Evidentiary value of retracted statement

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In the revenue matters largely the statement taken during the investigation is taken on the face of it, even if the same is incriminating against the maker of the statement. As per section 14 of the Central Excise Act, 1944 there are twin requirements in recording of the statement i.e. the statement has to be true and it must to be voluntary and if either the above mentioned essential is missing then the statement has to be discarded. Now if the maker of the statement subsequently retracted his earlier statement then what should be the treatment of that statement during the adjudication or prosecution, is the subject of this paper.

Though during the investigation the statement can be recorded as per section 14 of the Central Excise Act, 1944, but in the entire scheme of the act and rules there is no mention of retracted statement and the same are sometimes clarified in judicial pronouncements. In order to appreciate the fate of retracted statement let us examine Section 14 of the Central Excise Act, 1944, which read as follows:

**Power to summon persons to give evidence and produce documents in inquiries under this act.**

1. Any Central Excise officer empowered by the Central Government in the behalf shall have power to summon any person whose attendance he considers necessary either to give evidence or to produce a document or any other things in many inquiry which such officer is making for any of the purposes of this act. A summons to produce documents or other things may be for the production of certain specified documents or things or for the production of all documents or things of a certain description in the possession or under the control of the person summoned.

2. All persons so summoned shall be bound to bound to attend, either in person or by an authorised agent, as such officer may direct; and all person so summoned shall be found to state the truth upon any subject respecting which they are examined or make a statements and to produce such documents and others things as may be required:
Provided that the examinations under sections 132 and 133 of the code of civil code of civil Procedure, 1908 (5 of 1908) shall be applicable to requisitions for attendance under this section.

(3) Every such inquiry as aforesaid shall be deemed to be a “judicial proceeding” within the meaning of section 193 and section 228 of the Indian Penal Code 1860 (45 of 1860).

As per section 14 a central excise officer is empower to summon any person either give to evidence or to produce documents specified under the summon which are under the possession or control of the summoned person. A duty is casted upon summoned person to the state the truth or produces the document or other things as required by the Central Excise Officers. The duty is to tell the truth is not fettered by any limitation or prohibition described in law of evidence. So once the maker of the statement made the statement, it has to be red in the proceeding before the department or the appellate stage. The only rider is that the statement given is voluntary and true. In fact the officers when record statement under section 14 usually explain the maker of the statement regarding voluntariness and further explain that it may be read against the maker of the statement during the departmental adjudication and prosecution. The cardinal principle is the statement has to be voluntary and it has to be true and if either of the elements is missing then the statement has to be discarded or proved otherwise.

During the investigation the statement is recorded with the help of section 14 of the central excise act, if the same is retracted later on then it cannot be used against the maker of the statement if the same is not rebutted by the department. The Hon’ble Supreme Court in the matter of Mohtesham Mohd. Ismail [2007 (220) ELT 3 (S.C.)] held that even confession of a accused is not a substantive evidence. The statement is part of the evidence only if it is voluntary and free from any sort of pressure. The relevant para is as follows:

16. We may, however, notice that recently in Francis Stanly @ Stalin v. Intelligence Officer, Narcotic Control Bureau, Thiruvanthapuram [2006 (13) SCALE 386], this Court has emphasized that confession only if found to be voluntary and free from pressure, can be accepted. A confession purported to have been made before an authority would require a closure scrutiny. It is furthermore now well-settled that the court must seek corroboration of the purported confession from independent sources.

17. In The Assistant Collector of Central Excise, Rajamundry v. Duncan Agro Industries Ltd. - JT 2000 (8) SC 530, this Court held:

“...The inculpatory statement made by any person under Section 108 is to non-police personnel and hence it has no tinge of inadmissibility in evidence if it was made when the person concerned was not then in police custody. Nonetheless the caution contained in law is that such a statement should be scrutinised by the court in the same manner as confession made by an accused person to any non-police personnel. The court has to be satisfied in such cases, that any inculpatory statement made by an accused person to a gazetted officer must also pass the tests prescribed in Section 24 of the
Evidence Act. If such a statement is impaired by any of the vitiating premises enumerated in Section 24 that statement becomes useless in any criminal proceedings.

So, even the confessional statement recorded under section 14 of the Central Excise Act, has to pass the test prescribed under section 24 of the Indian evidence act. The retracted statement only shows that the same was recorded under some inducement, threat or promise and as such is not a voluntary statement per se.

The Hon'ble apex court in Vinod Solanki Vs. U.I.O. 2009 (233) ELT 157 (S.C.) again cautioned in using the retracted statement. The relevant para is as follow:

22. It is a trite law that evidences brought on record by way of confession which stood retracted must be substantially corroborated by other independent and cogent evidences, which would lend adequate assurance to the court that it may seek to rely thereupon. We are not oblivious of some decisions of this Court wherein reliance has been placed for supporting such contention but we must also notice that in some of the cases retracted confession has been used as a piece of corroborative evidence and not as the evidence on the basis whereof alone a judgment of conviction and sentence has been recorded. (See Pon Adithan v. Deputy Director, Narcotics Control Bureau, Madras [(1999) 6 SCC 1]}

34. A person accused of commission of an offence is not expected to prove to the hilt that confession had been obtained from him by any inducement, threat or promise by a person in authority. The burden is on the prosecution to show that the confession is voluntary in nature and not obtained as an outcome of threat, etc. if the same is to be relied upon solely for the purpose of securing a conviction. With a view to arrive at a finding as regards the voluntary nature of statement or otherwise of a confession which has since been retracted, the Court must bear in mind the attending circumstances which would include the time of retraction, the nature thereof, the manner in which such retraction has been made and other relevant factors. Law does not say that the accused has to prove that retraction of confession made by him was because of threat, coercion, etc. but the requirement is that it may appear to the court as such.

35. In the instant case, the Investigating Officers did not examine themselves. The authorities under the Act as also the Tribunal did not arrive at a finding upon application of their mind to the retraction and rejected the same upon assigning cogent and valid reasons therefore. Whereas mere retraction of a confession may not be sufficient to make the confessional statement irrelevant for the purpose of a proceeding in a criminal case or a quasi criminal case but there cannot be any doubt whatsoever that the court is obligated to take into consideration the pros and cons of both the confession and retraction made by the accused. It is one thing to say that a retracted confession is used as a corroborative piece of evidence to record a finding of guilt but it is another thing to say that such a finding is arrived at only on the basis of such confession although retracted at a later stage.

The Hon'ble High Court of Delhi while relying upon the Vinod Solanki (Supra) in the matter of DRI Vs. Mahendera Kumar Singhal 2016 (333) ELT (250) (Del.) held that burden is on the department to show that retraction made by the maker is the statement is not valid. The relevant para is as follows:
12. In Vinod Solanki v. Union of India (supra), the Supreme Court explained that where the confessional statement made by accused was retracted, the Court has to be conscious about the manner in which retraction has been made and other relevant factors. It was observed that a retracted confession could be used as a corroborative piece of evidence but cannot form the sole basis for returning a finding of guilt. In Union of India v. Bal Mukund (supra), in the context of confessional statement under Section 67 of the NDPS Act, the Supreme Court noticed that there can be conviction only if there is an independent corroboration of the retracted statement. In Noor Aga v. State of Punjab (supra), the said position was reiterated. The Court held that where the confessional statement was retracted, the burden shifted on the prosecution to prove that it was made voluntarily. It was pointed out that the confessional statement made by the accused while in custody was weak in nature.

The same view was also taken in the following matter:

In COMMR. OF C. EX., AHMEDABAD-III Vs. DEORA WIRES N. MACHINES PVT. LTD. 2016 (332) ELT 393 (Guj.) it was held as follow:

3. When in fact, the confirmation of duties and penalties were based on confessional statements which were promptly retracted and there was no other independent material on record, the Tribunal correctly reversed the orders of the authorities below. No question of law arises. Tax appeal is dismissed. Civil application also stands dismissed.

The Hon'ble High court of Delhi again in the matter of CCE, Delhi-I Vs. Vishnu & Co Pvt. Ltd., 2016 (332) ELT 793 (Del.) held as under:

41. What the above submission overlooks is the 'reliability' of such statements. Once it is shown that the maker of such statement has in fact resiled from it, even if it is after a period of time, then it is no longer safe to rely upon it as a substantive piece of evidence. The question is not so much as to admissibility of such statement as much as it is about its 'reliability'. It is the latter requirement that warrants a judicial authority to seek, as a rule of prudence, some corroboration of such retracted statement by some other reliable independent material. This is the approach adopted by the CESTAT and the Court finds it to be in consonance with the settled legal position in this regard.

The same principle was reiterated in the matter of Rakesh Kumar Garg Vs. CCE, 2016 (331) ELT 321 (Del.)

56. In Ravindran and Peter John v. The Superintendent of Customs - 2007-TIOL-89-SC-CUS, the Supreme Court cautioned that a confession cannot form the sole basis of a conviction under the Customs Act. Two other decisions that are relevant in this context are V. Ananthraman v. Union of India - 2003 (151) E.L.T. 278 (Bom.) and Nicco Corporation Ltd. v. Commissioner of Service Tax - 2014 (307) E.L.T. 228 (Cal.) = 2014 (35) S.T.R. 727 (Cal.).

The law regarding admissibility of the retracted statement is well settled. Firstly, it loses it's weight if it is retracted and secondly it cannot be sole basis of confirmation of duty demand or the prosecution of accused. The statement recorded during the investigation if retracted then has to be corroborated from other sources and if not the same cannot be relied upon in judicial proceedings. [A. Tajudeen Vs. Union of India 2015 (317) ELT 177 (S.C.)].
In revenue matter there is no short cut. As the duty demand has serious implication the law is construed strictly. The statement recorded if retracted has to be discarded and the demand of duty or prosecution of accused is required to be stand on independent sources.

The tribunal time and again has held that statement recorded during investigation is only starting point of investigation and not the end of the investigation. The Hon'ble Tribunal in the matter of M/s Hissar Pipes Pvt. Ltd Vs. CCE, Rohtak, 2015 (317) ELT 136 (Del.) after relying upon Tejwal Dyestuff Industries 2007 (216) ELT 310, held as follows:

5. Further, the Tribunal in the case of M/s. Tejwal Dyestuff Industries v. CCE, Ahmedabad [2007 (216) Commissioner of Income Tax v. Dhingra Metal Works 2010-TIOL-693-HC-DEL-IT laying down that though an admission is extremely important piece of evidence, it cannot be said to be conclusive. In view of the above, I find no merits in the impugned order. The same are accordingly set aside and appeal is allowed with consequential relief to the appellant.

The Hon'ble High Court of Delhi in the matter of DRI Vs. Moni, 2010 (252) ELT 57 (Del.) discarded the retracted statement for the purpose of conviction in following words:

10. This Court in the case of Vinod Kumar Sahdev v. Union of India - 2009 (4) JCC 2636; in the case of Abid Malik v. U.O.I. - 2009 (5) AD (Delhi) 749; in the case of Harpreet Singh Bahad v. D.R.I. Bail App.2211/08 decided on 23-9-2009 as well as in the case of Vikas Mohan Singhal v. D.R.I. Crl.M.C. 1815/2005 decided on 12-8-2009 [2009 (243) E.L.T. 507 (Del.)] has taken a consistent view that if the case of the prosecution whether launched by Custom Authorities, FERA Authorites or by Directorate of Revenue Intelligence is solely based upon the statement of the accused recorded by the Department pursuant to issuance of a notice given by them only, which stands retracted and there is no corroboration of the same, then the said statement cannot be the basis of conviction of the accused whether it is a statement recorded under Section 40 of the Foreign Exchange Regulation Act or under Section 67 of the NDPS Act or under Section 108 of the Customs Act.

Again the Hon'ble High Court of Delhi in the matter of Amrik Singh Saluja Vs. Union of India 2016 (331) ELT (57) (Del.) examined the relevance of retracted statement in following words:

37. There can be no doubt that a retracted statement under Section 40 of FERA, cannot form the sole basis for determining whether the maker of such a statement is guilty of contravening any of the provisions of FERA. It shall have to be corroborated by other independent evidence. In determining whether such a retracted statement can be relied upon, it will have to be examined whether the statement could be said to have been made voluntarily.

So, retracted statement cannot be used against the maker of the statement unless the charges are corroborated from independent sources.

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