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

Dated: 25/07/2017

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. **A/70667-70669/2017-EX[DB]** dated **04/05/2017**

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

Application	Appeal	Name and Address of Appellant
1	E/1197/2004	**Kisaan Gramodyog Sansthan** 117/q Lic Society, Sharda Nagar KANPUR UTTA R PRADESH
2	E/1198/2004	**Smt.vijay Laxmi Shukla** **Sectary** 117/q/94, Lic Society Sharda Nagar KANPUR U.P
3	E/1199/2004	**Kamal Kant Shukla Authorised** **Prpr.** C/o Kisan Gramodyog Sansthan 117/q/94, Lic Society Sharda Nagar KANPUR U.P

	Name and Address of Respondent
4	C.C.E. & S.T.-Kanpur 117/7...SARVODYA NAGAR, KANPUR, UTTAR PRADESH-208005
5	C.C.E. & S.T.-Kanpur 117/7...SARVODYA NAGAR, KANPUR, UTTAR PRADESH-208005
6	C.C.E. & S.T.-Kanpur 117/7...SARVODYA NAGAR, KANPUR, UTTAR PRADESH-208005

Other Appellants and Respondents as per Annexure
Copy To
7 Advocate(s) / Consultant(s):

Pawan Shree Agrwal, Advocate
B-9, SAGAR APARTMENTS,
6, TILAK MARG,
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8 Bar Association, CESTAT, Allahabad

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

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

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

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

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 & SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH : ALLAHABAD
COURT No. I

APPEAL Nos. E/1197, 1198, 1199/2004-EX[DB]

(Arising out of Order-in-Original No. 10/Commissioner/MP/2003 dated 07/11/2003 passed by Commissioner of Central Excise, Kanpur)

M/s Kisaan Gramodyog Sansthan, (In Appeal No. E/1197/2004)

Smt. Vijay Laxmi Shukla, Secretary, (In Appeal No. E/1198/2004) &

Shri Kamla Kant Shukla, Authorized Proprietor (In Appeal No. E/1199/2004) **Appellants**

Vs.

Commissioner of Central Excise, Kanpur **Respondent**

Appearance:

Shri Pawan Shree Agrawal, Advocate for Appellants
Shri S. J. Sahu, Assistant Commissioner (AR), for Respondent

CORAM:

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

Date of Hearing: 08/09/2016, 04/05/2017

Date of Decision: 04/05/2017

FINAL ORDER NO. 70667-70669/2017

Per: Anil Choudhary

Heard the both parties and perused the records and/or submissions.

2. The issue in this appeal is, whether the appellant- M/s Kisaan Gramodyaog Sansthan, is entitled to exemption as they were mainly doing manufacture of excisable goods i.e. Steel Furniture & Agricultural Tools & Implements and also claiming exemption as a KVIC Unit, being affiliated with the Director of Industries, U. P. Khadi Gramodyog Board, or whether the appellants are liable to Central Excise duty. Vide

the impugned OIO dated 07/11/2003 by which Central Excise duty amounting to Rs.60,88,148/- have been demanded under Section 11A of the Central Excise Act, 1944 read with first proviso thereto from the appellant - M/s Kisan Gramodyog Sansthan (M/s KGS for short) with equal amount of penalty under Section 11AC of the Central Excise Act, 1944. Further penalty of Rs.5,00,000/- is imposed on appellant - M/s KG Sansthan under Rule 173Q of Central Excise Rules, 1944 read with Rule 25 of Central Excise Rules, 2002. Further penalty of Rs.2,00,000/- is imposed on appellant – Smt. Vijay Laxmi Shukla under Rule 26 of the Central Excise (No. 2) Rules, 2001 and also equal amount of penalty of Rs.2,00,000/- on appellant – K. K. Shukla under Rule 26 of the Central Excise (No. 2) Rules, 2001. Further, interest has been demanded on the amount of duty payable.

3. The case of Revenue, as per the Show Cause Notice dated 28th June, 2002 is that a search was conducted by DGCEI, Regional Unit, Kanpur on 23/04/2002, in the factory premises of M/s KGS and the residential premises of its Secretary Smt. Vijay Laxmi Shukla. The appellant was engaged in manufacture of excisable goods i.e. Steel Furniture & Agricultural Tools & Implements and they had neither submitted any declaration nor had applied for Central Excise registration for the manufacture of said excisable goods. They cleared excisable goods without observing the formalities under the scheme of the Acts and/or the Rules. At

the time of search Shri Kamla Kant Shukla (Authorized Signatory) was present who is the husband of Smt. Vijay Laxmi Shukla the Secretary of M/s KGS. No documents related with the purchase of raw materials, production and sale of goods were available in the factory. Upon inspection the following goods were found in the factory premises:-

Description of Goods	**Quantity**
(i) Finished goods	
Steel Almirah	1
Steel Box 24"	30
Steel Box4' x 2.5'	2
Bukhari [Cylindrical Container used for storing food grains]	1
Water Container 36"	9
Thresher Pernal [U shaped Section]	111
Tasla [15 Kgs. Capacity]	50
Table Drawers	21
Phawra [Spade]	300
Tractor Far	100
(ii) Manufacturing Tools	
Electrical Welding Machine [DD Chawla Make]	1
Gas Welding Machine	1
Hand Drilling Machine	1
(iii) Raw Materials	
GP Sheet 8'x 3'	40
Black Sheet	5

Further, on being asked Shri Kamla Kant Shukla informed that the aforementioned finished goods had been manufactured in the factory. Further informed that there was no electricity connection and the same is lying disconnected since long, and that for manufacturing they were using 5 KW generator set, which was also out of order at the relevant time, and had been sent for repair on 21/04/2000 i.e. 2 years prior to the date of search being on 23/04/2002. On being asked about the 4 shops Cum-godowns which were located at the front side of the factory within the premises, Shri Kamla Kant Shukla informed that shop number four was on rent and other three shops were being used for storing the factory made goods. The three shops were opened and the following items were found lying in the shops:-

Description	**Quantity**
Duly painted Steel Almirah [Full size]	5
Almirah 50" [Steel Grey]	1
Book Shelf	5
Steel Bukhari	10
Phawra	20

The Panchnama was drawn for the search conducted on 23rd April, 2002. Further Shri Kamla Kant Shukla stated that the items had been manufactured by cutting steel sheets by hand operated scissors; then the sheet was given shape by hand press machine; when required, items are welded by electric welding machine and finally spray-painting was done on items like almirah, trunk, table with the help of compressor run by generator set. During the course of search in the residential premises of Smt. Vijay Laxmi Shukla W/o Shri Kamla Kant Shukla the Secretary of M/s KGS situated at Sharda Nagar, Kanpur. Some records were found pertaining to M/s KGS and also records relating to another Unit namely M/s Adarsh Lauh Evam Kashtha Kala Audyogik Utpadan Sahkari Ltd., Kanpur. In response to summons to Smt. Vijay Laxmi Shukla, her husband Shri Kamla Kant Shukla

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appeared on 23/04/2002 and his statement was recorded wherein *inter-alia* stated that M/s KGS was a Khadi Sansthan affliated with U. P. Khadi Gramodyog Board; that Shri Ram Sevak was President and his wife Smt. Vijay Laxmi Shukla was secretary and there were 14 other members in the said Sansthan; his wife used to look after the work of M/s KGS relating to purchase of raw materials, production of goods by workers, and sale of finished products, and maintenance of records was done by Accounts Clerk, Mr. Sharad Kumar and the unit had come into existence in 1992-93. And that they were purchasing raw material such as a HR/GP Sheet/Angles/Rounds, etc. from U. P. State Industries Corporation at Naini/Agra/Ghaziabad on cash payment; that the goods manufactured out of the raw materials were sold in market on cash payment whereas in respect of goods sold to Government Department; they were receiving payment through cheques/demand drafts. He further stated that there was an electric connection, which was in his name earlier, was disconnected and the operation of the compressor and electric welding machine was done with the help of 5 KVA generator set. The unit was registered with the Sales Tax, District Industries Centre [DIC] and with U. P. Khadi Board. They had submitted returns with the said the Departments. That they had taken a loan of Rs.2,80,000/- from U. P. Khadi Board in 1992-93. He further stated that they have neither filed any declaration not applied for any registration with

Central Excise Department. During the course of scrutiny of records recovered, it appeared that the appellants – M/s KGS were manufacturing the following items namely:-

(a) Steel Furniture [Table/Table racks, Almirahs, Book shelf, etc.]
(b) Steel Boxes
(c) Phawra Blade (Spade)
(d) Tractor trolly & Parts
(e) Thresher/Chop cutter Parnala
(f) Thresher Parts
(g) Thresher Jali
(h) Thresher/Chop cutter stand
(i) Machine Base [Theeha]
(j) Tasla
(k) Bakhari [Container for keeping wheat]
(l) Mini Trolly
(m) Tractor Far [Hal or Plough]

It was further explained that there being manufacturing activities done by about 10 to 12 workers and those workers was assisted by him. He also stated that he assigned work to them on contract basis and cost of nut, bolt and handles etc. were included in the contract price as they did not provide any such things to the workers. Items were sold on cash basis and addresses of buyers were incomplete for which Shri Shukla explained that buyers were coming to M/s KGS and gave orders. At the time of accepting the order 50% amount is accepted and the balance 50% is payable at the time of delivery of the goods. They issued cash memo either in the name of buyer or as cash sale. As such, the address of buyers was not known to them. Mr. Shukla further informed and/or stated that items manufactured like Parnala would be used in places like Thresher machine, Chop cutter, Rahat, and also as an equipment for draining water from roofs of houses in villages, etc. Similarly, they were manufacturing machine stand which could be used for keeping Thresher machine, Chop Cutter machine and even water cooler on it. These stands were similar in look and were sold on the basis of their weight and were of multiple uses. They also manufactured tractor trolley body in their factory from steel sheets, iron, angle and rods. The bodies manufactured with axle only and they did not attach hub and tyres normally, but if the buyer provided hubs and tyres, the same are attached, otherwise they sold body of the tractor trolley only. Mr. Shukla also tendered copies of balance sheets for the year 1997-98 to 2001-02 and a chart giving detail of sale of finished goods and purchase of raw materials for the said period.

4. Smt. Vijay Laxmi Shukla also appeared for recording of her statement before the SIO, DGCEI, Kanpur and she agreed to the statement given by her husband Shri Kamla Kant Shukla and also the statement of Accounts Clerk Shri Sharad Kumar Awasthi and agreed with the contents thereof. Further on scrutiny of records revealed that appellant – M/s KGS have purchased most of their raw materials from UP State Small Industries Corporation Ltd., Agra, Naini & Ghaziabad. From the perusal of some of the bills of M/s KGS the items seen were Rahat, Parnala, etc. It appeared to Revenue with reference to the Rule 1, for interpretation for schedule to Central Excise Tariff Act, read with Section Note 1 (g) to the Section XVI of the Central Excise Tariff Act, 1985 provides

that parts of general use as defined in note 2 to Section 15, of base metals (Section XV), or similar goods of plastics (chapter 19) are excluded from the purview of this Section and, therefore, the parts of general use of base metal i.e. iron and steel are to be classified in the respective headings in chapter 3 of the Central Excise Tariff Act, 1985. It appeared that M/s KGS were selling Parnalas by writing different names such as parnalas, rahat parnala, thresher parnala, CC parnala and were preparing bills. Whereas in the sale statements submitted by them, they have given details of CC/Thresher parnala only. This shows that parnalas manufactured by M/s KGS can be used anywhere and are multipurpose. Thus, it is obvious and clear that CC/Thresher Parnala, Rahat Parnala & other Parnala were similar in look, weight, rate per MT and can be used anywhere according to need. Similarly, machine stand could be used anywhere. Thus, Parnala and machine stand could be taken as items of general use and may be classified under chapter heading 7326.90 of the Central Excise Tariff Act, 1985. The other items of manufacture by M/s GS were identified and their classification according to Central Excise Tariff Act, 1985, was held as follows:-

Sr. No.	Description of goods manufactured and sold	Classification as per CETA, 1985
(a)	Steel almirah/book shelf/table racks & other Steel furniture	9403.00
(b)	Steel Box	7310.00
(c)	Steel bakhari/Tin container (of 5 Qtl. Capacity for storing grains)	7309.00
(d)	Phawra (Spate) blade (without stick)	8201.00
(e)	Tractor Trolley without Hub and Tyres & Parts (body)	8716.00
(f)	Thresher/CC Rahat Parnala/Parnala	7326.90
(g)	Thresher/CC Stand	7326.90
(h)	Mini Trolley	7326.90
(i)	Thresher Jali	8433.00
(j)	Thresher Parts	8433.00
(k)	Tasla	7326.90
(l)	Machine base (Theeha)	7326.00
(m)	Tractor Far	8201.00

5. It further appeared that as per Notification No. 4/97 dated 01/03/1997 read with dated 02/06/1998, Notification No. 5/99 dated 28/02/1999, Notification No. 6/2003 dated 01/03/2003 & Notification No. 3/2001 dated 01/03/2001, as amended from time to time, metal containers of chapter heading 73.10, attracting nil rate of Central Excise duty if:

(a) in relation to the manufacture of such container no process is ordinarily carried on with the aid of power; or.

6. As per statement of Shri Kamla Kant Shukla, Almirah, Steel Box etc. after finishing are painted with the help of compressor having electric motor of 1HP/KW, which was operated with the help of generator set of 5 KVA and painting was done by the compressor which could be operated only with the help of power. As such, benefit of Exemption Notification No. 4/97 dated 01/03/1997, as amended from time to time was not available to them, duty was chargeable as per the tariff. It appeared that although KGS is a KVIC unit

but the items manufactured by them are not covered in the schedule to the Notification No. 88/88 dated 01/03/1988, as amended which provides exemption from Central Excise duty on the item specified in the schedule to the said notification, if manufactured in rural area by co-operative/KVIC, etc. Thus it appeared that items manufactured by appellant – M/s KGS were taxable/dutiable, after allowing exemptions, if any, available to them.

7. On the basis of purchase bills, sale bill books submitted/recovered from M/s KGS and monthly statements received from Sales Tax Department, Kanpur, balance sheet, and the statements tendered by Smt. Vijay Laxmi Shukla – Secretary of M/s KGS, Shri K. K. Shukla – Authorized Signatory of M/s KGS and Shri Sharad Kumar Awasthi - Accounts Clerk of unit, year wise chart for sale of dutiable goods and corresponding duty liability was prepared by Revenue, as per Annexure to the SCN. And on the basis of such Annexure's, the sale figure of dutiable steel furniture and agricultural tools and implements manufactured and sold by M/s KGS has been calculated after giving benefit of SSI exemption, wherever applicable, the details of which are as follows:-

Period	Total Value of Goods Sold (Rs.)	Value of Exempted Goods (Rs.)	Value of Dutiable Goods (Rs.)	Duty Involved (Rs.)
1997-1998	4,32,19,000	1,19,77,000	3,12,42,000	34,97,788
1998-1999	5,53,58,000	1,61,29,000	3,92,29,000	59,17,690
1999-2000	5,73,98,000	1,63,79,000	4,10,19,000	65,63,040
2000-2001	7,41,86,000	4,41,02,000	3,00,84,000	48,13,440
2001-2002	6,09,07,000	4,48,62,000	1,60,45,000	25,67,200
TOTAL			**15,76,19,000**	**2,33,59,158**

Further, Revenue recognized appellant – M/s KGS is SSI unit and for the year 1996-97. The sale of dutiable goods being less than 3 Crores (total sale Value - Rs.3,24,85,700/-, (-) exempted goods Thresher parts) Rs.39,70,381/- = Rs.2,85,15,319/- (Dutiable goods) KGS were eligible for SSI exemption on the sale of dutiable goods for the year 1997-98 to 2001–02, the duty was calculated after allowing the exemption under SSI notification as applicable from time to time. The calculation is reflected in detail in the Annexure C-I, C-II, C-III, C-IV & C-V to the Show Cause Notice. It further appeared that appellant- M/s KGS have suppressed their affairs and have not disclosed their affairs with the Central Excise Department and were manufacturing dutiable items and cleared the same without taking Central Excise Registration and without observing other formalities and accordingly, it appeared that extended period of limitation was applicable.

8. The Show Cause Notice was adjudicated on contest and the duty was demanded along with penalty as more fully mentioned hereinabove.

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9. Being aggrieved by the said order/judgment the appellants have filed the appeal before this Tribunal. It is urged that vide the impugned order excise duty have been wrongly demanded either by wrongly classifying the products or erroneously denying exemption to the appellant and not considering the Modvat/Cenvat credit available to the appellant. It is further stated that the extended period of limitation have been wrongly invoked in the facts and circumstances of the present case. It is further stated that the appellant is a society registered as SSI with the Director of industries, U. P. and affiliated with U. P. Gramodyog Board. The Unit of the socicty was engaged in manufacture of steel furniture and agricultural tools and implements. The society has obtained registration under the U. P. Trade Tax and Central Sales Tax and enjoys exemptions being a certified 'Khadi & Village Industry' (KVIC). The society is further exempted from payment of income tax under the Income Tax Act. The society was also given loan, by KVI Commission. The appellants are a KVIC Unit, which is admitted fact by the Revenue, as is evident from Para 23 of the OIO. Is it is further urged that although the appellant are entitled to exemption as almost all of the production is of agricultural tools and implements. But even if any product is found to be dutiable under Central Excise Act and/or Rules, then they will be entitled to Cenvat/Modvat credit on the purchase of raw materials, going into the manufacture of dutiable final

products. The ld. Commissioner have erred in not considering the availability of Modvat/Cenvat credit while determining the duty liability. It is further urged that the appellants have admittedly acquired their raw materials from UPSIDC, which was registered as a first stage dealers under the Central Excise Acts and/or Rules and is entitled to pass on the Cenvat credit. The learned Chartered Accountant has demonstrated a few sample/invoices and further states that all the original invoices are in the custody of the Department. He further urges that the details of the amount of duty paid on the raw material purchased has been certified by the Chartered Accountant and the same have been annexed in the appeal paper book. They further rely on the ruling of this Tribunal in the case of Gujarat Ambuja Cement *Versus* Commissioner of Central Excise, Rajkot reported at 1996 (85) E.L.T. 154 (Tribunal), wherein it was held when documents are there to show that the duty paid cement has been used in the manufacture of tetrapods, which are held to be dutiable, the substantive benefit of Modvat credit cannot be denied, while confirming the demand.

10. "PRODUCTS WRONGLY CLASSIFIED AND CHARGED TO DUTY

It is submitted that the duty is sought to be imposed on the Appellant by seeking to classify the products wrongly and the same are detailed below item wise.

10.1. **STEEL BAKHARI/TIN CONTAINER (SEEDS BIN)**

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It is submitted that the item Steel Bakhari or Tin Containers used for storing grains has been wrongly held to be classifiable under Chapter Sub heading 7309 by the Adjudicating Authority. Chapter heading 7309 reads as under:-

"Reservoirs, tanks, vats and similar containers 'for any material' (other than compressed or liquefied gas), of iron or steel of iron or steel, of a capacity exceeding 300L, whether or not lined or heat insulated, but not fitted with mechanical or thermal equipment"

From the reading of the aforesaid entry it is absolutely clear that the said entry relates to those containers which are filled with liquid commodity and not for grains. Two reasons for the said submission are words "Reservoirs, tanks, vats" are such containers which are used to fill the liquid commodities and the word "similar containers" has to be read in that context by applying the principle of *Ejusdem Generis.*

The words "of a capacity not exceeding **300L**" signifies that the measurement is also in Liters and not Kilogram signifying that material which is to be contained in such containers should be measurable in Liters. Admittedly grains are not measured in Liters but in Kilograms.

It is submitted that Steel Bakhari is a commodity meant for storing grains and the same is not disputed by the department. These commodities are produced manually and are thus classifiable under Tariff Entry 84.36. tariff Entry 84.36 reads as under:-

"Other agricultural, horticultural, forestry, poultry-keeping, or bee-keeping machinery, including germination plant fitted with mechanical or thermal equipment; poultry/incubators and brooders".

10.2 The term "machinery" is to be understood in Section Note 5 of Section XVI which states:-

> *"5. For the purpose of these Notes, the expression "machine" means any machine, machinery, plant, equipment, apparatus or appliance cited in headings of Chapter 84 or Chapter 85"*

Thus the term machinery has been used in the most expansive sense to cover even the apparatus or equipment or appliance which need not be machine. The word "equipment" has been defined in *Compact Oxford Dictionary as "the items needed for a particular activity or purpose".* On the reading of the dictionary meaning it is clear that if a particular item is used for a particular purpose, will be equipment or apparatus. In the present case since the Steel Bakhari is used for storing seeds and is needed for the said purpose, is an equipment or apparatus and thus being the item of agriculture, is classifiable under entry 84.36 leviable to NIL rate of duty.

It is now well settled that in case of doubt the benefit should be given to the assessee and in the present case it should be in favour of the appellant.

Reliance in also placed on the decision of the Tribunal in the case of Thermax Ltd. V. CCE [1996 (181) ELT 417] which has held 'grain storage system' as classifiable under heading 84.36

10.3 **"Tractor Trolly" without Hub and Tyres & Parts"**

It is submitted that the item 'Tractor Trolley without Hub and Tyres & Parts' has wrongly being classified by the Adjudicating Authority under Chapter Sub Heading 8716.00 and instead is classifiable under Chapter 84 as claimed by the Appellant. Tariff Heading 8716.00 which reads as follows:-

> *"Trailers & Semi-trailers; other vehicle not mechanically propelled; parts thereof"*

The item in question is an open box of rectangular shape and size. It is not attached with any motor or mechanical device. The said tractor trolley is also without hub and tyres or wheels. The commodity is used for the purpose of transport of materials and had been sold without the trolley.

Further, it is relevant to note that the Tribunal has held in the case of Steel Crafts V. Collector of Central Excise, Belgaum [1995 (75) E.L.T. 897 (Tribunal)]:

> *"Trailer is a wheeled vehicle designed to be hauled by a motor vehicle"*

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Therefore, where it has clearly been stated by the Appellant that the tractor trolley in question is not attached with any wheels or tyres, hub and motor, the same has been wrongly classified as a trailer or vehicle under Chapter Sub Heading 8716.00 as opposed to 84.32/84.36 claimed by the Appellant.

10.4 **Machine Base (Theeha)**

That the item in question is Machine Base (Theeha) is manufactured by the Appellant for the installation of a thresher. It therefore forms part of the thresher and has been wrongly classified under Chapter Sub Heading 7326.90, reads as "Others".

It is submitted that the item in question is classifiable under Chapter Sub Heading 8433 which reads as "Harvesting or Threshing Machinery, including straw or fodder bales; grass or hay movers; machines for cleaning, sorting or grading eggs, fruit or other agricultural produce, other than machinery of heading 8437". Further within Chapter Sub Heading 8433, Tariff Entry 8433.90 includes parts of the machinery referred to Chapter Sub Heading 8433. Therefore, as the item in question is a part of the thresher machine, it will be covered within the Chapter Sub heading 8433 and 'nil' rate of duty will apply to the same. The thresher machine cannot work without the stand (theeha) as it will be of use only when the machine is placed on the theeha/base.

10.5 **Tractor Phar (Hal-Ki-Nok)**

That the item in question is Tractor Phar which has been wrongly classifiable under Chapter Sub Heading8201 which reads as **"Hand Tools,** the following; spades, shovels, mattocks, picks, hoes, forks and rakes; axes, bill hooks and similar hewing tools; secateurs and prunes of any kind; scythes, sickles, hay knives, hedge shears, timber wedges and other tools of a kind used in agriculture, horticulture or forestry".

It is submitted that the Tractor Phar is used for soil preparation and agricultural purposes alongwith the Tractor. The heading 8201 refers to Hand Tools. Tractor Far is not a hand tool and is to be used with tractor. In light of the description of the said item, it is submitted that the said item is correctly classifiable under Chapter Sub Heading 8432 which read's as:-

"Agricultural, Horticultural or forestry machinery for soil preparation or cultivation; lawn or sports ground rollers" at 'nil' rate of duty as prescribed for goods within such classification. The explanation of 'machinery' as hereinabove is adopted for the purpose of classifying the said item.

10.6 **Phawara blade/Belch (both without stick)**

It is submitted that the items Phawara blade/belcha (both without stick) are covered by Tariff Heading 8432 under Chapter 84 of the Central Excise Tariff which reads as "Agricultural, Horticultural or forestry machinery for soil preparation or cultivation; lawn or sports ground rollers". The items in question are commonly used for soil preparation and cultivation and are therefore liable to nil rate of duty falling squarely under Chapter Sub Heading 8432 for being agricultural machinery for soil preparation or cultivation.

It is further submitted that the Adjudicating Authority wrongly classified the said items as a spade under Chapter Sub Heading 8201 which reads as "Hand Tools, forks and rakes; axes, bill hooks and similar hewing tools; secateurs and prunes of any kind; scythes, sickles, hay knives, hedge shears, timber wedges and other tools of a kind used in agriculture, wedges and other tools of a kind used in agriculture, horticulture or forestry".

In order to understand the term 'spade' as understood in common parlance reference is made to the dictionary meaning of the same:

'a tool with a sharp-edged, typically rectangular, metal blade and a long handle, used for digging or for cutting earth, sand, turf, etc.' Oxford Dictionary, Oxford Dictionary Press, 2010.

Therefore as is clear from the definition above, a spade, in commercial parlance cannot be without a stick or handle. It has been stated by the Appellant that the stick or handle is not provided by them and the same has not been refuted by the Department. The Adjudicating Authority has wrongly denied the benefit of 'nil' rate of duty to the said items by incorrectly classifying them under Chapter Sub Heading 8201 as the items in question are both without handle but are used

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for soil preparation and cultivation and are therefore classifiable under Chapter Sub Heading 8432.

10.7 **Tasla**

It is submitted that the item Tasla has been wrongly classified by the Adjudicating Authority under Chapter Sub Heading 7326.90 under Chapter 73 of the Central Excise Tariff, Chapter Sub Heading 7326 reads as "Other Article of Iron & Steel" and Tariff Entry 7326.90 reads as "Others".

The item in question, Tasla, in common and ordinary parlance is used for agricultural purposes meant for soil preparation or cultivation. Further, the item in question had been specifically manufactured for the clearing, sorting or grading of agricultural produce.

Therefore it is submitted that the item in question is classifiable under Chapter Sub Heading 8432 which reads as " Agricultural, Horticultural or forestry machinery for soil preparation or cultivation; lawn or sports ground rollers" or is classifiable under Chapter Sub Heading 8433 which reads as "Harvesting or threshing machinery, including straw or fodder balers; grass or hay movers; machines for cleaning, sorting or grading eggs, fruit or other agricultural produce, other than machinery of heading 8437" as the item in question is used for the preparation and cultivation of soil and for the preparation and cultivation of soil and for purposes of cleaning, sorting and grading of agricultural produce.

10.8 **Steel Almirah & Steel Furniture**

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Without prejudice to the above, it is submitted that the exemption has been wrongly denied to the Appellant in case of steel furniture. Etc. And steel boxes. It is submitted that the exemption under Notification No. 198/87-CE has been wrongly denied to the Appellant for the goods falling under the Chapter Heading 94.03. It is an admitted position that the Appellant is a KVIC unit [Para 21 of the Order-in-Original]. Further, it is also not disputed that the goods are genuine products of village industry or that the goods are marketed by or with assistance of the Khadi & Village Industries Commission. The Appellant has also produced certificate from the U. P. KVI Board [at page 40 of the paper book] which is an **implementing agency** of the Khadi & Village Industries Commission to the effect that the unit is a village industry and is so assisted by the U. P. KVI Board. It is therefore submitted that the Appellant has complied with the conditions, objective and purpose of the exemption notification and the benefit of the same ought to be granted to the Appellant. The Hon'ble Supreme Court in the following cases has held that Notification is to be construed reasonablly and rationally and not in a manner so as to deprive the benefit.

* Shriram Vinyl *Versus* Commissioner of Customs [2001 (129) E.L.T. 278 (SC)]

* Commissioner of Customs (Preventive) *Versus* Malwa Industries [(2009) 12 SCC 735]

Aon

* Commissioner of Customs (Preventive) *Versus* Reliance Petroleum Ltd. [(2008) 7 SCC 2261]

In the present case the intention of the notification has been satisfied and the certificate from U.P. Khadi & Village India Board which is the implementing agency of Khadi & Village Industries Commission, recognizing Appellant as a KVIC Unit, satisfies the condition of the Notification including the purpose for which exemption was granted. It is submitted that the exemption has been wrongly declined on the sole ground that the certificate is not from KVIC while recognizing that the Unit is a KVIC Unit.

10.9 **STEEL BOXES**

It is submitted that steel boxes have been manufactured without the aid of power and are entitled to the exemption under Sr. No. 73.10 of the Notification No. 3/2001 dated 01.03.2001, 4/97-CE dated 01.03.1997, 5/98 dated 02.06.1998, 5/99 dated 28.02.1999, 6/2000 dated 01.03.2000 & 3/2001 dated 01.03.2001. It is submitted that the Order-in-Original proceeds on an hypothesis that the steel boxes have been painted and therefore, power has been used. It is submitted that the finding that the steel boxes are painted is entirely incorrect and contrary to record and evidence. It is submitted that the Panchnama drawn by the Department clearly records that the steel boxes have been found which are not painted [page 169 of the paperbook]. It is further submitted that the Appellant had submitted before the Adjudicating Authority the entire production process and picture of the products which clearly show that the boxes are not painted. It has been further submitted that the boxes without any paint are also generally sold in the market.

The Department has never noted the process of manufacture of such steel boxes and have also not produced any evidence to counter the submissions made by the Appellant. The exemption has been deined on a line picked up from the statement that states that steel furniture was painted by spray painting and relying it without context to apply the same to boxes also. The statement was made in context of steel furniture, steel almirah, tractor trolley and it cannot be said that the same has been made in context of steel boxes also. In fact, in the affidavit dated 24.04.2002 steel boxes have been dealt separately from steel furniture and from a perusal of the same it is clear that the boxes are not painted. It may further be noted that the statement sought to be relied upon by the Department has been retracted vide affidavit dated 24.02.2002 and the same cannot be taken as evidence in view of the following decisions:

* Hindustan fibres *Versus* Commissioner of Central Excise, Jaipur [2009 (245) E.L.T. 337 (Tri. -Delhi)]

* Vinod Solanki *Versus* Union of India [2009 (233) E.L.T. 157 (SC)]

It is, therefore, submitted that the exemption under Notification No. 4/97 dated 01.03.1997, 5/98 dated

02.06.1998, 5/99 dated 09.02.1999, 6/2000 dated 01.03.2000 & 3/2001 dated 01.03.2001 is available to the Appellant as the Appellant had adduced sufficient evidence to substantiate its claim and the Order-in-Original, to that extent, is liable to be set aside.

10.10 It is submitted that the Department has not discharged the burden of proof for disputing the classification as they have adduced no positive evidence to refute the claims of the appellant and therefore, the demands are unsustainable in view of the decision of the Hon'ble Supreme Court in the case of Hindustan Ferodo *Versus* Commissioner of Central Excise [1997 (89) E.L.T. 16 (SC)].

10.11 EXTENDED PEROD OF LIMITATION NOT AVAILABLE

It is submitted that the extended period of limitation cannot be invoked by the Department as there was no intention to evade payment of duty. It is submitted that the Appellant was under a bona-fide belief that the products manufactured by the Appellant were either exempt or chargeable to NIL rate of duty and therefore, there was no liability to pay any Excise duty. It is an admitted position that the Appellant has not charged excise duty from its customers. In similar facts, the Hon'ble Tribunal in the case of Bentek Electrical corporation *Versus* Commissioner of Central Excise [2006 (205) E.L.T. 1129] affirmed by Hon'ble Kerala High Court in 2010 (257) E.L.T. 367 (Kerala) where a unit was recognized as a village industries unit it was held that the extended period of limitation cannot be invoked by the department under Section 11AC of the Central Excise Act, 1944. "

11. The leaned Counsel further stated in the facts and circumstances that there is neither any contumacious conduct and/or suppression of facts on their part nor any concealment of the affairs and further they had *bona-fide* belief that they being a KVIC unit and manufacturing mainly agricultural implements are not taxable under the provisions of the Central Excise Act. Even on the purchase invoices for inputs from UPSIDC Ltd., as a registered dealer under the provisions of the Central Excise Act have reflected the amount of Excise duty on their invoices raised on the appellant, but have marked such invoices as "non-modvatable". This marking non-modvatable was prima facie on the belief of UPSIDC that the appellants are supposed to consume the raw materials provided to them for manufacture and the same is not for trade, and they do not need the Modvat credit being exempted as a KVIC Unit and also affiliated with U. P. Gramodyog Board. It is further evident that no contumacious conduct have been alleged in the Show Cause Notice, save and except, that it appeared to Revenue that the appellants are manufacturing goods which are excisable and as such they have failed to register and/or file the appropriate declaration with the Central Excise Department. Accordingly, he prays for allowing the appeal, with consequential benefits.

12. The ld. A. R. for Revenue have relied on the findings in the impugned order. The ld. A. R. have made the following submissions:-

> "On intelligence of non-declaration & also non Registration for evasion of duty on steel furniture & tools, elite agency DGCEI booked this fraud case on the basis *inter-alia,* not only the clear admission of 3rd appellant before *Panchas* but also, consequential confirmation of the Secretary, independently under Section 14 of Central Excise Act, 1944 that have never been shown to be false.
>
> The appeal was filed in 2004, chiefly on the grounds that:
>
> - Modvat credit would have been available on duty paid input (even *w/o following the prerequisite Option & Declaration therefor);*
> - *Bona-fide* belief of non-excisability by virtue of exemption (*w/o being shown at any stage or substantiation thereof;*
> - Amount Confirmed is disputed by referring to universal Classification, by exceptions.

12.1 **Department Submission on the issue:**

During hearing, Revenue relied on reported decision of Division Bench of Hon'ble Tribunal (Mumbai) in case of Suzlon Infrastructure *Versus* Commissioner of Central Excise, Pune-II {2012 (283) E.L.T. – 49 (Tri. – Mumbai)} held on limitation, ***Bona-fide belief,*** it can be formed after all reasonable considerations are taken into account. It cannot be formed when there is nothing on record to indicate that assessee approached with caustion. In that view, invocation of extended period of limitation and upheld.

In the instant case, it was the Department to detect clandestine removal, fraudulently & notice never approached i.e. double whammy.

On the plea of availability of Modvat on being caught, hereby reliance is placed on reported decision of Hon'ble High Court (Allahabad) in case of VEE Excell Drugs & Phmls P. Ltd. *Versus* Union of India wherein "Export Rebate, claim of, without filing requisite documents, ignorance of law, held, is not excuse when something is required to be done by law in a particular manner. Rule 18 of Central Excise Rules, 2002"

12.2 Therefore, in view of the above, further consideration of the plea for Modvat availability does not arise; as, neither the mandatory Option nor the prerequisite Declaration of SSI was ever filed by them & similar petition, *supra* was rejected. Further, humbly it is submitted that in the wake of abovementioned, all of their arguments loose force on considering appended & emphasized observations of various facts on confirmed demand neither figured nor disputed in arguments/contentions of appellant(s), hence the appeal deserves rejection as devoid of merits."

13. Having considered the rival contentions and on perusal of the facts on record, we are satisfied that all the goods manufactured by the appellant are agricultural implements and/or hand tools and have been mis-classified by the Revenue. Accordingly, we set aside the demand, save and except, on the Steel Boxes & Steel Almirah. As regards, Steel Boxes, it has been submitted that the same has been manufactured without the aid of power and as such are entitled to exemption under Serial No. 73.10 of Notification No. 30/2001-CE dated 01/03/2001, read with the previous Notification No. 4/97-CE as amended from time to time in the impugned order. We find the demand has been confirmed on the hypothesis that the Steel Boxes have been painted with the aid of power for running the compressor for painting. The learned counsel has submitted that in most of the cases, the Steel Boxes are not painted as is evident from the Panchnama, wherein the boxes which were found were not painted. We find that the submissions of the appellant are uncontroverted more particularly under the admitted fact that there was no power connection in the factory premises, at the time of inspection and/or drawal of proceedings and there is no investigation by the Revenue, as to the period, during which the appellant had connection from the Electricity Department and other relevant fact like, number of units consumed, etc. It is admitted fact that they were using generator for running their welding machine and compressor.

Under these admitted facts, we hold that the appellant is not liable to excise duty on the Steel Boxes & Almirah and they are entitled to exemption under Notification No. 30/2001-CE dated 01/03/2001. Accordingly, the whole demand is set aside along with penalties imposed on the appellants. The appellants shall be entitled for consequential benefits, if any, in accordance with law.

Thus, the Appeals stand allowed.

(Dictated and pronounced in Court)

-Sd/-	-Sd/-
(ANIL G. SHAKKARWAR)	(ANIL CHOUDHARY)
Member (TECHNICAL)	Member(JUDICIAL)

Ansari

प्रमाणित प्रतिलिपि/Certified True Copy
26/07/2017
सहायक पंजीकार/Asstt. Registrar
सीमा शुल्क, उत्पाद शुल्क एवं सेवा कर अपील अधिकरण(C.E.S.T.A.T)
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