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

APPEAL Nos.E/70573-70583/2016-EX[DB]

(Arising out of Order-in-Original No. 06-08/PR.COMMR./MRT/2016 dated 14/03/2016 passed by Principal Commissioner of Customs, Central Excise & Service Tax, Meerut-I)

M/s Super Fashion Fasteners Pvt. Ltd. (In Appeal No.70573/2016)

M/s Omega Zippers Pvt. Ltd. (In Appeal No.70574/2016)

Shri Hitin Malhotra, Director (In Appeal No.70575/2016)

Shri Ashok Kumar Malhotra, Director (In Appeal No.70576/2016)

Shri Anupam Mehta, Director (In Appeal No.70577/2016)

Shri Gulshan Kumar Bhatia, (In Appeal No.70578/2016)

Shri Amit Mehta, (In Appeal No.70579/2016)

Shri Umesh Gupta, (In Appeal No.70580/2016)

Shri Ramandeep Singh, (In Appeal No.70581/2016)

Shri Satish Kumar Bansal (In Appeal No.70582/2016) **&**

Shri Shailesh Kumar Kharbanda(In Appeal No.70583/2016) **Appellants**

Vs.

Principal Commissioner of Central Excise, Meerut-I **Respondents**

Appearance: **(In Appeal Nos.70573-70577/2016)**

Shri K.K. Anand, Advocate for Appellants
Shri Rajeev Ranjan, Joint Commissioner, (AR) for Respondents

Date of Hearing : 12/12/2017
Date of Pronouncement : 28/02/2018

Appearance: **(In Appeal Nos.70578-70583/2016)**

Shri A.P. Mathur, Advocate for Appellants
Shri Sandeep Kumar Singh, Deputy Commissioner (AR), for Respondents

Date of Hearing : 28/02/2018
Date of Decision : 28/02/2018

CORAM:

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

FINAL ORDER Nos-**70748-70758 / 2018**

Per: Anil G. Shakkarwar

The above stated 11 appeals are arising out of Order-in-Original No.06-08/PR.COMMR./MRT/2016 dated 14/03/2016 passed by Principal Commissioner of Customs, Central Excise & Service Tax, Meerut-I. Since all the above stated appeals are arising out of a common Order-in-Original, they are taken together for decision.

2. The brief facts of the case are that M/s Super Fashion Fasteners Pvt. Ltd. (hereinafter referred to as M/s Super) and M/s Omega Zippers Pvt. Ltd. (hereinafter referred to as M/s Omega) were engaged in manufacture of Zip Fasteners, falling under Chapter 96 of Schedule to Central Excise Tariff Act, 1985. On 21/09/2012 officers of Director General of Central Excise Intelligence conducted simultaneous searches at the factory premises of M/s Super and M/s Omega and at residences of their Directors Shri Anupam Mehta and Smt. Jyoti Mehta. As on 21/09/2012 both M/s Super and M/s Omega were declerants and had not registered themselves with Central Excise. From the factory premises of M/s Super certain documents, two laptops and one CPU were resumed by the officers. Further, finished goods, intermediate and raw materials were detained and were subsequently seized on 29/10/2012. At the residence of

Shri Anupam Mehta and Smt. Jyoti Mehta a pen drive and certain documents were recovered, in addition some torn invoices of M/s Super were also found in the residential premises of Shri Anupam Mehta. On 21/09/2012 statement of Shri Hitin Malhotra, Director of Omega was recorded who stated that during the Financial Year 2011-12 the turnover of the unit was Rs 1.2 crores and therefore, they had not got themselves registered with Central Excise. In respect of the documents resumed, he stated that the documents were in respect of two companies namely M/s Omega and M/s Super and that the documents available were prepared by him in his own hand writing and he further stated that sale and purchase accounts of M/s Super and M/s Omega were maintained by him combinedly in the said documents. Statements of Shri Ashok Kumar Malhotra, Director of M/s Super and that of Shri Anupam Mehta, Director of M/s Super were also recorded on 21/09/2012. In his statement Shri Anupam Mehta stated that the documents maintained in the file were related to M/s Super and they were maintained in his hand writing and hand writing of Shri Vipin Gupta. On the basis of said information and on the basis of data retrieved from the CPU, Laptops and Pen Drive and on the basis of further investigations data was examined and on the basis of data retrieved from Pen drive, a demand was raised through show cause notice dated 17/07/2014. On the basis of data retrieved through Pen drive which was recovered from the residence of Anupam Mehta for the period from April, 2009 to March, 2012, Revenue has arrived at total sales value of Rs.62,27,06,851/-. It was contended in the said show cause notice that the said value was related to value of goods clandestinely manufactured and removed jointly by M/s Super and M/s Omega during the period from April, 2009 to March, 2012. In addition, on the basis of hand written pages and details taken from torn parallel invoices value of clearance of alleged clandestine quantity was arrived at Rs.92,58,952/- for the period from April, 2009 to March, 2013 jointly by M/s Super and M/s Omega. Revenue further calculated on the said value of clearances Central Excise duty involved to be Rs.6,49,47,310/-. Further, through sub-para-(iii) of Para-23 of said show cause notice, the said duty liability was apportioned between M/s Super and M/s Omega on the basis of ratio of electricity consumption by M/s Super and M/s Omega. For the said purpose the amount of electricity bills paid by both were taken for the years

2009-10, 2010-11, 2011-12 and up to August, 2012 and their ratio was calculated and further value of alleged clandestine clearances for the said period were apportioned in the ratio arrived at, on the basis of electricity bills paid and alleged value of clandestine clearance by M/s Super and M/s Omega were arrived at and subsequently on that basis duty liability was calculated. On the said basis availment of duty liability of alleged clandestine clearance, the said show cause notice made following proposals, which are reproduced below:-

"33. *Now, therefore,* ***M/s Super Fashion Fasteners Pvt. Ltd.,*** *A-5, Industrial Estate Partapur, Meerut, Uttar Pradesh are called upon to show cause to the Commissioner, Central Excise, Meerut-I Commissionerate, Opp. Chaudhary Charan Singh University, Mangal Pandey Nagar, Meerut-250005, within 30 days of receipt of this Show Cause Notice as to why:-*

(i) Value of the clearances of ***Rs.33,49,59,675/-*** *out of the total value of clearances of* ***Rs.61,97,34,243/-*** *recorded jointly for M/s Super and M/s Omega in the resumed documents and retrieved data, should not be apportioned to them and Central Excise duty amounting to* ***Rs.3,24,93,572/- (Rupees Three Crore Twenty Four Lakh Ninety Three Thousand Five Hundred Seventy Two Only)*** *leviable on the said apportioned value of clearances of* ***Rs.33,49,59,675/-*** *should not be demanded and recovered from them under Section 11A(4) of the Central Excise Act, 1944 read with the proviso to*

erstwhile Section 11A(1) of the Central Excise Act, 1944.

(ii) *Central Excise duty amounting to* ***Rs.3,67,415/- (Rupees Three Lakh Sixty Seven Thousand Four Hundred Fifteen Only)*** *leviable on the clearances of Zip Fasteners valued at* ***Rs.29,72,609/-*** *made by them on parallel invoices (including clearance of 05 bags of Zip Fasteners mentioned in the resumed documents) during September, 2012 should not be demanded and recovered from them under Section 11A(4) of the Central Excise Act,1944 read with the proviso to erstwhile Section 11A(1) of the Central Excise Act, 1944.*

(iii) *Central Excise duty amounting to* ***Rs.8,89,573/- (Rupees Eight Lakh Eighty Nine Thousand Five Hundred Seventy Three Only)*** *leviable on the clearances of Zip Fasteners valued at* ***Rs.86,12,165/-*** *made by them on bills during the period from 03.01.2010 to 21.07.2010, April, 2012, August, 2012 and September, 2012 for which private records were not available, should not be demanded and recovered from them under Section 11A(4) of the Central Excise Act,1944 read with the proviso to erstwhile Section 11A(1) of the Central Excise Act, 1944.*

(iv) *Central Excise duty amounting to* ***Rs.11,43,279/- (Rupees Eleven Lakh Forty Three Thousand Two Hundred Seventy Nine Only)*** *leviable on the clearances Zip Fasteners valued at* ***Rs.92,49,830/-*** *made by them during October, 2012 to March, 2013 after obtaining Central Excise registration, should not be demanded and recovered from them under Section 11A(4) of the Central Excise Act,1944 read* *with the proviso to erstwhile Section 11A(1) of the Central Excise Act, 1944.*

(v) Interest on the Central Excise duty demanded above should not be demanded and recovered from them in terms of the Section 11AA of the Central Excise Act, 1944 read with erstwhile Section 11AB of the Central Excise Act, 1944.

(vi) Penalty should not be imposed upon them under Section 11AC of the Central Excise Act, 1944 read with Rule 25 of Central Excise Rules, 2002.

(vii) Central Excise duty amounting to Rs. 42 Lakh paid by them voluntarily during investigation should not be appropriated towards the duty demanded above.

34. *Further, **M/s Omega Zippers Pvt. Ltd.,** S1, Industrial Estate Partapur, Meerut, Uttar Pradesh are also called upon to show cause to the Commissioner, Central Excise, Meerut-I Commissionerate, Opp. Chaudhary Charan Singh University, Mangal Pandey Nagar, Meerut-250005, within 30 days of receipt of this Show Cause Notice as to why:-*

*(i) Value of the clearances of **Rs.28,47,74,568/-** out of the total value of clearances of **Rs.61,97,34,243/-** recorded jointly for M/s Super and M/s Omega in the resumed documents and retrieved data, should not be apportioned to them and Central Excise duty amounting to **Rs.2,79,92,210/- (Rupees Two Crore Seventy Nine Lakh Ninety Two Thousand Two Hundred Ten Only)** leviable on the said apportioned value of clearances of **Rs.28,47,74,568/-** should not be demanded and recovered from them under Section 11A(4) of the Central Excise Act, 1944 read with the*

proviso to erstwhile Section 11A(1) of the Central Excise Act, 1944.

(ii) *Central Excise duty amounting to* ***Rs.9,16,855/- (Rupees Nine Lakh Sixteen Thousand Eight Hundred Fifty Five Only)*** *leviable on the clearances of Zip Fasteners valued at* ***Rs.87,66,126/-*** *made by them on bills during the period from 03.01.2010 to 21.07.2010, April, 2012, August, 2012 and September, 2012, for which private records were not available, should not be demanded and recovered from them under Section 11A(4) of the Central Excise Act, 1944 read with the proviso to erstwhile Section 11A(1) of the Central Excise Act, 1944.*

(iii) *Central Excise duty amounting to* ***Rs.11,44,406/- (Rupees Eleven Lakh Forty Four Thousand Four Hundred Six Only)*** *leviable on the clearances of Zip Fasteners valued at* ***Rs.92,58,952/-*** *made by them during October, 2012 to March, 2013 after obtaining Central Excise registration, should not be demanded and recovered from them under Section 11A(4) of the Central Excise Act, 1944 read with the proviso to erstwhile Section 11A(1) of the Central Excise Act, 1944.*

(iv) *Interest on the Central Excise duty demanded above should not be demanded and recovered from them in terms of the Section 11AA of the Central Excise Act, 1944 read with the proviso to erstwhile Section 11AB of the Central Excise Act, 1944.*

(v) *Penalty should not be imposed upon them under Section 11AC of the Central Excise Act, 1944 read with Rule 25 of Central Excise Rules, 2002.*

(vi) Central Excise duty amounting to Rs. 49 Lakh paid by them voluntarily during investigation should not be appropriated towards the duty demanded above.

35. *Shri Anupam Mehta, Director of M/s Super, who masterminded whole operation of clandestine production, storage and removal of the excisable goods and who was responsible for day-to-day working of the company, is also called upon to show cause to the Commissioner, Central Excise, Meerut-I Commissionerate, Opp. Chaudhary Charan Singh University, Mangal Pandey Nagar, Meerut-250005, within 30 days of receipt of this notice, as to why penalty should not be imposed upon him under Rule 26 of the Central Excise Rules, 2002.*

36. *Shri Ashok Kumar Malhotra, Director of M/s Super who actively participated in the whole operation of clandestine production, storage and removal of the excisable goods and who was responsible for day-to-day working of the company, is also called upon to show cause to the Commissioner, Central Excise, Meerut-I Commissionerate, Opp. Chaudhary Charan Singh University, Mangal Pandey Nagar, Meerut-250005, within 30 days of receipt of this notice, as to why penalty should not be imposed upon him under Rule 26 of the Central Excise Rules, 2002.*

37. *Shri Hitin Malhotra, Director of M/s Omega who actively participated in the whole operation of clandestine production, storage and removal of the excisable goods and who was responsible for day-to-day working of the company, is also called upon to show cause to the Commissioner, Central Excise, Meerut-I Commissionerate, Opp. Chaudhary Charan Singh University, Mangal Pandey Nagar, Meerut-250005, within 30 days of receipt of this notice, as to why penalty should not be imposed* *upon him under Rule 26 of the Central Excise Rules, 2002.*

38. *Shri Amit Mehta, Proprietor of M/s Amit Sales Corporation; Shri Satish Kumar Bansal, Proprietor of M/s Bansal Traders; Shri Umesh Gupta, Proprietor of M/s Ram Trading Company; Shri Shailesh Kharbanda, Proprietor of M/s Shailesh Traders; Shri Gulshan Kumar Bhatia, Partner of M/s Niwar Corner, who were concerned in purchasing and selling of the excisable goods which they knew or had reason to believe were liable to confiscation under the provisions of the Central Excise Act, 1944 and Central Excise Rules, 2002, are also called upon to show cause to the Commissioner, Central Excise, Meerut-I Commissionerate, Opp. Chaudhary Charan Singh University, Mangal Pandey Nagar, Meerut-250005, within 30 days of receipt of this notice, as to why penalty should not be imposed upon them under Rule 26 of the Central Excise Rules, 2002.*

39. *Shri Ramandeep Singh, Proprietor of M/s New Gupta Transport Forwarding Agency, who was concerned both the transportation of the exc isable goods which he knew or had reason to believe were liable to confiscation under the provisions of the Central Excise Act, 1944 and Central Excise Rules, 2002, is also called upon to show cause to the Commissioner, Central Excise, Meerut-I Commissionerate, Opp. Chaudhary Charan Singh University, Mangal Pandey Nagar, Meerut-250005, within 30 days of receipt of this notice, as to why penalty should not be imposed upon him under Rule 26 of the Central Excise Rules, 2002."*

3. On contest, the said show cause notice was adjudicated through impugned Order-in-Original. The order of the Original Authority is reproduced below:-

(i) *"Out of the total value of clearances of* ***Rs.61,97,34,243/- (Cum-duty value)*** *recorded jointly for M/s Super and M/s Omega in the resumed documents and retrieved data, I order value of the clearances of* ***Rs.33,49,59,675/- (Cum-duty value),*** *is appropriated to M/s Super in terms of discussions made in Para-13 above. I hereby confirm under Section 11A (4) of the Central Excise Act, 1944 read with the proviso to erstwhile Section 11A(1) of the Central Excise Act, 1944 demand of Central Excise duty amounting to* ***Rs.2,94,65,704/- (Rupees Two Crore Ninety Four Lakh Sixty Five Thousand Seven Hundred Four Only)*** *payable on the said apportioned value of clearances of* ***Rs.33,49,59,675/- (Cum-duty value)*** *made from M/s Super evaded during the period April' 2009 to March' 2013 as discussed in* ***Para-13.1 & 13.2*** *above. I also order for appropriation of the amount of Central Excise duty of Rs. 42 lakh paid by M/s Super voluntarily during investigation towards the duty confirmed above;*

(ii) *I confirm, under Section 11A(4) of the Central Excise Act, 1944 read with the proviso to erstwhile Section 11A(1) of the Central Excise Act, 1944, demand of Central Excise duty amounting to* ***Rs.3,26,998/- (Rupees Three Lakh Twenty Six Thousand Nine Hundred Ninety Eight Only)*** *payable on the clearances of Zip Fasteners valued at* ***Rs.29,72,609/- (Cum-duty value)*** *made from M/s Super on parallel invoices (including clearance of 05 bags of Zip Fasteners mentioned in the resumed documents) during September, 2012 as discussed in* ***Para-13.4, 13.5 & 13.6*** *above;*

(iii) *I confirm, under Section 11A(4) of the Central Excise Act, 1944 read with the proviso to erstwhile Section 11A(1) of the Central Excise Act, 1944, demand of*

Central Excise duty amounting to ***Rs.8,05,168/- (Rupees Eight Lakh Five Thousand One Hundred Sixty Eight Only)*** *made from M/s Super leviable on the clearances of Zip Fasteners value at* ***Rs.86,12,165/- (Cum-duty value)*** *effected by them on bills during the period from 03/01/2010 to 21/07/2010, April, 2012, August, 2012 and September, 2012 for which private records were not available as discussed in* ***Para-13.3*** *above;*

(iv) *I confirm, under Section 11A(4) of the Central Excise Act, 1944 read with the proviso to erstwhile Section 11A(1) of the Central Excise Act, 1944, demand of Central Excise duty amounting to* ***Rs.10,17,514/- (Rupees Ten Lakh Seventeen Thousand Five Hundred Fourteen Only)*** *made from M/s Super leviable on the clearances of Zip Fasteners value at* ***Rs.92,49,830/- (Cum-duty value)*** *effected by them during October, 2012 to March, 2013 after obtaining Central Excise registration, as discussed in* ***Para-13.7*** *above;*

(v) *The total demand of* ***Rs.3,48,93,839/- (Rupees Three Crore Forty Eight Lakh Ninety Three Thousand Eight Hundred Thirty Nine Only)*** *made from M/s Super stands modified to the extent of* ***Rs.3,16,15,384/- (Rupees Three Crore Sixteen Lakh Fifteen Thousand Three Hundred Eighty Four Only)*** *as confirmed in* ***Para 20(i) to 22(iv)*** *above and re-calculated in* ***Para 13.8*** *above;*

(vi) *Out of the total value of clearances of* ***Rs.61,97,34,243/- (Cum-duty value)*** *recorded jointly for M/s Super and M/s Omega in the resumed documents and retrived data, I order value of the clearances of* ***Rs.28,47,74,568/- (Cum-duty value),*** *is apportioned to M/s Omega in terms of discussions made* *in Para-13 above. I also confirm, under Section 11A(4) of the Central Excise Act, 1944 read with the proviso to erstwhile Section 11A(1) of the Central Excise Act, 1944, demand of Central Excise duty amounting to* ***Rs.2,53,39,602/- (Rupees Two Crore Fifty Three Lakh Thirty Nine Thousand Six Hundred Two Only)*** *made from M/s Omega leviable during the period April, 2009 to March, 2013 on the said apportioned value of clearances of* ***Rs.28,47,74,568/- (Cum-duty value)*** *as discussed in* ***Para-13.1 & 13.2*** *above. I also order for appropriation of the amount of Central Excise duty of Rs.49 lakh paid by M/s Omega voluntarily during investigation towards the duty confirmed above;*

(vii) *I confirm, under Section 11A(4) of the Central Excise Act, 1944 read with the proviso to erstwhile Section 11A(1) of the Central Excise Act, 1944, demand of Central Excise duty amounting to* ***Rs.8,28,599/- (Rupees Eight Lakh Twenty Eight Thousand Five Hundred Ninety Nine Only)*** *made from M/s Omega leviable on the clearances of Zip Fasteners value at* ***Rs.87,66,126/- (Cum-duty value)*** *effected by them on bills during the period from 03/01/2010 to 21/07/2010, April'2012, August'2012 and September'2012 for which private records were not available as discussed in* ***Para-13.3*** *above;*

(viii) *I confirm, under Section 11A(4) of the Central Excise Act, 1944 read with the proviso to erstwhile Section 11A(1) of the Central Excise Act, 1944, demand of Central Excise duty amounting to* ***Rs.10,18,518/- (Rupees Ten Lakh Eighteen Thousand Five Hundred Eighteen Only)*** *made from M/s Omega leviable on the clearances of Zip Fasteners valued at* ***Rs.92,58,952/- (Cum-duty value)*** *effected by them during October'2012 to March'2013 after obtaining*

Central Excise registration, as discussed in ***Para-13.7*** *above;*

(ix) *The total demand of* ***Rs.3,00,53,471/- (Rupees Three Crore Fifty Three Thousand Four Hundred Seventy One Only)*** *made from M/s Omega stands modified to the extent of* ***Rs.2,71,86,719/- (Rupees Two Crore Seventy One Lakh Eighty Six Thousand Seven Hundred Nineteen Only)*** *as confirmed in* ***Para 20(vi) to 20(vii)*** *above and re-calculated in* ***Para 13.8*** *above;*

(x) *I confirm that in terms of the Section 11AA of the Central Excise Act, 1944 read with erstwhile Section 11AB of the Central Excise Act, 1944 interest is chargeable from M/s Super & M/s Omega on the amount of Central Excise duty confirmed above under Para-20 (i) to Para-20 (iv) and Para-20 (v) to Para-20 (viii) above;*

(xi) *I also order for confiscation of seized stock of finished goods, intermediate goods and raw materials, collectively valued at Rs.28,76,753/- found on 21/09/2012 at the factory premises of M/s Super* ***(SCN F.No. DZU/INV/F/CE/203/2012/930 dated 18/03/2013)*** *and valued at Rs.33,18,715/- found at the factory premises of M/s Omega* ***(SCN F.No. DZU/INV/F/CE/203/2012/925 dated 18/03/2013)*** *in terms of Rule 25 of Central Excise Rules, 2002 with an option to redeem the same by each of them on payment of an amount of* ***Rs. 5.0 Lakh*** *as redemption fine as the said goods have already been released provisionally;*

(xii) *I impose a Penalty of* ***Rs.3,16,15,384/- (Rupees Three Crore Sixteen Lakh Fifteen Thousand Three Hundred Eighty Four Only)*** *on M/s Super and* ***Rs.2,71,86,719/- (Rupees Two Crore Seventy One Lakh Eighty Six Thousand Seven Hundred Nineteen Only)*** *on M/s Omega respectively under* *amended provisions of Section 11AC(1)(c) of the Central Excise Act, 1944 [substituted vide the Finance Act, 2015 w.e.f. 14.05.2015 (20 of 2015] read with Rule 25 of Central Excise Rules, 2002 under all three show cause notices.*

(xiii) *I impose a penalty of* ***Rs.25.0 lakh (Rupees Twenty Five Lakh only)*** *each on Shri Anupam Mehta, Director of M/s Super; Shri Ashok Kumar Malhotra, also Director of M/s Super, and Shri Hitin Malhotra, Director of M/s Omega under Rule 26 of the Central Excise Rules, 2002 for the offence they committed during the relevant period of time;*

(xiv) *I impose a penalty of* ***Rs.5.0 lakh (Rupees Five Lakh only)*** *each on Shri Amit Mehta, Proprietor of M/s Amit Sales Corporation; Shri Satish Kumar Bansal, Proprietor of M/s Bansal Traders; Shri Umesh Gupta, Proprietor of M/s Ram Trading Company; Shri Shailesh Kharbanda, Proprietor of M/s Shailesh Traders; Shri Gulshan Kumar Bhatia, Partner of M/s Niwar Corner, and Shri Ramandeep Singh, Proprietor of M/s New Gupta Transport Forwarding Agency under Rule 26 of the Central Excise Rules, 2002 for the offence they committed during relevant period of time.*

The dues adjudged herein above may be paid forthwith."

Aggrieved by the said order above stated appellants have preferred above stated appeals before this Tribunal.

4. Heard the Learned Counsel Shri K.K. Anand for M/s Super, M/s Omega, Shri Hitin Malhotra, Shri Ashok Kumar Malhotra, Shri Anupam Mehta & heard Learned Counsel Shri A.P. Mathur for remaining appellants. The

Learned Counsel Shri K.K. Anand has submitted that the duty demanded in the instant show cause notice is against the provisions of Section 11A of Central Excise Act, 1944, inasmuch as the provisions of said Section required specific amount to be demanded in clear terms on the basis of strong evidence and indisputable values of alleged clearances. He has relied on the ruling of Hon'ble Apex Court in the case of Commissioner of Central Excise, Bangalore Vs Brindavan Beverages Pvt. Ltd. reported at 2007 (213) E.L.T. 487 (S.C.). He has argued that the duty liability on M/s Super and M/s Omega has been apportioned on the basis of ratio arrived at on the basis of electricity consumed by them for the manufacture of goods which was reflected in their books of account. He has further submitted that Revenue has presumed that the alleged clandestine clearances were also in the same proportion. Therefore, the apportionments of demanding duties on individual appellants were presumptive in nature. He has further submitted that the Hon'ble Supreme Court in the said case of Commissioner of Central Excise Vs. Brindavan Beverages Pvt. Ltd. (supra) in Para-10 has held that the Noticee has to be given proper opportunity to meet the allegations indicated in the show cause notice and if allegations are not specific and are vague and lack details then such show cause notices are not maintainable. He has further argued that though they do not agree with the contention that there was any clandestine clearance, it is least to say that the duty liability fastened on individual appellants was presumptive. He has further submitted that the value of clearance by M/s Super during the year from 2009 to 2013 was never more than Rs.1.5 crores per year, whereas the same for the years 2010-13 in respect of M/s Omega was also less than Rs.1.5 crores per year, whereas for the value of clearance of less than Rs.1.5 crores per year, the allegation in the show cause notice was for the value of clearance of around Rs.7-8 crores and for the period 2011-12 the allegation was for around Rs.14 crores and same was the case with M/s Omega. Further, for the said alleged value of clearances the requirements of other raw materials by M/s Super would have been around 539000kg. Yarn, 405000kg of PMF Yarn, 67000kg of Cord, 37000 kg of Sewing Thread and for Omega Zippers 49000 kg Yarn, 362000kg PMF Yarn, 60500kg Cord and 38500 kg of Sewing Thread and that Revenue has not established as to from which sources said raw materials were procured. He has further submitted that 80% of the demand raised in the show cause notice was on the basis of data retrieved from pen drive and such data was not admissible under the provisions of Section 36B of Central Excise Act, 1944. Further, he has placed reliance on the ruling of Hon'ble Supreme Court in the case of Anvar P.V. Vs P.K. Basheer reported at Manu./SC/0834/2014 and contended that the Hon'ble Supreme Court has held in Para-13 of the said ruling that on interpreting the provisions of Section 65B of Evidence Act, 1972 (which is para meteria with Section 36B of Central Excise Act, 1944). The purpose of these provisions is to sanctify secondary evidence in electronic form and that the Section starts with a non obstante clause, which says that notwithstanding anything contained in the Evidence Act, any information contained in an electronic form, shall be deemed to be a document only if the conditions mentioned under Sub-rule (2) are satisfied and that the admissibility of such document retrieved from electronic record needs to satisfy four conditions. He has further submitted that on interpretation of Section 65B (4) of Evidence Act the Hon'ble Supreme Court has held in Para-15 of said ruling that a certificate must accompany the electronic record like computer printout, Compact Disk, pen drive etc. pertaining to which a statement is sought to be given in evidence and the same is produced as evidence. Further, he has argued that the computer printout which have been retrieved in the present case are not in compliance with the provisions of Section 36B (2) and (4) of Central Excise Act, 1944, inasmuch as the condition that the printout should be produced by a computer during the period over which the computer was used regularly to store or process information by the person who was in total control, and who was using the computer and that there should be regularity in use of such computer and contended that in the present case the data was retrieved from the storage device called Pen drive and it was not established that it was used regularly and was under the control of authorized person. He has further submitted that cross examination was allowed and the witness cross examined, have not supported the statement recorded during investigation. In respect of other noticees Learned Counsel Shri A.P. Mathur has submitted that the other persons on which personal penalty under Rule 26 was imposed were not having any control over the clearances of the goods and there was no possibility of knowing whether the goods dealt with by them has suffered duty or not and the Original Authority has not established that they were having knowledge that the goods were cleared without payment of duty and therefore, the penalties imposed on them are not justified.

5. Heard Shri Rajeev Rajan, Joint Commissioner A.R. for Revenue and also Shri Sandeep Kumar Singh, Deputy Commissioner A.R. for Revenue. Both of them have supported the impugned Order-in-Original.

6. Having considered the rival contentions and on perusal of records, we find that the individual liability of duty alleged in the show cause notice and proposed to be recovered individually from M/s Super and M/s Omega has been arrived at on the basis of presumption that the clandestine activity was in the ratio of the consumption of electricity. Such a proposition is absurd and the quantification of individual liability is totally presumptive in nature. Therefore, we do not go into other arguments on merit and hold that the show cause notice is totally presumptive and relying on the ruling of Hon'ble Supreme Court in the case of Commissioner of Central Excise, Bangalore Vs. Brindavan Beverages Pvt. Ltd. (*Supra*), we set aside the impugned Order-in-Original and allow all the appeals.

7. In result, we allow all the appeals filed by the appellants. The appellants shall be entitled to consequential relief, as per law.

(Dictated & Pronounced in Court on-28.02.2018)

Sd/-	**sd/-**
(Anil Choudhary)	**(Anil G. Shakkarwar)**
Member (Judicial)	**Member (Technical)**

akp