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

Dated: 14/02/2017

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/70163/2017-SM[BR] dated 01/02/2017

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/SPS

Application	Appeal	Name and Address of Appellant
1	E/236/2007	**EURO FOOTWEAR LTD.** 988, Akrampur Indl. Area, Chakarampur, Unnao (UP)
		Name and Address of Respondent
2		-C.C.E. KANPUR 117/7, Sarvodaya Nagar, Kanpur

Copy To
3Advocate(s) / Consultant(s):

Rajesh chibber
FA-9, KAVI NAGAR,
GHAZIABAD,
UP

4 Bar Association, CESTAT, Allahabad

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

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

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

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

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

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

11 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad – 38

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

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

14 C.D.R. 15 Office Copy 16 Guard File

Asstt. Registrar/SPS

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

Appeal No.E/236/2007-EX[SM]

Arising out of Order-in-Appeal No.621/CE/APPL/KNP/06 dated 22.12.2006 passed by Commissioner (Appeals) Customs & Central Excise, Kanpur.

M/s EURO Footwear Ltd.

...APPELLANT(S)

VERSUS

Commissioner of Central Excise, Kanpur

...RESPONDENT (S)

APPEARANCE

Shri Rajesh Chibber, Advocate for the Applicant (s)

Shri Pawan Kumar Singh, Supdt. (AR) for the Department (s)

CORAM:

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

DATE OF HEARING: 11.08.2016

DATE OF PRONOUNCEMENT : 14.02.17

FINAL ORDER NO.- 70163/2017

Per Mr. Anil Choudhary :

This appeal is filed by appellant, M/s EURO Footwear Ltd., against Order-in-Appeal No.621/CE/APPL/KNP/06 dated 22.12.2006, rejecting the appeal and confirming the Order-in-Original, thus, confirming the duty amount of Rs.17,89,264/- along with equal amount of penalty under Section 11 AC with interest and also confirming amount of Rs.11,346/- (appropriated from the amount already deposited at the time of inspection on 24.06.2005 involved on 75 pairs of sandals found short).

2. The brief facts are that the appellant is a registered manufacture of Leather Shoes and Sandals and cleared the goods for export as well

as for home consumption to 'Mirza Tanners' under their brand name 'Red Tape'. The preventive officers of the Revenue made a surprise inspection on 24.06.2005 to the factory premises and conducted physical stock verification. Whereas during the course of physical stock verification (RUD NO.1) all the varieties of finished goods were found tallying with the recorded balance of RG-1, except shortage of 75 pairs of domestic leather sandals. The shortage of said 75 pairs of domestic leather sandals was accepted by the app0ellant and Central Excise duty amounting to Rs.11,346/- [Rs.4,404/- vide PLA entry No.4 (RUD No.2) and Rs.6,720/- vide RG-23A Pt.II entry No.14 (RUD No.3) both dated 24.06.2005] and Education Cess of Rs.222/- deposited vide PLA entry No.5 dated 24.06.2005 on the spot. (as detailed in physical stock verification report annexed to panchnama dated 24.06.2005 (RUD No.4) drawn on the sport. Whereas during the scrutiny of records of the appellant the officers found daily production report file containing four leaves of sandal stock report said to be prepared for and faxed to Shri Laiq Ahmad of M/s Mirza Tanners (Marketing division), New Delhi. The officers compared the figures given in the sandal stock report with the recorded balance of RG-1 (RUD No.5) and asked the appellant why the quantity shown in RG-1 on 28.05.2005 as 11490, on 04.06.2005 as 9252, on 08.06.2005 as 9570 and on 13.06.2005 as 9386 as the closing balance of RG-1 was not tallying with the Sandal stock report (RUD No.6) as detailed below:-

Date	Stock as per sandal Stock report	Stock as per RG-1 Register	Difference
28.05.2005	14421	11490	2931
04.06.2005	12116	9252	2864
08.06.2005	12742	9570	3172

13.06.2005	12246	9386	2860
	51,525	39,698	11,827

2.1 Shri Zafar Ahmad Khan, authorised signatory of the appellant, could not explain satisfactorily the discrepancy noticed above at the time of inspection. Thereafter, the authorized signatory appeared on 11.07.2005 before the authority and tendered his written statement. He stated that he sends the stock report to Mr. Laiq Ahmad authorised person of the brand owners (Mirza Tanners) in which he mentions finished goods and also the goods in the process of manufacture which are likely to be ready in the near future. They have manufactured only 222 pairs of domestic Sandal as against 2931 pairs during 28.05.2005 to 04.06.2005 that is the date of submission to next sandal stock report to Shri Laiq Ahmad. The appellant was further directed to produce the desired sandal stock report for the last five years. In compliance to the summons, Shri Ashish Kumar Gupta, Authorized representative of the appellant appeared and stated in his statement recorded on 30.01.2006 under Section 14 that no such type of sandal stock reports are being maintained by the appellant. It appeared to Revenue that the statement of Shri Khan and Shri Gupta are contradictory as one employee is admitting the existence of the said document and another employee is saying that no such type of documents are being maintained. It appeared to Revenue that the appellant have manufactured and cleared 11,827 pairs of leather sandals valued at Rs.1,82,72,715/- (@ Rs.1545/- per pair) and abated value of Rs.1,09,63,629/- (U/s 4A of the Act) without payment of duty to the tune of Rs.17,89,264.25 and thus have resorted to clandestine manufacture and clearance. Accordingly, SCN dated 28.02.2006 was issued demanding duty of Rs.17,89,264/- with interest and proposal for penalty under Rule 25 of CER read with Section 11 AC of the Act and further proposal for confirmation of duty of Rs.11,346/- on 75 pairs of sandals found short at the time of stock taking on 24.06.2005 and why not the same be appropriated from the amount already deposited by debit to PLA on 24.06.2005.

3. The SCN was adjudicated on contest. the Joint Commissioner vide Order-in-Original dated 22.08.2006 was pleased to confirm the proposed demand with equal amount of penalty under Section 11AC of the Act along with interest. Further, the duty amount of Rs.11,346/- on 75 pairs found short at the time of inspection was also confirmed and appropriated from the pre-deposit already made. Being aggrieved, the appellant had preferred appeal before Ld. Commissioner (Appeals) who vide the impugned order was pleased to dismiss the appeal upholding the Order-in-Original. The learned Commissioner (Appeals) observed that Revenue found at the time of inspection, daily production report file containing four leaves of sandal stock report, said to be faxed to Shri Laiq Ahmed of Mirza Tanners (Marketing Division), New Delhi. It was found that lesser quantity was shown in the statutory RG-1 register and the appellant assessee on being asked to produce the stock report for last five years, failed to produce the same. The Adjudicating Authority observed that the said Sandal stock report is a date-wise record in which heading "Sandal Stock" is printed on the top; further, there are columns for style number, number of cartons, pairs per carton etc.; under the columns of 'style No.42' different style numbers of

sandals manufactured regularly by the party and colours viz 04-
black, 04-brown, R-10 black etc. are printed in the form, against
which numbers (in pairs, size) of sandals are noted in hand writing,
at the end, total of every column has been given, which denotes
stock position of that date. Further, the fact of clandestine removal
of goods is corroborated by the shortage found in the stock of
sandals on the date of inspection, which was accepted by the
appellant-assessee. Being aggrieved, the appellant-assessee is in
appeal before this Tribunal.

4. The learned counsel urges that the nature of the activity of this
appellant is in the nature of job worker. They manufactured shoes
and sandals under the brand name 'red tape' for the principal M/s
Mirza Tanners. The show-cause-notice was issued without the relied
upon documents, only giving the list of RUDs. Appellant had prayed
for supply of all relied upon documents and also insisted on cross-
examination of different persons from whom alleged inculpatory
statement was taken and sought to be used against the appellant.
Although, relied upon documents and copy of the statements
recorded were subsequently provided, but cross-examination of all
the persons, the statement of whom were relied upon by Revenue,
was denied vide the impugned order which have been passed in
clear violation of Rules of Natural Justice. The impugned order is
vitiated as the plea of the appellant have been rejected without
examining the same and without following the binding decisions
cited by the appellant. Contradictions in the statement of different
persons have also been ignored. Further, no proper verification of
the purchase orders received from M/s Mirza Tanners and supply of

goods against the same by the appellant, on different dates, of the different quantities, with the accounts and records, cleared at applicable duty at the time of removal from the factory for supply to the buyer at different places, as per the purchase orders, had been altogether disregarded. There is no verification, co-relation and/or re-conciliation between the appellants records of goods produced and supplied as per the purchase orders from M/s Mirza Tanners, with the financial records of the appellant and those of Mirza Tanners. It is further urged that in absence of cross-examination, the persons from whom alleged statements have been taken and used against the appellant to raise the impugned demand, vitiates entire case of Revenue, making the demand unsustainable for violation of the Rules of Natural Justice as held in Andaman Timbers Vs. CCE (2015) 324 ELT 641(SC) by Hon'ble Supreme Court and in the case of Basudev Garg Vs. CC (2013) 294 ELT 353 (Delhi). He further states that the impugned order is bad as the same is in gross violation of the mandate of Section 9D of the Act. The allegation of clandestine removal cannot be sustained merely on assumptions and presumptions and/or surmises. Such allegations of clandestine removal of excisable goods must be based on tangible evidence, by discharge of onus of proof by the Revenue. Allegation of clandestine removal cannot be based on private records or diary or notebook or slips, in the absence of positive corroborative evidence to substantiate the allegation raised by Revenue. The impugned order is in the teeth of the ruling of Hon'ble Gujarat High Court in the case of CCE Vs. Vishwa Traders Pvt. Ltd. (2013) 287

ELT 243 (Guj.) and of the Patna High Court in the case of Brims Products Vs. CCE (2001) 130 ELT 719.

4.1 In the case of Arya Fibers Pvt. Ltd. Vs. CCE (2014) 311 ELT 529(Tri.) this Tribunal have summed up the requirements to be fulfilled by the Revenue in the light of various binding precedents by holding that "it is clear that the law is well settled that, in case of clandestine manufactures and clearance, certain fundamental criteria have to be established by Revenue which mainly are the following: - (i) There should be tangible evidence of clandestine manufacture and clearance and not merely inferences or unwarranted assumptions (ii) Evidence in support thereof should be of raw materials, in excess of that contained as per the records; instances of actual removal of unaccounted finished goods (not inferential or assumed) from the factory without payment of duty; discovery of such finished goods (non duty paid) outside the factory; instances of sale of such goods to identified parties; receipt of sale proceeds, whether by cheque or by cash, of such goods by the manufacturers or persons authorised by him; use of electricity or power far in excess of what is necessary for manufacture of goods otherwise manufactured and validity cleared on payment of duty; statement of buyers with some details of illicit manufacture and clearance; proof of actual transportation of goods, cleared without payment of duty; links between the documents recovered during the search and activities being carried out in the factory of production; etc. In other words, adverse inferences cannot be drawn of clandestine clearances merely on the basis of notebooks or diaries or slips privately maintained or on mere statements of some persons, may even be responsible officials of the manufacturer or even of its Directors/partner who were not even permitted to be cross-examined, as in the present case, without one or more of the evidences referred to above being present.

4.2 It is further urged that the factual details and complete verification and reconciliation was placed by the appellant before the lower authorities, having been disregarded by them. The Tribunal after hearing both sides on 11.04.2014, had directed the respondent/ Revenue to verify the facts and records and make necessary reconciliation and provide the report of the adjudicating authority on 04.06.2014, for which the matter was adjourned at requested by Revenue from time to time. On 14th of May, 2015 the report of Assistant Commissioner dated 28.05.2014 was given to the appellant which contains no verification, correlation or reconciliation, as directed by the Tribunal. In the so-called report, the Assistant Commissioner has chosen to disregard the purchase orders from Mirza Tanners and the goods manufactured and supplied pursuant thereto which can only be done after the Purchase orders are accepted and the goods manufactured in the factory of the assessee/appellant are inspected, approved and only then sale is executed. This vital aspect had been totally disregarded even after directions of the Tribunal. The report of the Assistant Commissioner in para-3 also states that the authorised Signatory of the appellant appeared and assisted in showing the original documents. These were tallied and verified with the photocopies as provided with the letter. Shri Siddiqui also put his dated signature along with the appellant's stamp on each document by way of authentication. Thus, even after verifying and tallying the records and documents and finding the same as correctly reconciled, the Assistant Commissioner have made false allegations against the appellant by attempting to justify the illegal action of issue of show-cause notice and the unsustainable orders of the courts below. The complete details of invoices with dates, number, amount, quantity, value and duty paid with reference to each Purchase order of Mirza Tanners had been placed on record by the appellant, as directed by this Tribunal earlier, and in all these have been duly verified and found correct as having been tallied and reconciled, as per the report of the Assistant Commissioner dated 28.05.2014. This ought to have been verified and reconciled by the Revenue prior to the issue of show-cause notice when all records of the appellant-assessee were seized and resumed by Revenue. The show-cause notice refers only to the RG-1 record in para-4 and the alleged difference in the stock as per stock report/private record and as per RG-1 Register and the apparent different to have been alleged clandestinely removed goods for which imaginary value at Rs.1,545/- per pair have been taken for valuation, for raising the demand.

4.3 The statement of Shri Zafar Ali Khan dated 24.06.2005 and 11.07.2005 and the statement of Ashish Kumar Gupta dated 30.01.2006 have been relied upon to raise the unsustainable demand. Mr. Zafar Ali Khan had left the service of the company and thereafter Ashish Kumar Gupta had joined in his place. Shri Ashish Kumar Gupta have rightly stated that the alleged stock sheets were taken from Shri Satyendra Singh and his statement in favour of company was recorded but the same had not been relied upon.

Therefore, the correct statement of Satyendra Singh and Ashish Kumar Gupta alone should have been taken as the basis instead of alleged statement of Zafar Ali Khan. Inspite of specific request for cross-examination of all these persons, repeatedly made, the same have been wrongly denied causing prejudice to the appellants. The appellants merely clears the goods manufactured by them to Mirza Tanners Ltd. It is erroneous to ignore purchase order of Mirza Tanners Ltd. giving specification of size, colour, shape and design of pairs of Sandals to be supplied with brand name of 'Red Tape' to the marketing outlets of Mirza Tanners, at later dates on completion of manufacture and after inspection and acceptance thereof by the buyer before delivery, to be totally disregarded for the purpose of making unsustainable case by the Revenue. The Sandals with brand name and specifications given by Mirza Tanners can only be supplied to them. The appellant/assessee has no marketing or distribution agency/outlet nor does it manufacture goods (footwear) without specifications and Purchase orders from buyers. Therefore, there is no question of goods being produced clandestinely and removed. Thus, the allegation of Revenue is un-substantiated based only on presumption and assumptions. Failure to make proper verification, correlation or reconciliation at the initial stage has necessitated this Tribunal to get such verification done having regard to the nature of the business and product involved which cannot be manufactured or supplied without prior orders and specifications of the buyers. There is no case of Revenue that the appellant/assessee had got its own sales outlets and has produced or sold goods without any brand name to anyone other than M/s Mirza Tanners Ltd. Supply to Mirza

Tanners is possible only after manufacture according to the specifications already received from them and after manufacture is done, the goods are verified and inspected by the buyer before delivery, and on being certified according to the buyer specifications thereafter, the goods are dispatched to the buyer for delivery at the place indicated in the Purchase orders and only at the time of clearances the invoices are issued giving complete details with payment of duty thereon, all of which have been duly verified and accepted by the Revenue. The allegations of Revenue in the show-cause-notice are frivolous and unsubstantiated. The appellant had also pointed out that the production shown in RG-1 record is only in respect of finished goods after inspection by the buyers. When the buyer accepted the goods which are produced and awaiting such verification and confirmation by the buyer would be nothing but semi-finished goods which are not to be entered in RG-1 at that stage because of the possibilities of rejection after inspection by the buyer. On such rejection, the goods will have to be discarded and cannot be sold to anyone save and except with the consent and direction of the buyer namely Mirza Tanners.

4.4 It is further urged that no evidence, whatsoever, of any alleged clandestine removal has been brought on record. Only based on the statements and the said four slips alleged to be stock records are sought to relied upon without verification and correlation. It is further urged that these stock records prepared on loose slips is actually the projected number of footwear of particular design and size, colour etc., which the appellant will be in a position to supply to their sole buyer in the near future on receipt of orders. Referring to the statement of Satyendar Singh, it is pointed out that he is only educated till High School and in the appellant firm used to look after the dispatch of domestic sandal. In response to question – on which day or dates you send this sandal report to Mr. Laiq Ahmed and why. It was answered that the report is faxed to Mr. Laiq Ahmed on the date shown in the sandal report itself, because on the basis of this report order is sent to us by Mr. Laiq Ahmed. So, I am sending the sandal stock report. Our planning and work in process are also included in the sandal stock report, which is sent to Mr. Laiq Ahmad.

5. The learned AR for Revenue has relied on the impugned order.

6. Having considered the rival contentions, I am satisfied that the stock records found in the four slips of different dates at the time of inspection also include incomplete and/or projected production of the appellant. This fact has been stated by Mr. Satyendar Singh, who prepares and dispatches the report to Mr. Laiq Ahmad of Mirza Tanners. I also find that the appellant's industry is doing the work in the nature of job work for one particular buyer (Mirza Tanners). Under the agreement with the sole buyer, they manufactured the goods under the brand name 'Red Tape', that belongs to the buyer, and they cannot normally clear the goods to anybody else for home consumption without the purchase order and/or directions of the buyers subject to pre-delivery inspection. Even the goods rejected by the buyer have either to be dismantled or retained and the same have to be cleared as per directions and discretion of the buyers namely Mirza Tanners. Further, no instance of any excess stock of raw material have been found nor any instance of any goods cleared

without proper documents and/or without payment of duty have been detected. I also find that impugned order is also vitiated for denial of opportunity to cross-examine the witness of the Revenue. In this view of the matter, I hold that the show-cause notices is unsustainable and accordingly, I set aside the impugned order. The appellant/assessee will be entitled to consequential benefits, if any, in accordance with law.

(Pronounced in the open Court on 14.02.17)

Sd/-

(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

Mishra

प्रमाणित प्रति / Certified True Copy
21/02/17
सहायक रजिस्ट्रार / Asstt. Registrar