

TAXATION LAW: RELEVANCY OF STATEMENT – STATEMENT TAKEN

DURING SEARCH, ARREST, INVESTIGATION ETC.

Recording of statement is the most vital component of investigation and under Section 161 of Code of Criminal Procedure 1973 prescribe power to the Police to record the statement whereas the provisions of the Indian Evidence Act, 1872 provides safeguard regarding recording of confessional statements of the accused. The Constitution of India under Article 20(3) provides protection from compelling anyone to make statements which are self-incriminatory in nature.

The investigating agencies under the tax statutes are empowered to record the statement i.e. under Section 50 of Prevention of Money Laundering Act (PMLA), Section 37 of Foreign Exchange Management Act (FEMA), Section 40 of Foreign Exchange Regulation Act (FERA), Section 108 of Customs Act, Section 14 of Central Excise Act, and Section 70 of Central Goods & Services Act (CGST). It is essential to keep note of the fact the standard of proof in a quasi-judicial proceeding is preponderance of probability whereas in prosecution proceeding it is beyond reasonable doubt. The higher standard of proof

The Hon'ble Supreme Court has held that the provisions of Code of Criminal Procedure Code or the Evidence Act shall not be applicable on the adjudication proceedings, but the fundamental principles of criminal jurisprudence and natural justice necessarily apply.¹ Resultantly, Section 24 of Evidence Act is not applicable which state that the confession recorded under coercion, threat and duress are irrelevant however the principle may be beneficial to the assessee.

Voluntary & Involuntary Confession – Burden of Proof

The recording of statement by the investigating agencies should ideally be voluntary and ought not to be extracted under the eminent danger, threat, coercion or duress. The statements recorded by the investigating agency involuntary shall render the statement false and inadmissible in the court of law on account of employing unlawful and unjust means to extract the statement/confession. Therefore, in the event of compulsive statement recording, the witness is advised to retract the statement at the earliest opportunity, so as to remove the benefit of doubt that the retraction was an after-thought process.

¹ *Amba Lal v. UOI*, 1983 (13) ELT 1321 (SC)

The Hon'ble Supreme Court in *K.I. Pavunny v. Assistant Collector (HQ), C. Ex. Collectorate, Cochin*¹ has held that the conviction may be based upon the voluntary confessions of the assessee and the burden of proof is on such assessee to showcase that the confession was recorded on the premises envisaged under Section 24 i.e. threat, coercion and duress. The *ratio decidendi* was followed in catena of judgments including *Assistant Collector, C. Ex. Collectorate, Rajamundry v. Duncan Agro Industries Ltd.*² and *Bhana Khalpa Bhai Patel v. Assistant Collector of Custom, Bulsar*³.

The burden to prove that the statement recorded by the agencies was involuntary and caused due to threat, coercion and duress has to be substantiated and supported by showcasing contemporaneous circumstances or medical evidence.

In *Vinod Solanki v. Union of India*⁴, the Hon'ble Supreme Court placed reliance on its earlier judgment in the matter of *K.T.M.S. Mohd. v. Union of India*⁵ and held that retraction of involuntary statement recorded under threat, coercion and duress shall be proved and the burden is on the person claiming recording of statement under threat, coercion or duress. The Hon'ble Court also held that the courts while adjudicating matter must bear in mind the important factors like time of retraction, the nature thereof, the manner in which such retraction has been made.

Further, due to frivolous allegations of recording of statement under coercion or threat, the investigating agencies have started taking handwritten confession of the maker/assessee/accused and if there is any recovery is made in pursuance of the confession, simultaneously panchnamas are drawn. The adoption of such practices have acted in the interest of the revenue.

Effect of Co-accused's Confessional Statement

As per Section 30 of Evidence Act, the statement of co-accused may be used if all accused persons are tried together. This principle was utilised by the Hon'ble Madras High Court in *D.V. Kishore v. Commr. Of Customs (Seaports-Imports), Chennai*⁶, wherein an assessee/accused has retracted at the early stage and since there was absence of direct link with the other accused, the Hon'ble Court provided relief to the accused

¹ 1997 (90) ELT 241 (SC)

² 2000 (120) ELT 280 (SC)

³ 1997 (96) ELT 211 (SC)

⁴ 2009 (13) STR 337 (SC)

⁵ (1992) 3 SCC 178

⁶ 2017 (350) ELT 527 (Mad.)

by setting-aside the learned Customs, Excise and Service Tax Appellate Tribunal (CESTAT).

Importance of Corroborated Evidences

The learned CESTAT in its order in the matter of *Davinder Sandhu Impex Ltd. v. Commissioner of C. Ex., Ludhiana*¹ placed reliance on *Commissioner of Saakeen Alloys Pvt. Ltd.*² and set-aside the order-in-original as the whole demand was confirmed solely on the basis of the statement and no corroborative evidences were recorded by the Adjudicating Authority.

The Hon'ble Gujarat High Court in *Commissioner of Saakeen Alloys Pvt. Ltd.*³, held that if there is nothing to bank upon for corroboration of the statement, then the absence of cogent and positive evidences would act in favour of the assessee/accused.

Conclusion

Thereby, in light of the aforementioned judicial precedents and jurisprudence, it may be summarised that the provisions of Code of Criminal Procedure or Evidence Act are not applicable in tax matters, however, the fundamental jurisprudential principles must be applied and upheld by all judicial or quasi-judicial bodies, despite of low level of standard of proof in civil proceeding in comparison to the prosecution proceedings.

The assessee/witness who have made statement, if felt that such statement was recorded under threat, coercion or duress, then it is advisable to retract the statement at the earliest opportunity, as delay in retraction raises genuineness on the retraction and might consider retraction as an after-thought process of the witness/assessee.

The investigating agency shall be required to support or substantiate their allegation against the assessee with corroborative evidences and sole dependence on the statement of the witness/assessee is unmaintainable before the courts, despite lower threshold of standard of proof in civil proceedings as compare to the prosecution proceedings.

¹ 2016 (337) ELT 99 (Tri.-Del.)

² 2015 (319) ELT A117 (SC)

³ 2014 (308) ELT 655 (Guj.)

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