CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD

REGIONAL BENCH - COURT NO.I

Excise Appeal No.70405 of 2023

(Arising out of Order-in-Appeal No.470 & 471-CE/APPL/LKO/2023 dated 30/06/2023 passed by Commissioner (Appeals) Customs, Central Excise & CGST, Lucknow)

M/s S.S.G.T. Company, **.....Appellant-I**
(House No.385-Kohat Enclave,
Pitampura, New Delhi-110088)

VERSUS

Commissioner of Central Excise &

CGST, Agra **....Respondent**

(113/4-Sanjay Place, Agra)

WITH

Excise Appeal No.70406 of 2023

(Arising out of Order-in-Appeal No.470 & 471-CE/APPL/LKO/2023 dated 30/06/2023 passed by Commissioner (Appeals) Customs, Central Excise & CGST, Lucknow)

Shri Kewal Krishna Chawla, Partner
M/s S.S.G.T. Company, **.....Appellant-II**
(House No.385-Kohat Enclave,
Pitampura, New Delhi-110088)

VERSUS

Commissioner of Central Excise &

CGST, Agra **....Respondent**

(113/4-Sanjay Place, Agra)

APPEARANCE:

Shri Ramji Khare, Advocate for the Appellants
Shri Manish Raj, Authorised Representative for the Respondent

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

FINAL ORDER NOs.70428-70429/2025

DATE OF HEARING : 08 April, 2025
DATE OF DECISION : 08 April, 2025

SANJIV SRIVASTAVA:

This appeal is directed against Order-in-Appeal No.470 & 471-CE/APPL/LKO/2023 dated 30/06/2023 passed by Commissioner (Appeals) Customs, Central Excise & CGST, Lucknow. By the impugned order following has been held:-

"09. The appellant has produced copy of their letters dated 27.01.2009 & 03.04.2010 addressed to the jurisdictional Range Officer intimating their sales godown. On perusal of the appellant's letter dated 03.04.2010, I find that they had declared the following premises as duty paid stores of Cigarettes with storage of raw materials:-

(i) Marketing Division, 2303, Mohalla Tangra, Radha Madhav Mandir, Kosi Kalan.

(ii) Godown in the house of Shri Ram Singh, Bathen Gate, Kosi Kalan.

(ii) Godown in the house of Shri Rakesh Singh, Near Brij Nursing Home, Kosi Kalan.

This makes it amply clear that the godowns at the residential premises of Shri Ram Singh, Bathen Gate, Kosi Kalan (seizure place of the seized 5,69,910 nos, of Cigarettes) and at the adjoining premises of the factory (seizure place of the seized 2,28,000 nos. of Cigarettes - 19CFC) were duly declared by the appellant to the department.

10. As regards the seizure of 2,28,000 nos. of Cigarettes (19CFC) from the godown at the adjoining premises of the factory, I find that it consisted of 14 CFC of 'MIDLAND' brand and 5 CFC of 'JET' brand as detailed in Para 20 of the impugned order. The appellant has claimed that the said seized Cigarettes were part of the Cigarettes cleared on payment of Central Excise duty under the cover of invoice Nos. 12 dated 30.12.2010 & No. 15 dated 31.01.2011. They have also submitted the copies of these invoices. Ongoing through the said invoices, I find that 40 Boxes of 'MIDLAND' brand (4,80,000 nos. of Cigarettes) *and 16 CFC of JET brand (1,92,000 nos, of Cigarettes) were cleared from the factory on 30.12.2010 & 31.01.2011 respectively to their Marketing Division, 2303, Mohalla Tangra, Radha Madhav Mandir, Kosi Kalan on payment of Central Excise duty. No further details with respect to description of goods/packaging are found mentioned in the said invoices. Further, I notice that both the invoices have been duly signed by the duty inspector in token of having physically supervised the clearances of the Cigarettes from the factory premises, showing that he was satisfied with the description/packaging details of the Cigarettes as mentioned in the said invoices. Moreover, the department has also not come up with any concrete evidence to establish that the seized Cigarettes were not the same as cleared under the cover of the aforesaid invoices and removed clandestinely from the factory premises without payment of Central Excise duty. In view of the above, I agree with the appellant's contention that the seized Cigarettes were part of the Cigarettes cleared under the cover of invoice Nos. 12 dated 30.12.2010 & No. 15 dated 31.01.2011 and were duty paid goods. Thus, the confiscation of the seized 2,28,000 nos. of Cigarettes (19CFC) valued at Rs.4,55,600/- is not sustainable and I vacate the same. Redemption fine of Rs. 1,13,900/- is liable to be reduced accordingly. The Central Excise duty of Rs.2,27,560/- involved on the said goods is also liable to be dropped.*

11. As regards the seizure of 5,69,910 nos, of Cigarettes from the godown at the residential premises of Shri Ram Singh, Bathen Gate, Kosi Kalan, I find that it consisted of Cigarettes of 'JET', 'MIDLAND', 'SPIDER', 'HIT-10' & MAGNET' brands as detailed in Para 20 of the impugned order. On the invoices submitted by the appellant for the period frott 23.04.2009 to 21.02.2011 (date of searches/seizure), I notice that only a single invoice no. 03 dated 02.12.2009 was issued by the appellant for their godown located at Bathen Gate, Kosi Kalan, showing the *clearance of Cigarettes of Tip-10' & HIT-10' brands only. Thus, I notice that no Cigarette of 'JET', "MIDLAND', 'SPIDER', & 'MAGNET" brands was cleared under the cover of any invoice from the factory premises to their godown located at Bathen Gate, Kosi Kalan. Furthermore, as the said invoice was issued more than 01 year prior to the date of seizure, the seized Cigarette of 'HIT-10' brand also cannot be considered as part of the Cigarettes cleared under invoice no. 03 dated 02.12.2009. In view of the above, it is established that the aforesaid seized 5,69,910 nos. of Cigarettes were not cleared under the cover of any invoice from the factory and were removed clandestinely from the factory premises without payment of Central Excise duty. Hence, the confiscation of the seized 5,69,910 nos. of Cigarettes from the godown at the residential premises of Shri Ram Singh, Bathen Gate, Kosi Kalan is sustainable under Rule 25 of the Central Excise Rules, 2002 and Redemption fine amounts to Rs.2,77,157/-in lieu of the said confiscation. The Central Excise duty of Rs.5,68,810/- involved on the said goods is liable to be confirmed along with interest under Section 11A(1) & Section 11AB of the Central Excise Act, 1944.*

12. As regards the seizure of 1,250 nos. of Cigarettes from the premises of the dealer, M/s Ajay Zarda, Kanpur, I find that Shri Ajay Kumar Gupta, Proprietor of the firm in his statement dated 05.08.2011 admitted that he had purchased the seized goods without any bill. Therefore, the confiscation of the said seized 1,250 nos. of Cigarettes is sustainable under Rule 25 of the Central Excise Rules, 2002 and Redemption fine of Rs.625/- was appropriately imposed. The Central Excise duty of Rs.1,248/- involved on the said goods is liable to be confirmed along with interest under Section 11A(1) & Section 11AB of the Central Excise Act, 1944.

13. With respect to short found 2,490 nos. of Cigarettes in the factory premises, I find that Shri Kewal Krishna Chawla, Partner in his statement dated 12.07.2011 *admitted the said shortage. Thus, the Central Excise duty of Rs.2,485/- involved on the said goods is liable to be confirmed along with interest under Section 11A(1) & Section 11AB of the Central Excise Act, 1944.*

14. In view of the vacation of the confiscation of 2,28,000 nos. of Cigarettes (19CFC) as discussed in Para 10 above, the penalty imposed upon the firm, M/s S.S.G.T. Company is reduced to Rs.5,72,543/ under Rule 25 of the Central Excise Rules, 2002 read with Section AC of the Central Excise Act, 1944.

15. I upheld the penalty of Rs. 1,00,000/- upon Shri Kewal Krishna Chawla, Partner, M/s S.S.G.T. Company under Rule 26 of the Central Excise Rules, 2002 for his active role in the clandestine removal of the impugned goods from the factory without payment of Central Excise duty. I also upheld the penalty of Rs.5,000/- upon Shri Ajay Kumar Gupta, Proprietor, M/s Ajay Zarda, Kanpur under Rule 26 of the Central Excise Rules, 2002 for facilitating the clandestine sale of the impugned goods."

2.1 Appellant-I having Central Excise Registration No.ABMFS5635CXM001, was engaged in manufacture & clearances of cigarettes of different brands falling under tariff head no.240270 of the Central Excise Tariff Act, 1985.

2.2 During the course of search of the premises and godown premises of the appellants by the offices DGCEI, New Delhi, following unaccounted finished goods/ raw materials were seized-

"(i) 5,69,910 nos. of Cigarettes involving Central Excise duty of Rs.5,68,810/- seized from the godown at the residential premises of Shri Ram Singh, Bathen Gate, Kosi Kalan, Mathura.

(ii) 2,28,000 nos. of Cigarettes (19CFC) involving Central Excise duty of Rs.2,27,560/- seized from the godown at the adjoining premises of the factory

(iii) 1,250 nos. of Cigarettes involving Central Excise duty of Rs.1,248/-seized from the premises of the dealer, M/s Ajay Zarda, Kanpur.

(iv) Raw materials valued at Rs.36,875/- seized from the godown at the residential premises of Shri Ram Singh, Bathen Gate, Kosi Kalan, Mathura.

(V) Raw materials valued at Rs.98,465/- seized from the godown at the residential premises of Shri Rakesh Singh, Kosi Kalan, Mathura.

The officers also short found 2,490 nos. of Cigarettes involving Central Excise duty of Rs.2,485/- in the factory premises."

2.3 Show cause noticed dated 12/17.08.2011 was issued to the appellants asking them to show cause as to why-

"(i) 569910 Cigarettes seized vide Annexure-A to Panchnama dated 21.02.2011 drawn at godown situated at the house of Shri Ram Singh at Bathen Gate, Kosi Kalan, Mathura should not be confiscated under Rule 25 of Central Excise Rules, 2002 and the Duty leviable thereon amount to Rs. 5,68,810/- (BED Rs. 4,61,057/- + NCCD Rs. 51,292/- + ADD Rs. 39,894/- + Ed. Cess Rs. 11,045/- + S&H Ed. Cess Rs. 5,522/-) (as shown in para 16 (a) above) should not be demanded and recovered from them under Section 11A(1) of Central Excise Act, 1944;

(ii) The seized raw material collectively valued at Rs.36,875/- which were found stored in the above said godown situated in the house of Shri Ram Singh should not be confiscated under Rule 25 of Central Excise Rules, 2002.

*(iii) The Duty of Rs. 2,485/- (BED Rs. 2,014/-+ NCCD Rs. 224/- + ADD Rs. 174 / (- E) * d Cess Rs. 48/- + S&H Ed. Cess Rs. 24 /-) (as shown in para 16 (b) above) leviable on 2490 Cigarettes found short in their factory premise*

should not be demanded and recovered from them under Section 11A(1) of Central Excise Act, 1944;

(iv) 2,28,000 Cigarettes (19 CFC) seized vide Annexure-A to the Panchnama dated 21.02.2011 drawn at the factory premise of M/s S.S.G.T Company should not be confiscated under Rule 25 of Central Excise Rules, 2002 and the Duty leviable thereon amounting to Rs. 2,27,560/- (BED Rs. 1,84,452/- + NCCD Rs. 20,520/- + ADD Rs. 15,960/- + Ed. Cess Rs. 4,419/- + S&H Ed. Cess Rs. 2,209/-) (as shown in para 16 (c) above) should not be demanded and recovered from them under Section 11A(1) of Central Excise Act, 1944; and

*(v) 1250 Cigarettes seized vide Panchnama dated 21.02.2011 drawn at premises of M/s Ajay Zarda, Kanpur should not be confiscated under Rule 25 of Central Excise Rules, 2002 and the Duty leviable thereon amounting to Rs. 1 ,248/- (BED Rs. 1,011/- + NCCD Rs.113/- + ADD Rs. 88 / (- E) * d Cess Rs. 24 /-+S\&H Ed. Cess Rs. 12 /-) as shown in para 16 (d) above) should not be demanded and recovered from them under Section 11A(1) of Central Excise Act, 1944;*

(vi) Raw material collectively valued at Rs. 98,465/-seized vide Annexure-a to Panchnama dated 21.02.2011 drawn at godown in the house of Shri Rakesh Singh, Near Brij Nurshing Home, Kosi Kalan, Mathura, should not be confiscated under Rule 25 of Central Excise Rules, 2002.

(vii) Interest should not be demanded from them on the said short payment of Central excise duty as mentioned in above para (i to iv above) under Section 11AB of the Central excise Act, 1944; and

(viii) Penalty should not be imposed on them under Rule 25 of the Central Excise Rules, 2002 and Section 11AC of the Central Excise Act, 1944 for non accountal of actual production of finished goods & clandestine removal thereof and procurement of unaccounted raw materials without

bills, in contravention of Central Excise Rules, 2002 as mentioned in paras hereinabove."

2.4 Appellant-II is partner of appellant-I was also asked to show cause as to why penalty under Rule 26(1) of the Central Excise Rules, 2002 should not be imposed upon him.

2.5 The said show cause notice was adjudicated as per the Order-in-Original No.10/CEX/ADC/2016 dated 19.02.2015.

2.6 Aggrieved by the said order appellants have filed appeal before Commissioner (Appeals) which has been decided vide Order-in-Appeal No.421-422-CE/APPL/LKO/2017 dated 28.12.2017 by holding as follows:-

"7. I have carefully gone through the case record. Issues raised in the grounds of appeal are discussed as under:

(i) The Appellant No. 2 have challenged the confiscation of cigarettes found in excess/ unaccounted for during the search. Regarding confiscation of 569910 number of cigarettes, it is claimed that the same were stored in declared godown. Likewise, It has been claimed that 228000 number of cigarettes were stored in the godown adjoining the factory and that the sald cigarettes were cleared on the strength of invoice No. 12 dated 30.12.2010. However, the appellant could not produce the evidence that the said godowns were declared to the department nor could they produce copy of the said Invoice. Also, the appellant could not produce the stock register required to be maintained at the said godowns. The entire quantity of cigarettes mentioned above was found outside the factory of production without duty paying documents and without proper documentation of their movement without payment of duty. This leads to inescapable conclusion that the said cigarettes were clandestinely removed, and, their confiscation is, therefore, sustainable.

(ii) Regarding shortage of 2490 No. of cigarettes, the appellant argues that the same is a small quantity and no malafides can be attributed to it. However, the shortage has been documented and accepted at the time of search. Therefore, demand of duty amounting to Rs 2485/- is justified.

(iii) Regarding confiscation of raw material, it has been pleaded that rule 25 of CER 2002 does not provide for confiscation of raw materials. From the language of rule 25, 1 find that there is no ground for confiscation of raw materials. Therefore, confiscation of raw materials total value Rs. 135340/= (Rs. 36875 +98465/) is not sustainable and the same is set aside. Total redemption fine is accordingly reduced by rupees forty thousand. Rest of the redemption fine is upheld on account of confiscation of cigarettes.

(iv) Regarding demand of duty on the confiscated cigarettes, I find the same unwarranted. After redemption of the same, it is required to be properly accounted for and cleared on payment of duty. However, demand of duty amounting to Rs 1248/ on 1250 No. cigarettes recovered from their dealer. M/s Ajay Zarda, Kanpur, is justified as the dealer has admitted that the same were purchased without bills. As dealer purchases goods from manufacturer, purchase without bills means clandestine clearance from manufacturer.

(v) It has been argued that penalty under section 11AC of CEA, 1944 is not Imposable as clandestine clearance has not been proved. However, I find that penalty of Rs 800103/-is not imposed under section 11 AC, the same is Imposed under rule 25 of CER 2002. The expression" read with section 11AC" used in the Impugned order is superfluous. In the facts and circumstances of the case, quantum of penalty is sustainable under rule 25 of CER 2002.

(vi) The appellant-1 has also challenged penalty on the ground that partner and partnership firm both cannot be penalized at the same time. Several case laws have been cited in this regard. However, one of the cited case laws, M.K.Jain Vs CCE Indore, reported at 2013(291) E.E.T. 217 (Tri.-Del.) upholds imposing penalty on partner. In the instant case, the appellant-1 has admitted that only he was responsible for affairs of the manufacturing unit. Thus, he was responsible for the clandestine manufacturing and clearance detected by the DGCEI. Therefore, imposition of penalty and quantum thereof is sustainable under rule 26 of CER 2002."

2.7 Aggrieved appellants have filed appeal before this Tribunal and the Tribunal vide Final Order No.71591-71592/2019 dated 28.08.2019 remanded the matter back to the Original Authority with following observations:-

"3. Without going into the detailed argument of both the sides I find that appellant had taken a categorical stand before the authorities below that their godowns were declared godown and goods were cleared under the Invoice No.12 dated 30 December, 2010. Lower Authorities have observed that no evidence stands produced on records as regards the status of the godowns. Neither invoice stands produced by the assesee. I also find that the appellant had taken a stand before the Authorities below that all the relied upon documents has not been provided to them in which case they are not in a position to file their detailed reply.

4. In view of the forgoing, I deem it fit to set aside the impugned order and remand both the appeals to the Original Adjudicating Authority with direction to supply the copy of the seized and relied upon documents to the appellant. I also find that the appellant should be given another opportunity to substantiate their claim of the godowns being declared godown and the goods found from the said godowns as having been cleared under the cover *of invoice. Accordingly, impugned orders are set aside and both the appeals are allowed by way of remand. Needless to say that the appellant would be given an opportunity to put forth their case."*

2.8 In the remand proceedings as per the above directions, matter was again adjudicated and following has been held:-

"ORDER

(i) I order for confiscation of :-

(a) 569910 No. of Cigarettes of different brands, valued at Rs. 11,33,288.00 seized from the godown at the residence premises of Shri Ram Singh, Bathen Gate, Kosi Kalan, Mathura:

(b) 19 CFC (total number of Cigarettes 19 X 12000 2,28,000), valued at Rs. 4,55,600.00 and involving Central Excise duty of Rs. 2,57,560.00, seized from the godown in the adjoining premises of the factory premise of M/s. S.S.G.T. Company, Plot No. 2063/18, Mohalla Tangara, Opp. Stateware Housing, National Highway, Kosi Kalan, Distt. Mathura;

under Rule 25 of Central Excise Rule, 2002. M/s. S.S.G.T. Company, Plot No. 2063/18, Mohalla Tangara, Opp. Stateware Housing, National Highway, Kosi Kalan, Distt. Mathura, have the option of redeeming the said goods on payment of Redemption Fine of Rs. 3,91,057.00 (Rupees Three Lakhs Ninety One Thousand Fifty Seven only), in lieu of the confiscation;

(ii) I order for confiscation of 1250 Cigarettes, seized from the premises of M/s. Ajay Zarda, 78/268, Latouche Road, Pan Dariba, Kanpur, under Rule 25 of Central Excise Rule, 2002. M/s. Ajay Zarda have the option of redeeming the said goods on payment of Redemption Fine of Rs. 625.00 (Rupees Six Hundred Twenty Five only) in lieu of the confiscation;

(iii) 1 confirm the demand of Central Excise duty amounting to Rs.8,00,103.00 (Rs. 5,68,810.00 + Rs.2,27,560 + Rs.2,485.00 + Rs.1,248.00), involved on the said 801650 cigarettes (569910+228000+2490+1250), and order for its recovery under Section 11A(1) of the Central Excise Act, 1944 from M/s. S.S.G.T. Company, Plot No. 206341B, Mohalla Tangara, Opp. Stateware Housing, National Highway, Kosi Kalan, Distt. Mathura;

(iv) I confirm the demand of interest at the appropriate rate for the relevant period till the payment of Central Excise duty confirmed here-in-above at St. No. (iii) and order for its recovery under Section 11AB of the Central Excise Act, 1944 from/M/SSBT. Company, Plot No. 2063/1B, Mohalla Tangara, Opp. Stateware Housing, National Highway, Kosi Kalan, Distt. Mathura;

(v) I impose a penalty of Rs.8,00,103.00 (Rupees Eight Lakhs and One Hundred Three only) upon M/s. S.S.G.T. Company, Plot No. 2063/1B, Mohalla Tangara, Opp. Stateware Housing, National Highway, Kosi Kalan, Distt. Mathura, under Rule 25 of the Central Excise Rules, 2002 read with Section 11AC of the Central Excise Act, 1944;

(vi) I impose a penalty of Rs.1,00,000.00 (Rupees One Lakh only) upon Shri Kewal Krishna Chawla, Partner of M/s. S.S.G.T. Company, Plot No. 2063/1B, Mohalla Tangara, Opp. Stateware Housing, National Highway, Kosi Kalan, Distt. Mathura, under Rule 26 of Central Excise Rules, 2002;

(vii) I also impose a penalty of Rs.5,000.00 (Rupees Five Thousand only) upon Shri Ajay Kumar Gupta of M/s. Ajal Zarda, 78/268, Pan Dariba, Latouche Road, Kanpur, under Rule 26 of Central Excise Rules, 2002."

2.9 Aggrieved appellants filed appeal before Commissioner (Appeals), who have held as per the impugned order referred in para 1 above.

2.10 Aggrieved appellants have filed these appeals.

3.1 I have heard Shri Ramji Khare learned Counsel appearing for the appellants and Shri Manish Raj learned Authorised Representative appearing for the revenue.

3.2 Arguing for the appellants learned Counsel submits that-

- Commissioner (Appeals) failed to take cognizance of Challan Nos.151 dated 19.11.2010, 153 dated 24.12.2010, 157 dated 31.12.2010, 158 dated 03.01.2011 and 160 dated 11.01.2011 under which the cigarettes were also transferred to godown of Shri Ram Singh from marketing division for further sale to the customer. On perusal of the said challans, it was observed that cigarettes of the brands were covered under the said challans.
- The factory of the appellants was under the control and there is no occasion for clandestine removal as there is round the clock duty of the departmental officers in the factory and no goods can be cleared without their authorization.
- In this regard CBEC has issued Circular No.224/37/2005-CX.6 dated 24.12.2008. Reliance is placed on the following decisions:-
    - Pelican Tobacco India Pvt. Ltd. Vs CCE Agra Final Order No.72392-72394/2008 dated 18.09.2018;
    - M/s RDB Industries Ltd. Vs CCE Visakhapatnam-II 2011 (272) ELT (Tri.Bang)
    - Hyderabad Decan Ciratette Factory Pvt. Ltd. 2010 (259) ELT 307 (Tri.-Bang);
    - Pravin N. Shah 2014 (305) ELT 480 (Guj.).

3.3 Learned Authorised Representative reiterates the findings recorded in the orders of the lower authorities.

4.1 I have considered the impugned orders along with the submissions made in appeal and during the course of argument.

4.2 Commissioner (Appeals) has in the impugned order records as follows:-

"07. The appellant vide letter dated 19.06.2023 has submitted copies of the invoices for the period from 23.04.2009 to 30.04.2011 evidencing clearances of the finished goods i.e. Cigarettes from the factory premises on payment of the Central Excise duty. They also submitted that the case may be decided on merit without affording personal hearing. No response has been received from the department in the present case. Hence, I take up the present appeal on the basis of the available records.

08. I have carefully gone through the case records and the submissions of the appellant

09. The appellant has produced copy of their letters dated 27.01.2009 & 03.04.2010 addressed to the jurisdictional Range Officer intimating their sales godown. On perusal of the appellant's letter dated 03.04.2010, I find that they had declared the following premises as duty paid stores of Cigarettes with storage of raw materials:- 2303, Mohalla Tangra, Radha Madhav Mandir. Kosi

(i) Marketing Division, Kalan.
(i) Godown in the house of Shri Ram Singh, Bathen Gate, Kosi Kalan
(ii) Godown in the house of Shri Rakesh Singh, Near Brij Nursing Home, Kosi Kalan.

This makes it amply clear that the godowns at the residential premises of Shri Ram Singh, Bathen Gate, Kosi Kalan (seizure place of the seized 5,69,910 nos. of Cigarettes) and at the adjoining premises of the factory (seizure place of the seized 2,28,000 nos. of Cigarettes - 19CFC) were duly declared by the appellant to the department

10. As regards the seizure of 2,28,000 nos. of Cigarettes (19CFC) from the godown at the adjoining premises of the factory, I find that it consisted of 14 CFC of MIDLAND' brand and 5 CFC of JET' brand as detailed in Para 20 of the impugned order. The appellant has claimed that the said *seized Cigarettes were part of the Cigarettes cleared on payment of Central Excise duty under the cover of invoice Nos. 12 dated 30.12.2010 & No. 15 dated 31.01.2011. They have also submitted the copies of these invoices. Ongoing through the said invoices, I find that 40 Boxes of MIDLAND' brand (4,80,000 nos. of Cigarettes) and 16 CFC of JET brand (1,92,000 nos. of Cigarettes) were cleared from the factory on 30.12.2010 & 31.01.2011 respectively to their Marketing Division 2303, Mohalla Tangra, Radha Madhav Mandir, Kosi Kalan on payment of Central Excise duty. No further details with respect to description of goods/packaging are found mentioned in the said invoices. Further, I notice that both the invoices have been duly signed by the duty inspector in token of having physically supervised the clearances of the Cigarettes from the factory premises, showing that he was satisfied with the description/ packaging details of the Cigarettes as mentioned in the said invoices. Moreover, the department has also not come up with any concrete evidence to establish that the seized Cigarettes were not the same as cleared under the cover of the aforesaid invoices and removed clandestinely from the factory premises without payment of Central Excise duty. In view of the above, I agree with the appellant's contention that the seized Cigarettes were part of the Cigarettes cleared under the cover of invoice Nos. 12 dated 30.12.2010 & No. 15 dated 31.01.2011 and were duty paid goods. Thus, the confiscation of the seized 2,28,000 nos. of Cigarettes (19CFC) valued at Rs.4,55,600/- is not sustainable and I vacate the same. Redemption fine of Rs.1,13,900/ - is liable to be reduced accordingly. The Central Excise duty of Rs.2,27,560/ - involved on the said goods is also liable to be dropped.*

11. As regards the seizure of 5,69,910 nos. of Cigarettes from the godown at the residential premises of Shri Ram Singh, Bathen Gate, Kosi Kalan, I find that it consisted of Cigarettes of JET', MIDLAND, 'SPIDER', 'HIT-10' 8

MAGNET' brands as detailed in Para 20 of the impugned order. On examination o the invoices submitted by the appellant for the period fror. 23.04.2009 to 21.02.2011 (date of searches/ seizure), I notice that only a single invoice no. 03 dated 02.12.2009 was issued by the appellant for their godown located at Bathen Gate, Kosi Kalan, showing the clearance of Cigarettes of Tip 10' & HIT-10 brands only. Thus, I notice that no Cigarette of JET' MIDLAND', SPIDER', & MAGNET brands was cleared under the cover of any invoice from the factory premises to their godown located at Bathen Gate, Kosi Kalan. Furthermore, as the said invoice was issued more than 01 year prior to the date of seizure, the seized Cigarette of 'HIT-10" brand also cannot be considered as part of the Cigarettes cleared under invoice no. 03 dated 02.12.2009. In view of the above, it is established that the aforesaid seized 5,69,910 nos. of Cigarettes were not cleared under the cover of any invoice from the factory and were removed clandestinely from the factory premises without payment of Central Excise duty. Hence, the confiscation of the seized 5,69,9 10 nos. of Cigarettes from the godown at the residential premises of Shri Ram Singh, Bathen Gate, Kosi Kalan is sustainable under Rule 25 of the Central Excise Rules, 2002 and Redemption fine amounts to Rs.2,77,157/- in lieu of the said confiscation. The Central Excise duty of Rs.5,68,810/- involved on the said goods is liable to be confirmed along with interest under Section 1 1A(1) & Section 11AB of the Central Excise Act, 1944

12. As regards the seizure of 1,250 nos. of Cigarettes from the premises of the dealer, M/s Ajay Zarda, Kanpur, I find that Shri Ajay Kumar Gupta Proprietor of the firm in his statement dated 05.08.2011 admitted that he had purchased the seized goods without any bill. Therefore, the confiscation of the said seized 1,250 nos. of Cigarettes is sustainable under Rule 25 of the Central Excise Rules, 2002 and Redemption fine of Rs.625/- was appropriately imposed. The Central Excise duty of Rs.1,248/- involved *on the said goods is liable to be confirmed along with interest under Section 1 1A(1) & Section 1 1AB of the Central Excise Act, 1944*

13. With respect to short found 2,490 nos. of Cigarettes in the factory premises, I find that Shri Kewal Krishna Chawla, Partner in his statement dated 12.07.2011 admitted the said shortage. Thus, the Central Excise duty of Rs.2,485/- involved on the said goods is liable to be confirmed along with interest under Section 11A(1) & Section 11AB of the Central Excise Act, 1944.

14. In view of the vacation of the confiscation of 2,28,000 nos. of Cigarettes (19CFC) as discussed in Para 10 above, the penalty imposed upon the firm, M/s S.S.G.T.Company is reduced to Rs.5,72,543/- under Rule 25 of the Central Excise Rules, 2002 read with Section AC of the Central Excise Act, 1944.

15. I upheld the penalty of Rs.1,00,000/- upon Shri Kewal Krishna Chawla, Partner, M/s S.S.G.T.Company under Rule 26 of the Central Excise Rules, 2002 for his active role in the clandestine removal of the impugned goods from the factory without payment of Central Excise duty. I also upheld the penalty of Rs.5,000/- upon Shri Ajay Kumar Gupta, Proprietor, M/s Ajay Zarda, Kanpur under Rule 26 of the Central Excise Rules, 2002 for facilitating the clandestine sale of the impugned goods.

16. The impugned order is modified to the above extent. The appeals filed by the appellants are disposed of accordingly"

4.3 Impugned order drops the case in respect of seizure made from the premises adjacent to the factory premises of the appellant. Revenue has not filed any appeal or cross objections against that part of the order hence this order is limited only to that part of the order which has been challenged in appeal by the appellants.

4.4 Acting on the intelligent following premises associated with the appellants were searched by the DGCEI:-

> *"i. Factory premises of M/s S.S.G.T Company, Plot No. 2063/1B, Mohalla Tangara, Opp. Stateware Housing, National Highway, Kosi Kalan, Distt. Mathura (UP)*
>
> *ii. Residence premises of Sh. Kewal Krishan Chawla situated at House No. 385, Kohat Enclave, Pitampura, Delhi.*
>
> *iii. Godown premises of M/s S.S.G.T. Company situated in the house of Sh. Rakesh Singh, Near Brij Nurshing Home, Officers colony, Kosi Kalan, Mathura (UP).*
>
> *iv. Godown premises of M/s S.S.G.T. Company situated in the house of Sh. Ram Singh at Bathen Gate, Kosi Kalan, Mathura (UP).*
>
> *V. M/s Ajay Zarda, 78/268, Pan Dariba, Latouche Road, Kanpur (Dealer premise)."*

4.4 From perusal of the above premises searched, it is observed that apart from the factory premises, the premises that have been searched are like residential premises, godowns situated in residential houses of the people associated in the company. From the godown situated in the house of Shri Rakesh Singh raw material value at Rs.98,465/- was seized, from the godown premises situated in the house of Shri Ram Singh various brands of cigarettes totaling to MRP valued to Rs.11,33,288/- and certain raw material valued at Rs.36,875/- seized from undeclared go down of Shri Ram Singh. Similarly from the premises of M/s Ajay Zarda about 1250 cigarettes were seized.

4.5 Overall, the godowns as is observed were located within the residential premises of certain persons on where these goods were being stored as raw material for use in production of cigarettes. I find that there are no provisions in law which permits storage of such hazardous materials in the residential premises by declaring that as godown. The claims made by the appellants that these were duty paid godowns have not been supported by any evidences to this effect.

4.6 In respect of the cigarettes seized from the premises adjacent to the factory premises after examination of the invoices produced Commissioner has set aside the seizure and demand, but only in cases where the document produced could not justifiably be co-related with the seized goods the seizure and demand has been upheld. In respect of these seizure impugned order clearly observes that that the invoice produced was dated more than a year back. Cigarette made of tobacco being highly hygroscopic has short shelf life though. Though no expiry period is mentioned on the pack it needs to be consumed very close to the date of manufacturing and storage in uncontrolled conditions of temperature and humidity. Tobacc readily absorbs and releases moisture from the surrounding air. If the air is dry, tobacco will release moisture, becoming brittle and prone to damage. Conversely, if the air is too humid, tobacco will absorb excess moisture, potentially leading to issues like mold or spoilage, and would pose serious health hazards. The claim made by the appellant in this regard on the basis of invoices more than year old needs to be rejected outright for this reason itself.

4.7 It is claim of the appellant that the cigarettes seized were from the duty paid stock cleared by them and were being stored in these godowns on the strength of certain challans which have been stated in the submissions made by the appellant. These challans are not supported by any duty paying invoices for any document to show that these were cleared after payment of duty. The relied upon challans are reproduced below:-

ANNEXURE NO.............

S.S.G.T. Company

(Marketing Division)

2303, Mohalla Tangra, Radha Madhav Mandir, Kosi Kalan (Mathura)

Sl. No. 168 Dated 11/01/2011

Name S.S.G.T Company Bathen Gate Kosi

Address Out Side Duty Paid Godown

S.No.	Description of Goods	Qty.	AMOUNT
01.	MAGNET	8 Box	1,15,000
02.	TIME - SPECIAL	4 Box	53,500
03.	SPIDER	5 Box	72,500
		G. Tatal	2,41,000

DUTY PAID
STOCK TRANSFER

For S.S.G.T. COMPANY

E. & O.E. Signature

ANNEXURE NO. 11

S.S.G.T. Company

(Marketing Division)

2303, Mohalla Tangra, Radha Madhav Mandir, Kosi Kalan (Mathura)

Sl. No. Dated 31/12/2020

Name S.S.G.T Company Bathen Gate Kosi

Address Out Side Duty Paid Godown

S.No.	Description of Goods	Qty.	AMOUNT
01.	SPIDER	28 BOX	3,55,000
02	JET	10 BOX	3,10,000
	DUTY PAID STOCK TRANSFER		
		G. Tatal	6,65,000

For S.S.G.T. COMPANY

E. & O.E. Signature

ANNEXURE NO....16.....

S.S.G.T. Company

(Marketing Division)

2303, Mohalla Tangra, Radha Madhav Mandir, Kosi Kalan (Mathura)

Sl. No. 158

Dated 03/01/2021

Name S.S.G.T Company Bathen Gate Kosi

Address Outside Duty Paid Godown

S.No.	Description of Goods	Qty.	AMOUNT
01.	SPIDER	5 Box	72,500
02.	HIT-TEN	2 Box	28,800
03.	MAGNET	8 Box	1,15,000
	DUTY PAID STOCK TRANSFER	G. Tatal	2,16,300

For S.S.G.T. COM...

PARTNER

E. & O.E.

Signature

ANNEXURE NO. 09

S.S.G.T. Company

(Marketing Division)

2303, Mohalla Tangra, Radha Madhav Mandir, Kosi Kalan (Mathura)

Sl. No. 51 Dated 19/11/2010

Name S.S.G.T Company Bathen Gate Kosi

Address Out Side Duty Paid Godown

S.No.	Description of Goods	Qty.	AMOUNT
01.	HIT-10	32 BOX	6,10,000
02.	MAGNET	28 BOX	
03.	MIDLAND	40 BOX	4,50,000
	DUTY PAID STOCK TRANSFER		
		G. Tatal	10,60,000

For S.S.G.T. COMPANY

E. & O.E. Signature

ANNEXURE NO. 10

S.S.G.T. Company

(Marketing Division)

2303, Mohalla Tangra, Radha Madhav Mandir, Kosi Kalan (Mathura)

Sl. No. Dated 24/12/2020 24/12/2020

Name S.S.G.T Company Barthen Gate Kosi

Address Outside Duty Paid Godown

S.No.	Description of Goods	Qty.	AMOUNT
01.	TIP-TEN	8 Box	
02.	TIP-TON	9 Box	3,70,000
03.	HIT-TEN	13 Box	
	STOCK TRANSFER		
		G. Tatal	3,70,000

For S.S.G.T. COMPANY

PARTNER

E. & O.E. Signature

4.6

4.8 The invoices submitted do not find any mention on the challans produced for supporting these goods in the godowns located in the residential premises. The invoices which have been produced before Commissioner (Appeals) would have shown clearance of certain goods by the appellant on payment of duty and they cannot be correlated with the challans produced on the strength of which these goods have been stored in these godowns.

4.9 I also observed that cigarettes is a commodity which is manufacture under the license, authorization of brand who strictly controls and monitors the production clearances and marketed these goods. It appears that appellants have manufactured the cigarettes under the brand name of 'TIP TON, JET, MIDLAND, HIT GATE, REDICO, TIPTEN & HIT-10' which are the brands of certain foreign based companies located in Saudi-Arabia. The manufacture and management of these goods under such brand names would not be possible in this manner as appellants have sought to make out. No license about the manufacturer under the said brands or authorization has been produced. Further, I find that both the authorities have come to conclusion after examination of the documents produced that these cigarettes are clandestinely cleared. Once it is settled principle in law that when two authorities conclude a finding of fact, the same should not have been simply turned aside unless and until it shown that the findings recorded were perverse.

4.10 No doubt cigarettes are manufactured under physical control. However, physical controls do not mean that each and every person of the unit is under physical control. Physical control is active on the gate of the factory for assessing the removal of goods on payment of duty. Physical control do not come in picture with regards to the operation of the factory, even the circular referred by the appellant say so, the said circular has been explained by subsequent Circular No.1055/04/2017-CX F.No.81/08/2016-CX.3 wherein following has been circulated-

> *"In terms of para 10 of instructions dated 24-12-2008 issued vide F. No. 224/37/2005-CX.6, read with para 2.2 of Chapter 4 of the CBEC Manual, mandatory, round-the-*

clock presence of Central Excise officer in the factory has been prescribed to ensure that the goods are not removed without his authorisation and also exercise supervision and control over operations as per instructions contained in the Commodity Manual for cigarettes. In view of the limited number of officers posted in the range, problems are being faced to post officers in the cigarette manufacturing units round-the-clock, resulting in delays in production/clearance of goods.

The above issue has been 2. examined. Rule 6 of the Central Excise Rules, 2002 lays down that in case of cigarettes, the Superintendent or Inspector of Central Excise shall assess the duty payable before the removal of goods by the assessee. Further, Rule 11 of the Central Excise Rules, 2002 prescribes that in case of cigarettes, each invoice signed by the owner of the factory or his authorized agent shall also be countersigned by the Superintendent or Inspector of Central Excise before the cigarettes are removed from the factory.

On plain reading of the said two 3. rules, it is clear that the presence of Central Excise officers is required for discharging the twin functions of assessment of duty to be paid by the assessee and countersigning the invoices before the goods are removed from the factory. There is no requirement in law of round-the-clock posting of Central Excise officers in the cigarette manufacturing units. Some field formations are taking a view that production in a cigarette factory can take place only in such shifts where the Central Excise officer is physically present. Such interpretation is not correct. Further, under the Goods and Services Tax (GST) regime, no such requirement of round-the-clock posting of officers has so far been envisaged on tobacco product dealers/manufacturers who would be paying GST and/or compensation cess.

In view of above, it is clarified 4. that round-the-clock presence of Central Excise officers in the cigarette factories *is not mandatory but directory. Those field formations which cannot post officers round-the-clock in cigarette factory shall use the preventive wing within their respective jurisdiction to maintain discreet preventive vigilance on the cigarette units round-the-clock. The presence of Superintendent or Inspector of Central Excise in all cases would be mandatory at the time of clearance of goods from the factory for the purpose of assessment of duty and countersigning the invoice."*

4.11 I also observe that appeal of the Appellant 2 (partner) has been rightly dismissed as in his statement recorded under section 14 he had admitted about the storage of the clandestinely cleared cigarettes and unaccounted raw material in undeclared godown located in the residential premises. The appellant 2 was responsible not only for the violation of the provisions of the Central Excise Act, 1944 by storing the clandestinely cleared cigarettes in undeclared godowns but was also responsible for causing serious health hazards in those localities.

4.12 In view of the above, I do not find any merits in the appeals filed by appellant-I and in respect of the seizer made from the residential premises of appellant-II and also the fact that he is a partner in the company having full control over the functioning of the company, I do not find any merits in the appeal of appellant-II also challenging the penalty imposed upon him, his appeal also liable to be dismissed.

5.1 Appeals are dismissed.

(Operative part of the order pronounced in open court)

(SANJIV SRIVASTAVA)
MEMBER (TECHNICAL)

akp