FAX : 0532-2400149

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

Dated: 20/09/2016

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/70821/2016-SM[BR] dated 05/09/2016

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/60181/2013	**JUBILANT LIFE SCIENCES LIMITED** BHARTIA GRAM,GAJRAULA AMROHOA,UTTAR PRADESH 244223
		Name and Address of Respondent
2		C.C.E. & S.T.-Meerut-ii OPPOSITE SHAHEED SMARAK,DELHI ROAD...BHANSALI GROUND, MEERUT, UTTAR PRADESH-

Copy To

3 Advocate(s) / Consultant(s):

Devinder Sharma,
J-185, SECTOR-25,
JALVAYU VIHAR,
NOIDA,UTTAR PRADESH
201301

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 Easy Service Tax Online Dot Com Pvt. Ltd., 407A, Iscon Mall, Satellite Road, Ahmedabad-15
10 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)
11 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi - 110070
12 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad – 38
13 The ICFAI society, 52, Nagarjuna Hill,Punjagutta Hyderabad.-500082
14 M/S Knowledge Processing Pvt. ltd.(taxmanagementindia.com).FF-19,1st Floor,Cross River Mall,CBD Ground,Near Karkardooma Court,Delhi-110032
15 C.D.R. 16 Office Copy 17 Guard File

Asstt. Registrar

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH : ALLAHABAD
COURT No. 1

APPEAL No.E/60181/2013-EX[SM]

(Arising out of Order-in-Appeal No. MRT/EXCUS/002/APP/137/13-14 dated 24/09/2013 passed by Commissioner of Central Excise & Customs (Appeals), Meerut-II)

For approval and signature:

Hon'ble Mr. Anil Choudhary, Member (Judicial)

1.	Whether Press Reporter may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	No
2.	Whether it would be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	Yes
3.	Whether their Lordships wish to see the fair copy of the order?	Seen
4.	Whether order is to be circulated to the Department Authorities?	Yes

M/s. Jubilant Life Sciences Limited — **Appellant**

Vs.

Commissioner of Central Excise & S.T., Meerut-ii — **Respondent**

Appearance:

Shri Devinder Sharma, Advocate — for Appellant
Shri Rajeev Ranjan, Joint Commissioner (AR), — for Respondent

CORAM:

Hon'ble Mr. Anil Choudhary, Member (Judicial)

Date of Hearing : 05/09/2016
Date of Decision : 05/09/2016

FINAL ORDER NO. 70821/2016

Per: Anil Choudhary

The issue in this appeal is whether delay in making dispatch entry in RG-1 (stock register) under the facts that entry of duty for payment was debited in the other statutory records namely RG-23 part-II or PLA, a case of clandestine removal is made out.

2. The brief facts of the case are-

"2.1. Jubilant Life Sciences Limited (formely Jubilant Organosys Limited and Vam Organic Chemicals Limited) is a company, incorporated under the Companies Act, 1956, having its factory at Bhartia Gram, Gajraula, District-Amroha-244223, Uttar Pradesh (hereinafter referred to as "the Appellant"). The Appellant, *inter-alia,* manufactured organic chemicals and emulsions classified under Chapter 29 and Chapter 39 of the Central Excise Tariff (The Excise Tariff), respectively.

2.2. The goods manufactured by the Appellant were covered by the provisions of Chapter VII-A of the erstwhile Central Excise Rules, 1944 (the Rules). Rule 174G, inter-alia, provided for maintenance of accounts for production, manufacture and storage of excisable goods as the Commissioner may require. The Commissioner, Central Excise, Meerut vide trade Notice No.56/89-CX 6 dated 24/11/89 had directed the manufactures to record the production of the excisable goods immediately after the close of the day. The day was defined to mean the day as declared by the factory. Accordingly, the Appellant declared 6.00AM to 6.00AM, as the day for recording of the production. It was also declared that the Appellant would update the records for dispatched on Saturday and Sunday on the following Monday.

2.3. The manufactured organic chemical were initially stored in the tanks in the manufacturing area and, thereafter, transferred either to the other manufacturing plants for further manufacture of other goods or to the tanks in the bonded storage area, for removal from the factory. Similarly, the emulsions were initially stored in the blenders and filled into barrels in the manufacturing areas and, thereafter, the filled barrels were transferred to the bonded storage area. The good stored in the manufacturing area were accounted for in the RG1 as **finishing room stock** and the goods stored in the bonded storage area were accounted for as **bonded store room stocks.** The goods manufactured or transferred during the day (6.00 AM TO 6.00 AM) were recorded in the RG 1 on the following day. T he stock of goods transferred from manufacturing area to bonded storage area were added to the bonded store room stock of RG-1 and reduced from the finishing room stocks recorded in RG-1.

2.4. The plant of the appellant was a continuous process plant and therefore, the manufacturing activity continued on Sundays and Holidays and limited dispatches were made with the help of skeleton staff. Goods manufactured and dispatched on Saturday and Sunday were entered in the RG-1 on Monday. However, the duty paid on such goods was debited in the RG 23 A Part-II or PLA on the same day. Goods manufactured or transferred or dispatched after 6.00AM on 15th March (Saturday) and 16th March, 97 (Sunday) but before 6.00 AM on 17th March were to be recorded in ten (10) different registers (RG1) on 17th March, 1997. The goods manufactured or transferred after 6.00 AM on 17th March, 1997 were to be recorded in RG1 on 18.03.1997. On, 17th March, at about 9.00 hours the team of the Central Excise Officers (the team) visited the factory of the Appellant.

2.5. The central excise officers took possession of the excise records including RG-1. Thereafter, the team started physical verification of the stocks in the bonded stores area and resumed the stock accounts of the Appellant. Further, the officers checked a truck belonging to the Appellant, which was being used for transporting material from the finishing room to the bonded storage area for further dispatch. However, while ascertaining the physical stock of Acetic Acid, the team did not include the quantity of materials, which had been loaded in the trucks parked in the factory. The Comparative stock statement prepared by the team is reproduced below:

S.No	Product	Physical Stock	RG1 Stock in Bonded Area (15/03/97)	Difference	Value
1	VAM	481928.70	465492.75	16435.95	756054
2	Acetic Acid	541311.09	697504.10	-156193.01	23,42,895
3	PVA (Emulsion)	63472.50	58431.95	5040.55	206663
4	Vamisol	4377.50	4387.25	-9.75	439
5	Vamitex	9125.00	9091.25	33.75	1181

2.6. The appellant explained to the team that the variations in the physical and book stocks are on account of the transactions of 15/03/97 which were to be entered in RG1 on 17/03/97/ However, the team seized the goods found in excess of the quantity recorded in RG1 as stocks in the bonded storage area. Further, the team seized the records of the appellant and recorded the statements of the officials of the appellants. The seized goods were handed over to the officials of the company for safe custody.

2.7. The appellant made submissions before the Assistant Commissioner and explained the reason for difference in the book stock as on 15/03/97 and the physical stock on 17/03/97. Accordingly, the Assistant Commissioner revoked the seizure in respect of stocks of VAM, PVA, VAMISOL and VAMITEX. Further, on 27/03/97, the Assistant Commissioner provisionally released the truck and the goods loaded in the truck against furnishing a bond and security of Rs.91000/-."

3. Thereafter, SCN dated 10/09/97 was issued, alleging that goods have been found short when compared with the physical stock in the bonded store room as compared with the RG-1 register. Accordingly, Central Excise Duty for Rs.4,21,831/- was demanded in respect of goods found short alleging removal without payment of proper

Central Excise Duty and further for goods Vamtex- 33, 750 Kg, PVA-5040.150 Kg, Vam-16435.950 Kg, construction chemical-4335 Kg along with truck No. UP-21–6672 and molasses weighing 4698.585 Qtls valued at Rs.20,06,125.50/- be not confiscated with further proposal to impose penalty on the company and Manoj Kumar, the driver of the said truck.

4. The appellant contested the SCN and the same was adjudicated without supplying, the relied upon documents vide Order-In-Original dated 29/08/2003, the proposed demand was confirmed and penalties imposed along with the order of confiscation. Option to redeem was given on payment of redemption fine of Rs.4,62,600/- and also option to redeem the confiscated truck was given on payment of separate fine of Rs.91,000/-. Being aggrieved, the appellant preferred appeal before learned Commissioner (Appeals), who vide the Order-in-Appeal dated 25/01/2010 was pleased to observe that inspite of several letters written by him (9 in number) to the Additional Commissioner Central Excise, Meerut-II requesting therein to send the concern/relevant documents being RG-23 part-I register and RG-1 register, but till the date aforesaid record have not been received by him. It is further observed that from perusal of correspondence between Adjudication Branch of Central Excise, Meerut-II and Adjudication Branch of Central Excise, Noida, copies of which were endorsed to the ld. Commissioner (Appeals), it was evident that the documents are still not traceable and/or readily available despite a lapse of more than five years. In order to confer substantial Justice the ld. Commissioner set

aside the Order-in-Original and remanded the matter back to the adjudicating authority with the direction to decide the case within three months, after providing the appellants the relevant RG 23 part-I register and RG-1 register and thereafter affording an opportunity to the appellants to present their case.

5. Pursuant to remand the second Order-in-Original dated 14/03/2013 was passed by the Additional Commissioner, Meerut-II. As pointed out by the learned Advocate for the appellant, it is evident on perusal of the records that the relied upon documents, as directed by the ld. Commissioner (Appeals) were not provided to the appellant assessee and again the duty of Rs.4, 21,831/- was confirmed along with confiscation of the seized goods and the seized stock with option to redeem on payment of redemption fine. However, penalty on Manoj Kumar, driver was not imposed as the amount of Rs.3,14,060/- and Rs.14,38,961/- were found to be admissible credit. Being aggrieved, the appellant preferred appeal before ld. Commissioner (Appeals), who vide the impugned order have been pleased to uphold the recovery of duty of Rs. 4,21,831/-, uphold the confiscation of the goods seized and also the truck seized but have been pleased to reduce the redemption fine to Rs.50,000/- and further, he was pleased to set aside the confiscation of the seized molasses. And further been pleased to reduce the redemption fine to Rs.1,50,000/- on the excess found goods.

6. Having heard the parties and on perusal of records, I find that the Order-in-Original, passed in the second round dated 14/03/2013,

have been passed in violation of the principles of natural Justice, as well as in gross violation of the orders and directions of the ld. Commissioner (Appeals). Accordingly, the said order is not sustainable. Accordingly, I set aside the Order-in-Appeal and the Order-in-Original and allow the appeal. The appellant assessee will be entitled to consequential benefits, in accordance with law. So far the pre-deposits or the payment of duty pending adjudication or appeal is concerned, the same are refundable to the appellant along with interest, as per Rules.

7. The appeal is allowed.

(Dictated in Court)

Sd/-

(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

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प्रमाणित प्रति / Certified True Copy
9.14.10
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