

**IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE
TRIBUNAL
REGIONAL BENCH : ALLAHABAD
COURT No. I**

APPEAL Nos. E/1949-1952/2010-EX[SM]

(Arising out of Order-in-Appeal No. 83 to 86-CE/LKO/2010 dated 31/03/2010 passed by Commissioner of Central Excise & Customs (Appeals), Lucknow)

M/s Musk Tobacco (India) Pvt. Ltd. (in Appeal No. E/1949/2010),

Shri Kaml Singh Yadav (in Appeal No. E/1950/2010),

Shri Lekh Raj (in Appeal No. E/1951/2010) &

Shri Roop Singh (in Appeal No. E/1952/2010)

Appellant(s)

Vs.

Commissioner of Central Excise, Lucknow

Respondent(s)

Appearance:

Shri Bipin Garg (Advocate) & Ms. Stuti Saggi (Advocate) for Appellant(s)
Shri Pawan Kumar Singh (Supdt.) AR for Respondent(s)

CORAM:

Hon'ble Mr. Anil G. Shakkarwar, Member (Technical)

Date of Hearing : 08/06/2018

Date of Decision : 08/06/2018

FINAL ORDER NOs. **71091-71094 / 2018**

Per: Anil G. Shakkarwar

Present appeals are directed against Order-in-Appeal No. 83 to 86-CE/LKO/2010 dated 31.03.2010 passed by Commissioner (Appeals) Central Excise and Customs, Lucknow. The above stated four appeals are arising out of same impugned Order-in-Appeal and, therefore, they are taken together for decision.

2. Brief facts of the case are that M/s Musk Tobacco were manufacturer of cigarettes falling under Chapter 24 of Schedule to Central Excise Tariff Act, 1985. Their unit was under physical control. The officers of Central Excise Intelligence visited the factory premises of the appellant on 26.09.2007 and found that 15,000 loose cigarettes were lying in the factory which were not entered into RG-1 register as on the date of visit. The said cigarettes valued at Rs.4,000/- were seized through Panchnama dated 26.09.2007. Further the officers conducted searches and investigations at residential premises of Shri Roop Singh where they seized 2,88,000 sticks of cigarettes of Captan brand cigarettes. They further seized 2,40,000 sticks of Perfect brand cigarettes at transporter premises of M/s Baba Roadline, Kashganj. They further seized 70,000 sticks of Perfect brand cigarettes at Ganesh Trading Company, Ludhiana and also seized 1,20,000 sticks of Perfect brand cigarettes at Varanasi Cantt. Railway Station. All the above stated cigarettes were presumed to have been manufactured by the appellant and, therefore, the appellant were issued with a show cause notice dated 20.03.2008 with a proposal to confiscate the said goods, demand Central Excise Duty of Rs.6,20,023/- and there were proposals to impose personal penalty under Section 26 of Central Excise Rules, 2002 on Shri Kamal Singh Yadav, Shri Lekh Raj and Shri Roop Singh. M/s Musk Tobacco submitted before the Original Authority that the

cigarettes manufactured by them were covered by physical system of control and no cigarettes manufactured by them can go out of the manufacturing premises without physical presence of the Central Excise Officers and, therefore, the allegations of clandestine removal were baseless. Further, they also sought for cross examination of various persons whose statements were relied upon for issue of said show cause notice. The said show cause notice was adjudicated through Order-in-Original No. 22/ADC/LKO/2009 dated 31.08.2009 wherein the Original Authority confiscated seized goods and imposed redemption fine of Rs.3 lakhs. Further he confirmed the demand of Rs.6,20,023/- and imposed equal penalty on the manufacturer. Further he imposed personal penalty of Rs.2 lakhs on Shri Kamal Singh Yadav, that of Rs.2,40,000/- on Shri Roop Singh and that of Rs.60,000/- on Shri Lekh Raj. Aggrieved by the said order manufacturer and above stated persons filed appeal before Commissioner (Appeals). Before the learned Commissioner (Appeals) the appellants also took up the matter of non-acceptance of their request for cross examination of the persons whose statements were relied upon for issue of said show cause notice. The learned Commissioner (Appeals) decided the said appeals through impugned Order-in-Appeal. Learned Commissioner (Appeals) did not interfere with said Order-in-Original dated 31.08.2009. Aggrieved by the said order appellants are before this Tribunal.

3. Heard the learned counsel for the appellants he has submitted that there is no provision in Central Excise Act to seize the goods which are within the factory premises and which have not been removed without payment of duty from the factory. He further submitted that if the goods are removed from the factory without payment of duty then they became contravened goods and they can be confiscated. He has further submitted that goods out of the goods confiscated 15,000 sticks of cigarettes were found within the factory premises so their confiscation is not sustainable. He has further submitted that cigarettes which were found at transporter premises of Shri Baba Roadlines and trading premises of M/s Ganesh Trading Company and at Varanasi Cantt. Railway Station were not manufactured by them and, therefore, the duty liability on the same cannot be fasten on them. He further submitted that the cigarettes which were claimed to have in excess of the recorded quantity at the residential premises of Roop Singh were those which were recorded to be in excess without actual verification at the said residential premises. He further submitted that residential premises of Shri Roop Singh was used for storing duty paid cigarettes after clearance. He further submitted that in view of the physical control it was not possible to remove cigarettes to the residential premises of Shri Roop Singh without payment of Central Excise Duty. He further submitted that in view of the ruling in the Hon'ble High Court of Punjab & Haryana in

the case of Jindal Drugs Pvt. Ltd. reported at 2016 (340) ELT 67 (P & H) such statements which have not been examined by the Adjudicating Authority as in examination in chief cannot be relied upon as admissible evidence.

4. Heard the learned AR who has supported the impugned Order-in-Appeal.

5. Having considered the rival contention and on perusal of record I find that 15,000 cigarettes which were lying within the factory premises were not contravening goods and had not violated any provision of Central Excise Act and, therefore, their confiscation is set aside. The Original Authority should have ordered them to be recorded in RG-1 so that on clearance they suffer duty. The goods which were within the factory premises were not the goods which has contravened the provision of law and, therefore, they were not liable to be confiscated. In respect of other goods which were confiscated such as at the transporter premises of Baba Roadlines and at trading premises of Ganesh Trading and at Varanasi Cantt. Railway Station the redemption fine cannot be directed to be paid by the appellants because said goods were proceed to have been manufactured by the appellant. Further in respect of 2,88,000 sticks of Captan brand cigarettes stated to have been found in excess at the residential premises of Shri Roop Singh it can be very clearly inferred that they cannot be contravening goods because the

manufacturers factory was under physical control and it was not possible to remove manufactured goods without payment of duty. I, therefore, set aside the impugned Order-in-Appeal and allow the appeals. The appellants shall be entitled for consequential relief as per law.

(Dictated and pronounced in Court)

Sd/-
(Anil G. Shakkarwar)
Member (Technical)

Ankit