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: 16/12/2016

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/71129-71130/2016-EX[DB] dated 10/11/2016

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/3004/2012	SURENDRA KUMAR JAIN 209, BHANOT PLAZA-II, 3,D B GUPTA ROAD, N DELHI-55
2	E/3005/2012	VIRENDRA KUMAR JAIN C-92, SOUTH EXTENSION PART-2, SOUTH DELHI, N DELHI-49

Name and Address of Respondent

3 C.C.E. & S.T.-Lucknow
7-A...ASHOK MARG,
LUCKNOW,
UTTAR PRADESH-226001

4 C.C.E. & S.T.-Lucknow
7-A...ASHOK MARG,
LUCKNOW,
UTTAR PRADESH-226001

Other Appellants and Respondents as per Annexure

Copy To

5 Advocate(s) / Consultant(s):

SH RAJESH CHIBBER,ADV
FA-9, KAVI NAGAR
GHAZIABAD

6 Bar Association, CESTAT, Allahabad

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

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

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

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

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

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

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

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

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

16 C.D.R. 17 Office Copy ~~18 Guard File~~

Asstt. Registrar

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

APPEAL No. E/3004-3005/2012-EX[DB]

(Arising out of Order-in-Original No. 10/Commissioner/LKO/2006-07 dated 15/02/2007 passed by Commissioner of Central Excise & Customs (Appeals), Lucknow)

For approval and signature:

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

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 Surendra Kumar Jain & Virendra Kumar Jain

Appellant

Vs.

Commissioner of Central Excise & Service Tax, Lucknow

Respondent

Appearance:

Shri Rajesh Chhibber, Advocate, for Appellant
Shri L. Patra, Assistant Commissioner (AR), for Respondent

CORAM:

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

Date of Hearing & Date of Decision: 10/11/2016

FINAL ORDER NO. 71129 - 71130/2016

Per: Anil Choudhary

The present appeal is filed by the appellants, M/s Surendra Kumar Jain & Virendra Kumar Jain, against Order-in-Original No. 10/Commissioner/LKO/2006-07 dated 15/02/2007 passed by Commissioner of Central Excise & Customs (Appeals), Lucknow.

2. The brief facts of the case are that the issue in this appeal by these appellants who are individuals as to whether the penalty imposed on them under Rule 26 of Central Excise Rules, 2002 is just and proper.

3. Heard both the parties.

4. The ld. Counsel points out that the allegation against the appellants is that they have engaged in evasion of Central Excise duty by way of clandestine manufacture and clearance of excisable products. It was alleged in the Show Cause Notice that the appellants herein as directors in M/s Sunshine Capital Ltd., M/s Besty Growth Finance Ltd. & M/s Stellar Investment Ltd., by their acts of omission and commission committed criminal conspiracy in connivance with the proprietor of M/s Shyam Traders namely Mr. Sanjiv Mishra and his associates executed the scheme of arrangement of providing fictitious and bogus entries in the books of accounts of Ms. Shyam Vanaspati Oils Ltd., (SVOL) and in

turn facilitated M/s Shyam Traders in an attempt to escape from the penal action against them for contravening the provisions Central Excise Act and Rules made thereunder. The ld. Counsel draws our attention to the Final Order No. 769-774/2011-EX dated 12/08/2011, wherein this Tribunal in Appeal by M/s Shyam Traders & Others including (SVOL) have held as follows in Para 5 of its order:-

> "The allegations against M/s SVOL, its directors, Shri Sanjiv Mishra and Shri Pratyoos Mishra, Shri V.K. Tulsiyan, Chartered Accountant and Auditor of M/s SOVL, Shri Surinder Jain, director of M/s Sunshine and M/s Besty Finance and Shri Virendra Jain, Director of M/s Stellar Investment is that they fabricated documents to show the legal origin of cash of Rs.4,38,80,530/- seized from the residential premises of Shri Sanjiv Mishra, which according to the Department was sale proceeds of Gutka cleared without payment of duty and without invoices. There is no allegation that Shri Sanjiv Mishra and Shri Pratyoosh Mishra as Directors of M/SVOL and other persons – Shri V.K. Tulsiyan, Shri Virendra Jain and Shri Surendra Jain had acquired possession of or were in any manner concerned in transporting, removing, depositing, keeping, concealing, selling or purchasing, or in any other manner, dealing with any excisable goods which they knew or had reason to believe was

liable for confiscation. The charge against these persons is basically of money laundering, for which there are no provisions for penalty in the Central Excise Rules and certainly not in Rule 26, which is attracted in respect of any person, who is concerned in acquiring the possession of or is concerned in dealing with any excisable goods, which he knew or had reason to believe were liable for confiscation. In view of this, we hold that irrespective of whether the currency of Rs.4,38,80,530/- is liable for confiscation or not, no penalty under Rule 26 of Central Excise Rules, 2002, is imposable on M/s SVOL, Shri Sanjiv Mishra and Shri Pratyoosh Mishra as Directors of M/s SVOL and as such, the part of the impugned order imposing penalty on them under Rule 26 of Central Excise Rules, 2002, is liable to be set aside.

5. That in view of the findings of the Tribunal, the Tribunals set aside the penalty under Rule 26 of Central Excise Rules, 2002 on M/s SVOL, Shri Sanjiv Mishra and Shri Pratyoosh Mishra, both the directors of M/s SVOL. The ld. Counsel, further, urges that in view of the categorical findings by Tribunal that the appellants have not done anything amounting to contravention of the provisions of Central Excise Act & Rules, no penalty is sustainable under Rule 26 of Central Excise Rules, 2002 on all these appellants

and accordingly prays for allow the appeal with consequential relief.

6. The ld. A.R. has relied on the impugned order.

7. Having considered the rival contentions, we find that no case of suppression of facts, or contravention of provisions of Central Excise Rules have been framed, nor any finding recorded, to that effect. Accordingly, we set aside the penalty imposed on both the appellants under Rule 26 of Central Excise Rules, 2002. Thus, the appeals are allowed with consequential reliefs, if any, in accordance with law.

(Dictated and pronounced in Court)

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

Sd/-
(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

Ansari

प्रमाणित प्रति / Certified True Copy
22.12
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