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

APPEAL No.E/467/2012-EX[DB]

(Arising out of Order-in-Appeal No.250/CE/ALLD/2011 dated 08/12/2011 passed by Commissioner (Appeals), Central Excise, Allahabad)

M/s Raju Kesarwani **Appellant**

Vs.

Commissioner, Central Excise, Allahabad **Respondent**

<u>Appearance:</u>

Shri S.P. Ojha (Consultant) for Appellant
Shri Mohd Altaf, Assistant Commissioner (AR), for Respondent

<u>CORAM:</u>

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

Date of Hearing : 03/08/2018
Date of Decision : 03/08/2018

FINAL ORDER NO.71783/2018

Per: Archana Wadhwa

After hearing both the sides we find, that the demand of duty of Rs.16,418/- stands confirmed against the appellant on the allegations and findings of illegal manufacture of Deshi Gutkha, which was seized from the appellant premises on 17.01.2018 as a result of the raid by the Police. Subsequently, the matter was brought to the notice of the Revenue who further initiated proceedings against the appellant proposing confirmation of demand of duty of Excise as also imposition of penalty and confiscation of the goods. Accordingly, proceedings were initiated against them by way of issuance of show cause notice dated 16.04.2009, which culminated into an order passed by the Original Adjudicating Authority and upheld by Commissioner (Appeals). Hence the present appeal.

2 Learned Consultant appearing for the appellant draws our attention to the plea adopted by the appellant before the Lower Authority that he was not in possession of the premises from where the said Gutkha was recovered and seized. The premises was rented out by them to one Shri Umesh Chandra on rent and in support of his above contentions the Learned Counsel draws our attention to rent agreement purportedly excluded between the appellant and the tenant Shri Umesh Chandra and attested by the notary.

3. After hearing the Learned A.R., we find that the said rent agreement is not registered and is only attested by the Notary. We further note that page 1 of the agreement has been purportedly attested by the Notary concerned on 02.01.2008 and on page 2 of the agreement attestation is dated 01.01.2008. Moreover at the back of the stamp paper the stamp vender has endorsed the date of sale of stamp paper on 02.02.2008. From this the rent agreement relied upon by the appellant appear to be false documents. Further Learned Advocate has not been able to show us and establish

that the goods were actually not manufactured by the appellant but by Shri Umesh Chandra. The goods illegally manufactured having been recovered from the premises belonging to the appellant and rent agreement produced by him having been established to be a false fabricated document, the onus gets shifted to the appellant to show that the Gutkha in question was not manufactured by him. There is no evidence to rebutt the above allegations of the Revenue.

4 As regards the appellant contention that the goods stand confiscated but have not been got redeemed by him and as such no duty liability would arise against him, we find that Commissioner (Appeals) has dealt with the said issue by observing as under:-

"Further, it is observed that the taxable event is "manufacture". As soon as excisable goods are manufactured the liability to pay duty arises on the manufacturer. The fact that payment of duty gets deferred till the excisable goods are removed does not take away the liability to pay duty on the taxable event of "manufacture" of excisable goods. Now, in normal circumstances, when the goods are manufactured abiding by the provisions of law with a proper Central Excise Registration, the place of manufacture is an identifiable, legally approved place and the place of storage is an approved place of storage and that, therefore, there is a demarcation and a recognition under law as to the boundaries of manufacture and

storage across which lie the point of clearance. Since the manufacture took place at unregistered and unapproved premises illegally there cannot be said to exist any legal boundary of factory gate to demarcate the place of removal from the place of clearance. In such a situation the appellant cannot take advantage of his own lapses of illegal manufacture without Central Excise Registration. Since there was no approved and registered premises of place of manufacture, storage, factory gate or approved place of removal from the factory or approved place of clearance in the appellant's case, the plea that the goods were not cleared and duty cannot be demanded, is not sustainable."

5. Inasmuch as we have not accepted the assessee's stand of having rented out the premises, we find no infirmity in the impugned order of the Authorities below.

6. Accordingly, appeal filed by the appellant is rejected.

(Dictated in Court)

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

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