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: 18/07/2017

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/70645/2017-SM[BR] dated 14/07/2017

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/3127/2009	**PANCHWATI PRAYOGSHALA, .** (AYURVEDIC DIVISION), 25-26, A-B, MOHKAMPUR, DELHI ROAD, MEERUT.
		Name and Address of Respondent
2		-C.C.E. MEERUT I Excise Chowk,Opposite Choudhary Charan Singh University Mangal Panday Nagar, Meerut - 250005.

Copy To

3Advocate(s) / Consultant(s):

Kamaljeet Singh
J-144, PATEL NAGAR -I,
GHAZIABAD,
UTTAR PRADESH

4 Bar Association, CESTAT, Allahabad

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

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

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

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

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

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

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

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

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

14 C.D.R. 15 Office Copy 16 Guard File

Asstt. Registrar

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

APPEAL No.E/3127/2009-EX[SM]

(Arising out of Order-in-Appeal No. 103-CE/MRT-I/2009 dated 31/08/2009passed by Commissioner of Central Excise & Customs (Appeals), Meerut)

M/s Panchwati Prayogshala (Ayurvedic Division) **Appellant**

Vs.

Commissioner of Central Excise, Meerut-I **Respondent**

Appearance:

Shri Kamal Jeet Singh, Advocate for Appellant
Shri D.K. Deb, Assistant Commissioner (AR), for Respondent

CORAM:

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

Date of Hearing : 20/01/2017
Date of Pronouncement : 14-07-2017

FINAL ORDER NO:-70645/2017....

Per: Anil Choudhary

This appeal filed by the appellant-assessee M/s Panchwati Prayogshala (Ayurvedic Division), have been filed against Order-in-Appeal No. 103-CE/MRT-I/2009 dated 31/08/2009 passed by Commissioner of Central Excise & Customs (Appeals), Meerut-I, whereby the appeal have been rejected, confirming the demand of Rs.7,66,922/- under Section 11A of the Act with equal amount of penalty under Rule 25 of Central Excise Rules, 2002 with further demand for interest.

AO

2. The brief facts are that the appellant is a proprietorship concern of Smt. Pooja Goel and is manufacturing Ayurvedic preparation such as Churan Goli, Anardana, Rasmola, Hingoli & Hazemewala Tablets etc. under the brand name 'Panchwati' which belongs to M/s Panchwati Prayogshala (Food Division), a proprietary concern of Shri Pankaj Goel, also Husband of Smt. Pooja Goel. Appellant was claiming benefit under Notification No.08/2003-SSI Exemption. A team of officers of Central Excise, (Preventive) visited the factory premises of appellant located at 25-26, A-B Mohkampur Industrial area, Phase-I Delhi Road, Meerut (UP) on 07th September, 2006 and conducted checks therein. During physical verification of the stock of finished goods, the shortages of finished goods totally valued at Rs.10,90,207/- was noticed. ShriLalit Mohan, Authorized Signatory of the appellant in his statement on the same date recorded under Section 14 of the Act could not offer any valid explanations/reason for the said shortages. It appeared that the appellant had removed the finished goods found short clandestinely without discharging duty liability thereon. The Central Excise duty on the goods found short was worked to Rs.1,74,433/- + Education Cess of Rs.3489/-.

3. Further, during the search, certain loose paper slips were recovered from the factory premises and the same were resumed under panchnama dated 07th September, 2006. On scrutiny of the

said slips, it appeared that the appellant had issued the same indicating production of goods on a particular date. However, a comparison with the stock register-RG-1 maintained by appellant revealed that the actual production shown as per slips was not entered in RG-I Register. Thus, it appeared that the appellant suppressed the production by not recording the actual quantity of goods produced and the quantity of goods not entered in the statutory records was removed clandestinely without payment of Excise duty, without issuing the invoice, as required under the rules. The apparent duty on such alleged clandestinely removed goods was worked out to Rs.5,89,500/-. Shri Pankaj Goel Husband of the proprietor in his statement dated 10th May, 2007 recorded under Section 14 of the Act, inter-alia stated that they have been manufacturing their products under the Trade Mark 'Panchwati' for the last 9 years and they have applied for registration of the same. It further appeared to Revenue, as per para-4 of the Notification No.08/2003, the exemption shall not apply to specified goods bearing the brand name or trade name, whether registered or not, of another person. As the appellant have availed the benefit of the said Notification irregularly as they were clearing the finished goods using the brand name 'Panchwati' belonging to M/s Pancwati Prayogshala (Food Division), proprietor Shri Pankaj Goel, thus the benefit of SSI exemption under Notification No.08/2003 was not available to the appellants . Accordingly, show cause notice dated 30th May, 2007 was issued to the appellant requiring to show cause, as to why-

"(i) The Central Excise duty involved on the goods found shortto Rs.1,77,922/- may not be demanded from them under Section 11A of the Act.

(ii) The Central Excise duty amounting to Rs.5,89,000/- involved on goods not entered in their statutory records should not be demanded under Section 11A of the Act.

(iii) Central Excise duty amounting to Rs.32,64,000/- for the period June, 2005 to February, 2007 involved on goods cleared by availing the exemption irregularly under the said Notification No.08/2003 be not demanded under Section 11A of the Act.

(iv) Further, penalty was also proposed on the proprietorship concern and its proprietor."

4. Further, allegation in the show cause notice is that Shri Yudhish Kumar Gupta, Authorized Signatory in his statement in respect of loose slips recovered from the factory premises, appeared to be not tenable as he had stated that recovered slips related to production/packing of goods in 'primary packing'. From the scrutiny of records that is RG-1, it was observed that the quantities for which the slips have been issued tally with the quantities of goods

produced and reflected in production record. It appeared that appellant issued loose paper slips showing excess production of goods. However, this quantity of production was not enterred in the statutory records. Thus, it appeared that appellant was not reflecting the actual quantity of goods manufactured by them and was removing the unrecorded quantity of finished goods clandestinely.

5. The SCN was adjudicated on contest vide Order-in-Original dated 20th February, 2009 by the Additional Commissioner. However, he was pleased to drop the demand of Rs.32,64,000/- which was proposed for disallowing the SSI exemption, observing that the appellant have applied for the Trade Mark 'Panchwati' on 27th April, 2005 and have been allotted official No.2201 dated 27th April, 2005 having Trade Mark No.01353552 dated 27th April, 2005. Further, the Registrar of Trade Marks have issued the certificate of registration of Trade mark under Section 23(2) of the Trade Mark Act vide Sl. No.662214 dated 21.12.2007. The Trade Mark Certificate states as follows:-

"Certified that the Trade Mark/a representation is annexed hereto has been registered in the name (s) of PankajGoel, PoojaGoel, NeerajAggarwal, Trading as PanchwatiPrayogshala (Ayurvedik Division), 25-26, A-B, Mohakampur, Phase-I, Delhi Road, Meerut, Uttar Pradesh, Merchants and Manufacturers".

6. Thus, he recorded the finding that as per provision of Section 23 of the Trade Mark Act, 'Trade Mark' when registered shall be registered as of (or with effect from) the date of making of the said application and that date shall, subject to the provision of Section 154, be the date of registration.

7. Accordingly, I find that Smt. Pooja Goel, proprietor of the appellant is also the Co-owner of the Trade Mark 'Panchwati'. The benefit of SSI exemption was also held as allowable under Notification No.08/2003.

8. As regards the demand of Rs.1,77,922/- for shortage of finished goods found on the date of inspection. The contention of the appellant is that there were accounting error. As the staff of the appellant assisting the search team was afraid/fearful, in presence of the search team, the said contention activity was not believed. In view of the admission of the shortage by the Authorized Signatory-Shri Lalit Mohan-Accountant, such stand had been taken after a period of 1 year and 8 months, appeared to be after thought. Shri Yudhish Kumar Gupta, Authorized Signatory in his statement dated 14th February, 2007 stated that though he was not much related to production, however, as he understands, these goods were present in the factory, lying on the floor in loose condition and during the visit of the officers, in the absence of concerned dealing person these

goods were not taken into account which resulted into conclusion of shortages. As the representative of the appellant had signed the panchnama, the said explanation was not believed, as regards shortage of finished goods, allegedly manufactured and cleared clandestinely, on the basis of loose slips found in the factory of appellant. On the date of search, appellant had contended that the loose slips related to production floor and the goods were on the production floor.There is no evidence of any clandestine removal and no demand can be raised for goods lying on the production floor, duly accounted in the records, and there being no evidence of any removal. The explanation was rejected, observing that the same is out of context. Accordingly, the demand of Rs.7,66,922/- (1,77,922+5,89,000/-) was confirmed along with equal amount of penalty, with further demand for interest.

9. Being aggrieved, the appellant preferred appeal before the learned Commissioner (Appeals), who have been pleased to reject the appeal upholding the Order-in-Original. Being aggrieved, the appellant is before this Tribunal.

10. The learned Counsel for the appellant among others, inter-alia urges that the shortage of finished goods in respect of which duty is demanded for Rs.1,77,922/-, was not the real shortage, as the quantity of the finished goods had not been correctly determined. In presence of the search team/officials, staff of the appellant were

fearful and could not properly assist in stocktaking. Further, the duty demand of Rs.5,89,000/- based on the loose slips recovered from the factory, alleged to be containing record of the production of finished goods, is not sustainable, as no enquiry was conducted as to who wrote those loose slips. Further, no enquiry in this regard was made with contract labours. Thus, no reliance can be placed on the entries in the loose slips. Further, it is alleged that large quantity of goods manufactured was lying on the floor of the factory, which was not accounted for or taken for the purpose of stock verification, although the appellant had recorded the production in their statutory records. The learned counsel further urges that save and except based on assumption and presumption, there is no evidence of any clandestine removal or production or of any clandestine activity, by whatever name called. Thus only for the sake of apparent shortage or discrepancy at the time of search, does not lead to the inevitable conclusion that goods have been manufactured and removed clandestinely. The learned Counsel further relies on the division bench ruling of this Tribunal in the case of Arya Fibres Pvt. Ltd. Vs Commissioner of Central Excise, Ahmedabad reported at 2014 (311) ELT 529 (Tri.-Ahmd.), wherein vide Final Order dated 26/09/2013 this Tribunal after careful consideration in the matter of clandestine manufacture and clearance observed that it is well settled law that in cases of clandestine manufacture and clearances, certain fundamental criteria have to be established by Revenue, which mainly are the following: –

(i) There should be tangible evidence of clandestine manufacture and clearance, and not merely inferences or unwarranted assumptions;

(ii) Evidence in support thereof should be of:

(a) raw materials, in excess of that contained as per the statutory records;

(b) instances of actual removal of unaccounted finished goods (not inferential or assumed) from the factory without payment of duty;

© discovery of such finished goods outside the factory;

(d) instances of sale of such goods to identified parties;

(e) receipt of sale proceeds, whether by cheque or by cash, of such goods by the manufacturers or persons authorised by him;

(f) use of electricity far in excess of what is necessary for manufacture of goods, otherwise manufactured and validly cleared on payment of duty;

(g) statements of buyers with some details of illicit manufacture and clearance;

(h) proof of actual transportation of goods, cleared without payment of duty;

(i) links between the documents recovered during the search and activities being carried on in the factory of production; etc.

Tribunal further observed– needless to say, a precise enumeration of all situations in which one could hold with certainty that there have been clandestine manufacture and clearances, would not be possible. It would depend on the facts of each case. What one could, however, say with some certainty is that inferences cannot be drawn about such clearances merely on the basis of note books or diaries privately maintained or on merely statements of some persons, may even be responsible officials of the manufacturer or even of its Directors/partners who are not even permitted to be cross-examined, as in the present case, without one or more of the evidences referred to above, being present. It is further observed that reliance on private/internal records maintained for internal control cannot be the sole basis for demand. There should be corroborative evidence by way of the statements of purchasers, distributors or dealers, record of unaccounted raw materials purchased or consumed and not merely the recording of confessional statements. Theory of preponderance of probabilities would be applicable only when there are strong evidences heading only to one and only one conclusion of clandestine activities. The said theory, cannot be adopted in cases of weak evidences of a doubtful nature.

11. Accordingly, learned Counsel urges that, save and except the

strong suspicion of clandestine removal. There is no material on record to conclude that there have been clandestinely manufacture and removal. Accordingly, he prays for allowing the appeal, with consequential benefits.

12. Learned A.R. for the revenue Shri D.K. Deb Assistant Commissioner have relied on the impugned order.

13. Having considered the rival contentions, I find that the demand of Rs.1,77,922/- have been confirmed in respect of finished goods, which were found short vis.-a-vis the balance recorded in the RG-1 register. Although the authorised representative of the appellant could not immediately explain such apparent shortage, it does not lead to the inevitable conclusion in absence of corroborative evidence that the appellant have indulged in clandestine clearance of such shortage. Further, the loose slips found at the time of search maintained with respect to activity of the production floor are private report/records and the same are not reliable for drawing adverse conclusion against the appellant in absence of any corroborative evidence of clandestine manufacture and removal. Further, I find that save and except assumption and presumption of clandestine removal for the apparent shortage, no clandestine activity and evidences have been brought on record. Under such facts on record, I find that the allegation of clandestine removal is not established.

14. Accordingly, I set aside the impugned order. So far as the demand of Rs.7,66,922/- have been confirmed, along with penalty, under Rule 25 of Central Excise Rules, 2002 and allow the appeal. The appellant shall be entitled to consequential benefits, in accordance with law.

(Pronounced in Open Court on 14-07-17)

-Sd/-
(ANIL CHOUDHARY)
Member(JUDICIAL)

akp

प्रमाणित प्रति/Certified True Copy
21/07/2017
सहायक पंजीकार/Asstt. Registrar
सीमाशुल्क, उत्पादशुल्क एवं सेवा कर
अपील अधिकरण(C.E.S.T.A.T.)
8 एम.जी. मार्ग, इलाहाबाद-211001
8 G. MARG ALLAHABAD-211001