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: 31/01/2017

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/70078-70079/2017-SM[BR] dated 13/01/2017

I am directed to transmit herewith a certified copy of order passed by the Tribunal under section 35-C(I) of the Central Excise and Salt Act, 1944.

Asstt. Registrar

Application	Appeal	Name and Address of Appellant
1	E/2153/2010	**K.K. TOBACCO COMPANY,** S-2/415, A-6, PREM CHAND NAGAR, PANDEYPUR, VARANASI.
2	E/2154/2010	**SH. LAXMI KANT PANDEY S/O SURYA NATH PANDEY,** S-2/415, A-9, PREM CHAND NAGAR, PANDEYPUR, VARANASI.
		Name and Address of Respondent
3		-C.C.E Allahabad 38,M.G.Marg, civil Lines, Allahabad
4		- C.C.E Allahabad 38,M.G.Marg, civil Lines, Allahabad

Other Appellants and Respondents as per Annexure

Copy To

5Advocate(s) / Consultant(s):

S. K. Pandey,Adv
62, KHURSHED BAGH,
LUCKNOW,
UTTAR PRADESH

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 AND SERVICE TAX APPELLATE TRIBUNAL, REGIONAL BENCH : ALLAHABAD

Appeal Nos. : E/2153 & 2154/2010-EX[SM]

Arising out of OIA No. 107-108/CE/ALLD/2010 dated 31.03.2010 passed by Commissioner (Appeals), Allahabad.

I. K.K. Tobacco Company (E/2153/2010)
II. Sh. Laxmi Kant Pandey (E/2154/2010)

...APPELLANTS

VERSUS

I. Commissioner, Central Excise, Allahabad
II. Commissioner, Central Excise, Allahabad

...RESPONDENT

APPEARANCE

Shri S.K. Pandey, Advocate for the appellants.
Shri Pawan Kumar Singh, (Supdt.) (A.R.) for the Department.

CORAM:

HON'BLE MR. ANIL G. SHAKKARWAR, MEMBER (TECHNICAL)

DATE OF HEARING & PRONOUNCEMENT : 13.01.2017
FINAL ORDER NO. 70078-70079/2017

Per Mr. Anil G. Shakkarwar :

The present appeals are filed against OIA No. 107-108/CE/ALLD/2010 dated 31.03.2010 passed by Commissioner (Appeals), Allahabad.

2. The brief facts of the case are that, Central Excise offices visited manufacturing premises of M/s. K.K. Tobacco Company and residence of the other appellant and recovered one diary which they call "Raju Deluxe Register". Further in the factory premises they found 78,300

pouches + 29,952 pouches of Gutkha totally valued at Rs. 16,698/- which were not entered into RG-1 Register. At the residence they found 1100 kg. of Supari, 60 kg of raw tobacco and 8 rolls of laminated films rolls i.e. the packing materials totally valued at Rs. 53,460/-. Goods manufactured in the factory which were not entered into RG-1 Register were seized. Raw materials were also seized. Investigations were carried out. On the basis of investigation a show cause notice dated 01.04.2008 was issued calling upon K.K. Tobacco Company to show cause as to why 78,300 + 29,952 pouches of the Gutkha seized in the factory should not be confiscated, Central Excise duty amounting to Rs. 16,698/- on the said goods should not be demanded, the raw materials seized at residence should not be confiscated under Rule 25 of Central Excise Rules, 2002 and why 5570 kg. of Gutkha involving Central Excise duty of Rs. 6,31,267/- manufactured between 22.05.2007 to 29.05.2007 and removed clandestinely should not be confiscated and redemption fine should not be imposed as the said goods were not available for seizure under Rule 25 of Central Excise Rules, 2002 and why Rs. 6,31,267/- of Central Excise Duty on 5570 kg. of Gutkha should not be demanded and recovered under Rule 25 of Central Excise Rules, 2002 and why penalty should not be imposed and further the said show cause notice proposed to impose penalty under Rule 25 & 27 of Central Excise Rules, 2002 on Shri Laxmi Kant Pandey. The said show cause notice was adjudicated through Order-in-Original No. MP (Dem-18/2008) 03 of 2009 dated 29.01.2009. The order passed by the Original Authority is reproduced below :-

"(i) I order for the confiscation of the seized 27 polythene bags containing 78,300 puches and 344 packed bags containing 29952 pouches of Deshi Gutkha, totally valued at Rs. 49,126/- only involving Central Excise Duty of Rs. 16,698/- under Rule 25 of the Central Excise Rules, 2002. However, I give an option to the party that they may redeem the seized goods on payment of Redemption Fine of Rs. 25,000/- (Rupees Twenty Five Thousand only). These goods shall be entered in their records and duty paid at the time of its clearance.

(ii) I order for confiscation of 5570 kg of the Gutkha (37,13,333 pouches) involving Central Excise duty of Rs. 6,31,267/- manufactured between 22.05.2007 to 29.05.2007 and removed clandestinely under Rule 25 of the Central Excise Rules, 2002. However, the goods are not available for confiscation I hereby impose a penalty of Rs. 6,31,267/- (Rupees Six Lacs Thirty One Thousand Two Hundred Sixty Seven only) in lieu of confiscation.

(iii) I confirm the demand of Central Excise duty of Rs. 16,698/- involved on 1,08,252 pouches of the seized goods and Rs. 6,31,267/- (Rupees Six Lacs Thirty One Thousand Two Hundred Sixty Seven only) involved on 37,13,333 pouches removed clandestinely.

(iv) I order for confiscation of raw material 1100 kg of supari, 60 kg of raw-tobacco and 8 rolls of laminated film rolls detained on 10.10.07 and seized on 05.03.08 valued at Rs. 53,460/- under Rule 25(d) of Central Excise Rules, 2002. I however, give an option to the party to redeem the goods on payment of Redemption Fine of Rs. 25,000/-.

(v) I impose a penalty of Rs. 16,698/- and Rs. 6,31,267/- (Rupees Six Lacs Thirty One Thousand Two Hundred Sixty Seven only) on the Party under Rule 25 and a penalty of Rs. 1,00,000/- on Shri Laxmi Kant Pandey under Rule 27 of the Central Excise Rules, 2002 for above violation read with section 11AC of the Central Excise Act, 1944.

(v) I order for charging of appropriate Interest on the Central Excise duty so evaded for the delayed payment under section 11 AB of the Central Excise Act, 1944."

Aggrieved by the said order, appellants preferred appeals before Commissioner (Appeals). Commissioner (Appeals) decided the said appeal through OIA No.107-108/CE/ALLD/2010 dated 31.03.2010. Learned Commissioner (Appeals) upheld the Order-in-Original and rejected the appeals. Aggrieved by the said OIA, the appellants are before this Tribunal.

3. Heard the learned counsel for appellant who has submitted that there are large number of case laws in which it is held that goods manufactured and not cleared from the factory and not entered into RG-1 Register are not liable for seizure and confiscation. He has further submitted that the amount of Central Excise duty of Rs. 16,698/- involved in 78,300 + 29952 pouches which were found in the factory and seized and confiscated were subsequently cleared on payment of duty. He has further submitted that in respect of raw materials there is no provision in the Central Excise Act to seize and confiscate the same. In respect of 5570 kg. Gutkha alleged to have been manufactured between 22.05.2007 to 29.05.2007, he has argued that there were two machines in the factory and Shri Laxmi Kant Pandey, in his statement dated 17.12.2007 has stated that the speed of packing machine was packing 60 pouches per minute. Learned counsel argued that if said two machines were running non stop for 24 hours for 8 days between 22.05.2007 to 29.05.2007 they would have produced 13,82,400 pouches whereas the show cause notice alleges to

have manufactured 37,13,300 pouches out of 5570 kg of Gutkha and therefore the show cause notice is presumptive. He further argued that since goods manufactured and not cleared from the factory and raw materials seized were not eligible to be confiscated the personal penalties are not imposable in the present case.

4. Heard the learned D.R., who has submitted that Shri Laxmi Kant Pandey in his statement dated 21.01.2008 has agreed with the calculations made in the calculation sheet attached to the said statement that Rs. 6,31,267/- was Central Excise duty liability on 5570 kg. Gutkha manufactured during 22.05.2007 to 29.05.2007 and therefore the demand in respect of Central Excise duty on 5570 kg Gutkha is sustainable.

5. Having considered the rival contentions and on perusal of records, I find that the show cause notice had proposed confiscation of goods manufactured in the factory and not cleared from the factory. The duty is to be paid only when the goods are cleared from the factory and only such goods are liable for confiscation which are removed without payment of duty. Therefore, the seizure and confiscation of goods manufactured in the factory and not cleared is not sustainable in law. Therefore, related penalties are also not sustainable in law. Further there is no provision in Central Excise Act for seizure of raw materials and confiscation of raw materials. Therefore, confiscation of raw materials is also not sustainable. So far as the demand of Central Excise duty of Rs. 6,31,267/- is concerned, the said show cause notice did not invoked provisions of Section 11A for demand of said duty and the said demand was raised by invoking

Rule 25 of Central Excise Rules, 2002, whereas said Rule 25 of Central Excise Rules, 2002 does not authorize Central Excise officers to demand duty. Therefore, I do not find any of the proposals of the show cause notice to be sustainable. Therefore, the impugned OIO and OIA are set aside and both the appeals are allowed. The appellants shall be entitled for consequential relief as per law.

(Pronounced and dictated in the open Court)

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

Patel/-

प्रमाणित प्रति / Certified True Copy
8.2.17
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