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: 06/01/2017

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/70017-70026/2017-EX[DB] dated 05/01/2017

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/2468/2006	C.C.E, LUCKNOW 7-A, Ashok Marg, Lucknow.
2	E/3147/2005	**PUNJAB GENERAL MANUFACTURING WORKS** 1-2, KRISHNA NAGAR MATHURA
3	E/3148/2005	**ASHOKA GENERAL INDUSTRIES** 1-2, KRISHNA NAGAR, MATHURA
4	E/3149/2005	**ELITE METAL PRODUCTS** 1-2, KRISHNA NAGAR, MATHURA
5	E/3150/2005	**KARAM SANITATIONS** GAUR KENDRA MATHURA DELHI,BY PASS ROAD MATHURA
6	E/3151/2005	**ELKAY SANITATIONS PVT. LTD.** GAUR KENDA MATHURA ROAD
7	E/3152/2005	**GOLDLINE BATH FIXTURES PVT. LTD.** TRIVENI COMPLEX GOVERDHAN ROAD, MATHURA

E/3153/2005 **SHREYA SANITATIONS PVT. LTD.**
GAUR KENDRA MATHURA ROAD

9 E/3154/2005 **PUNJAB GENERAL MANUFACTURING WORKS**
1-2, KRISHNA NAGAR, MATHURA

10 E/3155/2005 **ELITE METALS PRODUCTS**
1-2, KRISHNA NAGAR, MATHURA

Name and Address of Respondent

11 -C.C.E. LUCKNOW
7-A, Ashok Marg, Lucknow.

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12 PUNJAB GENERAL MANUFACTURING WORKS & OTHERS
MATHURA (U.P),,

,

13 -C.C.E. LUCKNOW
7-A, Ashok Marg, Lucknow.

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14 -C.C.E. LUCKNOW
7-A, Ashok Marg, Lucknow.

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15 -C.C.E. LUCKNOW
7-A, Ashok Marg, Lucknow.

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16 -C.C.E. LUCKNOW
7-A, Ashok Marg, Lucknow.

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17 -C.C.E. LUCKNOW
7-A, Ashok Marg, Lucknow.

18 -C.C.E. LUCKNOW
7-A, Ashok Marg, Lucknow.

19 -C.C.E. LUCKNOW
7-A, Ashok Marg, Lucknow.

20 -C.C.E. LUCKNOW
7-A, Ashok Marg, Lucknow.

Other Appellants and Respondents as per Annexure

Copy To

21 Advocate(s) / Consultant(s):

Anurag Mishra
117/10 SK APARTMENT
SARVODAYA NAGAR,
KANPUR,
UTTAR PRADESH

22 Bar Association, CESTAT, Allahabad

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

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

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

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

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

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

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

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

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

32 C.D.R. 33 Office Copy ~~34~~ Guard File

Asstt. Registrar

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL,
REGIONAL BENCH : ALLAHABAD

Appeal Nos. : E/3147, 3148, 3149, 3150, 3151, 3152, 3153, 3154, 3155/2005-EX[DB] & E/2468/2006-EX[DB]

Arising out of common OIO No. 21/COMMISSIONER/LKO/2005 dated 27.05.2005 passed by Commissioner, Central Excise, Lucknow.

i) Punjab General Manufacturing Works.
ii) Ashoka General Industries.
iii) Elite Metal Products.
iv) Karam Sanitations.
v) Elkay Sanitations Pvt. Ltd.
vi) Goldline Bath Fixtures Pvt. Ltd.
vii) Shreya Sanitations Pvt. Ltd.
viii) Punjab General Manufacturing Works.
ix) Elite Metal Products.
x) C.C.E., Lucknow (E/2468/2006)

....APPELLANTS

VERSUS

i) C.C.E., Lucknow.
ii) Punjab General Manufacturing Works & others. (E/2468/2006)

....RESPONDENTS

APPEARANCE

Shri Rupesh Kumar & Shri Anurag Mishra, Advocates, for the assessee.
Shri Rajeev Ranjan, Joint Commr. (A.R.) for the Department

CORAM:

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

DATE OF HEARING & PRONOUNCEMENT : 17. 11. 2016
FINAL ORDER NO. 10017 - 70026/2017

Per Mr. Anil G. Shakkarwar :

The above stated appellants except C.C.E., Lucknow were issued with a common show cause notice F No.

DZU/INV/37/2000/Pt./2327 dated 24.09.2001, therefore the above stated appeals are taken together for decision.

2. The above stated appellants (except C.C.E., Lucknow) were engaged in the manufacture of sanitary/bathroom fittings. M/s. Punjab General Manufacturing Works was manufacturing said goods having brand name L & K. The other manufacturing units such as M/s. Ashoka General Industries, M/s. Elite Metal Products, M/s. Karam Sanitations, M/s. Elkay Sanitation (P) Ltd., M/s. Goldline Bath Fixture (P) Ltd., M/s. Sherya Sanitation (P) Ltd. were also manufacturing the same goods but they were manufacturing similar goods which were bearing their own brand name such as AGI, Elite, Karam, Canter, Glibs & Shreya. In addition to manufacture of said goods bearing said brand names they were also manufacturing said goods with brand name L & K. Director General of Central Excise (Intelligence) conducted investigation against above stated manufacturers who were claiming SSI exemption contained in Notification No. 14/96 dated 23.07.1996 as amended from time to time. The investigations conducted pertain to period from July, 1996 to May, 2000. Simultaneously searches were continued at various factory premises and record were examined and statements of concerned persons associated with manufacture were recorded and on the basis of investigation it appeared to Revenue that all the manufacturing units stated above are misusing the exemption provided for SSI exemption through Notification No. 14/96 dated 23.07.1996 by manufacturing goods bearing the same brand name

in different manufacturing units and it appeared to Revenue that the clearances during the period of investigation, in respect of all above stated manufacturing units should be clubbed together to examine the eligibility on the basis of value of clearance for the purpose of eligibility in the said notification for reduced rate of duty as small scale manufacturer. Therefore, Revenue issued above stated show cause notice dated 24.09.2001 which had two major allegations. One was in respect of the differential duty of Rs. 1,44,96,923/- alleged to have short paid by availing the benefit of Notification No. 14/96 when they were not eligible for the same. Further, during the course of investigation the Investigating Officer came across certain records and diaries on the basis of which it appeared to Revenue that above stated manufacturing units have cleared the goods clandestinely and as a result there was evasion of Central Excise duty to the tune of Rs. 1,04,34,642/-. Through the said show cause notice Punjab General Manufacturing Works, M/s. Ashoka General Industries, M/s. Elite Metal Products, M/s. Karam Sanitations, M/s. Elkay Sanitation (P) Ltd., M/s. Goldline Bath Fixture (P) Ltd., M/s. Sherya Sanitation (P) Ltd. and M/s. L & K Sanitations (P) Ltd. were called upon to show cause as to why Central Excise Duty amounting to Rs. 1,44,96,923/- on account of clubbing of clearances should not be demanded and recovered from them under the first proviso to Sub Section (1) of Section 11 of Central Excise Act, 1944 and why Central Excise duty amounting to Rs. 1,04,34,642/- involved on clandestinely removed goods should not be demanded and recovered from them jointly and/or severally under the same provisions. In addition there were proposal for interest and penalty. Through the said show cause notice Shri Basant Lal and Shri Anil Arora were called upon to show cause as to why penalty should not be imposed under Rule 209A of Central Excise Rules, 1944.

3. Commissioner, Central Excise, Lucknow vide Order-in-Original No. 19/Commr/LKO/2002 dated 27.08.2002 adjudicated the said show cause notice. The above stated manufacturer appellants preferred appeals before this Tribunal and this Tribunal vide Final Order No. 653-661/103-R dated 02.09.2003 allowed the appeals by way of remand. Through the said Final Order this Tribunal had directed the Original Authority to provide reasonable opportunity to the noticee to file detailed reply to show cause notice and furnish defence evidence and adjudicate the matter. The manufacturers-appellants submitted before the Original Authority that clubbing of clearances was unwarranted and that the show cause notice does not contain any allegation that any of the noticee is a dummy unit and clearances of only dummy unit can be clubbed with the main unit in view of various case laws. They further contended that the said manufacturing units run with the help of loan from the bank and their balance-sheet did not show flow back of profit from one unit to other unit. They further contended that there were no allegations in the show cause notice that any of the said manufacturing units did not undertake the activity of manufacturing

and they are only showing the clearances. They further contended that value of the clearance of the units did not excess to Rs. 3 Crore in any preceding year and this is how they were eligible to avail exemption. They further contended that that the said notification provided that value of clearances of goods bearing brand names of other persons will not be added in the aggregate value of clearances of all excisable goods and exempted goods. They further submitted that all the said units were regularly submitting declaration under Rule 173B of Central Excise Rules, 1944 and monthly returns were also filed in time. They further submitted that it is not alleged in the show cause notice that the goods bearing brand name of L & K manufactured by different manufacturing units did not pay full duty and such goods were cleared by availing said exemption in Notification No. 14/96. In respect of other allegations that the goods were clandestinely removed and duty was evaded, they stated that Rs. 65,21,625.11/- were collected towards repair charges for repair of the goods at post manufacturing stage and without assigning any convenience reason Revenue multiplied that figures with 100 and claimed that unaccounted proceeds received by them was Rs. 65,21,62,511/- and leveled allegations that the said amount was proceeds of clandestine clearance and framed the charge of evasion of Central Excise Duty to the tune of Rs. 1,04,34,642/-. They denied that there was evidence to prove unaccounted production and there was no seizure of any non duty paid goods to any purchaser and that there was no statement of any purchaser that they received non duty paid goods and that there was no evidence of receipt of unaccounted raw materials and there is no evidence produced regarding the transportation of such allegedly clandestinely removed goods. They submitted that in view of their submissions the allegation of clandestine removal was only presumption. The Original Authority did not appreciate the submissions in respect of clubbing of clearances. However, in respect of allegations regarding clandestine clearances, the Original Authority has held that it would be a travesty of justice if the amount of duty so taken is confirmed without even knowing as to which goods and in respect of which company and in what quantity of goods and what was the quantum of value of said goods clandestinely removed and that there was no evidence to show clandestine removal of goods and that there was no juristic person before him on whom he could fasten the duty liability of so called clandestinely removed goods and therefore he dropped the proceedings in respect of demand of duty on the allegation of clandestine clearance. The Original Authority passed following order which is reproduced below :-

> *"(1) I confirm the demand of Rs. 29,11,919/- (Rs. Twenty Nine Lacs Eleven Thousands Nine Hundred and Nineteen only) against M/s Punjab General Manufacturing Works, Mathura. (Noticee No.1`) under provisio to Sec. 11A of Central Excise Act, 1944. I also order the party to pay the interest at appropriate rate under Section 11AB of Central Excise Act, 1944.*
> *(2) I also impose an equal penalty of Rs.29,11,919/- (Rs. Twenty Nine lacs Eleven Thousands Nine Hundred and Nineteen only) upon M/s Punjab General Manufacturing Works, Mathura. (Noticee No. 1) under Section 11AC of*

Central Excise Act, 1944 read with Rule 173Q of Central Excise Rules, 1944.

(3) I confirm the demand of Rs.15,89,136/- (Rs. Fifteen lacs Eight Nine Thousands thousand One Hundred Thirty six only) against M/s Ashoka Genera Industries, Mathura. (Noticee No. 20 under proviso to Section 11A of Central Excise Act, 1944. I also order the party to pay the interest at appropriate rate under Section 11AB of Central Excise Act, 1944.

(4) I also impose an equal penalty of Rs.15,89,136/- (Rs. Fifteen lacs Eighty Nine Thousands One Hundred Thirty Six only) upon M/s Ashoka General Industries, Mathura. (Noticee No. 2) under Section 11AC of Central Excise Act, 1944 read with Rule 173Q of Central Excise Rules, 1944.

(5) I confirm the demand of Rs.10,75,467/- (Rs. Ten lacs Seventy Five Thousand Four Hundred Sixty Seven only) against M/s Elite Metal Products, Mathura (Noticee No. 3) under proviso to Section 11A of Central Excise Act, 1944. I also order the party to pay the interest at appropriate rate under Section 11AB of Central Excise Act, 1944.

(6) I also impose an equal penalty of Rs. 10,75,467/- (Rs. Ten lacs Seventy Five Thousand Four Hundred Sixty Seven only) against M/s Elite Metal Products, Mathura (Noticee No. 3) under Section 11AC of Central Excise Act, 1944 read with Rule 173Q of Central Excise Rules, 1944.

(7) I confirm the demand of Rs.23,64,973/- (Rs. Twenty Three lacs Sixty Four thousand Nine hundred Seventy Three only) against Karm Sanitations, Mathura (Noticee No. 4) under proviso to Section 11A of Central Excise Act, 1944. I also order the party to pay the interest at appropriate rate under Section 11AB of Central Excise Act, 1944.

(8) I also impose an equal penalty of Rs.23,64,973/- (Rs. Twenty Three lacs Sixty Four thousand Nine hundred Seventy Three only) against Karm Sanitations, Mathura (Noticee No. 4) under Section 11AC of Central Excise Act, 1944 read with Rule 173Q of Central Excise Rules, 1944.

(9) I confirm the demand of Rs.19,12,629 (Rs. Nineteen lacs Twelve Thousand Six Hundred Twenty Nine only) M/s Elkay Sanitations (P) Ltd., Mathura (Noticee No. 5) under proviso to Section 11A of Central Excise Act, 1944. I also order the party to pay the interest at appropriate rate under Section 11AB of Central Excise Act, 1944.

(10) I confirm the demand of Rs.19,12,629 (Rs. Nineteen lacs Twelve Thousand Six Hundred Twenty Nine only) M/s Elkay Sanitations (P) Ltd., Mathura (Noticee No. 5) under Section 11AC of Central Excise Act, 1944 read with Rule 173Q of Central Excise Rules, 1944.

(11) I confirm the demand of Rs.21,73,874/- (Rs. Twenty One lacs Seventy Three Thousand Eight Hundred Seventy Four only) Against M/s Shreya Sanitations (P) Ltd.

Mathura (Noticee No. 6) under proviso to Section 11A of Central Excise Act, 1944. I also order the party to pay the interest at appropriate rate under Section 11AB of Central Excise Act, 1944.

(12) I also impose penalty of Rs.21,73,874/- (Rs. Twenty One lacs Seventy Three Thousand Eight Hundred Seventy Four only) Against M/s Shreya Sanitations (P) Ltd. Mathura (Noticee No. 6) under Section 11AC of Central Excise Act, 1944 read with Rule 173Q of Central Excise Rules, 1944.

(13) I confirm the demand of Rs.24,68,925/- (Rs. Twenty Four lacs Sixty Eighty Thousand Nine Hundred twenty Five only) against M/s Goldline Bath Fixtures (P) Ltd., Mathura (Noticee No. 7) under proviso to Section 11A of Central Excise Act, 1944. I also order the party to pay the interest at appropriate rate under Section 11AB of Central Excise Act, 1944.

(14) I also impose an equal penalty of Rs. 24,68,925/- (Rs. Twenty Four lacs Sixty Eighty Thousand Nine Hundred twenty Five only) against M/s Goldline Bath Fixtures (P) Ltd., Mathura (Noticee No. 7) under Section 11AC of Central Excise Act, 1944 read with Rule 173Q of Central Excise Rules, 1944.

Thus, in respect of the 7 Noticee as mentioned above a demand of Central Excise duty totally amounting to Rs.1,44,96,923/- has been ordered to be confirmed. They are directed to pay the same forthwith alongwith the interest due thereon under Section 11AB of the Central Excise Act, 1944.

(15) I, further, order to appropriate the following amounts deposited by various notices during the course of investigation against the above mentioned confirmed demand of duties, penalty and interest due thereon:-

Sl. No.	**Name of the party**	**Amount deposited**
1.	M/s Ashoka General Industries.	Rs.5,00,000.00/-
2.	M/s Elite Metal Products.	Rs.5,00,000.00/-
3.	M/s Shreya Sanitations (P) Ltd.	Rs.10,00,000.00/-
4.	M/s Gold Line bath Fixtures (P) Ltd.	Rs.30,00,000.00/-
	TOTAL	**Rs.50,00,000.00/-**

(16) I drop the demand of duty amounting to Rs.1,04,34,642/- (Rs. One crore four lacs thirty four

thousand six hundred forty two only) against Noticee No. 1 to Noticee No. 7.
(17) I also impose a penalty of Rs.15,00,000,.00/- (Rs. Fifteen lacs only) upon Shri Basant Lal (Noticee No. 8) under Rule 209A of Central Excise Rules, 1944.
(18) I, further, impose a penalty of Rs.15,00,000,.00/- (Rs. Fifteen lacs only) upon Shri Anil Arora (Noticee No. 9) under Rule 209A of Central Excise Rules, 1944.

4. Aggrieved by the said order on dropping of the demand in respect of clandestine clearances, the Revenue preferred appeal before this Tribunal. In respect of confirming of demand against individual manufactures and persons on whom personal penalties have been imposed have preferred appeal before this Tribunal.

5. Heard the learned counsel for the appellants except the C.C.E., Lucknow. He has taken us through para-23 of the show cause notice wherein M/s. Punjab General Manufacturing Works, Mathura, M/s. Ashoka General Industries, Mathura, M/s. Elite Metal Products, Mathura, M/s. Karam Sanitations, Mathura, M/s. Shreya Sanitations, Mathura, M/s. Ellkay Sanitations, Mathura and M/s. Goldline Bath Fixtures Pvt. Ltd., Mathura were called upon to show cause as to why Central Excise duty totally amounting to Rs. 1,44,96,923/- on account of clubbing of clearances should not be demanded and recovered in proviso to Sub Section (1) of Section 11A of the Central Excise Act, 1944. He has pleaded that the said show cause notice to the extent of this demand of duty was not sustainable as held by this Tribunal in the case of ***Commissioner of Central Excise, Chandigarh vs. Shiv Exim Enterprises*** reported at ***2005 (185) E.L.T. 169 (Tri.-Del.).*** He contended that

Tribunal has held in the above stated case that the duty can be only demanded from the principal unit and not from both the units and that Where the duty has been demanded from both the units, it would rather lead to an inference that the Revenue has recognized implicitly both of them as independent units and that such proposition of law flows from the Apex Court judgment in the case of ***Gajanan Fabrics Distributors v. CCE, Pune - 1997 (92) E.L.T. 451 (S.C.)***. He further submitted that Hon'ble Supreme Court has affirmed the decision of this Tribunal in the said case of ***C.C.E., Chandigarh vs. Shiv Exim Enterprises*** reported at ***2015 (322) E.L.T. 832 (SC)***.

6. Heard learned D.R. on the ground of appeal in the appeal filed by Revenue. Learned D.R. has reiterated the grounds stated in appeal filed by Revenue.

7. We have considered the rival contentions. We find that the impugned show cause notice has two aspects. First aspect was related to clubbing of clearances and the other was demand of duty allegedly evaded on clandestine removal of goods manufactured. In respect of demand of differential duty on clubbing of clearances, we find that Revenue has jointly demand duty from M/s. Punjab General Manufacturing Works, Mathura, M/s. Ashoka General Industries, M/s. Elite Metal Products, M/s. Karam Sanitations, M/s. Shreya Sanitations, M/s. Ellkay Sanitations and M/s. Goldline Bath Fixtures Pvt. Ltd. therefore, we hold that the finding of this Tribunal in the said case of C.C.E., Chandigarh vs. Shiva Exim Enterprises as

affirmed by Hon'ble Apex Court is squarely applicable in the present case. Therefore, we hold that the said part of the show cause notice is not sustainable, In so far as it relates to demand of differential duty of Rs. 1,44,96,923/-. We did not find any ground forwarded by Revenue to negate such holding by the Original Authority in respect of allegation of clandestine clearance. We, therefore, dismiss the appeal filed by the Revenue. As a result, both the demands in show cause notice are set aside. Since both the demands in show cause notice is set aside, the personal penalties also do not survive in view of our finding. The appeal filed by Revenue is dismissed and remaining all appeals are allowed. The appellants whose appeals are allowed shall be entitled for consequential relief, if any.

(Pronounced and dictated in the open Court)

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

Sd/-
(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

Patel/

प्रमाणित प्रति / Certified True Copy
17.1.17
सहायक पंजीकार / Asstt. Registrar
सीमाशुल्क, उत्पाद शुल्क एवं सेवा कर
अपील अधिकरण / (C.E.S.T.A.T.)
38, एम. जी. मार्ग, इलाहाबाद-211001
38, M. G. MARG, ALLAHABAD-211001