CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
OLD RED BUILDING, 38,M.G.Marg,CIVIL LINES, ALLAHABAD

Dated: 5/05/2016

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/ 70157-70162/2016 SM dated 28/4/2016 ....

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
	E/50004/2015 E/50017/2015 E/50063/2015 E/50129/2015 E/50130/2015 E/50730/2015SM	PHOOL CHAND SALES CORPN 24, BATESHE WALI GALI AMINABAD, LUCKNOW MAHESH CHAND CHAURASIA 24, BATESHE WALI GALI AMINABAD, LUCKNOW SANTOSH KUMAR H.NO 320, VILL&POST-SAHARANWA THANA, SOHRAMAU UNNAO, UP209859 KULDEEP KUMAR H.NO 84/154, KATRA MAKBOOLGANJ LUCKNOW,UP SUJIT KUMAR VILL&POST-SAHARANWA THANA SOHRAMAU UNNAO,UP SUBHASH KUMAR R/O 5, GOSAI TOLA SARARABAGH ALLAHABAD(UP)
	Name and Address of Respondent	COMMISSIONER OF CENTRAL EXCISE,LUCKNOW 7-A, ASHOK MARG LUCKNOW

Other Appellants and Respondents as per Annexure

Copy To
3Advocate(s) / Consultant(s SH K.K.SHARMA,ADV
A-115, GROUND FLOOR
ASHOKA ENCLAVE, PART-II
SECTOR-37, FARIDABAD
HARYANA

SAURABH YADAV,ADV
3/A MAQABAR ROAD
HAZRATGANJ, LUCKNOW
226001

10 Bar Association, CESTAT, ALLAHABAD
11 Director Publications, Customs, Excise. I.P. Estate, Delhi

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

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

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

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

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

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

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

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

20 C.D.R. 21 Office Copy 22 Guard File

Asstt. Registrar
Regional Bench, Allahabad

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
Old Red Building, 38 M.G. Marg, Civil Lines, Allahabad

Date of hearing/order: 23.12.2015
Pronounced on: 28·04·2016

Excise Appeal No. E/50004/2015, E/50017/15, E/50061/2015, E/50129/2015, E/50130/15, E/50730/2015 (SM)

[Arising out of the Order-in-OriginalNo.06/COMMR/CX/2014-15/2007 dated-18.09.2014 passed by the Commissioner of Central Excise & Service Tax, Lucknow]

For approval and signature:

Hon'ble Mr. Anil Choudhary, Judicial Member

Whether Press Reporter may be allowed to see the Order for publication as per Rule 26 of the CESTAT (Procedure) Rules, 1982?	
Whether it should be released under Rule 26 of CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	
Whether their Lordships wish to see the fair copy of the Order?	
Whether Order is to be circulated to the Departmental authorities?	

1)Phool Chand Sales Corporation (in Ex.Appeal No.50004/15)
2)Mahesh Chand Chaurasia (in Ex.Appeal No.50017/15)
3)Shri Santosh Kumar (in Ex.Appeal No.50061/15)
4)ShriSujit Kumar (in Ex.Appeal No.50130/15)
5)ShriKuldeep Kumar (in Ex.Appeal No.50129/15)
6)Shri Subhas Kumar (in Ex.Appeal No.50730/15)

..Appellant
Vs.

C.C.E., Lucknow

.... Respondent

Excise Appeal No. E/50004/2015, E/50017/15, E/50061/2015, E/50129/2015, E/50130/15, E/50730/2015 (SM)

Appearance:

Shri K. K. Sharma & Shri Saurabh Yadav, both Advocates

for the appellants

Shri AshutoshNath(Asst. Commr.),A.R..

for the Respondent/Revenue

Coram: Hon'ble Mr. Anil Choudhary, Judicial Member

Final Order No. 70157-70162/2016

Per: Mr. Anil Choudhary

The appellants are in appeal against common Order-in-Original dated 18/9/14 passed by the Commissioner of Central Excise and Service Tax, Lucknow.

2. The appellant Phool Chand Sales Corporation (PCSC for short) is a manufacturer of Pan Masala and Gootkha (Pan Masala containing tobacco) and is a partnership firm whereas the appellants Mahesh Ch. Chaurasia (MCC for short) is a partner of the firm. The appellant Shri Subhash Kr. is an ex employee of Phoolchand Sales corporation and is the purported owner of the manufacturing unit manufacturing pan masala and Gootkha (clandestinely at Plot No.4, Rajaji Puram, Lucknow) but actually found to be ex-employee, associate of the appellants Phoolchand Sales Corporation

and Mahesh Chand Chaurasia. The appellant Kuldip Kr. is owner of light transport vehicle (Tata-Ace Regn.No.UP 32 DN 6314)) and appellant Shri Sujit Kumar is the driver of the said vehicle which was found laden hand with goods being removed clandestinely. The appellant Santosh Kumar is operator of the machine in the said clandestine unit. On information that an authorised/unregistered Gootkha manufacturing unit is operational at Plot No.4, new tempo stand, Rajajipuram, Lucknow, the officers of Central Preventive Branch of Lucknow Commissionerate conducted search in the said premises in presence of two witnesses on 4/8/2012 which continued till the next day i.e. on 5/8/2012.

3. The Revenue (search team) found four electrically operated automatic Gootkha pouch making machines (Form, Fill, Seal) in the said premises alongwith finished goods being pouches of Gootkha of brand "Phoolchand Gold No. 101" and "Phool Chand Super". Both having maximum retail price of Rs.1/-, ready to pack Gootkha Masala, packing materials like packing rolls and outers and other items used in the manufacture of Gootkha more fully described in the Panchnama. Out of the four machines, three machines were operational at the time of the arrival of the officers at the said premises and Gootkha pouches were being made. The vehicle Tata-Ace bearing Registration No. UP-32 DN 6314 was also recovered from the said premises on which bags containing Gootkha pouches were being loaded at the time of arrival of the inspection team. The appellant Subhas Kumar who was present in the

said premises at the time of arrival of the officers, introduced himself as "Supervisor of the factory" in the said premises. Some documents relating to lease of the said premises and the said vehicle were also recovered. The name of the manufacturer printed on the Gootkha pouches was of appellant "PC Sales Corpn." and the registration number printed on them was of appellant PCSC, Aminabad Unit, being No. "AAFFPO 509 GXM001". On being asked about legality of the manufacture of Gootkha at the said premises, the appellant Subhash Kumar could not show or produce any documents in support of licit manufacture of Gootkha in the said premises or on payment of Central Excise duty thereon. Hence, on reasonable belief that Gootkha was being manufactured in the said premises in an illegal manner on which no duty was being paid and that the recovered goods valued at Rs.11,34,479/- were liable to confiscation under Rule 17 of "pan masala packing machines" (Capacity Determination and Collection of Duty) Rules, 2008 read with Rule 25 of Central Excise Rules,2002. Recovered vehicle (Tata-Ace bearing No. UP32 DN 6314) valued at Rs.3,18,250/- ~~was~~ also appeared liable to confiscation under Section 115 of Customs Act as applicable to the Central Excise Act, as amended, and the recovered documents were delivered to the enquiry officers aiding the illegal manufacture of Gootkha in the said premises. The officers seized the aforesaid goods, vehicle and documents recovered from the said premises under Section 12F of the Central Excise Act, 1944 read with Rule 24 of Central Excise Rules, 2002 and read with Section 110 of Customs Act. A punchnama dated 4/5 August, 2012 of search proceedings, in the said premises was drawn at the spot which was signed by the appellant, Subhash Kumar and two independent witnesses and the officers conducting the search. The details of the goods, vehicle and documents seized from the said premises during the search are given in annexures to the punchnama. At the time of search, the following persons were found present in the said premises apart from appellant, Subhash Kumar -

(i) S/Shri Sudhir Kr. Chaurasia & Dinesh Kr.,Chaurasia, son of Ram Asrey Chaurasia,

(ii) S/Shri Pawan Chaurasia & Pankaj Chaurasia, son of Rajendra Chaurasia ;

(iii) Shri Ajit Chaurasia, son of Rakesh Chaurasia

(iv) Shri Santosh, son of Shri Ram SnehiChaurasia

(vii) Shri Sujit Kumar, son of Rakesh Chaurasia

(vii) Shri PappuChaurasia, son of BanadinChaurasia

(viii) Shri Amit Kr. Goutam, son of Bhagwan Din.

4. On being asked by the inspection team, the appellant Subhash Kumar replied that Amit Kr. Goutam was not working in the factory and had only come to meet him. The appellant Santosh Kumar looked after supply of labourers. The appellant Sujit Kr. Was the driver of the said vehicle and the rest six persons were labourers. The appellant Sri Subhash Kumar and Santosh Kumar got their salaries directly from Shri M.C. Chaurasia and salary of the rest persons was distributed by Shri

Santosh Kumar on receiving it from appellant MCC. Gootkha of "Phoolchand Gold No. 101" and "Phool Chand super" brands was manufactured in the said premises with the help of the machines in the said premises. This was sent to appellant PCSC. The ready to pack pan masala and gutka and packing rolls used in the manufacture of Gootkha was also received from the appellant PCSC. The vehicle No.UP-32 DN 6314 recovered in the said premises was used for bringing raw materials and sending the finished goods.

5. On scrutiny of the rent agreement, revealed that appellant Subhash Kumar had entered into agreement for the said premises with one Pankaj Verma, son of Sri Durga Prasad.

6. Statement of appellant Subhash Kumar, the manager of the said factory was recorded under Section 14 of the Act on 05.03.12 and it was stated by him that owner of the said factory at the said premises is MCC who is also owner of PCSC. He himself (Subhash Kumar) was working as a Supervisor in the Gootkha factory in the said premises. Four machines have been installed in the said premises on the direction of MCC on which Gootkha of "Phool Chand Gold No. 101" and "Phool Chand Super Brands" is being manufactured. The ready to pack Gootkha Masala and packing materials were brought to the said premises from appellant PCSC Aminabad and after packing,the packed gootkha packages were also sent back to PCSC, Aminabad. The direction for running the machines were given by MCC to Santosh Kumar and accordingly,Gootkha was packed

using the machines as communicated to the said Santosh Kumar. Which Gootkha brand had to be packed was decided by the appellant MCC. He (Subhash) had been working for MCC for last three-four years. For the first three years, he used to look after sales and used to visit shops in Bahraich for selling Gootkha. From April '12, he was looking after the manufacture of the Gootkha at the said premises on a salary of Rs.7,000/- per month. The rent agreement in respect of the said premises was executed by him with Shri Pankaj Verma, being the employee of the appellant MCC and at his instance. The rent of the said premises was Rs.3,000/- per month and the same was given by him upon receiving it from the appellant MCC. The owner of seized Tata-Ace vehicle is the appellant Kuldeep Kumar and he accepted the agreement dated 20/6/12 with the said Kuldeep Kumar for taking the said vehicle on rent of Rs.15,000/- per month. The said vehicle was used in the transportation of ready to pack GootkhaMasala from the factory of PCSC, Aminabad and for sending the packed Gootkha from the said premises to the said PCSC.

7. The appellant Santosh Kumar was also interogated and his statements were recorded under Section 14 wherein inter alia he said that the factory in the said premises was being run in an illegal manner by MCC, who was the owner of PCSC. He used to make payment of salary to labourers after taking it from the said MCC. The ready to pack Gootkha masala and packing rolls are brought into the said premises from PCSC through the said Tata-Ace vehicle, the driver of which is Sujit Kumar,

who also takes the finished goods from the said premises at Rajajipuram to the factory at Aminabad of PCSC. The salary of the driver Sujit Kumar was Rs.5,000/- to Rs.6,000/- which was given by him after taking it from the said MCC. He used to get instruction regarding when raw materials are to be brought from the factory at Aminabad, how many machines are to be run and which brand of Gootkha is to be manufactured from Shri Shrivastavji who looks after working in the Aminabad factory on his Mobile No. 8853200592 through Shrivastava's Mobile No. 9455279960. He gets a salary of Rs.6,000/- from the said MCC. He was earlier working in the house of the said MCC for the last 10 years and was looking after the work in the said premises since April, 2012. The rent and electricity bills in the said premises was given to the owner of the said premises – Shri Pankaj Verma, sometimes by Shri Subhash Kumar and sometimes by him after taking it from the said MCC.

8. The statement of driver of the said vehicle-Sujit Kumar was also recorded under Section 14 of the Act. He inter alia stated that he was working as driver with the appellant PCSC for the past one month and four days. He was brought to Lucknow for the said work by the appellant Shri Santosh Kumar who is the resident of his village. His work was to bring raw materials from the factory of PCSC to the said premises and delivered the finished goods from the said premises to the premises of PCSC-Aminabad using the said Tata-Ace vehicle. He used to get direction for the work from Santosh Kumar. However, he was not given any

document for taking the raw materials from Aminabad to Rajajipuram and finished goods from Rajajipuram to Aminabad. The owner of the company PCSC and the Gootkha factory at the said premises (in Rajaji Puram) was the said MCC.

9. Statement of Shri Amit Kumar Gautam who was found present in the said premises at the time of arrival of the inspection team was also recorded under Section 14 of the Act. He inter alia stated that he was not working in the said Gootkha factory at the said premises. He had a Bolero pick up Van and got the work of transporting 25 Gootkha laminated rolls from the said PCSC, Aminabad on 03/8/2012 to this factory at Rajaji Puram in lieu of which he was to get Rs.600/- from the said Subhash Kumar. After completion of the said work, the said MCC had given him only Rs.400/- and on 4/8/12, he had gone to the said premises to collect his balance Rs.200/-. Prior to the said work, he had never transported any goods to the said premises and had no relation with the manufacture of Gootkha.

10. The statement of the Landlord Shri Pankaj Verma, son of Shri R. Prakash with whom Subhash Kr. had entered into rent agreement for the said premises was also recorded under Section 14 of Central Excise Act and he inter alia stated that his father was the owner of the said premises but he looks after the property. He executes the agreement with his father's permission. He had rented the said premises to the appellant Shri Subhash Kumar at a rent of Rs.3,000/- per month for

packing purposes. He had no relations with the machines and manufacture of Gootkha. He provided the rent agreement in respect of the said premises executed between him and Subhash Kumar. As per the said agreement, Subhash Kumar, the tenant would not do any illegal working in the said premises and if he is found indulging any illegal work then the entire responsibility of such work would be on the tenant Subhash Kumar.

11. The statement of owner of the Tata-Ace vehicle bearing Registration No. UP 32 DN 6314- Kuldeep Kumar was also recorded under Section 14 of the Act in which he inter alia stated that he was a small time Civil contractor and took contracts for repairing of house etc. He was the owner of the said vehicle and had given it on a rent of Rs.15,000/- per month to the said Subhash Kumar. He had purchased the said vehicle for Rs.3,70,000/- out of the money he got after the death of his father. The said Subhash Kumar was his friend and had himself proposed for taking the vehicle on rent. He did not know anything about the PCSC or any person associated with it and had also no contract on mobile with any person associated with the appellant PCSC. He did not know for what work the vehicle was being used. As per the agreement, the responsibility for illegal work done, if any, using the vehicle,would lie with Subhash Kumar.

12. Summons under Section 14 of the Act was issued to appellant MCC on 6/8/12, 13/8/12, 22/8/12, 29/8/12 and 7/9/12 for appearing before

the Superintendent/CP Central Excise, Lucknow for recording of evidence in the case. However, the said MCC repeatedly sought further time and appeared before the Supdt. only on 12/9/12. In his statement dated 12/9/12, the said MCC inter alia stated that the appellant PCSC is a partnership firm of which he is one of the partners and the other partner is Shri Chandra Prakash Chaurasia. All the work of the firm PCSC was looked after by him. The other partner could not walk due to handicap with his legs and did not work. Both the partners resided in the said premises at Aminabad, Lucknow. The firm PCSC is engaged in manufacturing of Gootkha and pan masala and is registered unit at 24, BW Gali, Aminabad, Lucknow having Central Excise registration No.AAFF 0509 GXM 001 and at 12, Mill Road, Aishbag, Lucknow, having Central Excise Registration No. AAFFP 0509 GEM 004. The Gootkha brand manufactured by them was "Phool Chand Super, Phool Chand Gold No. I and Phool Chand Gold Star and the pan masala brand wasPhool Chand Gold No.1. He had no mobile phone. However, he used mobile phone of his family members or his staff in case of need. The mobile phone number of his brother and partner, Chandra Prakash Chaurasia is 9839621559. The accounts work of both their factories at Aminabad and Aishbag is looked after by Shri Bhanu Agarwal and the production work of both the factories is looked after by Sri Bharat Singh whose Mobile No. is 9559783101. The sale of their products is mainly done through five dealers. They have two dealers in Lucknow viz. M/s. M.M. Marketing whose proprietor is one Ms. MadhuriChaurasia having mobile No.

9935520810 and M/s. Ganga Traders whose proprietor is GobindaChaurasia having Mobile No. 9695516986. He and his firm PCSC have no relation with the said (illegal) factory, machine and Gootkha found in the said premises. His firm has never manufactured Gootkha or Pan Masala of "Phool Chand Gold No.101 brand". He did not know and had never employed any person named "Subhash Kumar" and had also not made any payment to him. He also did not know and had never employed any person named Santosh. He did not know the appellant Sujit Kumar and Shri Amit Kumar Gautam and had never delivered any goods through them or made any payment to them. He had never made any direct or indirect rent payment to the owner of the said premises or the owner of the 'Tata-Ace' vehicle seized by the inspection team.

13. The statement of Smt. MadhuriChaurasia, GovindChaurasia was also recorded under Section 14 of the Act, it is evident that she is the wife of MCC & Govind Chandra Chaurasia, is son of MCC and deals with goods of PCSC.

14. In view of denial by the said MCC of having any relation with the said Gootkha factory at Plot No. 4, Rajajipuram, the appellants Subhash Kumar, Santosh Kumar and appellant Sujit Kumar were summoned again under Section 14 of the Act. Sujit Kumar appeared on 31/10/12 and his statement was recorded under Section 14 and he inter alia stated - that he was working as driver in the said premises. Since the Gootkha manufactured at the said premises, Had the name of PCSC

printed on it and also because Subhash Kumar had told him that the factory of the said premises was of PCSC, whose owner was the said MCC, in his earlier statement, he had said that he works as driver with the said PCSC. He did not know the said MCC or any person associated with the firm PCSC. He used to take the raw materials to the Gootkha factory at the said premises from beneath the Mawaiya or Aishbag Bridge and also used to deliver the finished Gootkha to these places. At these places, the raw materials were brought and the finished goods (Gootkha) was taken by Thela/Carts. The said Subhash Kumar used to accompany him during the transportation and hence he never asked for any documents relating to these goods which were never given to him. He did not know from where these materials came. He had never picked up any raw material and/or delivered Gootkha to the factory of PCSC. On 5/8/12, he had said that he used to bring materials and take finished goods (Gootkha) to the said PCSC at the instance of Subhash Kumar, who had told him to say so, if any officer asks him.

15. The said Santosh Kumar also subsequently appeared on 1/11/2012 and he also retracted his earlier statement stating that the owner of the said factory was Subhash Kumar. He had never met the said MCC and had never seen him in the said Gootkha factory, at the said premises. He had some pending dues with the said Subhash Kumar. Hence whatever he mentioned in his earlier statement dated 5/12/2012 was at the behest of Subhash Kumar. He did not know from where the

raw materials came and to where the finished goods were delivered. He did not know any Manager named Srivastava of PCSC. He used to get instruction from the said Subhash Kumar and also his wages and workers wages from Mr. Subhash Kumar.

16. The appellant Subhash Kumar also appeared on 19/20th December, 2012 when his further statement was recorded and he inter alia stated retracting his earlier statement dated 5/8/2012, that he made the statement out of fear and to save himself. He had repeatedly stated that the owner of the said factory at the said premises was MCC. In fact, MCC had no relation with the said Gootkha factory and actually he was the owner and was manufacturing Gootkha with the help of the four machines found at the said premises. During the course of selling Pan Masala and Gootkha, he came with contact with one Shri Jabbar, who inspired him and he invested small amount and started manufacturing Gootkha. He got on lease premises and started manufacturing the said Gootkha in the said premises from April, 2012 by installing one pouch making machine, which he brought from scrap dealer for Rs.10,000/-. Thereafter, from the sale proceeds of Gootkha, he purchased three more old machines through Shri Jabbar. He used to purchase loose Gootkha Masala at the rate of Rs.80/- per kg. and packing rolls at the rate of Rs.100/- per kg. fromJabbar and also used to sale the goods Gootkha packed to him @ Rs.30/- per pack. He used to make delivery of Gootkha to and take raw materials from Jabbar beneath the Mawaiya or Aishbag

bridge. He had no information about Shri Jabbar and did not know his address. Neither he knew from where he got the raw materials or where he sold packed gutka. Further, no raw materials used to come from the premises of PCSC and no finished Gootkha was sent to PCSC. He used to pay the rent and wages to labourers most of the time. However, sometimes Santosh Kumar used to make this payment. He had no knowledge or information about the provisions of Central Excise and hence he had neither taken the registration nor paid Central Excise duty.He did not have any documents relating to the purchase of the packing machines and also did not use to prepare any documents relating to data of production and sale of Gootkha.

17. The Revenue also obtained the call details of the mobile telephone numbers being used by the appellants their associates, etc. and found that there were several & regular telephone calls between them. Accordingly, summons were again issued to appellant Kuldeep Kumar under Section 14 of the Act and also to the said Subhash Kumar and Santosh Kumar. The said Kuldeep Kumar appeared on 27/12/12 and inter alia stated that he does the work of property dealer and civil contracts alongwith his friend Mukhtar Ali who had also taken the contract to repair of the property of Shri GovindChaurasia and accordingly used to contact regularly with Shri GovindChaurasia and Smt. MadhuriChaurasia on their mobile number. He did not know about their profession and that they were related to PCSC and accordingly, in his earlier statement dated 8/8/12, he stated that he

did not know any person relating to PCSC and never contacted any person associated with PCSC.

18. The appellant Shri Subhash Kumar again appeared before the Superintendent on 15/1/13, when the further statements were recorded wherein he stated that he knew that Shri Bharat Singh was looking after the manufacture of Gootkha in the firm of PCSC. Hence, he obtained the mobile number of Bharat Singh from some one, He could not recollect from whom. He used to request for purchase of Gootkha. After April 12, he desired to purchase Gootkha from PCSC so that he can mix it with his Gootkha and also know the sales scheme of PCSC. The said Bharat Singh had called him on his mobile to enquire as to how much Gootkha he wanted to purchase. Further, he did not have enough money and PCSC were not ready to sale small quantity. He could never got any Gootkha from PCSC even after much effort. Similarly, Mobile No. of Shri Satish Srivastava who manages the selling of Gootkha of PCSC, he got from Sri Bharat Singh who also gave the mobile Nos. of Smt. MadhuriChaurasia and Chandra Prakash Chaurasia. The calls to them were also in relation to purchase of Gootkha from them.During the period April 12 to 4/8/12, most of the time he used to use his own two mobile numbers. However, sometimes he had also used mobile numbers of Santosh Kumar and Shri Sujit Kumar.

19. In view of the afore mentioned, it appeared to Revenue that the PCSC , it's partner MCC , Subhash Kumar and Kuldeep Kumar had

collectively and wilfully entered in the illegal manufacture of the said Gootkha and whereas PCSC and MCC alongwith Subhash Kumar were actively and willingly engaged in the illegal manufacture and removal of Gootkha. Kooldeep Kumar willingly leased his vehicle (seized Tata-Ace) for transportation of raw materials to the said factory and for carrying illegal manufactured Gootkha out of it. Though the said MCC had in his statement denied that he or his firm PCSC had any relation with the manufacture of Gootkha, in the factory at the said premises, the statement dated 5/8/12 on the spot at the time of search of the said premises i.e. of Subhash Kumar, Santosh, Sujit Kumar and Amit Kr. Goutam, unambiguously implicate the said MCC/PCSC in the illegal manufacture and clearing of Gootkha in the said premises. In their statements recorded at the time of search on 5/8/12, they had coherently said that the said MCC and his firm PCSC were the owner of the said illegal Gootkha factory. They have also stated that ready to pack GootkhaMasala and packing rolls were brought to the illegal factory from PCSC and after manufacturing at the said illegal factory,Gootkha was also cleared and delivered to PCSC .The statement of Amit Kumar Gautam dated 5/8/12, in which he stated he had delivered 25 packing rolls taken from the firm PCSC, Aminabad to the illegal Gootkha factory at the said premises, also corroborates the statements of other persons. The subsequent statements, retracting the earlier statements are made in attempt to wash of the illegalities done by the said MCC and PCSC, at the instance of the said MCC. The subsequent statement of Shri Subhash

Kumar owning the sole responsibility of illegal manufacture and clearance of Gootkha is also after thought and also an attempt to conceal the real facts. Accordingly, show cause notice dated 29/1/2013 was issued calling upon all the appellants herein particularly, the appellants PCSC, MCC and Subhash Kumar were issued show cause notice ~~of~~ for the goods valued of Rs.11,34,479/- seized at the said premises (as mentioned in the annexures to Panchnama), should not be confiscated and penalty be imposed upon PCSC, MCC and Subhash Kumar under Rule 17 (1) of the pan masala packaging machines rules, 2008, read with Rule 25 of CER, 1944. Kuldeep Kumar was required to show cause as to why the Tata-Ace vehicle valued Rs.3,70,000/- seized from the said premises be not confiscated and further, why penalty be not imposed under Rule 26 to C.E.R. Santosh Kumar was required to show cause as to why penalty be not imposed under Rule 26 to C.E.R. alongwith the said Sujit Kumar.

20. The appellants appeared and contested the show cause notice. The SCN was adjudicated and the seized goods valued at Rs.11,34,479/- (as detailed in the Annexure "Ka" to Panchnama) were confiscated. However, option to redeem was given to PCSC on payment of Rs.3.00 Lakhs redemption fine. The Tata-Ace vehicle valued at Rs.3,18,250/-) was also confiscated and option was given to Kuldeep Kumar, owner of the vehicle to redeem at fine of Rs.75,000/-. Penalty of Rs.3.00 Lakhs each was imposed on PCSC and MCC under Rule 17 (1) of Pan Masala packing Rules read with Rule 25 of CER. Penalty of Rs.3.00

Lakhs was also imposed on Shri Subhash Kumar under Rule 17 (1) of CER,2008 read with Rule 25 of CER. The penalty of Rs.1.00 Lakh was imposed on Shri Kuldeep Kumar, the owner of the seized vehicle and Shri Santosh Kumar under Rule 26 of CER. Further, penalty of Rs.25,000/- was imposed on Sri Sujit Kumar, the driver of the seized vehicle under Rule 26 of the CER.

21. Being aggrieved, the appellants are in appeal before this Tribunal. The ld.Counsel, Mr.K.K.Sharma, appearing for the appellants, M/s Phool Chand Sales Corporation & Shri Mahesh Chand Chaurasia, urged that the entire case of Revenue is made on the basis of statements recorded on 05.08.2012 from the appellants & others. The statements have been retracted in the subsequent statements. No corroborative evidence have been brought on record by Revenue. The appellant- Shri Subhash Kumar in his subsequent statements have categorically admitted being the actual owner of the said premises/factory at Rajajipuram. The rent agreement between Shri Subhash Kumar & Pankaj Kumar (son of owner of premises) as well as agreement of hire of Tata Ace vehicle between Shri Subhash Kumar & Shri Kuldip Kumar, corroborates the claim of Shri Subhash Kumar, as owner of the factory. Mr. Pankaj Verma in his statement under Section 14 of the Act, stood by the Agreement with Shri Subhash Kumar.The owner of Tata Ace vehicle Kuldip Kumar in his statement under Section 14 recorded on 08.08.2012 also stated that he had given the vehicle on rent to Shri Subhash Kumar at a monthly rent

AR

of Rs.15,000/- per month. Although Shri Subhash Kumar & Shri Santosh Kumar in their statement dated 05.08.2012 had stated that they had been working as employees of M/s Phool Chand Sales Corporation & Shri Mahesh Chand Chaurasia, but this statement was not verified from the records of M/s Phool Chand Sales Corporation, nor stood corroborated.

21.1 That so far call details record (CDR) of appellants and others are concerned, Shri Subhash Kumar has stated that he had spoken to employees of M/s Phool Chand Sales Corporation, for procurement of their Gutka, and to understand the sale scheme/strategy of M/s Phool Chand Sales Corporation. Other appellants- Santosh & Sujit supported the version of Subhash to the effect that Subhash was using their mobile phone from time to time. Appellant, Kuldip also stated that he used to contact with wife and son of appellant, Shri Mahesh Chand Chaurasia, in respect of repair work of property of Govind Chourasia (son of Shri Mahesh Chand Chaurasia and Madhuri).

21.2 Further urged that it is not the case of Revenue that M/s Phool Chand Sales Corporation had removed any of their declared packing machine to the said factory at Rajajipuram. Further, appellant, Shri Mahesh Chand Chaurasia had filed a written complaint on 13.07.2012 with District Magistrate, Lucknow that some unknown persons were manufacturing Gutka of their brand, thus bringing damage & disrepute to them. A copy of complaint is annexed as Annexure-F to the appeal book.

Arg

21.3 The appellants, M/s Phool Chand Sales Corporation & Shri Mahesh Chand Chaurasia, had prayed for cross-examination of the other appellants and one Amit Kumar Gautam. The appellants M/s Phool Chand Sales Corporation & Shri Mahesh Chand Chaurasia have been prejudiced by not providing the opportunity to cross-examine, as the whole case of Revenue is based on the statements of these persons. The adjudicating authority have not recorded any findings in this matter, resulting in violation of the principles of natural justice. Further, reliance is placed on-

i) CCE V/s Kurele Pan Products (P) Ltd. Reported in 2014 (307) E.L.T. 42 (Allahabad)

ii) Anil Pannalal Saraogi V/s CC (Import) reported in 2009 (24) E.L.T. 219 (Tri.)

iii) Sai Kripa Exim (P) Ltd V/s CC reported in 2003 (156) E.L.T. 225 (Tri.)

21.4 That it is further urged that as the goods seized from the said illegal factory at Rajajipuram do not belong to them (PCSC & MCC), this imposition of redemption fine and penalty is not justified.

21.5 That no correlation have been established with the appellants PCSC & MCC of the goods seized from the illicit factory at Rajajipuram.

21.6 That in view of subsequent retraction of statement dated 5/8/2012 by appellant Nos. 3 (Subhash), 5 (Santosh) and 6 (Sujit) and they all being unanimous that the real owner is Subhash, the rejection of this contention by Ld. Commissioner is bad.

21.7 That the owner of TATA ACE Vehicles – Kuldeep Chaurasia have no where implicated the appellants PCSC & MCC. He had categorically stated that he had hired his vehicle to appellant – Subhash.

21.8 That no discrepancy have been found by Revenue in the records, stock, and/or books of account of PCSC.

21.9 That by not providing cross-examination of Amit Kumar Gautam – who claimed to have transported packing material from factory of PCSC to the illicit factory, have resulted in miscarriage of justice, as the said statement have been relied upon for drawing adverse inference against the appellants PCSC & MCC.

21.10 That so far recovery of 'Phoochand Super' brand packed Guthka from the illicit factory is concerned which is one of the brand of PCSC, it is stated that the appellant MCC had filed complain before the District Magistrate, Lucknow, on 13.7.2012, that some unknown persons are imitating and manufacturing guthka etc. of their brand(s).

21.11 That so far reliance have been placed by Ld. Commissioner on CDR (call details record) of the appellant Nos. 3 to 6, the same have been adequately explained by the concerned persons, and no adverse inference is attracted.

21.12 That under the facts & circumstances ld. Commissioner is not justified in upholding confiscation of seized goods in the name of appellant PCSC in view of categorical claim to the seized goods by Subhash Kumar.

21.13 That under the circumstances imposition of Redemption fine & penalty on appellant. PCSC is not justified, as well as penalty on MCC is also unjustified. Reliance is placed on ruling in Rimjhim Ispat Ltd. V/s CCE, 2013 (293) ELT 124 (Tri.)

22.01 That the appellant- Subhash have urged grounds in support of appellant PCSC and MCC. He further urges that the finding of Ld. Commissioner that Guthka was being mfd. Since April' 12 in the said premises, is erroneous, as the premises itself were taken on rent from 01.7.2012 vide agreement dated 30.6.2012.

22.02 That the value of packed Guthka found & seized is about Rs.6 to 7 Lakhs, which is under limitation of Rs.1.5 Crore, hence not liable to confiscation.

22.03 That the seized goods (edible) loss its value, as the same deteriorated with the efflux of time, and became non-usable or unfit for consumption.

23.03 Under the circumstances, penalty imposed may be set-aside.

24.01 That the appellant Santosh Kumar have urged grounds in support of Appellants PCSC & MCC.

24.02 That he have further urged that no case is made against him of having indulged in illicit manufacture of Guthka with the knowledge that the goods are dutiable and liable to confiscation.

24.03 That in any view of the matter the penalty imposed is disproportionate and excessive.

25.01 That appellant Sujit Kumar have raised grounds similar to Santosh Kumar.

26.01 The appellant Kuldeep Chaurasia – owner of the TATA ACE Vehicle No. UP-32-DN-6314 have also urged ground in support of PCSC & MCC. He further urges that he had given his vehicle on monthly rent and was not aware if the activity of Subhash Kumar were of clandestine nature. According there being no malafide on his part,penalty of Rs.1,00,000/- under Rules 26 of Central Excise Rules is fit to be set-aside.

26.02 That in any view of the matter redemption fine & penalty are excessive and disproportionate.

27.01 The ld. A.R. for Revenue relied on the impugned order. He states that there is sufficient evidence on record to establish the case of revenue. All the three persons namely – Subhash, Santhosh & Sujit coherently stated under section 14 of the Act, that it is MCC, who is the real owner of the said factory at Rajajipuram and the manufacturing activity is carried on as per his directions. He pays the salary and other disbursements. The ready to pack Guthka/Pan masala, and packing material (laminated rolls) are received from PCSC and/or MCC and the packed finished products are despatched to PCSC at Aminabad. Even Amit Gautam, who happened to be an outsider and present at the time of search, have stated that he transported laminated rolls from PCSC Aminabad, at instance of MCC to the said factory at Rajajipuram. This corroborated the statement given by Subhash, Santosh & Sujit on 5/8/2012. That it is evident that the retractions by these 3 appellants have been made after much delay and only after delayed appearance and statement of appellant MCC on 12.9.2012 after issue of five summons. Further the retraction is made only when Subhash, Santosh & Sujit were summoned for further statement pursuant to statement of MCC.

27.02 In the subsequent statements of Subhash dated 19.12.2012 and 20.12.2012, the new story made out is unbelievable as there is no whereabouts given of one Shri Jabbar, who helped him in setting up this factory. He started with capital of only Rs.10,000/- as stated, then from where and how within four months, he acquired the three more automatic (Form fill, seal) machines and also had stock valued at Rs.11.00 lakhs approx. found at the time of search. On 19/20.12.2012, he stated that he knows nobody in PCSC or the said MCC. Subsequently, when he was asked to explain his call details made from his mobile to Bharat Singh & Shri Srivastava of PCSC, he admitted the repeated calls made including call to mobile no of C.P.Chaurasia (partner of PCSC), and to mobile no of Madhuri Chaurasia w/o MCC.

27.03. The ld.A.R. further relies on the following rulings "

A) On delayed retraction, it does not take away the evidence of original statement given under Section 108 of Customs Act or under Section 14 of Central Excise Act –

(i) P. B. Nair C & F (P) Ltd. Vs. CC : 2015 (318) ELT 437 (Tri-DB)

(ii) CCE Vs. Kalvert Foods India (P) Ltd. : 2011 (270) ELT 643 (SC) .

B) Retraction during cross-examination which took place few years after the initial statements were recorded and none of the witnesses complained of threat or coercion in the meantime, it was held, retraction was not acceptable –

National Boards Vs. CCE : 2014 (313) ELT 113 (Tri.-DB)

C) On denial of opportunity to cross examine, it was held that, it does not amount to violation of the principle of natural justice in every case, instead it depends on the particulars facts and circumstances –

Patel Engg. Ltd. Vs. Union of India : 2014 (307) ELT 862 (Bom.).

27.4 The ld. AR also relies on the ruling of Honourable Kerala High Court in the case of K.P.Abdul Majeed Vs. CCE 2014 (309) ELT 671 (Ker.) under the fact that contraband gold biscuits of foreign origin were seized along with some empty cotton jackets from one N. K. Abdul Rahiman and further gold biscuits were seized from a Contessa Car parked in the residential premises of one K. V. Moosan Haji along with currency and one semi-automatic rifle from the house of one E. K. Sivanandan. However, in the course of search of premises of K.P.Abdul Majeed, no incriminating materials were recovered and in the statements recorded from several persons about 17 in number including the persons from whom gold etc. were seized under section 108 of the Customs Act, 1962. They all took the name of K.P.Abdul Majeed being the kingpin of the smuggling racket although the said K.P.Abdul Majeed, did not give any confessional statement admitting the commission of offence under the Customs Act, 1962.

27.5 Pursuant to show-cause notice, it was held that K.P.Abdul Majeed was the kingpin of the smuggling racket and penalty was imposed on him. The number of persons initially gave inculpatory statement implicating the appellant-K.P.Abdul Majeed, subsequently, retracted their statement. The Hon'ble High Court held that such statement though retracted, cannot lead to conclude that the statement was baseless, even if an accused retracted from the earlier statement under section 108, unless sufficient material are available to take on record that such statement have been forcibly taken from the accused, it is not possible for the Court or quasi Judicial authorities to ignore the statement given under Section 108. That the retraction might be an afterthought as well. It was further held that the retracted statements was filed after more than two months from the date of presenting of the accused before the Magistrate after recording of the statements initially, none ~~one~~ alleged any manhandling or coercion exercised by the revenue authority. Thus, the claim of statements being recorded under coercion was rejected. The Honourable High Court further noticed that in the statements of all the persons recorded, they had given a wealth of details as to how the entire smuggling operation was carried out resulting in the seizure of the gold and these details, could have been only in the personal knowledge of the persons who made those statements. The details of movements from one place to another, the type and number of vehicles used, the time when they moved from one place to another are details, which cannot be invented by the Customs Officers. Accordingly, the ld.A.R. prays for dismissal of the appeal.

28.01 Having considered the rival contentions and the facts on record, I hold that the initial statements given by the appellants, Subhash Kumar, Santosh Kr. and Sujit Kr., are good piece of evidence under the provisions of Section 14 of the Central Excise Act as the same are freely given and none of them have claimed exercise of any coercion etc. by the Revenue Officer. Further, the statements of Mr. Amit Kr.Gautom, who is an outsider, have also explicitly stated that he transported 25 gutkha lamination rolls from the premises of the PCSC to the said illicit factory on 3/8/12 and in lieu of which he was to get Rs.600/- out of which Appellant

No.(2) – MCC had given him Rs.400/- and he came to the said illicit factory to receive the balance of Rs.200/- from the appellant-Subhash Kumar. It is further evident that the appellant-Subhash Kumar is a person of small means and has been unable to explain the presence of stock of about Rs.11 lakhs present in the said illegal factory. The said Subhas Kumar have referred to one, Jabbar (a ghost person) whose whereabout phone number et cetera are unknown to him. The said Jabbar helped him in setting up this factory by providing raw material on credit as well as in acquiring the automatic packing machines. The appellant, Subhash Kr. also failed to identify how and from where he acquired the machinery installed in the said factory and how within the period of about 4 months, his capital of Rs.10,000/- grew to about more than Rs.11 lakhs. In view of the "called detail records" of mobile number of the appellants, Santosh, Sujit, after an initial denial by the said Subhash, he subsequently admitted that he was talking on their telephone to the various persons connected with the business of appellant PCSC and MCC. It is evident that the appellants, Subhash Kumar, Santosh Kr. and Sujit Kr., are dependent on their livihood on this said MCC and on the PCSC, and accordingly, they have retracted from their earlier statement at the instance of the said MCC. So far claim made by MCC that he had made a complaint with the District Magistrage in July 2012 that some unknown persons are imitating their products, no reliance can be placed on the same as the complaint is vauge without any evidence annexed to it, nor implicating any person. It further appears that no complaint is registered and enquired into by the concerned District Magistrate. The initial statements on the date of search given by the appellants Subhash Kumar, Santosh Kr. and Sujit Kr. and the said outsiders have explicitly implicated the appellant PCSC & MCC as being the kingpin the real owner of the said illicit factory. There is coherence and no ambiguity in the statements of the four persons. Further, the whole business plan have been explained by them. Further, the key persons in the illicit factory namely the appellants, Subhash Kumar & Santosh Kumar, were the ex- employees of the said MCC and as such, they were trusted persons for the clandestine activity or manufacture and clearance. It is further evident that in order to bring the raw materials to the illicit factory for packing and for the clearance of the packed gutkha, in clandestine manner, in order to avoid too many persons knowing about the illicit affairs, one Tempo (Tata - Ace) had been hired on monthly basis. The rent agreement for the said premises and the agreement for Tata - Ace was both in the name of the Subhas Kr., do not exonerate the Appellant No.(1) & (2) that is, PCSC & MCC. It is evident that when a person resorts to such clandestinely activity of manufacture and clearance of excisable products, he will make all efforts to keep his name aloof, or out of the public gaze. Further, the presence of packing materials and packed gutka, in the said illegal illicit factory with the name and address and Excise Registration number of PCSC, in view of the other corroborating evidence clearly implicates the appellant PCSC and MCC being the actual persons and kingpin behind the illegal activity of manufacture and clearance in clandestine manner. This Tribunal takes

Ar

notice of the conduct of the said MCC to keep avoiding appearance in spite of several summons issued upon him and finally appeared before the authority on 12/9/12 i.e. after about 5 weeks from the date of inspection and issue of summons, after having cooked the story and creating evidence in order to save himself from the liability and ~~goods~~ from the clutches of law. It is also evident from the record that the statements given by other person including the appellants, implicating the said MCC and PCSC have been retracted only subsequently that is, after 12/9/2012 (when statement of MCC was recorded), when they were again summoned by the revenue authority for further questioning. I further find that the subsequent retraction made by Subhash Kumar, that he started this illicit factory with the help of one Jabbar, in absence of whereabouts of the said Jabbar, story is unbelievable and the retraction is rightly rejected. The subsequent retraction made by all persons are rejected, as none of them have complained of any undue influence, coercion etc. at the hands of the Revenue Officers, when the initial statement was recorded under Section 14 at the factory premises during the course of search. I further find that the said persons retracting the statements, have not been able to explain the reason for the delay retraction which came only after 3 to 4 months and subsequent to the statement of the said MCC. Further, I find that, it is admitted by the said MCC that although he did not keep or purchase any personal mobile phone but he was using regularly the mobile phone of his other partner, family members and/or staff. In view of the called detailed records, it is evident that the said MCC was in constant touch with Subash, and Santosh, who were the key persons in the illicit manufacturing and clearance of gutkha. In view of this finding and observations, I confirm the finding of the Adjudicating authority that it is the appellant-PCSC which is the real owner and its partner-MCC, have been running the whole affairs clandestinely. Accordingly, the order of confiscation of the goods is confirmed along with redemption fine and the option given to the appellant-PCSC to redeem the same.

28.02 So far the ground of cross examination is concerned, it is urged that Subhash Kumar, Santosh Kumar and Sujit Kumar are the employees of PCSC & MCC. They have already retracted their earlier statement under Section 14. So no useful purpose will be served in their cross-examination. So far statement of Amit Gautom dated 05.08.2012 is concerned, when he stated, he had transported packing material on 03.08.2012 from PCSC, Aminabad to illegal factory at Rajajipuram, at the instance of MCC ; in his subsequent statement under Section 14 on 31.07.2013 , have reconfirmed the said transport work with the only variation that work was done at the instruction of Subhash Kumar, who had given him Rs.400/- on 03.08.2012 and the goods were loaded at Garbage house in BW Gali, Aminabad (which is in the close vicinity of factory of PCSC). Thus, there remains no points or issue for cross-examination of Amit Kumar Gautam also. Thus, the ground of opportunity to cross-examination is rejected.

28.03 So far the question of penalty on the said PCSC and MCC is concerned, I hold that penalty should not have been imposed both on the firm and the partner and accordingly, I set aside the penalty imposed on the appellant firm-PCSC.

28.04 So far confiscation of seized vehicle (Tata-Ace) bearing Registration No.UP 32 DN 6314, valued at Rs.3,18,250/- is concerned, I uphold the confiscation. I further find that the redemption fine at Rs.75,000/- is excessive, I reduce the same to Rs.40,000/-.

28.05 So far personal penalty of Rs.1.00 lakh is concerned on the owner of the seized vehicle, Shri Kuldeep Kr. Chaurasia, I find that the penalty is excessive, I reduce the same to Rs.25,000/-.

28.06 So far penalty imposed on Subhash Kumar, of Rs.3.00 lakhs under Rule 25, I find that he is involved in the illegal manufacturing and clearance knowingly, but being employee and a person of small means, I reduce the penalty imposed on him to Rs.1.00 lakh.

28.07 So far penalty of Rs.1.00 lakh imposed on Santosh, I find that although he was involved actively in the illegal manufacture and clearance but there is no finding that he had knowingly involved himself in the clandestine activity. Accordingly, considering that he was a person of small means and only an employee of the said MCC and PCSC, I reduce the penalty to Rs.10,000/- under Rule 26 of the CCR 2002.

28.08 So far penalty of Rs.25,000/- imposed on Shri Sujit Kumar is concerned, I find that he was not knowingly involved in the illegal manufacturing and clearance. Further, as a driver of Tata-Ace, he is also a person of small means earning about Rs.5,000/- to Rs.6,000/- per month during the relevant time and accordingly, I reduce the penalty to Rs.5000/- under Rule 26 of the CCR, 2002.

29. In a nutshell, to sum up as follows :

(i) Findings of the Adjudicating Authority are confirmed ;

(ii) Confiscation of goods and redemption fine in the hands of PCSC is confirmed ;

(iii) Penalty is set aside on the appellant, PCSC ;

(iv) Penalty on Mahesh Chand Chaurasia is confirmed.

(v) Confiscation of seized vehicle bearing Registration No.UP 32 DN 6314 is confirmed ;

(vi) Redemption fine is reduced from Rs.75,000/- to Rs.40,000/ ;

(vii) Penalty is reduced from Rs.1.00 lakh to Rs.25,000/ on the owner of the seized vehicle, Shri Kuldeep ~~Singh~~ Kumar.

(viii) Penalty is reduced from Rs.3.00 lakh to Rs.1.00 lakh on Shri Subhash Kumar ;

(ix) Penalty is reduced from Rs.1.00 lakh to Rs.10,000/- on Shri Santosh Kumar ;

(x) Penalty is reduced from Rs.25,000/- to Rs.5,000/- on Shri Sujit Kumar.

30. Thus, the appeal (Ex.Appeal No.E/50017/15) of MCC is dismissed and the other appeals are allowed in the aforementioned terms in part.

(Pronounced in the open Court on 28.04.2016)

(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

KB/mm