whereof the custom duty had been paid and the gold bars seized.

We, therefore, do not accept the contention of Mr. Vella Palli that no question of law had been raised. It was done by the Revenue in its grounds, stating :

"That the Ld. Tribunal has erred in holding that the finding of the commissioner is not sustainable because Shri Vijay D. Patel, Prop. of M/s. Paras Bullion has produced documentary evidence of purchasing 200 bars from M/s. Riddhisidhi Bullion Ltd., which was received by the said Riddhisidhi Bullion Ltd. from ABN Amro Bank, Ahmedabad. It is worthwhile to note that the document was not accompanying the consignment at time of detection by the police and was produced subsequently at the time of statement of Shri Vijay D.

Patel, on 24-10-1999. The Ld. Tribunal has recorded this finding by stating reasons that the commissioner and the department has not rejected the letter dated 12.11.1999 of the ABN Amro Bank certifying "Credit Suisse" TT bars to RBL nor they have alleged that RBL has given false/fabricated delivery challans/invoices to the noticees.

It is respectfully submitted that the Ld. Tribunal has recorded the above finding without any material or evidence on record and without even looking into the content of the letter dated 12.11.1999 of the ABN Amro Bank. It is submitted that the bank's letter referred to invoices dated 25.10.1999 and in such circumstances the question of effecting delivery by the bank to the authorized dealer under delivery challan dated 23.10.1999 which is two days prior to the date of invoice is not credit worthy. It is also against normal trade practice and makes the transaction suspect. Further, a bare glance at the documents of the bank undoubtedly establishes that the stock of FM GB shown in the delivery challan does not establish that the said challan relates to the gold pieces seized under panchnama dated 28/29.10.1999. It is submitted that no convincing record/ evidence is led before the competent authority that the 200 seized pieces of gold bars are clearly linked/part (including the same brand name) of the stock shown in the aforesaid delivery challans and invoices. Thus, a vital link of sale transaction of the seized gold is not fully established. It is the duty of the person purchasing foreign mark gold bars to see that the correct description of the goods is entered in the respective challans"

The aforementioned letter dated 12.11.1999 issued by the ABN AMRO Bank was the main fulcrum of the reasonings of the Tribunal. It was, therefore, in our considered view, required to be considered at some details. Even the error of law committed by the Tribunal in relying upon the trade practices had expressly been taken by the Revenue, stating :

"The Ld. Tribunal has erroneously held that the proven practice of sales in gold/bullion market lead to finding that there is nothing amiss in invoices being written/prepared with or without brand marks, subsequent to sales and deliveries and thus the penalty as arrived on the Shri Satishbhai A. Patel is to be set aside.

It is submitted that Shri Satishbhai A. Patel has also actively concerned himself in abetting the smuggling of the seized gold as no prudent buyer or seller will buy or sell such a huge quantity of gold without mentioning individual mark or details."

Similarly, in regard to the fact of non-payment of consideration had been raised by the Revenue in its grounds.

In regard to the purported retracted statements, the Commissioner dealt with the matter elaborately, opining :

"....The retractions are in the form of two separate (almost identical) letters both dated 29.10.99 from Shri Shailesh R. Patel and Shri Vijay D. Patel wherein they have merely stated that their

statements were taken forcibly. They also said that the Police and the Customs Officers had illegally detained them in "their own premises". Similarly, telegrams have been received on 29.10.99 from other Noticees alleging wrongful confinement by the Police & Customs officers.....

* * * * It is observed that all these retractions are belated, i.e.

after 6 days, during which the investigations had been carried out. The Noticees or their family members could have sought the intervention of the senior officers of the department during this period i.e. 23.10.99 to 28.10.99 if there was any truth in their allegations of wrongful confinement or detention. This has not been done.

Moreover, they have not produced any evidence to support that any physical or mental torture was inflicted on them.

The CEGAT in their decision in the case of P.

Pratap Rao Sait versus Collector of Customs, Cochin reported at 1988 (33) ELT 433 (Trib.) had held that:

"The detailed statement before Customs officers prima facie merits acceptance and by mere retraction, the original statement does not lose all evidentiary value."

Since the retractions are made belatedly and without any supporting evidences, these have no evidentiary value in the eyes of law."

It was furthermore held by the Tribunal that the bills had been prepared subsequently.

The learned Commissioner had opined that their existed serious discrepancies in the bills or vouchers. The Tribunal, in our opinion, should have dealt with the aforementioned findings of the Commissioner.

Mr. Vella Palli has strongly relied upon Meenakshi Mills, Madurai vs. The Commissioner of Income Tax, Madras [1956 SCR 691], wherein it was held :

".....On these facts, the Tribunal came to the conclusion that the contentions of the Department had been fully established, namely, that the intermediaries were dummies brought into existence by the appellant for concealing its profits, that the sales standing in their names were sham and fictitious, and that the profits ostensibly earned by them on those transactions were, in fact, earned by the appellant, and should be added to the amounts shown as profits in its accounts. The point for decision is whether there arises out of the order of the Tribunal any question which can be the subject of reference under section 66(1) of the Act. Under that section, it is only a question of law that can be referred for decision of the court, and it is impossible to argue that the conclusion of the Tribunal is anything but one of fact."

There is no dispute as regards the proposition of law but, as noticed hereinbefore, same question of law did arise for consideration of the High Court.

For the reasons aforementioned, we are of the opinion that the High Court may not be entirely correct in holding that no substantial question of law arise for its consideration. Ordinarily, although, we have referred the matters back to the High Court, having regard to the fact that we

have ourselves examined the findings of the Tribunal and the findings of the Commissioner, we are of the opinion that instead of remitting the matter back, interest of justice would be met if upon setting aside the judgment of the High Court and Tribunal the matters are remitted to the latter for considering them afresh. The parties shall be entitled to raise their respective contentions before the Tribunal. We intend to make it clear that our reference to the findings of the Commissioner as also the Tribunal was made only for the purpose of considering as to whether any substantial question of law arose for consideration before the High Court and for no other purpose. We may not therefore be understood to arrive at any finding in regard to any question which would arise for the consideration of the Tribunal.

For the reasons aforementioned, the appeals are allowed. The impugned judgments of the High Court as well as the order of the Tribunal are set aside. The matter is remitted to the Tribunal for consideration thereof afresh.