FAX : 0532-2400149

REGISTERED / AD

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
38,MG Marg Civil Lines,Old Red Building,Allahabad-211001
Regional Branch, Allahabad

Dated: 07/09/2016

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/70766-70769/2016-EX[DB] dated 23/08/2016

I am directed to transmit herewith a certified copy of order passed by the Tribunal under section 35-C(1) of the Central Excise and Salt Act, 1944.

Asstt. Registrar

Application	Appeal	Name and Address of Appellant
1	E/1066/2007	**SUPER CASSETTES INDUSTRIES LTD.** PLOT NO.1, FILM CITY, SECTOR 16-A, NOIDA (U.P.) PIN 201301
2	E/1067/2007	**MRS. CHANDRIKA CLERK,** M/S SUPER CASSETTES INDUSTRIES LTD., PLOT NO.1, FILM CITY, SECTOR-16 A, NOIDA (UP) PIN 201301
3	E/1068/2007	**SH. VED CHANANA, DIRECTOR** M/S SUPER CASSETTES INDUSTRIES LTD., PLOT NO.1, FILM CITY, SECTOR 16 A, NOIDA (UP) PIN 201301
4	E/1069/2007	**SH. D.K.KAKKAR, FACTORY MANAGER,** M/S SUPER CASSETTES INDUSTRIES LTD., PLOT NO.1, FILM CITY, SECTOR 16 A, NOIDA (UP) PIN 201301

Name and Address of
Respondent

5 -C.C.E. NOIDA
C-56/42, Sector-62, Noida-201307

Other Appellants and Respondents as per Annexure

Copy To

6 Advocate(s) / Consultant(s): SH V.L.KUMARAN,ADV
5, JANGPURA EXTENSION
LINK ROAD, NEW DELHI

7 Bar Association, CESTAT, Allahabad

8 Director Publications, Customs, Excise. I.P. Estate, Delhi

9 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, New Delhi-3

10 Company Law Institute of India Pvt. Ltd., No.2 (old no.36), Vaithyaram Street, T. Nagar, Chennai-17

11 Taxmann Allied Service Pvt. Ltd., 59/32, New Rohtak Road, New Delhi-110005

12 Easy Service Tax Online Dot Com Pvt. Ltd., 407A, Iscon Mall, Satellite Road, Ahmedabad-15

13 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)

14 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi - 110070

15 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad -- 38

16 The ICFAI society, 52, Nagarjuna Hill,Punjagutta Hyderabad.-500082

17 M/S Knowledge Processing Pvt. ltd.(taxmanagementindia.com),FF-19,1st Floor,Cross River Mall,CBD Ground,Near Karkardooma Court,Delhi-110032

18 C.D.R. 19 Office Copy 20 Guard File

Asstt. Registrar

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

Appeal No.E/1066-1069/2007-EX[DB]

Arising out of Order-in-Original No.05/Commissioner/Noida/2007 dated 27.02.2007 passed by Commissioner, Customs & Central Excise, Noida.

For approval and signature:

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

---

1. Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982? : No
2. Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not? : Yes
3. Whether His Lordship wishes to see the fair copy of the Order? : Seen
4. Whether Order is to be circulated to the Departmental Authorities? : Yes.

Super Casettes Industries LTd.,
Mrs. Chandrika, Clerk
Shri Ved Chanana, Director
Shri D.K. Kakkar, Factory Manager

...APPELLANT(S)

VERSUS

Commissioner of Central Excise, Noida

...RESPONDENT (S)

APPEARANCE:

Shri B.L. Narasimhan & Shri Hrishikesh, Advocates for the Appellant (s)
Shri Pawan Kumar Singh, Supdt. (A.R.) for the Department

CORAM:

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

DATE OF HEARING & PRONOUNCEMENT : 23.08.2016

FINAL ORDER NO.– 70766-70769/2016

Per Mr. Anil G. Shakkarwar:

These four appeals are arising out of common Order-in-Original No.05/Commissioner/Noida/2007 dated 27.02.2007 passed by Commissioner, Customs & Central Excise, Noida, and therefore, they are taken up together for decision.

2. The brief facts of the case are that M/s Super Cassettes Industries Ltd. were engaged in the manufacture of blank and recorded audio cassettes, audio CDs, Video CDs etc. and ~~was~~ were registered with Central Excise Department. On the basis of search, conducted on 30^{th} June, 2003 and 1^{st} July, 2003 and subsequent investigations, M/s Super Cassettes Industries Ltd. were issued with a show cause notice bearing No. C. No.IV-CE(9) CP/72/03/1463 dated 13.08.2004. During the raid, the Investigating Officers found certain loose papers, sheets and slips in the possession of various functionaries of the manufacturing company and to know the contends written on the said loose slips, statements of said functionaries were recorded by the Investigating Officer. The investigation was concentrated on File No.40 and File No.55. File No.40 contained loose sheet No.78, 79, & 101, 102, 104, 105 upto 109 & 110 and File No.55 contained various loose sheets No.88, 112 & 113. The statements of Smt. Chandrika Khanna, Mr. Ved Chanana & Mr. D.K. Kakkar were recorded multiple times, and show-cause-notice was issued to M/s Super Cassettes Industries Ltd., making allegation that the noting on the loose sheets were related to

clandestine removal of dutiable goods and duty of Rs.79,98,533/- was demanded through the said show cause notice. Further, another duty of Rs.76,351/- was also demanded through the said show-cause-notice based on File No.55. Further, there were proposals to impose penalty and proposals were also included in the said show cause notice for personal penalty on Shri Ved Chanana, Director of the Company, Shri Devendra Kumar Kakkar, Factory Manger and Smt. Chandrika and Shri V.K. Sharma. The noticee have submitted their reply to the show cause notice stating that they were manufacturing both dutiable and exempted goods and they were also maintaining their records properly and that none of the functionaries of the manufacturing unit nor any of the customers with whom the department carried out investigation did admit that there has been any clandestine clearances of the dutiable goods from the noticee nor there was any evidence with the department about the details on the loose slips being that related to proceeds of goods cleared clandestinely without payment of duty and that the show cause notice was based on the presumption about the figures mentioned on the loose sheets to be one hundredth of the actual transactions value and also about the numbers mentioned on the slips to be connected to their dealers with whom they have regular transaction of duty paid and exempted goods. The Original Authority has held that on the basis of statements the clandestine clearances were established and that on the basis of the fact that during the course of investigation the noticee could not explain entries made on loose papers recovered from the room of Shri Ved Chanana who was the responsible person in the company and working as Director. The Original Authority further concluded that Shri Ved Chanana was not a labour paid employee of the Company and that every action of Shri Ved Chanana must have some value for company and that his silence on the entries found on the papers recovered from his room is enough to indicate that something contrary to law was going on the factory. Therefore, he concluded that the figures on the loose sheets were related to cash transactions of clandestine clearances of dutiable goods. He confirmed the demand and appropriate an amount of Rs.15 lakhs already deposited, imposed equal penalty and further imposed personal penalty of Rs.45 lakhs on Shri Ved Chanana, Rs.40 lakhs on Shri Devendra Kumar Kakkar Rs.50,000/-, on Smt. Chandrika and Rs.35,000/- on Shri V.K. Sharma.

3. Challenging the findings of Ld. Original Authority as stated above through Order-in-Original No.05/Commissioner/2007 dated 27.02.2007, the appellant is before this Tribunal, wherein the appellant-M/s Super Cassettes Industries Ltd., Mrs. Chandrika, Mr. Ved Chanana and Mr. D.K. Kakkar have filed appeals before this Tribunal. The grounds of appeal are as follows:-

(a) Allegation in the sow cause notice confirmed by the Commissioner only on the basis of certain numerical figures in loose papers, but no details of goods manufactured provided by the deptt. and hence the demand is based on the imaginary grounds.

(b) Deptt. quizzed about the goods manufactured clandestinely, but no details of goods provided in correspondence with the department.

(c) No evidence of any transaction in manufactured goods even in enquiries conducted by the deptt., hence demand is based on presumption and assumptions.

(d) Private records/rough papers, loose slips do not lead to any conclusions or even any link to any goods manufactured by the appellant.

(e) No detail of goods manufactured, date of manufacture, quantity of goods manufactured, value of such goods manufactured and duty leviable on such goods manufactured and duty leviable on such goods manufactured and the duty leviable on such goods could be specified by Revenue hence demand is liable to be set aside.

(f) Appellants manufacture excisable as well as non excisable goods and no conclusion can be reached only about the excisable goods and hence demand is bad in law.

(g) Major demand in the unit C-26 & 27 for Rs.55 lakhs is otherwise not sustainable as most of the goods manufactured (recorded Audio Cassettes) they are exempt from central excise duty.

(h) Demand based on valuation of (unknown) goods under Section 4 of the Central Excise Act, but nothing known as to what type of goods manufactured and whether those will be liable to assessed under Section 4 or 4A of the Act.

(i) Legal requirement of evidence of procurement of raw material, labour employed electricity consumed, transport of such goods to their buyer/dealer and collection of payments and flow of funds relating to such transaction not met and hence allegation of clandestine manufacture and sale of goods is unsustainable.

(j) No discrepancy was found in stocks of raw material.

(k) No corroborative evidence from the buyers and others such as transporters, could be collected.

(l) Demand is merely based on presumption and assumptions as no direct material evidence brought on record.

(m) There was no cogent and reliable evidence for clandestine manufacture and clearance.

(n) Shortage/excess in physical stock taking of goods was incorrectly assessed on the date of search.

(o) Statements of dealers, who denied any clandestine purchase of goods was totally ignored in passing the order by the Commissioner.

(p) There was no corroborative statements from any of the dealers about the correctness of the entries in the Diary/loose papers.

4. The learned Counsel for the appellants contended that in the entire investigation there has been no admission, by any of the functionaries that the data available on the said loose slips indicated the clandestine clearances of dutiable goods without payment of duty. There is no admission on behalf of any of the customers that they have ever received any goods cleared clandestinely, without payment of duty. The presumption that the figures on the loose slips were one hundredth of the actual figures is only a presumption, and there is no evidence on record to indicate that the data given on the loose slips was related to clearances of clandestine goods. He further submitted that if the department had impression that the data on the loose sheets was related to the clearances of the goods manufactured by them then they should have tallied the data with duty paid goods and goods manufactured by them which were not attracting duty and even after that verification if the data did not tally then there was reason for the department to make allegation that the data relates to clearances of goods without payment of duty in a clandestine manner. This exercise has not been done and it was only presumed that the data available on loose sheets was indicating the value of the goods cleared clandestinely. The show

cause notice issued on the basis of presumption is not sustainable in law and therefore, the appeals may be allowed.

5. Learned Counsel for the D.R. has submitted written submissions. The written submissions are extracted from the impugned Order-in-Original and there is no addition in the written submissions beyond what is stated in the impugned Order-in-Original.

6. We have carefully taken into consideration the rival contentions. We have also gone through the statements and the various Annexures enclosed to ~~be~~ the show cause notice. We find that in none of the statements there was any admission that the data recorded on the loose sheets, was related to the value of the goods cleared clandestinely. There is force in the argument of the learned Counsel for the appellants that department did not compare the data with the data related to clearances of goods on which duty was paid and the goods manufactured by them which did not attract duty. We, therefore, find that the show cause notice is based on presumption. Therefore, we hold that ~~show~~ the subject show cause notice dated 13.08.2004 is not sustainable. In view of the above, we set aside the impugned Order-in-Original and allow all the four appeals. The appellant shall be entitled to consequential relief, if any.

(Dictated & pronounced in the open Court)

—Sd/—
(ANIL G. SHAKKARWAR)
MEMBER (TECHNICAL)

—Sd/—
(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

प्रमाणित प्रति / Certified True Copy
13/10/16
सहायक पंजीकार / Asstt. Registrar
सीमाशुल्क, उत्पादशुल्क एवं सेवा कर
अपील अधिकरण / (C.E.S.T.A.T.)
38, एम. जी. मार्ग, इलाहाबाद-211001
38, M. G. MARG, ALLAHABAD-211001