

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD**

REGIONAL BENCH - COURT NO.I

Excise Appeal No.4040 of 2012

(Arising out of Order-in-Appeal No.472-473/CE/MRT-II/2011 dated 30.08.2011 passed by Commissioner (Appeals) Customs, Central Excise & Service Tax, Meerut-II)

M/s Mint Port Pvt. Ltd.

.....Appellant

(C/o Quality Flavours Exports, Industrial Estate,
Prem Nagar Export Zone, Kanth Road, Moradabad, U.P.)

VERSUS

Commissioner of Central Excise, Meerut-IIRespondent

(Opposite Shaheed Park,
Delhi Road, Meerut)

APPEARANCE:

Absent on call for the Appellant

Shri Manish Raj, Authorised Representative for the Respondent

CORAM: HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)

FINAL ORDER NO.-70150/2024

DATE OF HEARING : 06.03.2024
DATE OF DECISION : 06.03.2024

SANJIV SRIVASTAVA:

This appeal is directed against order in appeal No 472-473/CE/MRT-II/2011 dated 30.08.2011 of Commissioner (Appeal) Customs, Central Excise & Service Tax Meerut-II. By the impugned order, order in original No 09/ADC/M-II/2011 dated 31.01.2011 of the Additional Commissioner, to the extent it is in respect of the appellant has been upheld:

1.2 By Order-In-Original following has been held:

"ORDER

- i) *I confirm the demand of Central Excise duty amounting to Rs 8,13,706/- (Rupees Eight Lakh Thirteen Thousand Seven Hundred and Six only) (CENVAT duty Rs 8,09,379/- + Ed. Cess Rs 4,327/-) and order its recovery from them under the provisions of Section 11A of the Central Excise Act, 1944.*
- ii) *I also demand the Central Excise duty amounting to Rs 97,920/- (Rupees Ninety Seven Thousand Nine Hundred and Twenty Only) (CENVAT duty Rs 96,000/- + Ed Cess 1,920/-) on goods removed (1000 kg Menthol) without issuing of proper invoice on 29.10.05 to M/s Unique Allied & Chemicals, Rampur from them under the provisions of Section 11A of the Central Excise Act, 1944.*
- iii) *I demand the Central Excise duty amounting to Rs 23,501/- (Rupees Twenty Three Thousand Five Hundred and One Only) (CENVAT duty Rs 23,040/- + Ed Cess 461/-) on 360 Kgs DMO valued at Rs 1,44,000/- excess clearance detected from records of the year 2004-05, and order its recovery under the provisions of Section 11A of the Central Excise Act, 1944.*
- iv) *Interest due on all above mentioned amount is demanded from them under the provisions of Section 11 AB of the Central Excise Act, 1944/-*
- v) *I impose a penalty of Rs 9,35,127/- upon the party under Section 11AC of the Central Excise Act, 1944 for contravention of the provisions mentioned above.*
- vi) *I also impose a penalty of Rs 1,00,000/- (Rupees One Lac only) upon Shri Raeev Kashyap, Manager of the company."*

2.1 Appellant got registered with Central Excise Authorities from 19.05.2005 for manufacture and clearance of various goods falling under Chapter 29 and 33 of the First Schedule to Central Excise Tariff Act, 1944. They are also exporting their goods by following the procedure of Rule 18.

2.2 Based on the information officers of Central Excise Division I Moradabad visited the appellant premises on 04.01.2006 and conducted a search in presence of Shri Rajeev Kashyap, Manager of the Appellant. It was observed that no plant and machinery was installed in premises and no manufacturing activities were being undertaken. A stock of 2428 Kgs of Essential Oil Waste (EOW) in 15 steel drums of capacity 180 kgs each and a stock of 169 empty steel drums and 97 empty fibre drums were found. Certain documents were recovered and resumed during the search operations for further scrutiny and investigations under a proper panchnama. A statement of Shri rajiv Kashyap under Section 14 of the Central Excise Act, 1944 was also recorded.

2.3 During course of investigations statement of following persons were recorded as indicated in table below:

S No	Name and other details of the person whose statement recorded	Date of recording the statement
1	Shri Rajiv Kumar Gupta S/o Late Shri Raja Ram Gupta, R/o 4A Kanth Road, Moradabad, One of Partners	12.01.2006
2		17.01.2006
3		31.01.2006
4		01.02.2006
5		02.02.2006
6		13.02.2006
7		17.03.2006
8		12.04.2006
9		11.01.2007
10	Shri Rajesh Khanna S/o Shri Tilak Raj Khanna R/o Mazhola Moradabad and authorized representative of M/s Quality Exports Moradabad	13.02.2006

11	Shri Mukul Kumar S/o Late Shri Raja Ram Gupta, R/o 4A Kanth Road, Moradabad, One of Partners	23.02.2006
12		30.06.2006
13	Shri Vinay Kumar Gupta S/o Late Shri Raja Ram Gupta, R/o 4A Kanth Road, Moradabad, One of Partners	11.01.2007
14	Shri Sanjeev Kumar Aggarwal S/o Late Shri Raja Ram Gupta, Proprietor of M/s Unique Allied and Chemicals Zila Parishad Road, Rampur	

2.4 On the basis of investigations carried out revenue was of the appellant have contravened the provisions of Rule 4, 6, 8, 9, 10, 11 and 12 of the Central Excise Rules, 2002 read with Section 6 of the Central Excise Act , 1944 and Notification No 8/2002-CE dated 01.03.2002 and 8/2003-CE dated 01.03.2003 and render themselves liable for payment of Central Excise duty together with interest under the proviso to section 11A (1) read with Section 11Ab of the Central Excise Act, 1944. For various contraventions the appellant was liable to penal action under Section 11AC of the Central Excise Act, 1944.

2.5 A show cause notice dated 18.03.2008 was issued to appellant asking them to show cause as to why:

(i) *the Central Excise duty amounting to Rs 8,13,706/- (Rupees Eight Lakh Thirteen Thousand Seven Hundred and Six only) (CENVAT duty Rs 8,09,379/- + Ed. Cess Rs 4,327/-) should not be demanded and recovered from them under the provisions of Section 11A of the Central Excise Act, 1944.*

(ii) *the Central Excise duty amounting to Rs 97,920/- (Rupees Ninety Seven Thousand Nine Hundred and Twenty Only) (CENVAT duty Rs 96,000/- + Ed Cess 1,920/-) on goods removed (1000 kg Menthol) without issuing of proper invoice on 29.10.05 to M/s Unique Allied & Chemicals, Rampur should not be demanded and recovered from them under the provisions of Section 11A of the Central Excise Act, 1944.*

(iii) *the Central Excise duty amounting to Rs 23,501/- (Rupees Twenty Three Thousand Five Hundred and One Only) (CENVAT duty Rs 23,040/- + Ed Cess 461/-) on 360 Kgs DMO valued at Rs 1,44,000/- excess clearance detected from records of the year 2004-05, should not be demanded and recovered from them under the provisions of Section 11A of the Central Excise Act, 1944.*

(iv) *Interest due on all above mentioned recoverable amounts should not be demanded and recovered from them under the provisions of Section 11 AB of the Central Excise Act, 1944/-.*

(v) *Penalty under Section 11AC of the Central Excise Act, 1944 should not be imposed upon them for contravention of provisions of law as mentioned above.*

2.6 Show cause notice was also issued to the partners and manager of the company. As the proceedings against them have been dropped it is not detailed here.

2.7 Show cause notice was adjudicated as per the Order-In-Original referred in Para 1.2 above.

2.8 Aggrieved appellant preferred the appeal before Commissioner (Appeal) which has been dismissed as per the impugned order.

2.9 Aggrieved appellant have filed this appeal.

3.1 Matter is listed today. None appeared in the matter. Learned Authorized Representative is present.

3.2 Earlier Vide Final Order No.71548 of 2019 the appeal was dismissed for non-prosecution. Following was observed while dismissing the appeal:

"The matter was listed on 24 January, 2019, on 04 April, 2019, on 28 June, 2019 and today and on all the four occasions nobody appeared on behalf of the appellant to press the appeal. Therefore, the appeal is dismissed for non-prosecution with a liberty to the appellant to apply for restoration of appeal on showing the sufficient cause for the

absence of representative for hearing on today i.e. 16 August, 2019."

3.3 Subsequently, the restoration application filed by the applicant-appellant was allowed vide Miscellaneous Order No.70001 of 2023 dated 13.07.2023.

3.4 Again when the matter is listed today it is found that none appeared in the matter and no communication has been received seeking adjournment in the matter. It appears that appellant is not interested in pursuing this appeal and accordingly this appeal has been taken up for consideration on the basis of the facts available on record.

3.5 Heard Shri Manish Raj learned Departmental Representative for the Revenue. He submits that:

- the appellants were undertaking the manufacturing and trading activities from the same premises.
- They were without making documents transferring the goods from the manufacturing account to trading account and clearing the same without payment of duty.
- The appellant unit was established in the year 1998-99 and they got registered with the Department only on 19.05.2005.
- Appellants claimed that in the earlier years they were eligible to exemption No.8/2002-CE dated 01.03.2002 and 8/2003-CE dated 01.03.2003 as amended.
- Investigations revealed that the appellant was manipulating their records to remain within the exemption limits. As such the claim of exemption for the small scale exemption after crossing the exemption limit prescribed is not proper and the demand needs to be upheld.

4.1 I have considered the impugned order along with the submissions made during the hearing of the appeal.

4.2 It is interesting to note that the order in original reproduces the show cause notice verbatim while recording the facts of case in para 1 to 24. Para 25 records as follows:

"25 Party requested for supply of non relied upon documents which were provided to the party on 11.04.2008. The party again stated that they have obtained copy of Non relied upon documents and they requested three and half month to file defence reply. Personal hearing was fixed on 17.02.2009, party requested another date as the relative of their consultant died. Another date for personal hearing was fixed on 27.02.2009. In reply received from the party, next date of personal hearing was fixed on 20.03.2009 and 26.03.2009, party again requested to give another date in mid of April 2009 to file defence reply. Further, date of personal hearing was fixed on 28.04.2009, 05.05.2009, 21.05.2009, 24.08.2009, 16/17.09.2009 and 10/11/14/15.12.2009 but the p[arty did not turn up for personal hearing nor did they file any defence reply. So I, proceed to decide the case on the basis of records available with the department."

After having recorded the failure of the appellant to file defence reply and appear for personal hearing the adjudicating authority in the part of order "Discussion and Findings", reproduces the entire show cause notice only by adding phrase "I find" before each paragraph (Paras Number 1 to 22 of Order in Original under the head "discussions and findings"). Para 23 records the failure of appellant to give any defence reply or attend personal hearing and then records, *"It establishes that they have nothing to defend themselves from the charges levelled against them in the show cause notice. Their intention to suppress production and clearance in garb of trading activity with intent to evade duty is clearly established. I further find that the department cannot be expected to prove the case with mathematical accuracy in the case of clandestine removal and evasion of duty. Whatever evidence that is available on records is sufficient to establish the department's case against the party. I find support from the following case laws:*

1. *C C Madras vs D Bhoormal 1983 (13) ELT 1546 (SC)*
2. *Sai Chemicals (P) Ltd Vs C C E Raipur [2010 (257) ELT 457 (Trib Delhi)]*

3. *Sai Metal Industries Ltd. Vs C C E Hyderabad [2010 (256) ELT 631 (Trib Bangalore)*
4. *R A Shaikh Paper Mills (P) Ltd Vs CCE UOI [2010 (258) ELT 198 (Guj)]*

In the first case cited above, the Hon'ble Supreme Court held that onus is also with other party and department is not required to prove the case with mathematical precision.

In the second case cited above, the Hon'ble Tribunal has held that absence of investigation with buyers or evidences on electricity consumption not fatal as quality of evidence relevant and not quantity of evidence. Suppression of production as borne out by records maintained by the assessee amounts to initial discharge of burden by the department. Onus shifts to manufacturer to prove that entries in records not relating to manufacture and removal of goods.

In view of above, I pass the following order:"

So the entire examination of the issue by the adjudicating authority is limited to what has been reproduced above.

4.4 The impugned order records following to uphold the demand confirmed by the adjudicating authority:-

"6.3 As regard to the issue of trading of the similar goods from the premises of the factory engaged in the manufacture of the similar excisable goods, the appellant's contention is that there is no provision either under Central Excise Act, 1944 or Central Excise Rules, 2002 or any other provision desiring the exempted unit to inform the department that they are in the business of trading as well as manufacturing. As far as provisions of new Central Excise Rules, 2002, is concerned, I am in agreement with the appellants to the extent that the present set of rules does not contain any provision on the lines of erstwhile Rule 51A of the Central Excise Rules, 1944 for granting permission to store duty paid goods inside the factory premises. However, there are provision under Rule 16 of the Central Excise Rules, 2002 which allow any manufacturer. to bring into his factory any duty paid goods for specified purposes, to take CENVAT credit of duty paid thereon and to remove the same from his factory after discharge of/reversal of appropriate. duty/CENVAT credit. Further, sub-rule (3) of the said Rule 16 states that in case of any difficulty in following the provisions of sub-rule (1) and (2) of Rule 16, the assessee

may bring the goods for re-made, refined, re-conditioned or for any other reason and may remove the goods subsequently subject to conditions specified by the Commissioner. Thus, in this time. of liberality, the assessee has to bear more responsibility. In this case the appellants admittedly have maintained the parallel sets of records in which entries were made according to their wishes for the products manufactured by them or the similar goods claimed to be purchased. It has been admitted by one of the partners Shri Rajiv Gupta in his statements dt. 01.02.2006 13.02.2006 & dt.12.04.2006 tendered under section 14 of the Central Excise Act, 1944, which have not been retracted that they were maintaining common purchase, sale ledgers & cash book and balance sheets in respect of their trading activities and the manufacturing activities. Further in his statement dated 12.04.2006 Shri Rajiv Kumar has admitted that they were maintaining common bill book in respect of the clearances of goods for their trading activity as well as in respect of their own manufactured goods. It has also been found by the investigation that even the format of invoices issued for both type of sales was same. It was also found that the appellants maintained multiple set of records/ registers at the same time for all the years which were resumed from their premises on 04.01.2006 and for which the investigation prepared year wise table as presented at para 9.6 of the facts of the show cause notice in question. Apart from above the records for packing material i.e. steel/ fibre drums was not maintained in the required manner as has been admitted by Shri Rajiv Kumar Gupta, partner, in his statement dt. 31.01.2006 wherein he stated that the registers relating to G.I. drums/ Fibre drums are not maintained officially. I find that the above mentioned discrepancies are sufficient for investigation of any doubt of suppressing the manufacture by way of showing the trading of goods. I also find that the appellants did not give any cogent explanation for the above discussed discrepancies except reiterating that the statements of Shri Rajiv Gupta, partner, did not mean what the adjudicating authority has understood and that if for the accounting purposes the ledgers are common and nothing is adverse in it The case laws relied upon by the appellants in the case of (i) Transfomers & Electricals Kerala Ltd. vs CC, Cochin 1995 (78) ELT 682 (Tribunal) (ii) Sambhaji vs Ganga Bai 2009 (240) ELT 0161 (SC) are not applicable to the facts of the present case. I rely on the following judgments wherein the Hon'ble Tribunal have stressed upon a respectful observance of provisions of Rules/ law by the honest maintenance of records to prove the menseria of the assesses with regard the payment of duty

(i) COLLR. OF C.E., MADRAS Vs ULTRA MARINE AND PIGMENTS LTD-1985 (22) E.L.T. 4 13 (Trib)

--Accounting of excisable goods must be done according to the prescribed procedure Non-entry of goods according to prescribed procedure is not accounting - Finished goods not entered in the accounting Register will attract Rule 173Q(b).

- The combined R.G.I.- E.B. 4 register is a prescribed document. When a manufacturer is called upon to account for any goods manufactured he has to do so in the manner prescribed and not in the manner that he chooses. [para 22,23]

(ii) *COMMR. OF C.C. E. VAPI vs DAN DETERGENTS LTD.* 2006 (205) E.L.T. 333 (Tri.- Mumb) --1989 (39) E.L.T. 650 (T) - *Ganga Rubber Industries v CCE*- "In this case, the Tribunal observed that maintenance of proper accounts, especially of production, is a very important statutory duty of the appellants. They failed in this regard and rendered themselves liable to penalty"

Therefore, I am of the view that it was obligatory & statutory duty of the appellants that they should have maintained the proper records in such manner to that there was no attempt or otherwise for clandestine removal. However in this case, it is proved that the appellants have knowingly & willfully maintained the multiple sets of records, and not maintained them properly as discussed herein above, actually to suppress the actual turnover of the unit by way of splitting he cleared quantity of manufactured goods into two parts i.e. as traded goods and manufactured one, in the multiple sets of records for their ease to do so, with intent to evade the payment of duty. Even if it is considered that they were also engaged in the trading of the same goods which were being manufactured and cleared by them from the same premises, the appellant No. 1 has acted in complete disregard to the provisions of Rule 16 of the Central Excise Rules, 2002 inasmuch as they did not maintain separate record for such trading purchase and sale. Thus the department allegation that the appellants have suppressed the production of excisable goods is established and the adjudicating authority has correctly passed the order by combining the sale proceeds shown in relation to trading goods with the sale proceeds of manufacturing goods for confirming the central excise duty.

6.4. Now, I proceed to examine the year wise position of value of clearances of manufactured excisable goods for availing SSI exemption, against the allegation that the appellant No. 1 were suppressing the production and clearances of their final products during all the years i.e. during 2002-03, 2003-04, 2004-05 and 2005-06 and for which the Adjudicating Authority has confirmed the demand of Rs 813706/- (Rs 809379/- duty + Rs 4327/- E.Cess) under section 11A of the Central Excise Act, 1944, vis-à-vis the position explained in the grounds of appeal by the

appellants. I find that the tables given in para 13 of facts of the impugned order and in para 9.5 of impugned SCN, states about the total value of home clearances for the years in question and that has been calculated -by including the value of trading goods also considering the fact that goods shown as the trading goods by the appellants were also manufactured in the factory. [find that in the year 2002-03 the total value of clearances of excisable goods has been shown as Rs 1,29,52.82 1/- for domestic sales and thus value of clearance of Rs 29,52,821/- is in excess to. the exemption limit of Rs 100 lakhs during the financial year 2002-03. Therefore, demand of duty of Rs 472452/- is liable to be paid by the appellants which was confirmed by the Adjudicating Authority in the impugned order, In this regard, the appellants have contended that in chart Annexure A-1 for the year 2002-03, the total value of manufacturing sales has been taken as Rs 1,09,97,721.00, which is wrong in as much as that there was a sales return of Rs. 10,44,576.99 in respect of Invoice no. 9 & 11 both dated 13.02.2003 on which the material was sold to Dabur India Limited, Solan Baddi (HP). On return, it was booked as `sale return in the books of account and it was sold again to same party vide invoice no. 18 & 19 both dated 05.03.2003. I find that the appellant's explanation is not justified & correct to be accepted because the total quantity 3240 kg against invoice no. 9 811 dt 13.02,2003 was claimed to be returned which does not match with the total quantity 4140 kg. being excess by 900 kg. claimed to be sold back vide invoice no. 18 & 19 both dt. 05.03.2003, to the same buyer. I find that on 03.03.2003 at page 12 of daily stock account (RG-1) maintained for peppermint a return of 3240 kg is shown without any remark in respect of the said return document or from whom the said return has been received. Further, no supporting document evidencing return of the same has been produced. If at all, the plea is accepted then no explanation in respect of 900 kg of peppermint cleared in excess is given by the appellants. Moreover, there is no provision under notification no. 8/2003-CE dated 1.3.03 to exclude the sales return from the value of clearances. Further, the appellants have mentioned that there was a sale return of Rs.3,13,040.00 for rejection of 650.Kgs of Menthol from M/s Magnum Formatac, which was sold in the year 2003-04 on 02.05 2003. On examination of photocopy of records supplied by the appellants, I don't find such entry in records neither for supply /sale and for return nor there appears any entry for further sale as was claimed by the appellants. In absence of any details evidencing the sale viz invoice no. & date for dispatch or for return and for further sale being not given in the documents produced, I don't agree with the appellants explanation. Rather I find that the goods were manufactured and cleared same

day on 29.04.2003 and not on 02.05.2003 as claimed, as such it confirms the department's view hence it is not acceptable. Therefore, the amount of Rs.13,57,616.99 claimed for deduction from the value of sales for the year 2002-03 cannot be accepted. Thus the manufacturing sales given in chart A-1 are correct to be Rs. 1,09,97,721/-

6.5 Further with regard to trading sales of Rs.19,55,100.00 shown in Annexure A-2, the appellants explain that sale of Menthol at SI. No. 2, has been incorrectly shown as Rs.9,36,000.00 as this invoice relates to sale of EOW for value of Rs.3600.00 only and thus- the total exceeds by Rs.9,32,400.00, and it needs to be reduced. A photo copy of relevant invoice was produced by the appellant. I find that the appellant's explanation is not acceptable on the grounds that (a) the investigation has established that they were maintaining parallel sets of records which is not denied by the appellants. (b) In para 9.6 of SCN & in para 17 of facts of order, the investigation has shown a chart table prepared on the basis of records resumed from the appellants, for the year 2002-03, clearly showing maintained records in parallel for the products manufactured (daily stock account) and purchased goods (raw material register), which is also not denied by the appellants. and in this table at SI. No. 5 clearly shows that EOW is a manufactured product. It is thus evident that the claimed invoice for deduction from the total value of claimed trading account is not appropriate document which has been shown in the annexure-A-2. (c).On examination of the photocopies of registers for the year 2002-03 enclosed by the appellants, I nowhere found entry of the claimed invoice dt. 24.07.2002 produced in this regard. for such value and thus the chart prepared by the investigation is correct (d) The appellants have also themselves admitted that the value for calculation of CE duty comes to RS 1,06,62,704.00 after deducting the values claimed in the para E-2 above, relating to the year 2002-03 and discussed herein above too.

Therefore, the appellant's claim of deduction of any amount from the net sales value is not correct for acceptance rather it gives strength to the allegation of investigation that trading sales are nothing but manipulation of manufactured excisable goods. Therefore I strongly feel that the adjudicating authority has made no mistake in confirming the CE duty Rs 4,72,452/- on differential value of Rs 29,52,821/- being excess to the exemption limit of Rs 100 lakhs during 2002-03. Therefore the appellants are liable to pay the duty as confirmed by the adjudicating Authority.

6.6 Further, I find that for the year 2003-04, the total value of clearances of excisable goods for domestic sales were shown as Rs 1,07,53,789/- including the value of sales of

manufactured goods and the trading as well and thus Rs 7,53,789/- were alleged to be in excess to the exemption limit of Rs 100 lakhs, for which the appellants have been made liable to pay the duty Rs 1,20,607/-. However the chart Annexure 8-1 showing the value for manufacturing sales as Rs 9546364/- and for trading sales as Rs 1207425/- which is also treated as manufacturing sale value.

On this account in para E 3 above, the appellants have contended that the value of Rs 33,54,500/- has wrongly been included in value shown for manufacturing sales was made through Form 'H' vide invoice no. 11 dated 21.08.2003 for Rs.6,54,500.00, invoice no. 13 dated 17,09,2003 for Rs.9,00,000.00 and invoice no. 21 dated 21.10.2003 for Rs. 18,00,000.00. I find that the appellant in this regard refers to guidelines given in Part-II of Excise Manual (CBEC Supplementary Instructions) 2003-04 in Para 4.1.2 under the head Simplified Procedure for Exempted Units which describes the whole procedure for export for exempted units and that the serially numbered, Form 'H' issued by the sales Tax Department for such exports units may be treated as proof of export. However, this facility was available only to those exempted units which undertake exports by themselves or through merchant exporters directly from the unit itself and not for the supplies made to any other domestic manufacturer who may or may not export his finished product. In this regards, I have noticed that appellants have not followed the procedure prescribed in para 4 1.2. since they have not produced the copies of serially numbered form 'H' or ST-XXII Form or any other equivalent Sales Tax form duly attested and stamped by the manufacturer or his authorised agent to be accepted for purpose of proof of export and clarification/ documents in evidence that these supplies were made to merchant exporter directly from their unit for the purpose of export. In view of the above discussion the appellant's explanation is not tenable and value Rs 33,54,500/- cannot be deducted from the total value of manufacturing sales

6.7. Further, in para E.4 above, the appellants have claimed that, in chart B-1 of manufacturing sales, at SI. No.9 wherein the amount should be-R\$.16600.00 instead of Rs. 16250.00 and at SI. No. 31 the amount should be 23,375.00 instead of Rs.24,076.00 and therefore net error on these two accounts is Rs.351.00 as excess, Thus in nut shell the manufacturing value will become Rs.9546013/- instead Rs 9546364/- after deducting Rs.351.00 as excess value error in entry no. 9 & 31 and accordingly duty amount should be reduced by Rs 57/-only. Although, I find that the appellant did not produce any document to substantiate their stand as such their view cannot be accepted

6.8 Further, the appellants claimed that in Annexure B-2 for trading sale, the entry of Rs.11,65,250.00 against invoice no. 8 dated 21.09.2003 has incorrectly been made for the canceled invoice and therefore this amount needed to be deducted from value of trading sales in year 2003-04. I find that the appellants have failed to produce any evidence in support of their claim hence the claim of deduction of the trading value alleged by the department to be the value of manufactured goods virtually, is not acceptable, as the table of annexure B-2 is also prepared on the basis of records/invoices resumed from the appellants during the investigation

Thus the total duty demand of Rs. 1,20,607/- on the net value of clearance including trading sales and manufacturing sales amounting to Rs.10753789/-as confirmed by the adjudicating authority for the period 2003-04 is in order

6.9 As regards the year 2004-05 nothing has to be considered since the table under para 9.5 in SCN and under para 16 of facts of order mention the value of clearances below exemption limits itself hence there was no duty involvements

6.10 The chart D-1 for financial year 2005-06 is showing the total manufacturing sale of Rs.1,55,82,142.00 and apart from this trading sale of Rs.13,52,000.00 in Chart D-2 has also been treated as manufacturing sale. No anomaly has been pointed in manufacturing sales except the only dispute in relation to invoice no. 11 dated 25.11.2005 mentioned at SI. No, 11 of Annexure D-2. (The allegation confirmed in para 20 of impugned order dt.31.03.2011 by the Adjudicating Authority).

I find that on this issue the appellants in para E.6 submitted that the said sale was a transit sale. The material was purchased from M/s Himalayan Chemicals, Kashipur, for Emami Ltd, Gauhati, and it was transported on GR no. 738 dated 25.11.2005 issued by National Transport Co. 'Kashipur' on Road Permit Form-62 issued by Emami Ltd as per The Assam Value Added Tax Rules, 2005. Enroute the documents were lost in Gurgaon by the transporters for which proper FIR was filed at Gurgaon. Thereafter the material was transported further on Consignment Note No. 6467248 dated 30.11.2005 of Transport solution (P) Ltd, New Delhi. The relevant document have also been produced by the appellants. The appellants further stated that in view of this it is substantially proved the goods were not manufactured by them, hence no duty is payable on the same and therefore demand of duty of Rs 2,20,647.00 is not maintainable.

The close look of the impugned order reveals that in financial year 2005-06 (upto closure of the unit) in chart (D-1 & D-2) the total of Rs 16934142/- has been taken as domestic sale of manufactured- goods, and alleged that the clearances of value of Rs. 13,52,000.00 were made without payment of duty of Rs 2,20,647/-(Rs 216320/-duty + Rs 4327/- E.Cess) after obtaining the central excise registration, which was liable to be recovered, as per the chart showing value of clearances and the differential duty. On this point the appellants claims that the amount of Rs.1,55,82,142.00 was of manufacturing sale and Rs.13,52,000.00 was of the trading sale. But the department treats the sale of Rs.13,52,000.00 as the sale of manufactured excisable goods and no other anomaly has been pointed out by the department in respect of sales of manufactured goods.

I have considered the submission of the appellants and the photocopies of the documents submitted before me. I find that the invoice No.11 dt. 25.11.2005 issued by the appellants, is reflecting the movement of goods from Moradabad, on vehicle No.UP-21- N/1979 (vehicle owned by the appellant itself) vide GR_738 dt. 25.11.2005 issued by National Transport Co. Moradabad, and not at Kashipur, as written in grounds of appeal.

It is confirmed by another act of the appellant that, apart from other instances of sending G. I. drums/fibre drums from their manufacturing stock of packing material for packing of so said trading goods under transport note dt.02.09.2005 & 02.10.2005, they sent 80 fibre drums to Kashipur, same time on 25.11.2005 in the same vehicle No.UP-21-N/1979 (their own vehicle), claiming to be empty for packing of the goods i.e. Menthol. They have actually clandestinely cleared the consignment of manufactured goods packed in 80 fibre drums to be routed through Kashipur, under the guise of empty drums, without payment of duty and manipulate the consignment to be passed through kashipur, Thakurdwara, check post under invoice issued by Ms Himalayan Chemicals, Kashipur, for the same consignment. The rest of the story of missing the original documents at Gurgaon and thereafter sending goods to Guahati on Consignment Note No. 6467248 dated 30 11.2005 of Transport solution (P) Ltd New Delhi instead Gurgaun, is concocted one. It is not understood why the goods have not been dispatched directly from Kashipur or Moradabad to Gauhati and why these were sent first to Gurgaun and then dispatched from Delhi. This is not acceptable on the face that they have not produced any evidence of clearances of goods, payment & receipt particulars of the same from the side of M/s Himalyan Chemicals, Kashipur on the basis of bank statement. In

view of the above discussion, it is very well established that the clearances, made by the appellants vide invoice no. 11 dated 25.11.2005 of 2000 kgs of manufactured Menthol to M/s Emami Ltd Gauhati, were fraudulently manipulated as trading goods, and without any doubt these have to be clubbed with manufacturing sale proceeds and thus duty of Rs 2,20,647.00 was liable to be recovered.

Thus, it is substantially proved that goods were actually manufactured by the appellant, but manipulated to be as traded goods. Hence duty is payable on the same. Therefore, demand of duty of Rs 2,20,647.00 was correctly confirmed by the Adjudicating Authority for the period 2005-06 and I do not find any infirmity in the order to this extent.

6.11 I have also considered the appellant's further reiteration that the trading sales cannot be included in the manufacturing sales and even if for the sake of argument it is accepted without admitting that the trading sales and manufacturing sales can be combined the net demand of duty on this account shall be only Rs 1,05,872.64 and I find it is not acceptable on the ground that the value of Rs.13,52,000.00 claimed to be trading sale by the appellant, has been well proved to be the value of manufactured excisable goods and hence the same has to be clubbed with the value of manufactured excisable goods to levy the proper central excise duty accordingly.

6.12. I find that while confirming the demand of duty the Adjudicating Authority relied upon decisions in case laws SAI CHEMICALS PVT. LTD.Vs C.C. EX., RAIPUR 2010 (257) E.L.T. 457 (Tri. Del.), SAI METAL INDUSTRIES LTD.Vs C.C. EX., HYDERABAD- 2010 (256) E.L.T. 631 (Tri. Bang.), R.A. SHAIKH PAPER MILLS PVT. LTD.Vs U O 1 2010 (258) E.L.T. 198 (Guj.). I also rely on theses judgments that the burden of proof shifted on the appellants where they claimed exemption on the basis of records but the records maintained by them created enough doubt about the cause for which these were maintained. I find that in all cases discussed herein above the appellants failed to prove their submission

6.13 I have also examined the issue of availing the credit of Central Excise Duty of Rs.97,920/- (Rs 96,000/- CENVAT + Rs. 1,920/- Ed. Cess) in RG23A-II Entry No. 37 dated 06.10.2005 on the goods returned and subsequently clandestinely removed to Ms Unique Allied & Chemicals, Rampur vide simple transport memo dated 29-10-2005 without payment of duty. I find that the appellant's reply to the above issue, in the grounds of appeal is justified. The photocopy of invoice no. 11 dated 20.09.2005 shows that originally the material was supplied by the Appellant to, M/s

Urmin Products (P) Ltd on invoice No. 11 dated 20.09.2005 for value of Rs.6,00,000/- plus applicable duty, which was returned by M/s Urmin Products (P) Ltd vide Invoice no Scrap 06 dated 23.10.2005 and on return an amount of Rs.97920.00 was taken as credit. I also find that the invoice Sl. No. scrap-06 dt. 23.10.2005 issued by M/s Urmin Products (P) Ltd bearing a reference of invoice no. 11 dt. 20.09.2005 of the appellants.

As regards the alleged question of clandestinely removal of the same to M/s Unique Allied & Chemicals, Rampur vide simple transport memo dated 29-10-2005 without payment of duty, I have considered the reply of the appellants that M/s Unique Allied & Chemicals, a unit availing exemption from duty as SSI unit, supplied 1000 Kgs. of Menthol valuing Rs.4,90,000.00 vide their invoice no. 3 dated 20.04.2005 which was recorded as a trading activity in records in Form - H, for evidence they submitted a photo copy of such invoice appears to tenable. However, the appellants claimed that subsequently the order was cancelled hence the material supplied was returned on 29.10.2005 for value of Rs.4,90,000.00 but no document evidencing their reply to that extent is produced. Hence, I uphold the demand of Rs. 97,920/- as confirmed by the adjudicating authority

6.14 As regards the allegation confirmed in para 20 of impugned order, that on 06-11-2004 the appellant No.1 have cleared 14400 Kg of DMO for Export vide Invoice. No. MP/33 dated 06- 11-2004 after debiting 8408 Kgs from Daily Stock Account Register and 6352 Kgs from Raw Material register and they have clandestinely cleared 360 Kgs of DMO in excess without payment of duty and without issue of proper invoice.

I have considered the appellant's submission that the department has mentioned wrong figures as 8408 Kgs and 6352 Kgs in the show cause notice as well as order-in-original. 31.03.2011. The figures taken by the department are based on two register i.e. register C-3 and Register E. In the register C-3 & E the exact figures are 8048 Kgs and 6352 Kgs on dated 06.11.2004 and also that the figures of DMO as shown by the department at Para no. 20 does not matched with the figures shown by the department at page no. 10 of the show cause notice as well as page no. 11 of the order-in-original.

I do not agree with the appellant's view on the face of the matter explained at page 17 under para 10 of the impugned SCN dt. 18.03.2008, where in it is made clear that figures 8408 Kgs from Daily Stock Account Register "C-4" and 6352 Kgs from Raw Material Register "E" and not in register "C-3" and these figures are also reflected in Annexure -26

submitted by the appellants. Thus, the contention of the appellant is without any substantial evidence on record and therefore it is proved that the appellants have clandestinely cleared 360 Kgs of DMO in excess without payment of duty and without issue of proper invoice. Hence I do not find any infirmity in the impugned order dt. 31.03.2011 in confirming the demand of the duty Rs 23,501/- (Rs 23040/-duty + Rs 461/-E.Cess).

6.15 The department has alleged in the SCN and in facts of the impugned order that appellant No.1 did not have proper accountal of packing material GI Drums/Fibre Drums and have also sent many times, GI Drums/Fibre Drums from their manufacturing stock of packing materials for packing of said traded goods supplied by the appellant No.1 found-mentioned in transport note dated 02-09-2005, 02-10-2005, 25-11-2005 which were issued by the manager of the appellant No. 1 and the goods were also transported by the vehicle owned by the appellant No. 1 bearing Regn. No. UP 21N/1979 (vehicle owned by the appellant)

In this regard I find that the appellants in ground of appeal have submitted that they were exempted from payment of duty during the period 2002-03 to 19.05.2005 and not registered with Central Excise. I find that availing of the benefit of SSI exemption under Notfn. No 8/2002- CE dt.01.03.2002 or 8/2003-CE dt.01.03.2003 as amended, does not exempt them from maintaining the proper records in unit, prescribed in the rules rather in such a case they should be more responsible assessee.

The appellants further states that Mentha Oil is purchased in drums only for the product Menthol for which these drums old and new, are used. Old drums are purchased from open market while new drums are purchased from other manufacturers. Normally it becomes difficult to maintain records of old drums. In cases where old drums are of goods quality finished goods are sold in such drums also. Further that no specific case has been pointed out where excess or shortage in stocks of drums has been noticed and the comment is in general As no duty is involved the appellant has refrained from making any substantial defence in the absence of specific charge. I find that the appellants accepted that for their product Menthol the packing material i.e. drums were essential but their reply that "Normally it becomes difficult to maintain records of old drums" showing their casual approach towards law ask for maintaining the records. However, I find that as no specific allegation regarding evasion of duty is made by the department on basis of investigation hence no cognizance is taken and the benefit of doubt remained in favour of the appellants.

Thus I find that the adjudicating authority is proper & correct in confirming the demand raised in the impugned SCN and in view of the discussion I hereby further uphold the demand of duty as confirmed by the adjudicating authority in the impugned order."

4.5 I find that the issue in the present case is in relation to the manufacture and clearance of the goods. It is the case of department that appellants were manufacturing and clearing the goods claiming exemption under Notification No 8/2002-CE dated 01.03.2002 and Notification No 08/2003-CE dated 01.03.2003, even after crossing the exemption limits as prescribed. It is the case of the revenue that appellant was during the period in dispute undertaking the manufacturing and trading activities from the same premises. However from the facts as available on record, it is evident that at the time of visit of the appellant premises no manufacturing activity was found. In fact no manufacturing facility - plant and machinery was available in the said premises. I find that Order-In-Original itself records as follows:-

"2. Based on specific information, a team of Central Excise Officers from Central Excise, Division- Moradabad visited the noticee firm on 04.01.2006. At the time of visit of the Central Excise Officers, none of the partners of the noticee firm were available in the said premises. The premises of the noticee firm were accordingly searched by the Central Excise Officers in the presence of Shri Rajeev Kashyap, Manager and authorized signatory of the noticee firm. During search of the unit, it was found that plant and machinery were installed in the noticee firm and no manufacturing activities were going on in the unit. A stock of 2428 Kgs. of Essential Oil Waste (EOW) in 15 steel drums of capacity 180 Kg. each and a stock of 169 empty steel drums and 97 empty fibre drums, were however, available in the said premises at the time of physical verification conducted on 04-01-2006."

4.6 If at the time of the visit of the officers there were no manufacturing activities going on in the premises of the appellant and there were no machineries for the production of any type of goods then how it has been concluded that the appellant was during the past period undertaking any manufacturing at the same premises is not clear. No

investigation has been made to determine as to whether any plant and machinery was ever installed in the said premises. If it was installed and removed titan what was investment made by the appellant in the said plant and machinery. On the basis of investigations made revenue has alleged that appellant started manufacture/ production at the said premises from 1998 onwards, and they took registration with central excise with effect from **19.05.2005**. On the date of visit i.e. **04.01.2006** no production machinery was found in the premises. Certain stock of Essential oil waste was found along with certain empty drums. Nothing else was found in the premises. No evidence has been collected during the course of the investigation that the appellant was engaged in any type of manufacturing activities at the said premises. Show cause notice or adjudication and appellate authority do not even record any categorical finding that verification was conducted by the department during the period after grant of registration, when manufacturing activities were noticed at the premises of appellant. It is only on the basis of the statements of Shri Rajeev Kashyap, Manager the entire case of clearance of these goods by claiming SSI Exemption without payment of duty has been made of.

4.7 Undisputedly from the same premises the appellant was undertaking trading activities. Revenue has alleged that, appellant was clearing the manufactured goods in garb of traded goods and thereby manipulating the manufacturing turnover to remain within the exemption limits. The case of revenue is based on the following evidences relied Show Cause Notice (para 8 to 11) and also referred in the order in original para 10 to 21 reproduced below:

"10. Scrutiny of resumed records relating to clearances made by the unit during the years 2002-03, 2003-04 and 2004-05 revealed that the noticee was showing the manufacturing as well as trading activities from the same premises. As per the resumed records, the details of the clearances of various goods by the noticee firm are as follows :

Year	Description of excisable-goods shown as cleared on account of trading activity	Description of goods shown as manufactured and cleared for domestic sale
2002-03	Terpene, Menthol, Essential Oil Waste (EOW)	Menthol, DMO, Peppermint Oil, Mint Peppermint Oil
2003-04	Terpene, Menthol	Terpene, Menthol, Peppermint Oil, Melted Menthol Terpene, Menthol, Bottom Pitch M, Terpene
2004-05	EOW, Terpene, Bottom Pitch/Heyer, Rejected Terpene, Peppermint Oil, DMO, Menthol Crystals, Terpene Oil, Menthyl Chavicol, Menthone Oil Mint Terpene Oil, Mentha Pippermint Oil	EOW, Peppermint Oil, Mint Terpenes, Menthol, Terpenes

11. As regard financial year 2005-06, Sh. Mukul Kumar, one of the partners of the noticee firm, in his statement dated 23.02.06 stated that the noticee firm is closed since November, 2005 and that by the end of December, 2005, all the machineries were also sold out by them. Scrutiny of the resumed records in respect of financial year 2005-06 revealed that upto closing of the unit, clearance of following excisable goods were shown by the noticee in their records:-

Year	Description of excisable goods shown as cleared on account of trading activity	Description of goods shown as manufactured and cleared for domestic sale. (i.e. excluding exported goods)
2005-06	Menthol, (Menthol Crystals 1000 Kg.)	Menthol, Mentha Peppermint Oil, Menthol Crystals, Menthol Rice, Terpene Mentha Bold Crystals.

12. Thus it was found that during the years 2002-03 to 2005-06, the noticee had shown the trading of various goods from their unit, the goods shown as their trading activity were. also the goods which were being manufactured by the noticee firm. As per resumed records and as admitted by Sh. Rajiv Kumar, one of the partners of the noticee firm in his statement dated 01.02.06 and 13.2.06, they were maintaining a common purchase book, balance sheet, ledger and cash book in respect of their trading activities and their manufacturing activities. Scrutiny of the resumed records further revealed-that for the purpose of clearances of the goods from their premises (whether as a trading activity or for clearances of their own manufactured products), the noticee were maintaining separate sets of Bills for clearance of their own manufactured product and product meant for trading. The format of Invoices issued for both type of sales remained same till the noticee got Central Excise Registration. After getting Registration the format of invoices meant for clearance of trading goods and manufactured goods were changed. That there are instances on record showing hat noticee cleared goods of trading stock and manufactured stock combined for export without showing

any transfer from manufacturing stock to- trading stock or vice versa. This type of cases are cited below:

YEAR-2002-03

SI. No.	Invoice No	Date	Product	Quantity Cleared (Kgs)		
				Out of Trading	Out of Manufacturing	Total
1	MP05	27.05.2002	Menthol Melted Powder	2950	11450	14400
2	MP51	15.03.2003	Terpenes	108	6892	7000

YEAR --2003-04

SI. No.	Invoice No	Date	Product	Quantity Cleared (Kgs)		
				Out of Trading	Out of Manufacturing	Total
1	MPO6	08.05.2003	Peppermint Oil	160	380	540
2	MP14	19.06.2003	DMO	1722	7528	9250
3	MP32	07.10.2003	DMO	3800	700	4500
4	MP39	23.03.2004	DMO	11103.5	02896.5	14000
5	MP04	01.05.2003	DMO	9104	4896	14000

YEAR --2004-05

SI. No.	Invoice No	Date	Product	Quantity Cleared (Kgs)		
				Out of Trading	Out of Manufacturing	Total
1	MPO8	01.05.2004	Menthol	1100	7900	9000
2	MPO9	06.05.2004	Peppermint Oil	8640	5760	14400
3	MP11	11.06.2004	DMO	11672	2728	14400
4	MP14	15.07.2004	DMO	11103.50	2896.5	14000
5	MP20	29.07.2004	Menthol	2700	6300	9000
6	MP24	01.10.2004	Menthol	3850	1150	5000
7	MP33	06.11.2004	DMO	8408	5992	14400
8	MP39	14.12.2004	Peppermint Oil	3060	1980	5040
9	MP43	04.02.2005	Menthol	375	9375	9750
10	MP46	16.02.2005	Terpenes	110	90	200
11	Bill No. 6	22.07.2004	EOW	90	435	525

YEAR -2005-06

SI. No.	Invoice No	Date	Product	Quantity Cleared (Kgs)		
				Out of Trading	Out of Manufacturing	Total
1	MP51	05.04.2005	Menthol	7020	180	7200
2	MP54	29.04.2005	DMO	4570	9830	14400
3	MP56	24.05.2005	Terpenes	5705	4795	10500

- I. Besides above on 03.08.2005 a quantity of 3600 Kgs Basil Oil was got transferred from trading stock in Form-IV/Process Register of Basil Oil manufacturing records without issuance of any proper document.
- II. On 04.06.2005 a quantity of 900 Kgs DMO shown as transferred from trading account to manufacturing register from trading stock without issuance of any document.
- III. On 10.10.2005 a quantity of 2700.Kgs. Peppermint Oil have been cleared Trading Stock vide manufacturing* invoice No. MP84 dated 10.10.2005.
- IV. On 25.11.2005 the 80 empty fibre drums were sent by noticee firm for packing of Menthol Crystal which were said to be traded from M/s Himalayan Chemicals, Kashipur to M/s Urmin Products P. Ltd. Ahmedabad

In this regard, Shri Rajiv Kumar, one of the partners in his statement dated 12.4.06 had also stated that they were using a common bill book in respect of the clearances of goods of their trading activities as well as clearances of their own manufactured goods

13. in view of the facts and circumstances mentioned in para 9.4 above, it appears that the noticee knowingly maintained multiple sets of records to suppress their actual turnover to remain below the SSI Exemption limit with intent to evade the payment of duty by way of splitting the sold quantity as well as manufactured quantity among the multiple sets of records so maintained and further resumed on 04-01-2006.

As per the records maintained by the noticee, there was no clear-cut demarcation 1 between their trading activities and manufacturing activities. Even at the time of seeking Central Excise registration in the year 2005, the noticee did not disclose about their trading activities to the Central Excise department. In view of this, the value of clearances of excisable goods shown as trading activity by the noticee during all these years appears to be the clearances of their own manufacturing activity. Taking such value of clearances into account, the value of excisable goods cleared by the noticee for Homestic sale (i.e. other than export) during these years appears to be as follows:

SI No	YEAR	Value of Clearances of excisable goods for domestic sale.	Value of Clearance in excess to the exemption limit (in Rs.)	Cenvat duty @ 16% (in Rs.)
1	2002-03	12952821	2952821*	472452

2	2003-04	10753789	753789	120607
3	2004-05	9869451	NIL	NIL

Party had crossed the exemption limit of Rs. One Crore in the month of March' 2003

4	2005-06 (upto closure of the unit)	Total Value of Clearances of excisable goods for domestic sale	Value of clearances after taking registration on which duty was not paid.	Duty involved		
				CENVAT Duty @ 16%	Educational Cess @ 2%	Total
		Rs.16934142	Rs.1352000	Rs.216320	Rs.4327	Rs.220647
TOTAL CENVAT DUTY			Rs.809379			
Ed. Cess.			Rs.4327			
Total Central Excise duty			Rs.813706			

A. The date wise details of goods cleared by the noticee during 2002-03 (shown as trading sales, clearances of their own manufactured products; and clearances for exports) are as per annexure A1, A-2, & A-3.

B. The date wise details of goods cleared by the noticee during 2003-04 (shown as trading sales, clearances of their own manufactured products; and clearances for exports) are as per annexure B-1, B-2 & B-3.

C. The date wise details of goods cleared by the noticee during 2004-05 (shown as trading sales, clearances of their own manufactured products and clearances for exports are as per annexure. C-1,C-2,& C-3

D. The date wise details of goods cleared by the noticee during 2005-06 (shown as trading sales, clearances of their own manufactured products and clearances for exports) are as per annexure D-1, D-2, & D-3.

E. The date wise summary, prepared from the records resumed, having details of production, clearance/sale, raw material for the years 2002-03, 2003-04, 2004-05 and 2005-06 are annexed to this notice as E, F G & H respectively

14. The fact that the noticee were suppressing the production and clearances of their final products during all these years is further supported by the following:

On 04.01.06, Central Excise officers resumed records/registers from the noticee firm pertaining to the year 2002-03, 2003-04, 2004-05 and 2005-06. The details of

resumed registers are given below by assigning a number to each of the register:

2002-03

S.No	Record maintained (a)			Parallel Record Maintained (β)		
	Name of Register s	Description of Parallel Registers	Assigned Number s	Name of Register s	Description of Parallel Registers	Assigned Number s
1	Daily Stock Account	Menthol	A	Daily Stock Account	Menthol	A-1
		Terpene			Terpene	A-2/A-3
		DMO			DMO	A-4/A-5
2	Daily Stock Account	Peppermint Oil	B	Daily Stock Account	Peppermint Oil	B-1
		L-Menthol			L-Menthol	B-2
3	Raw Material register	Mentha Oil	C	Raw Material register	Mentha Oil	C-1
		DMO				
4	Raw Material register	Basil Oil	D			
5	Daily Stock Account	EOW	E			
6	Daily Stock Account	Menthone	F			

2003-04

SI.No	Record maintained (a)			Parallel Record Maintained (β)		
	Name of Register s	Description of Parallel Registers	Assigned Number s	Name of Register s	Description of Parallel Registers	Assigned Number s
1	Daily Stock Account	Menthol	A	Daily Stock Account	Menthol	A-1
		Peppermint Oil			Peppermint Oil	A-2
					Methyl Chevicol	A-2
2	Daily Stock Account	Terpene	B	Daily Stock Account	Terpene	B-1/B-2
		DMO			DMO	B-3/B-4
3	Daily Stock Account	EOW	C			
4	Daily Stock Account	Basil Oil	D	Raw Material register	Basil Oil	D-1
5	Daily Stock Account	Menthone	E			
		Pipperatta				
6	Raw	Mentha Oil	F			

	<i>Material register</i>	<i>DMO</i>				
		<i>EOW</i>				
		<i>Basil Oil</i>				

2004-05

SI.No	Record maintained (a)			Parallel Record Maintained (β)		
	Name of Registers	Description of Parallel Registers	Assigned Numbers	Name of Registers	Description of Parallel Registers	Assigned Numbers
1	Daily Stock Account	Menthol	A	Daily Stock Account	Menthol	A-1
		Peppermint Oil			Peppermint Oil	A-2
2	Daily Stock Account	Menthone	B	Daily Stock Account	Menthone	A-2
		Methyl Chevicol				
3	Daily Stock Account	Terpene	C		Terpene	C-1/C-2
		EOW			DMO	C-1/C-3/C-4
					EOW	C-1
4	Daily Stock Account	Basil Oil	D			D-1
5	Raw Material register	DMO	E	Raw Material register	DMO	E-1
		Basil Oil			Basil Oil	
6	Raw Material register	Mentha Oil	F			

2005-06

<i>SI.No</i>	<i>Record maintained (a)</i>			<i>Parallel Record Maintained (β)</i>		
	<i>Name of Registers</i>	<i>Description of Parallel Registers</i>	<i>Assigned Numbers</i>	<i>Name of Registers</i>	<i>Description of Parallel Registers</i>	<i>Assigned Numbers</i>
<i>1</i>	<i>Daily Stock Account</i>	<i>Terpene</i>	<i>A</i>	<i>Daily Stock Account</i>	<i>Terpene</i>	<i>A-1</i>
		<i>Menthol</i>			<i>Menthol</i>	<i>A-2/A-3</i>
<i>2</i>	<i>Daily Stock Account</i>	<i>Pepperrmint Oil</i>	<i>B</i>	<i>Daily Stock Account</i>	<i>Pepperrmint Oil</i>	<i>B-1</i>
<i>3</i>	<i>Daily Stock Account</i>	<i>EOW</i>	<i>C</i>		<i>EOW</i>	<i>C-1/D-6</i>
		<i>Menthone</i>			<i>Menthone</i>	<i>C-1/C-2</i>
<i>4</i>	<i>Raw Material register</i>	<i>DMO</i>	<i>D</i>	<i>Raw Material register</i>	<i>DMO</i>	<i>D-1/D-5/D-6</i>
		<i>Basil Oil</i>			<i>Basil Oil</i>	<i>D-2/D-7</i>

					Terpene	D-2/D-3/D-4/D-6
5	Raw Material register	Menthol Flakes	E			
6	Account of raw Material and Component s	Mentha Oil	F	Stock Register	Mentha Oil	F-1
7	Process Register	Menthol Flakes	G	Process Register	Menthol Flakes	G-1
		Mentha Oil			Mentha Oil	
8	Daily Stock Account	Pipperatta	H			

On comparison of registers marked as (a) and (β), it was found that in both type of registers the noticee has entered the details of materials for the same period.

15. The noticee were clearing their finished goods packed in G.I. drums and fibre drums. On 04.01.06, the Central Excise officers resumed three registers having the details of receipt and issue of drums for the period 2002-03; 2003-04, 2004-05 and 2005-06. The comparative charts of the said registers marked as "P", "Q" and "R" are annexed as Annexure "I" to the show cause notice.

16. In all three registers there were entries relating to opening balance, receipt, issue, closing balance, of G I drum and fibre drums. On comparison of these registers instances were noticed when the clearances of drums have even exceeded from stock available on the records and also the closing balance has not been correctly carried forward several times. When these discrepancies were pointed out to the noticee, Shri Rajiv Kumar Gupta one of the partners of the noticee firm in his statements dated 31.01.06 stated that in the records resumed by the visiting team on 04.01.2006, the registers relating to GI drums and Fibre drums are not maintained officially. That records were maintained by the staff to prove their accountability to the firm unofficially

17. Thus the intention of the Noticee to remove the goods clandestinely without payment of Central Excise Duty is also supported by the act of non maintenance of proper/official records for packing material i.e. G.I. drums/ Fibre drums. This is further supported by the fact that the number of G.I. drums/Fibre drums shown on the sale invoice do not tally with the number. of G.I. drums/Fibre drums issued for packing of sold goods

18. Further, the intention of the noticee to remove the goods clandestinely without issuance of proper invoice and without payment of proper duty is also supported by the act that noticee received 1000 Kgs of Menthol as rejected from M/s Urmin Products P. Ltd. vide invoice No. Scrap-06 dated 23.10.2005 (RUD-21, 22). The noticee also availed the credit of Central Excise Duty to the tune of Rs. 96,000/- (CENVAT) + Rs. 1,920/ (Ed. Cess) = Rs. 97,920/- in their RG23A-I Entry No. 37 dated 26.10.2005. These goods were subsequently clandestinely removed to M/s Unique Allied & Chemicals, Rampur vide simple transport memo dated 29-10-2005 without payment of duty.

19. In addition to above, the Noticee also appear to have evaded the payment of Central Excise duty as per details below

- Noticee have also cleared 2000 Kgs. Menthol to Ms Emami Ltd. on 25.11.05 A/ through bill No. 011 dated 25.11.05 valued Rs.1352000/- without payment of /a Central Excise duty amounting to Rs.2,20,647/- (Cenvat duty Rs.216320/- + Education Cess Rs.4327/-) purchased from M/s Himalyan Ltd., Kashipur, said to be the transit sale (Detailed at Para 9.5 above).
- The noticee have also sent many times packing material GI Drums/ Fibre Drums for packing of said traded goods from their manufacturing stock of A packing materials, supplied by the noticee as mentioned in transport note/ dated 02-09-2005, 02-10-2005, 25-11-2005 issued by the manager of the noticee and the goods were also transported by the vehicle owned by the noticee bearing Regn. No. UP 21N/1979
- On 06-11-2004 noticee cleared 14400 Kgs of DMO for Export vide Invoice No. MP/33 dated 06-11-2004 after debiting 8408 Kgs from Daily Stock Account Register and 6352 Kgs from Raw Material Register. Thus, they have cleared 360 Kgs of DMO in excess clandestinely without payment of duty and without issue of proper invoice.

20. It further appeared that the Noticee knowingly maintained multiple sets of records with intent to suppress their actual turnover to remain below the exemption limit to evade the payment of duty, therefore the proviso to Section 11A of Central Excise Act, 1944 for extended period appears to be applicable in the instant case.

21. Thus, it appeared that Noticee has contravened the provisions of Rule 4, 6,&9, 10, 11 and 12 of Central Excise Rules, 2002 read with Section 6 of Central Excise Act, 1944 and Notification No. 8/2002-CE dated 01-03-2002 and 08/2003-CE dated 01-03- 2003 and hence liable for payment of Central Excise duty together with interest under

the proviso to Section 11A (1) read with Section 11AB of the Central Excise Act, 1944. The noticees are also liable for penal action as per the provisions of Section 11AC of the Central Excise Act, 1944 for contravention of Rules ibid."

4.8 From the perusal of entire evidence relied against the appellant, the entire case is based on the records said to be maintained commonly for the self manufactured goods and traded goods. On the basis of records revenue has alleged that what has been said to be traded should be included in the manufacturing turnover. However no evidence in respect of actual manufacture of the traded goods has been adduced. . Even in the statement recorded no admittance with regard to manufacturing comes out. It only says a common account was being maintained. There is no inquiry being made in the investment in plant and machinery. The entire case has been made out by treating the entire trading activities turnover to be the manufacturing turnover as no evidence has been adduced that appellant had taken manufacturing activities at the said premises. The demand has been made on the basis of presumption and without proper appreciation of evidence.

4.9 In the impugned order reliance is placed on the decisions of tribunal which are clearly distinguishable. The decision in the case of Ultramarine Pigments Ltd [1985 (22) ELT 413 (T)] and Dan Detergents Ltd [2006 (205) ELT 333 (T)] and Ganga Rubber Industries [1989 (39) ELT 650 (T)] are in respect of the earlier Central Excise Rules, 1944 and not in respect of the Central Excise Rules, 2002 which were applicable and hence are clearly distinguishable. Further in all the cases referred the party at the time of visit of their premises was engaged in manufacturing activities at the said premises. Further these are in case of the unit which was registered with the central excise at the relevant time, and not in the case of the unit which was availing exemption and was not registered.

4.10 The decisions in the case of Sai Chemicals Pvt. Ltd.[2010 (257) E.L.T. 457 (Tri. Del.)], Sai Metal Industries Ltd.[2010

(256) E.L.T. 631 (Tri. Bang.)] & R.A. Shaikh Paper Mills Pvt. Ltd.[2010 (258) E.L.T. 198 (Guj.)] have been referred by both the lower authorities in their order, without even stating clearly the reason for placing reliance on these cases in facts of the case in hand. Principle of law as stated in the decision is not in dispute. The burden of proof will shift on the appellant once revenue establishes with the tangible evidence their case against the appellant. I do not find any merits on the reliance placed on this decision without specifying the purpose for which they have been relied upon.

4.11 I do not find any merits in the impugned order.

5.1 Appeal is allowed.

(Dictated and pronounced in open court)

Sd/-

**(SANJIV SRIVASTAVA)
MEMBER (TECHNICAL)**

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