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

APPEAL Nos. E/1134-1137/2012-EX[DB]

(Arising out of Order-in-Appeal No.15-18-CE/APPL/NOIDA/2012 dated 23/01/2012 passed by Commissioner (Appeals), Customs, Central Excise, Noida)

M/s Maral Overseas Ltd. **Appellants**

Vs.

Commissioner of Central Excise, Noida **Respondents**

Appearance:

Shri Sharad C. Tewari (Consultant) for Appellant
Shri Mohd. Altaf (Asstt. Commr.) AR for Respondent

CORAM:

Hon'ble Mrs. Archana Wadhwa, Member (Judicial)
Hon'ble Mr. Anil G. Shakkarwar, Member (Technical)

Date of Hearing : 19/07/2018
Date of Decision & Pronouncement : 07/08/2018

FINAL ORDER NOs. - **71807-71810/2018**

Per: Archana Wadhwa

All the four appeals are being disposed of by a common order as they arising out of the same impugned order of Commissioner (Appeals) and in the same set of facts and circumstances.

2. After hearing both the sides duly represented by Shri Sharad C. Tewari learned advocate (Consultant) and

Shri Mohd. Altaf learned A.R. for Revenue, we note that the appellant M/s Maral Overseas Ltd., is engaged in the manufacture of Ready Made Garments in their Unit located at A-11, Hosiery Complex, Phase-II Noida (hereinafter referred to as Unit No.1). As per the appellant due to shortage of space they took three more premises situated at A-11, B-29 and A-194, Sector 83 Noida (hereinafter referred to as Unit No.2, 3 & 4).

3. All the four units of the appellants were put to search on simultaneously by the Central Excise Officers on 02/05/2008. Whereas shortages of Ready Made Garments were detected at Unit No.1, the same were found to be in excess at the various other units i.e. Unit No.2, 3 & 4. The excesses found in the said units were put under seizure on the reasonable belief that the same stand cleared from Unit No.1 without payment of duty.

4. In view of the above background proceedings were initiated against Unit No.1 vide show cause notice dated 03/06/2010 alleging clandestine removal and proposing to confirm duty on the same along with imposition of penalty. Similarly proceedings were initiated against Unit No.2, 3 & 4 by way of issuance of three show cause notices all dated 29/10/2008 proposing confiscation of

the excess found goods along with imposition of penalties.

5. The said show cause notices culminated into orders passed by the Original Adjudicating Authority vide which demand of duty of Rs.6,81,831/- was confirmed against Unit No.1 on the allegations and findings of clandestine removal of their final product. In addition duty of Rs.6,17,526/- was confirmed on shortages of finished goods and Rs.8,95,449/- was confirmed being involved on the shortages of raw materials. The Adjudicating Authority also confirmed the interest amount and imposed penalty of identical amount.

In respect of show cause notices issued to Unit No. 2, 3 & 4, the excess found goods were confiscated with an option to the appellant to redeem the same on payment of redemption fine of Rs.7 lakhs, Rs.1.5 lakh, and Rs.7 lakhs each in respect of the three units. Further penalty of Rs.4,50,601/- was imposed on Unit No.2 along with penalty of Rs.2 lakhs on Shri Anil Maheshwari Vice President of the Company. Penalty of Rs.1,13,423/- was imposed upon Unit No.3 along with imposition of penalty of Rs.1 lakh on Shri Anil Maheshwari Vice President and penalty of Rs.4,49,206/- was imposed on Unit No.4 along with imposition of penalty of Rs.2 lakhs on Shri Anil Maheshwari Vice President of Company.

The said order of the Original Adjudicating Authority stand confirmed by Commissioner (Appeals) and hence the present four appeals by the appellants.

6. After hearing both the sides and after going through the impugned order, we note that Unit No.1 of the appellant is an integrated Ready Made Garments factory and undertakes various numerous industrial processes which includes 'Conversion of Yarn into Fabric arranged on job work basis', Washing, Bleaching, Dyeing, Sizing, Cutting, Stitching (Panel Making), Stitching (Garmenting), Accessorizing, Quality Control & Packing etc. As per the appellant the huge export turnover requires sizeable amount of manufacturing activities, which could not be undertaken in their premises and as such they have taken other premises for carrying out a part of the manufacturing process. These processes were being carried out by Unit No. 2, 3 & 4 on job work basis from the rented premises and after carrying out the said job the goods were being returned to their Unit No.1 and after carrying out further processes, the same were being cleared on payment of duty. As such they have taken a

plea that there was no shortages of goods in Unit No.1 inasmuch as they were found to be in excess in Unit No.2, 3 & 4. As regards the non registration of Unit No. 2, 3 & 4, they submitted that since the said Units were only doing the job work as also their clearances were less than the exemption limit provided to small scale industries in terms of Notification No.08/2003-CE dated 01/03/2003, there was no requirement to take the registration. However, they fairly agreed that the proper procedure under Notification No.214/86-CE was not followed by them, which is only a procedural requirement and was an inadvertent mistake on their part.

7. We note that the entire case of the Revenue is based upon the shortages detected in Unit No.1 and the excesses found in Unit No.2, 3 & 4. Whereas the Revenue has considered the shortages in Unit No.1 as clandestine clearance, the excesses found in the other units stand confiscated along with imposition of penalties.

8. We note that first of the shortages by themselves, without there being any corroborative evidence cannot lead to the finding of clandestine removal. The legal position in respect of the said issue stands considered by various precedent decisions of the Tribunal as also High

Courts. Reference can be made to the Hon'ble Allahabad High Court decision in the case of Commissioner of Central Excise, Kanpur vs. Minakshi Castings 2011 (274) E.L.T. 180 (All.) as also to the Hon'ble Punjab & Haryana High Court decision in the case of Commissioner of Central Excise, Chandigarh vs. Nachiketa Paper Ltd. 2008 (225) E.L.T. 194 (P & H). It stands held in the said decisions that the shortages of the final product detected by the officers during the course of their visit in the assessee's factory are not enough to hold charge of clandestine removal in the absence of any investigations conducted by the Revenue so as to identify the buyer or supplier of the raw material.

In the present case, we note that apart from the shortages, Revenue has not referred to any other evidence on record to indicate or to establish that the short found goods stand cleared by Unit No.1 without payment of duty. As such, we hold that the findings of clandestine removal against the said Unit are unsustainable.

9. In any case and in any view of the matter the shortages found in Unit No.1 were almost equal to the goods seized in Unit No.2, 3 & 4. The Revenue has

confiscated the excess found goods in Unit No.2, 3 & 4 even though the said units were not registered with the Department and there was no requirement for their registration inasmuch as they were doing the job work for Unit No.1 and was not manufacturing any final product. Their clearances were also less than the exemption limit available in terms of small scale units. As such, we find no justification for confiscation of the said excess found goods in their premises, which are nothing but the shortages detected in the Unit No.1. Accordingly, the confiscation of the same and imposition of penalties on the said units are set aside.

10. In view of the foregoing, impugned orders are set aside and all the four appeals are allowed with consequential relief to the appellants.

(Pronounced in Court on 07/08/2018)

Sd/-	**Sd/-**
(Anil G. Shakkarwar)	**(Archana Wadhwa)**
Member (Technical)	**Member (Judicial)**

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