IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL,
REGIONAL BENCH : ALLAHABAD

E/257/2012-EX[DB]

(Arising out of Order-in-Appeal No.124/CE/ALLD/2011 dated 09.08.2011 passed by Commr.(Appeals) of Central Excise, Allahabad.)

Swatantra Kumar Sahu

…APPELLANT(S)

VERSUS

Commissioner of Customs, Central Excise & Service Tax, Allahabad

RESPONDENT (S)

APPEARANCE

Shri B.L.Narasimhan (Advocate) & Shri Ayush Agarwal (Advocate) for the Appellant (s)
Shri Rajeev Ranjan (Addl.Commr.) (A.R.) for the Revenue

CORAM:

SHRI ANIL CHOUDHARY, HON'BLE MEMBER(JUDICIAL)
SHRI ANIL G. SHAKKARWAR, HON'BLE MEMBER(TECHNICAL)

DATE OF HEARING/DATE OF DECISION : 18.09.2018

FINAL ORDER NO.72491/2018

Per Anil Choudhary :

Appellant is Proprietor of M/s Jai Gange Industries, engaged in the manufacture of Gutkha. So far this appeal is concerned, as per the impugned order it has been recorded that the officers searched the residential premises occupied by the appellant along with his brother Shri Manoj Kumar Sahu, at Banda. The ground floor of the premises was used as office of various companies/firms of the brothers engaged in manufacture and trading of Gutka. A chest was lying in the office/business premises of the ground floor which is opened by the appellant Swatantra Kumar Sahu before the witnesses, and wherein it was found to contain cash of Rs.1,75,000/-. As no immediate explanation was given for the said cash, it appeared to the officer that the same is as result of unrecorded sale and clandestinely removed Gutkha of various brands manufactured at their various factories. Statement of Shri Swatantra Kumar Sahu was recorded on 31.05.2007 wherein he stated that the case belongs to him & his brother-M.K. Sahu. He is the proprietor of Jai Gange Industries manufacturing 'Sahu Bharat Gutka'. Earlier he was proprietor of M/s.Sahu Enterprises which was involved in trading. His brother Shri Manoj Kumar Sahu is the proprietor of Shree Ganesh Trader/Ganesh Traders, which is involved in trading of 'Sahu Bharat', 'Mahan' and 'lung' brand Gutka and Masala Gutka manufactured by the various manufacturers namely Jai Gange Industries, S. Enterprises, Kaveri Products and Triveni Corporation. The trade mark 'Sahu Bharat Gutka' is owned by proprietor Shri Manoj Kumar Sahu. Both of them reside in their ancestral home. Further it was found that the residential premises belongs to the family and various firms namely M/s.Sangam Enterprises, M/s.Prayag Industries, M/s.Sanjay Kirana Store etc. owned by his brothers. Further, it appeared that cash amounting to Rs.1,75,000/- recovered, was the sale proceeds of clandestinely removed Gutka. On further scrutiny of documents at File No.11 of the Panchnama drawn at the premises of Ganesh Traders/Shree Ganesh Traders owned by Shri Manoj Kumar Sahu, indicated removal of Gutka clandestinely without payment of Central Excise duty, by M/s.Jai Gange Industries. At page 31 of the appeal, data is available such as date of manufacture, slip numbers, quantity in pouches recovered from M/s.Ganesh Traders. Further, the appeared to Revenue that the said information in the File No.11 also contained agreement dated 30.11.2006 for the distribution of the existing property amongst the family members of Shri Rakesh Kumar Sahu, his brothers and sisters. Further it said agreement reveals that profit and loss in manufacturing and trading of Gutka will be distributed in the ratio of 50%, 30% and 20% among Shri Rakesh Kumar Sahu, Shri Manoj Kumar Sahu and Shri Swatantra Kumar Sahu respectively. It was further observed by the Assistant Commissioner that in the course of personal hearing, appellant have not furnished proper evidence in respect of recovered currency that the same was not the sale proceed of excisable goods. Accordingly, the said currency of Rs.1,75,000/- was confiscated and also equal amount of penalty was imposed under Rule 26 of Central Excise Rules, 2002.

2. Appellant carried the matter before the Commissioner(Appeals). The appellant had placed various grounds before the Commissioner(Appeals) that the cash recovered was out of income of the appellant and his brothers out of their income. Such cash was recovered from joint residence/office. That during the course of search, no document was recovered from the possession of the appellant regarding manufacturing and sale of any excisable commodity. So far the agreement referred to in the show cause notice is concerned dated 30.11.2006, as noticed hereinabove, nothing can be inferred from such agreement to come to a conclusion that the cash recovered was sale

proceeds of clandestinely removed Gutka. It was also contended that the show cause notice dated 11.06.2007 was not given within six months from the date of seizure and as such the order of confiscation is bad. Consequently penalties under Rule 26 is not imposable.

3. Ld.Commissioner confirming the demand observed that in view of the fact that the statement of appellant was recorded under section 14 on 31.05.2007 and it was admitted that cash amounting to Rs.1,75,000/- was the sale proceeds of clandestinely removed Gutka and the fact of illegal trade of Gutka, on which no duty was paid, runs across the family members of the appellant, as borne out by incriminating documents recovered from the residential premises, the entire defense is an after-thought and is too feeble and too unconvincing to be accepted. The so called income tax returns filed by the appellant are a bunch of papers carrying neither any authentication nor any acknowledgement from the income tax department.

4. Having heard the parties and considered the evidences on record, we find that the appellant had only stated in his statement under section 14 that the cash found and seized was out of their business operations. The appellant had also led evidences that they had income from other business of trading in Bhusan, provisions and also on rental income. Nowhere it is stated that the cash recovered is from the sale proceeds of clandestinely removed Gutka. The appellant is also doing trading business of Kirana/grocery. We take notice of our findings in the Appeal Nos. E/57116-57125/2013 arising out of the same order, that the allegation of clandestine removal does not stand in view of the lack

of evidences on record and also the statements relied upon by Revenue are not a good piece of evidence as they are hit by section 9D of the Central Excise Act.

5. In this view of the matter we hold that the confiscation of the amount of Rs.1,75,000/- is bad. Accordingly we set aside the same and also set aside the penalty under Rule 26 of Central Excise Rules, 2002. Accordingly this appeal also stands allowed with consequential relief.

(Dictated and pronounced in the open Court.)

SD/	SD/
(ANIL G. SHAKKARWAR)	**(ANIL CHOUDHARY)**
MEMBER(TECHNICAL)	**MEMBER (JUDICIAL)**

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