

Vikas Mohan Singhal Vs. Directorate of Revenue Intelligence

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Court : Delhi

Decided On : Aug-12-2009

Reported in : 2009(243)ELT507(Del)

Judge : Mool Chand Garg, J.

Acts : Customs Act - Sections 56, 108 and 114; Narcotic Drugs and Psychotropic Substances Act - Sections 42 and 67; [Evidence Act, 1872](#) - Sections 24, 25 and 27; Foreign Exchange Regulation Act - Sections 40; [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 91, 161, 245(2) and 482

Appeal No. : Crl.M.C. 1815/2005

Appellant : Vikas Mohan Singhal

Respondent : Directorate of Revenue Intelligence

Advocate for Def. : Satish Aggarwala and ; Shirish Aggarwal, Advs.

Advocate for Pet/Ap. : Pradeep Jain, Adv

Disposition : Petition allowed

Judgement :

Mool Chand Garg, J.

Crl.M.A.4665/2005 (delay in refilling)

Delay in refilling is condoned and the application is disposed of.

Crl.M.C.1815/2005

1. This petition has been filed under Section 482 Cr.P.C. by the petitioner for quashing the order dated 23.10.2003 passed by the ACMM New Delhi dismissing the application filed by the petitioner under Section 245(2) Cr.P.C. for discharge in a criminal complaint case, where he was arrayed as accused No. 2 along with one Tankeshwar Singh Nimbekar. The aforesaid criminal complaint is filed by the respondent/DRI on the following allegations:

I. That one Tankeshwar Singh accused No. 1 in the complaint, was apprehended by the Custom Department while he was about to leave New Delhi for Dubai vide Flight No. EK-701 and at that time he was found in possession of foreign currency wrapped in polythene and kept below the soles of his foot. The distinction of the foreign currency recovered has been given as follows:

i) Left Foot-Deutsche Mark = 1000×65 - 65,000

ii) Right foot - a) Deutsche Mark = 500×44 - 22,000

b) Swiss Frank = 1000×32 - 32,000

II. On demand by the DRI officers, the accused No. 1 could not produce any evidence in support of unlawful import, acquisition and possession or exportation of the above referred recovered foreign currency. The value of the above referred foreign currency in Indian Rupees is given below:

i) Deutsche Mark = 1000×65 = Rs. 24.35 x 65,000 - Rs. 15, 82,750/-

ii) Deutsche Mark = 500×44 = Rs. 24.35 x 22,000 = Rs. 5,35,700/-

iii) Swiss Frank = 1000×32 = Rs. 29.75 x 32,000 = Rs. 9,52,000/-

III. The statement of said Tankeshwar Singh was recorded under Section 108 of the Customs Act on the same day where he stated;

That in 1996, he went to London and came back to India after around two months and joined as a Manager with M/s Clouds Club (India), x/466, Jain Gali, Raghubar Pura No. 1, Gandhi Nagar, Delhi; that he was getting a salary of Rs. 6,600/- per month; that Vikas Mohan Singhal was the proprietor of M/s Cloud Club (India); that he resided at C-8/243, Yamuna Vihar, Delhi, Telephone No. 2265862; that Singhal's residence was at 40, Shyam Enclave, Karkarduma, Delhi; that Singhal's office Phone No. was 2206627, 2443794, 2443215 and 2448386; that Singhal's residence phone Nos. were 2166691, 2164491 and his mobile No. was 9810021213 9810021213 ; that Singhal was running a business of readymade garments and woolen garments for the last four years; that all the past consignments had been dispatched to MOSCOW except one consignment of ladies dresses which was sent to Dubai in a 20 ft. container, details of which, he did not remember at that moment; that the seized foreign currency was given to him by one Afgani person who had come to his shop at the address X-466, Jain Gali, Raghubir Pura No. 1, Delhi, a day before (i.e. 18.8.1999) at around 5 PM; that the money in Indian rupees was provided by Singhal and the Afgani person came to his office at his (Singhal) direction; that he did not remember the full name and address of the Afgani person; that Singhal had asked him to come to Dubai for setting up an office in Dubai and accordingly, he was going to Dubai that day morning by flight No. EK-701, that he kept all the foreign currency inside the socks; that in Dubai somebody was to receive him; that he did not know the name of that person who was to receive him in Dubai but Tankeshwar Singh Nimbekar was to identify him as the receiver was supposed to carry a placard of his name at Dubai Airport; that he did not know where this money had to go and he was only to carry that money from Delhi to Dubai.

2. Statement of the present petitioner was also recorded by the Custom Authorities under Section 108 of the Customs Act, when he is alleged to have stated:

That in the year 1995, he started export business to Russia and opened a firm in the name and style of M/s Cloud Club India; that Tankeshwar Singh Nimbekar was his employee and working in the capacity of supervisor in-charge; that in March or April, 1999, he sent Tankeshwar Singh Nimbekar to Dubai to carry the samples for one of his buyers; that he left for Moscow on 11.8.1999 and from there he went to

Dubai on 18.8.1999 to collect the payments for his past exports; that he never asked Tankeshwar Singh Nimbekar to carry any foreign currency for him; that on 19.8.1999, he came to know while Nimbekar was arrested with foreign currency at IGI Airport, New Delhi; that while he was in Moscow, Tankeshwar Singh Nimbekar had asked for two days leave telephonically; that there is no record of the same; that after the arrest of Tankeshwar Singh Nimbekar, he was apprehensive and scared to come to India; that when Tankeshwar Singh Nimbekar was detained under COFEPOSA, Tankeshwar Singh Nimbekar's brother read the documents supplied to Tankeshwar Singh Nimbekar and informed him telephonically at Dubai that his name (Singhal) had been included in the statement of Tankeshwar Singh Nimbekar; that he was the source of Indian currency in lieu of foreign currency which the Afgani person had given as per his direction. However, accused No. 2 stated that he was not related to the seized foreign currency and only Tankeshwar Singh Nimbekar could explain as to why he had been falsely implicated; that he asked Tankeshwar Singh Nimbekar's brother to sent the COFEPOSA papers to him to know what he (Tankeshwar) had stated; that on reading the papers, he became scared and did not come to India till 14th November, 1999; that he was submitting a copy of Bank statement for the month of August, 1999, that he also put his signatures on a copy of the statement of Tankeshwar Singh Nimbekar shown to him in token of having seen the same; that he read the complete statement and found that Tankeshwar Singh Nimbekar had implicated him for arranging Indian currency in lieu of which as per his directions an Afgani person delivered foreign currency to Tankeshwar Singh Nimbekar in his office i.e. at M/s Clouds Club (India). The accused No. 2 further stated that he had no concern with the Indian or foreign currency involved in the case; that he was not going to set up an office in Dubai; that he was not aware of Tankeshwar Singh Nimbekar's visit to Dubai; that he did not have any explanation as to why Tankeshwar Singh Nimbekar had implicated him; that he had no concern whatsoever with the seized currency.

3. On the basis of the aforesaid statement, the respondents filed a complaint against accused No. 1 Tankeshwar Singh as well as against the present petitioner by arraying him as accused No. 2. Accused No. 1 is ex parte while the present petitioner is facing trial in this case.

4. Simultaneously, the respondents also initiated adjudicatory proceedings by serving a show cause notice upon the petitioner in respect of the same cause of action. In respect of those proceedings an appeal was filed by the present petitioner against the order of Commissioner of Customs (Gen.), New Delhi dated 31.08.2001 whereby the said Commissioner of Customs had imposed a penalty of Rs. 3 lakhs on the present petitioner. However, vide order dated 26.08.2002 the Customs, Excise & Gold (Control) Appellate Tribunal, New Delhi, exonerated the petitioner of the allegation made against him by the respondents. The relevant portion of the order, which has been passed in this regard, is reproduced hereunder:

5. Against, Shri Vikas Mohan Singhal, Appellant, the only evidence to connect him with the foreign currency is the statement of Shri Tankeshwar Singh, appellant, from whom the recovery took place. But even, he is in his own statement, had admitted that Shri Vikas Mohan Singhal, appellant, was not in India when one Afgani person gave him the foreign currency, but was abroad. Shri Vikas Mohan Singhal, appellant, himself has denied his connection with the seized foreign currency. The fact that Shri Tankeshwar Singh, appellant, from whom possession of foreign currency had been recovered, was working as an employee of Shri Vikash Mohan Singhal is not enough to raise an inference that the foreign currency belonged to him. Even otherwise, statement of Shri Tankeshwar Singh, appellant, being of co-noticee cannot be made sole basis for imposing penalty on Shri vikash Mohan Singhal, appellant, under Section 114 of the Customs Act, without corroboration from any reliable evidence, in view of the law laid down in Punit Kumar Sakhuja and Anr. v. CC New Delhi 2001 (43) RLT 797 (CEGAT) and Shri Sunil Ghosh v. CC (prev.) West Bengal, Calcutta 2001 (47) RLT 234 (CEGAT), referred by the counsel.

6. Therefore, for want of any reliable evidence against Shri Vikash Mohan Singhal, appellant, the impugned order of Commissioner of Customs imposing penalty of Rs. 6 lakh on him cannot be sustained and same is set aside.

7. In the light of the discussion made above, the appeal No. C/579/2001-NB of Shri Tankeshwar Singh, stands disposed of in the terms detailed above, while

appeal No. C/584/2001-NB of Shri Vikash Mohan Singhal is accepted with consequential relief, if any, permissible under the law.

5. Against the aforesaid order of the Appellate Tribunal, the respondents have not filed any further appeal or revision and had accepted the said order, yet they wanted to continue with the proceedings in the complaint case. It was in these circumstances the petitioner filed an application under Section 245(2) Cr.P.C. for discharging him in the said complaint case.

6. The learned ACMM dismissed the aforesaid application by observing that:

It is clear that adjudicating authority is not binding on this Court. It is further clear that prosecution in a criminal case is to be determined on its own merits as per law uninhibited by the findings of Tribunal. In this case, discharge of accused has been sought on the ground that the accused has been exonerated in the adjudication proceedings by the CEGAT. Hence, the accused may be discharged in the present criminal complaint also. However, in view of the above discussion, I am of the opinion that the findings of CEGAT is not binding on this Court in the light of the law laid down by the Hon'ble High Court of Andhra Pradesh in the case of K. Neelkanta Rao v. State of Andhra Pradesh and the ratio laid by the Constitution Bench of Hon'ble Supreme Court in Malwani's case. Hence, I am of the considered view that there is no merit in the arguments raised on behalf of accused Vikas Mohan Singhal. The discharge application filed by accused Vikas Mohan Singhal is dismissed.

7. Assailing the aforesaid order, it has been submitted on behalf of the petitioner that in this case, the ACMM concerned has erred in not appreciating the fact that the Tribunal is a fact finding body and exonerated the petitioner of the charges leveled against him inasmuch as the offence was sought to be proved by the respondents only on the basis of statement of accused No. 1, Tankeshwar Singh, who, in fact, has not implicated the present petitioner. The exoneration of the present petitioner was on merits inasmuch as the respondents failed to prove the allegation made against the petitioner in the departmental proceedings which proceeded on the same cause of action. As such, the petitioner was entitled to discharge in respect of the criminal charges also. Hence, the present petition.

8. Learned Counsel for the petitioner has also relied upon the following judgments in support of his case:

1. Sunil Gulati v. R.K. Vohra 2007 (1) JCC 220

2. G.L. Didwania v. Income Tax Officer : 1999 (108) ELT 16 (SC)

3. Ajay Gulati v. Union of India and Anr. Crl.M.C. 1108-09/2007 1108-09/2007 decided on 03.04.2008

4. D.K. Rastogi v. Union of India Crl.M.C. 6649/2005 decided on 18.04.2007

5. Standard Chartered Bank v. Directorate of Enforcement : 2006 (197) ELT 18 (SC)

6. Surkhi Lal v. Union of India 2005 (85) DRK 11

7. Bihariji Mfg. Co. P. Ltd. v. Commissioner of Central Excise Crl.M.C. 938/2008 decided on 14.02.2007

9. The principles which has been crystalized in these judgments including the judgments delivered in the case of Sunil Gulati (Supra), which has also been relied upon by the respondents, stand enumerated by Justice S. Ravindra Bhat in the case of Bihariji . v. Commissioner of Central Excise Crl.M.C. 938/2008 in the following words:

i). On the same violation alleged against a person, if adjudication proceedings as well as criminal proceedings are permissible, both can be initiated simultaneously, for initiating criminal proceedings on does not have to wait for the outcome of the adjudication proceedings as the two proceedings are independent in nature.

ii). The findings in the departmental proceedings would not amount to res judicata and initiation of criminal proceedings in these circumstances can be treated as double jeopardy as they are not in the nature of 'prosecution'.

iii). In case adjudication proceedings are decided against a person who is facing prosecution as well and the Tribunal has also upheld the findings of the

adjudicators/assessing authority, that would have no bearing on the criminal proceedings and the criminal proceedings are to be determined on its own merits in accordance with law, uninhibited by the findings of the Tribunal. It is because of the reason that in so far as criminal action is concerned, it has to be proved as per the strict standards fixed for criminal cases before the criminal court by producing necessary evidence.

iv). In case of converse situation namely where the accused persons are exonerated by the competent authorities/Tribunal in adjudication proceedings, one will have to see that reasons for such exoneration to determine whether these criminal proceedings could still continue. If the exoneration in departmental adjudication is on technical ground or by giving benefit of doubt and not on merits or the adjudication proceedings were on different facts, it would have no bearing on criminal proceedings. If, on the other hand, the exoneration in the adjudication proceedings is on merits and it is found that allegations are not substantiated at all and the concerned person(s) is/are innocent, and the criminal prosecution is also on the same set of facts and circumstances, the criminal prosecution cannot be allowed to continue. the reason is obvious criminal complaint is filed by the departmental authorities alleging violation/contravention of the provisions of the Act on the part of the accused persons. However, if the departmental authorities themselves, in adjudication proceedings, record a categorical and unambiguous finding that there is no such contravention of the provisions of the Act, it would be unjust for such departmental authorities to continue with the criminal complaint and say that there is sufficient evidence to foist the accused persons with criminal liability when it is stated in the departmental proceedings that ex-facie there is no such violation. The yardstick would, therefore, be to see as to whether charges in the departmental proceedings as well as criminal complaint are identical and the exoneration of the concerned person in the departmental Page 0751 proceedings is on merits holding that there is no contravention of the provisions of any Act.

In the aforesaid judgment the learned Single Judge after applying the aforesaid principles came to the following conclusion:

that show cause notice as well as the complaint are premised on identical facts, namely, clandestine and illegal removal without disclosure to the Central Excise Authorities by the petitioners. Though the first round went in favor of the Department in as much as adjudication by the Commissioner fastened liability upon the petitioners, those findings were reversed by the Tribunal, which categorically and unambiguously recorded that there were no materials recovered to prove the charge of clandestine removal, or that evasion of duty stood established. In these circumstances, I am of the opinion that on application of the rule enunciated in Sunil Gulati's case, (particularly, the latter portion of proposition (4) quoted above, i.e. exoneration of the assessed being on merits, and not on a technicality) further proceedings in the criminal complaint would not sub-serve ends of justice.

10. It has been submitted by the petitioners that a perusal of the order of the Tribunal and the complaint shows that the exoneration of the petitioner with respect to the opportunity notice given on the basis of the same facts, which are also the subject matter of the criminal complaint, is on merits. It is also submitted that except the evidence relied upon by the respondents, which has been discarded in the departmental proceedings, there is no other evidence available with the respondents to prove the guilt of the petitioner and as such, the petitioner is entitled to be discharged in the facts of this case.

11. The respondents have filed a short synopsis. The only point taken by them is that the exoneration of the petitioner by the Customs, Excise & Gold (Control) Appellate Tribunal (CEGAT) is not on merits and that the said exoneration is only by making an observation that the evidence against the petitioner was insufficient.

12. The respondents have relied upon the following judgments:

1. Naresh J. Sukhwani v. Union of India : 1996 (83) ELT 258 (SC)
2. Paramjit Singh v. Commissioner of Customs and Ors. 2002(2) JCC 916.
3. Rehmatullah v. N.C.B. 2008 (3) JCC 174.

13. The respondents have contended that in such a case the exoneration in the departmental proceedings does not help the petitioner in the criminal complaint which is to be decided on the basis of its own facts. With reference to the judgment delivered in the case of Sunil Gulati v. R.K. Vohra (Supra) it has been observed that the said judgment itself does not help the petitioner once it is held that the exoneration of the petitioner was only on account of insufficient evidence. Respondents have relied upon the following portion of the judgment in this regard:

1. On the same violation alleged against a person, if adjudication proceedings as well as criminal proceedings are permissible, both can be initiated simultaneously. For initiating criminal proceedings one does not have to wait for the outcome of the adjudication proceedings as the two proceedings are independent in nature.

2. The findings in the departmental proceedings would not amount to resjudicata and initiation of criminal proceedings in these circumstances can be treated as double jeopardy as they are not in the nature of 'prosecution'.

3. In case adjudication proceedings are decided against a person who is facing prosecution as well and the Tribunal has also upheld the findings of the adjudicators/ assessing authority, that would have no bearing on the criminal proceedings and the criminal proceedings are to be determined on its own merits in accordance with law, uninhibited by the findings of the Tribunal. It is because of the reason that in so far as criminal action is concerned, it has to be proved as the strict standards fixed for criminal cases before the criminal court by producing necessary evidence.

28. It is thus clear that the exoneration is not on merits. The learned trial court while rejecting the application of the petitioner for discharge has referred to the judgments of the Supreme Court in cases of K.K. Pavunay v. Assistant Collector : (1997) 3 SCC 721, Hem Raj v. State of Ajmer : AIR 1954 SC 462, Assistant Collector of C.E. v. Duncan Agro Industries Ltd. AIR 2000 S.C. 2001 & Surjeet Singh v. UOI : AIR 1997 S.C. 256 on the basis of which he has observed that the statement of accused recorded under Section 108 of the Customs Act cannot be disbelieved merely because retraction has been filed. After discussing this law, in penalty made para, the learned trial court has observed:

From the aforesaid authorities, it is evident that statement of accused under Section 108 of the Customs Act cannot be disbelieved merely because it has been retracted by the accused. Hon'ble Supreme Court in the case of Naresh Sukhwani v. UOI : 1996 (83) E.L.T. 258 (SC) with regard to the statement of co-accused Under Section 108 of the Customs Act held that such statement of co-accused is a substantive evidence against the other accused.

29. It is clear from the above that in the departmental proceedings, the petitioner is not exonerated on merits and it would still be open to the criminal court as to whether the statement of Sunil Gulati under Section 108 of the Customs Act should be believed or not. Therefore, the impugned order of the learned trial court is valid and proper, though the discussion in the issue namely relevance of adjudication proceedings on the criminal cases may not be fully correct which is stated by the learned trial court in the earlier part of the order. Since the conclusion of the learned trial court in the impugned order is otherwise proper and meets the legal test, this petition is devoid of merits and is dismissed.

14. It is thus submitted that in the facts of this case the order of the Appellate Tribunal though accepted by the department does not entitle the petitioner for his discharge in the criminal case.

15. Now coming to the judgment cited by the respondents, I find that in the case of Naresh J. Sukhwani v. U.O.I. (Supra) the only thing said by the Hon'ble Supreme Court was:

4. It must be remembered that the statement made before the Customs officials is not a statement recorded under Section 161 of the Criminal Procedure Code, 1973. Therefore, it is a material piece of evidence collected by Customs officials under Section 108 of the Customs Act. That material incriminates the petitioner inculcating him in the contravention of the provisions of the Customs Act. The material can certainly be used to connect the petitioner in the contravention inasmuch as Mr. Dudani's statement clearly inculpates not only himself but also the petitioner. It can, therefore, be used as substantive evidence connecting the petitioner with the contravention by exporting foreign currency out of India. Therefore, we do not think that there is any illegality in the order of confiscation of

foreign currency and imposition of penalty. There is no ground warranting reduction of fine.

16. In the case of *Paramjit Singh v. Commissioner of Customs and Ors.* (Supra) it has been observed:

6. As per the allegations the petitioner was the owner of truck No. DEL 1885; from a secret cavity in this truck 27.17 kgs. of gold worth more than Rs. 57.0 lacs was recovered; the driver and the cleaner in their statement recorded under Section 108 of Customs Act named the petitioner; and after the seizure petitioner absconded. All these circumstances show, prima facie, case for framing of the charge. At the stage of framing of charge, evidence is not required to be appreciated, even grave suspicion is enough. Reference in this regard can be made to Supreme Court decisions in (i) *Munna Devi v. State of Rajasthan and Anr.* 2001 (8) SC 172, (ii) *State of M.P. v. S.B. Johari and Ors.* 2000 (1) Crimes 165 (SC), (iii) *Ram kumar Laharia v. State of Madhya Pradesh and Anr.* 2001 1 AD S.C. 54, (iv) *Om Wati v. State* 2001 SCC 685.

17. The judgment delivered in the case of *Rehmatullah v. N.C.B.* (Supra) is a judgment in respect of a case under the NDPS Act. In para 16 of the said judgment, it has been observed:

16. In order to examine the contention that successive statements cannot be recorded under Section 67 NDPS Act, the provision itself requires some detailed examination. It reads as under:

Section 67 - Power to call for information, etc. Any officer referred to in Section 42 who is authorized in this behalf by the Central Government or a State Government may, during the course of any enquiry in connection with the contravention of any provisions of this Act,-

(a) call for information from any person for the purpose of satisfying himself whether there has been any contravention of the provisions of this Act or any rule or order made thereunder;

(b) require any person to produce or deliver any document or thing useful or relevant to the enquiry;

(c) examine any person acquainted with the facts and circumstances of the case.

The words during the course of any enquiry in connection with the contravention of any provisions of this Act indicate that the statements could be recorded at any stage of the enquiry. There is nothing in the wording of Section 67 that forbids the recording of the successive statements. The words examine any person acquainted with the facts and circumstances of the case in Clause (c), by no means can be interpreted as permitting only a single examination of a person. A comparison could be drawn with Section 91 of the Code of Criminal Procedure, (Cr PC) 1973 which empowers the officer-in-charge of a Police Station to require any person to produce a document or thing. Likewise, under Section 161 Cr PC, the power to examine persons who may be acquainted with the facts and circumstances of the case, by no means indicates that such statements of a person can be recorded only once and not on successive occasions.

17. A reference may be made to the judgments concerning the interpretation of Section 67 NDPS Act. In *Raj Kumar Karwal v. Union of India*, the Supreme Court was examining whether officers of the Department of Revenue Intelligence were police officers within the meaning of Section 25 of the [Evidence Act, 1872](#) and, therefore, whether the confessional statement recorded by such officers in the course of the investigation of a person accused of an offence under the revenue laws was admissible in evidence against him. The question was answered in the negative and it was held that such statements made to the officers of the Department of Revenue Intelligence were not hit by Section 25 of the Evidence Act.

18. Still the twin tests of voluntariness and truthfulness will have to be satisfied. As far as the statement not being voluntary is concerned, there is no evidence to substantiate the plea of the accused that they were subjected to physical torture by the officers of the Respondent. The other circumstance relied upon is that both the accused have retracted their confessions on the ground that they were compelled to give statements earlier. In *Kanhaiyalal v. Union of India*, the

Supreme Court was dealing with a case where, after making a statement under Section 67 NDPS Act, an application was filed by the accused for retracting the confession. However, no order was passed on that application. The Supreme Court then held (AIR, p.1052): 40. It may also be recalled that though an application was made for retracting the confession made by the appellant, neither was any order passed on the said application nor was the same proved during the trial so as to water down the evidentiary value of the said statement. On the other hand, in the absence of such evidence on record, the High Court had no option but to proceed on the basis of the confession as made by the appellant under Section 67 of the NDPS Act. Since it has been held by this Court that an officer for the purposes of Section 67 of the NDPS Act read with Section 42 thereof, is not a police officer, the bar under Sections 24 and 27 of the Evidence Act cannot be attracted and the statement made by a person directed to appear before the officer concerned may be relied upon as a confessional statement against such person. Since a conviction can be maintained solely on the basis of a confession made under Section 67 of the NDPS Act, we see no reason to interfere with the conclusion of the High Court convicting the appellant.

18. On facts, none of the judgments comes to the help of the respondents inasmuch as the statements made by the accused No. 1 under Section 108 of the Customs Act does not prove that the possession of foreign exchange by him in the complaint case was on account of the same having been given to him by the second accused, i.e., the present petitioner.

19. As far as the judgments cited on behalf of the petitioner are concerned, the principle laid down in Sunil Gulati's case (supra) has been reiterated by Justice S. Ravindra Bhat in the judgment of Bihariji . (supra) quoted above. In the case of Ajay Gulati (Supra) a learned Single Judge of this Court has relied upon the aforesaid judgment and observed:

13. In that case, the allegations against the petitioners were that they indulged in clandestine removal of manufactured goods exceeding rupees one crore and the petitioners were liable to pay excise duty. The adjudicating order was passed against the petitioners by Commissioner of Central Excise. Aggrieved against that

order they preferred appeals to the Customs, Excise and Service Tax Appellate Tribunal and the Tribunal allowed the appeals and held inter-alia that no materials were produced nor was there anything brought on record to show that the goods were actually cleared by the petitioners. On the basis of findings and order of the Tribunal (which it is stated, has become final), the petitioners claimed that it was not open for respondent to proceed with the criminal complaint any longer.

20. Similarly, in the case of D.K. Rastogi (Supra) also delivered by Justice S. Ravindra Bhatt, where Section 40 of FERA was involved and statements recorded under Section 108 of the Customs Act were also relied upon, it has been observed:

15. In the facts of this case, it is evident that the findings of the Special Enforcement Director discharging the show cause notices issued to the petitioner were premised on merits and on full appreciation of all the factors. In these circumstances, I am of the considered view that such a decision amounts to a categorical and unambiguous finding that no contravention of provisions of law, took place. It, therefore, falls within the fourth category contemplated in Sunil Gulati's case. therefore, the basic reason for prosecuting the petitioner, namely, his having contravened provisions of the Act, a foundational issue, in terms of violation of Section 56 ceased to exist.

Accordingly the criminal complaint against the petitioner in that case was quashed.

21. The judgment delivered in Standard Chartered Bank v. Directorate of Enforcement (Supra) is relied upon by both the sides but the said judgment only says that the proceeding can be taken out with respect to the same cause of action by way of adjudication as well as by filing a criminal complaint however, once the adjudicatory proceedings exonerates the petitioner then there is no reason for continuing with the criminal complaint.

22. I have already quoted the order of the Appellate Tribunal. The aforesaid order passed by the Tribunal has not been assailed further by the respondents either before this Court or before any other authority as would have been available to them. They have accepted the order of the Appellate Tribunal.

23. In these circumstances, I do not find any strength in the submissions made by the respondents, who are opposing the present petition. I, therefore, allow the petition filed by the petitioner and quash all the proceedings arising out of Criminal Complaint No. 152/1/2002 titled as Sh. P.N. Sharma v. Tankeshwar Singh Nimbekar and Anr. qua the present petitioner only. Costs of Rs. 25,000/-is also imposed upon the respondents to be paid within one month from today to the petitioner.

Crl.M.A. 4667/2005 (stay)

In view of the orders passed in the main petition, the application is disposed of as having become infructuous.

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