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: 10/05/2017

To

Appellant as per address in table below
Respondent as per address in table below

Final Order No. A/70457-70460/2017-SM[BR] dated 05/05/2017

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/51139/2015	**Panchwati Prayogshala Pvt Ltd** 25-26, A-b, Mohkampur Industrial Area, Phase-1, Delhi Road MEERUT-U.P
2	E/51143/2015	**Pankaj Goyal Director Of** C/o Panchwati Prayogshala Pvt Ltd,25-26, A-b, Mohkampur Industrial Area, Phase-1, Delhi Road MEERAT- UP
3	E/51816/2015	**Spack Coaters Pvt Ltd,** 143-144, Anand Industrial Estate, Mohan Nagar GHAZIABAD- UP
4	E/51817/2015	**Surendra Kumar Gupta The Director** Spack Coaters Pvt Ltd, 143-144, Anand Industrial Estate, Mohan Nagar GHAZIABAD -UP
		Name and Address of Respondent
5		C.C.E. & S.T.-Meerut-ii OPPOSITE SHAHEED SMARAK,DELHI ROAD...BHANSALI GROUND, MEERUT, UTTAR PRADESH-
6		C.C.E. & S.T.-Ghaziabad 202...WING A C.G.O. COMPLEX-II,KAMLA NEHRU NAGAR, GHAZIABAD, UTTAR PRADESH-201002
7		C.C.E. & S.T.-Ghaziabad 202...WING A C.G.O. COMPLEX-II,KAMLA NEHRU NAGAR, GHAZIABAD, UTTAR PRADESH-201002
8		C.C.E. & S.T.-Meerut-ii OPPOSITE SHAHEED SMARAK,DELHI ROAD...BHANSALI GROUND, MEERUT,-U.P

Other Appellants and Respondents as per Annexure
Copy To
9Advocate(s) / Consultant(s):

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

10 SHRI R.M. SAXENA (ADV.)
LASA CONSULTANCY PVT LTD
D-60, GROUND FLOOR,
SECTOR-2, NOIDA DISTRICT
GAUTAM BUDDH NAGAR UP

11 Bar Association, CESTAT, Allahabad

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

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

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

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

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

21 C.D.R. 22 Office Copy 23 Guard File

Asstt. Registrar

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH : ALLAHABAD
COURT No. I
APPEAL No. E/51139, 51143 , 51816 & 51817/2015-EX[SM]

(Arising out of Order-in-Appeal No. GZB/EXCUS/000/APP/261-262/201415 dated 15/12/2014 passed by Commissioner of Customs, Central Excise & Service Tax (Appeals), Meerut)

M/s Panchwati Prayogshala Pvt. Ltd., (In appeal No. E/51139/2015),

Pankaj Goyal Director of PPPL (In appeal No. E/51143/2015)

Spack Coaters Ltd., (In appeal No. E/51816/2015), &

Shri Surendra Kumar Gupta, Director of SCL (In appeal No. E/51817/2015), **Appellants**

Vs.

Commissioner of Central Excise & Service Tax, Meerut-II (In appeal No. E/51139 & 51143/2015) & Commissioner of Central Excise, Ghaziabad, (In appeal No. E/51816 & 51817/2015) **Respondents**

Appearance:

Shri R. M. Saxena, Advocate, (In Appeal No. E/51816 & 51817/2015)&
Shri Kamaljeet, Singh, Advocate, (In Appeal No. E/51139 & 51143/2015) for Appellant
Shri S. S. Chattopadhyay, Assistant Commissioner, (AR), for Respondent

CORAM:

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

Date of Hearing: 05/05/2017

Date of Decision: 05/05/2017

FINAL ORDER NO...70457-70460/2017

Per: Anil Choudhary

In these appeals the appellants are challenging the levy of duty/penalty or both for alleged clandestine manufacture and removal, purchase of excisable goods.

2. The brief facts of the case are that on the basis of intelligence gathered by DGCEI Officers that M/s Panchwati Prayogshala (Ayurvedic division) located at 25-26 AB, Mohkampur, Delhi Road, Meerut (Now M/s Panchwati

Prayogshala Pvt. Ltd. and hereinafter referred to as M/s PPPL, (Unit-I) & Panchwati Prayogshala (Food Division), located at 19-A, Mohkampur, Phase-I, Delhi Road, Meerut (hereinafter referred to as M/s PPPL, Unit-II) were indulging in large scale evasion of Central Excise duty by way of unaccounted production and clearances of excisable goods namely; Digestive Tablets & Ayurvedic Medicines without payment of Central Excise duty. Another Unit namely; M/s Panchwati Prayogshala Pvt. Ltd., Kashipur, Saharanpur road, Roorkee (hereinafter referred to as M/s PPPL – Roorkee) were misusing the area based exemption provided to the industrial unit located in Uttarakhand. That search was conducted at all these premises or the factories & office of M/s PPPL, 20-B, Mohkampur, Phase-I, Delhi Road, Meerut on 15th July, 2011. In the search at the factory of M/s PPPL Unit-I DGCEI Officers seized stock of excisable goods amounting to Rs.15,05,466/-. During the course of search at godown cum factory premises of M/s PPPL, at 20-B, Mohkampur, Phase-I, Delhi Road, Meerut DGCEI Officers seized finished goods valued at Rs.7,08,720/- and during the course of search at office cum factory of M/s PPPL – Unit-II, the Officers seized the finished goods valued at Rs.2,95,664/-. The statement of Shri Pankaj Goel, Director of M/s PPPL was recorded on 16/07/2011, in which he stated that he was the proprietor of M/s PPPL Unit -II and his wife Smt. Puja Goel was the proprietor of M/s PPPL Unit-I, that both the units were taken over by the appellant (PPPL) with effect from 01/04/2011. Both the units were manufacturing goods under the brand name of 'Panchvati', they were having Ayurvedic & Unani Drugs Controller Licence for manufacturing Ayurvedic medicines/products. During the course of search various incriminating documents, pen drives & CPUs, were recovered from various places/premises. The said documents/pen drives/CPUs were resumed by the Officers for further investigation. The documents recovered from the separate office were found to contain date-wise dispatch details for the period 2007-08, 2008-09 (upto 30/11/2008), 2009-10 (upto 01/01/2010) & 2011-12 (upto 14/07/2011). It further appeared that ~~the~~ M/s PPPL have issued invoices only in a few cases. It also appeared that M/s PPPL were in the practice of issuing invoices for the safe delivery of the goods. Once the goods were delivered, the invoices were being destroyed and again parallel invoices were issued by them. It also appeared that there are two firms namely; M/s PPPL Unit-I & M/s PPPL Unit-II and which were neither registered with Central Excise department nor found to be paying any Central Excise duty on the manufactured goods. The statement of Shri Ajay Gupta, Accountant was recorded on 18/11/2011. In his statement he inter-alia informed that he was looking after the work of billing, banks, sales tax, central excise and he was working from the premises located at 19-A, Mohakampur, Meeurt which was the common office of all the Units. That both the units namely; M/s PPPL Unit-I & M/s PPPL Unit-II were taken over by the appellant company with effect from 01/04/2011. He, further, stated that they issued invoices, whenever they supplied any goods. However, which invoices were to be accounted for in the books of account was decided by Shri Surinder Pal, General Manager Marketing and the other invoices were being called back and destroyed. Shri Surinder Pal, General Manager Marketing, accepted the contents of the statement of Shri Ajay Gupta. Further Shri Pankaj Goel was also shown the documents recovered from the separate office. He accepted that the same contains daily dispatch details such as description of goods, name of the buyer, place of destination as well as quantity dispatched. He agreed to deposit an amount of Rs.50 lakhs towards the duty liability. The officers also resumed kacha ledger for the period 2007-08 to 2011-12 (upto 13/07/2011). The said ledger contained accounts of the customers of the M/s PPPL for purchase ayurvedic churan, aurvedic goli & digestive tablets. The amount of goods sold was mentioned (debit column) and the amount paid/realized (credit column). Only a few of the entries contained in the kacha ledger were found to be matching with the invoices issued by M/s PPPL. The said kacha ledgers were shown to Shri Sudhir Kumar, Sales Clerk who confirmed that those records were maintained by him or Shri Surinder Pal and contain details of the goods dispatched and amounts realized against the same.

3. Enquires were also made from the suppliers of packing material to M/s PPPL. Most of them confirmed the supply of packing material to M/s PPPL as per their private records and receipt of sale proceeds in cash. Among others, it appeared that M/s Spack Coaters Limited – appellant was also engaged in the manufacturing and supplied packing material i.e. Printed Laminated Plastic Film in Roll & Pouch Form to M/s PPPL without payment of Central Excise duty and without following the procedure for clearance. For the period August, 2007 to 14th July, 2011, it appeared that M/s Spack Coaters Limited – appellant have cleared packing material (for the said goods), total assessable value at Rs.1,49,29,423/- which is liable to confiscation under Rule 25 (1) of the Central Excise Rules, 2002 for contravention of the provisions of Rules 4, 5, 6, 8 10, 11 & 12 of the Central Excise Rules, 2002, as the same was manufactured and cleared in contravention of the provisions of Acts & Rules with intent to evade payment of duty. Further from scrutiny of documents No. 48 & 52 (RUD 4 & 5) seized from the premises of M/s PPPL revealed that the said documents are gate registers maintained by the guards posted at the gate of the godown premises of M/s PPPL, at 20-B, Mohkampur, Delhi Road, Meerut. The receipt entries of packing material as found in document No. 63 (RUD -3) are also available in the said gate registers. The receipt of materials as reflected in the gate registers, corroborates the unaccounted receipt of packing material shown in documents

Ar

No. 62 & 63 (RUD – 2 & 3). Further from scrutiny of document No. 68 (RUD – 6) seized from the premises 20-B, Mohkampur, Delhi road, Meerut,of M/s PPPL revealed that it is a cash book containing date wise details of receipt of raw material and packing material during the period from 01/07/2007 to 28/12/2007. Name of the suppliers were found mentioned, in short, such as KND, Spack, GLS, GPP, Omni, etc. It appears that "Spack" in the said cash book was used for M/s Spack Coaters Limited. Accordingly, Revenue calculated the receipt of packing material (printed flexible plastic packaging material in pouch and roll forms) have been tabulated and annexed as Annexure – B to the Show Cause Notice. It appeared that during the period from 01/08/2007 to 28/12/2007 M/s PPPL received 8181. 89 kgs of printed packaging material from M/s Spack Coaters Limited. Further from perusal of invoices of M/s Spack Coaters Limited, tendered by its Director, Shri Surendra Kumar Gupta, during his statement recorded on 12/01/2012 revealed that M/s Spack Coaters Limited did not issue any invoice in the name of M/s PPPL during the said period i.e. 01/07/2007 to 28/12/2007. Thus, it appeared that M/s SCL had cleared excisable packaging material without payment of Central Excise duty. Scrutiny of document No. 57 (RUD – 7) seized from the premises 20-B, Mohkampur, Delhi, Meerut of M/s PPPL revealed that it is a duplicate note book containing date wise details of receipt of packaging material for the period from 14/11/2010 to 23/04/2011 by M/s PPPL. The said document contain details such as name of the item received, name of the supplier in short, number of bundles/roll, gross weight, tare weight and net weight. Similar details of packaging material were also found in document No. 58, 59 & 61 (RUD – 8, 9 & 10) seized from the aforesaid premises of M/s PPPL for the period 26/02/2011 to 05/07/2011. The details of packaging material found in the said document No. 58, 59 & 61 (RUD – 8, 9 & 10) tally with the details of document No. 63 (RUD – 3). Following entries were found in document No. 57 in the name of "Spack" which pertain to M/s Spack Coaters Limited.

Sl No.	Date	Description of goods	No. of box/rolls	Net weight	Corresponding entry in document No. 63 at page No.
1	25.12.2010	Aam Bambaiya	51	1554.250	121
2	24.01.2011	do	16	478.30	115
3	23.04.2011	do	346	2852.00	97

The corresponding entries of the aforesaid receipt entries of document No. 57 are also available in diary No. 63. When compared the aforesaid three entries with the sales invoices of M/s Spack Coaters Limited, it was noticed that M/s Spack Coaters Limited have issued invoice No. 2352 dated 23/01/2011 for 16 bags (476.100) of Aam Bambmaiya to M/s PPPL. No invoice in respect of entry dated 25/12/2010 &

23/04/2011 of document No. 57 appears to have been issued by M/s Spack Coaters Limited. Thus, it appeared that the goods shown received by M/s PPPL on 25/12/2010 & 23/04/2011 which were supplied by M/s SCL were without cover of Central Excise invoice and without payment of Central Excise duty. Scrutiny of document No. 4 (RUD – 11) seized from the premises 20-B, Mohkampur, Delhi Road, Meeurt of M/s PPPL revealed that page No. 85 is the weight sheet dated 11/05/2010 of packing material received from M/s SCL. The said page shows receipt of 328 rolls (2484.56 kgs) and 7 rolls (65.900 kgs) of Aam Bambaiya 50P and 7 rolls (65.900 kgs) of Aam Bambaiya 1Re respectively. No invoice appears to be received from M/s SCL for supply of the said 328 rolls and 7 rolls of Aam Bambaiya. The aforesaid weighment sheets of packing material corroborates the receipts of unaccounted packaging material from M/s SCL as shown in document No. 62 & 63 as the entries for the same quantities are also available in document No. 63. Scrutiny of document No. 43 (RUD – 13) seized from the premiscs 20-B, Mohkampur, Delhi Road, Meeurt of M/s PPPL revealed supplies of packaging material by M/s SCL at the various premises of M/s PPPL. Computer CPUs, Hard Discs, Pen Drives & Laptops were seized as detailed in panchnama drawn for the respective premises. Imaging of HDDs of CPUs, HDDs of Laptops, Pen Drive & HDDs were done at the Cyber Forensic Cell, installed at Directorate General of Revenue

Intelligence, Mumbai Zonal Unit, Mumbai on 14/10/2011 & 22/11/2011 under panchnama proceedings. Printouts were taken which revealed that it inter alia contains various files pertaining to receipt of packaging material. Printout of such files were taken and placed in file folder containing pages 1 to 239 (RUD – 16). Details of receipt of packaging material from various suppliers including Kanodia, Galore, GPP, Spack, GLS & Veebro were found in the printouts. It appears that the printout of file in the name of "SPK" & "Spack" pertain to M/s SCL, weight in kgs and item wise rate/kg is also mentioned in the printouts. Separate entries for M/s PPPL & M/s PPPL, Roorkee were found mentioned in the said printouts, month wise. From the Annexure-C to SCN, it appeared that M/s PPPL received 1,13,431.28 kgs of packaging material from M/s SCL during the period from August, 2007 to June, 2011. In the course of investigation the statement of Shri Surendera Kumar Gupta, Director of M/s SCL was recorded on 22/12/2011 who stated that they are engaged in manufacture of flexible packaging material in rolls and pouch form and they were also supplying packaging material of M/s PPPL Unit – I, M/s PPPL Unit – II & M/s PPPL, Roorkee. That identical packaging material having same address and manufacturing license were supplied to both the units at Meerut, however, as per requirement they billed the material in the name of M/s Panchwati Prayogshala (Ayurvedic Division) or Panchwati Prayogshala (Food Division) 19-A

Mohkampur, Delhi Road, Meerut. For supply of packaging material to M/s PPPL, Roorkee, address and manufacturing license No. of Roorkee was printed on the same. When it was shown that the entries in the name of Spack (in the registers, diaries, etc.) recovered and seized from the factory-cum-godown premises of M/s PPPL at 20-B, Mohkampur, Delhi Road, Meerut Shri Surendra Kumar Gupta stated that they supplied packaing material to M/s PPPL vide Inovice No. 1026 dated 10/08/2010, 1791 & 1792 both dated 12/11/2010 & 2352 dated 22/01/2011. He stated that though there is minor difference in quantity in kgs as shown against the entries in the name of "Spack" in seized document No. 63 and invoices but the number of rolls/bundles is the same. Further, he stated that they supplied packaging material to Meerut & Roorkee Units of M/s PPPL since 2008 & the entries in the name of "Spack" in seized document No. 63 pertains to packaging material supplied to M/s Panchwati Prayogshala (Ayurvedic Division), Meerut. He further stated that he will check from their accounts whether goods were supplied on bills or not and revert. When he was asked to produce the document on summons Shri Surendra Kumar Gupta stated that he will produce the documents in course of time. Further statement of Shri Surendra Kumar Gupta was recorded on 12/01/2012 wherein he admitted that they have not issued any bill in respect of entries in the name "Spack" at page Nos. 158, 155, 153, 152, 150, 145, 143, 142, 97, 84, & 83 of document No. 63 for supply of packaging material. When confronted the printout of "Spack" account taken after imaging of 4GB Data Traveler Pen Drive seized from the premises of M/s PPPL, Shri Surendra Kumar Gupta stated that printout pertains to the period from April, 2009 to June, 2011 & for the period 03/12/2009 to 30/03/2010. He stated that they have issued only Invoice Nos. 1517, 1533, 956, 964, 1026, 1791, 1792 & 2352 during the period from 30/12/2009 to 12/01/2011. On being questioned as to why they have not issued invoices in all cases against the entries found in seized document No. 63 and entries in printout of Spack account (pendrive) and whether he is ready to deposit the duty involved on the goods cleared without the cover of invoices and without payment of duty to M/s PPPL, Shri Gupta offered to deposit the approximate duty liability voluntarily. Further M/s SCL vide their letter dated 31/01/2012 informed that they have deposited Rs.5,00,000/- vide Challan No. 50037 & Rs.3,00,000/- vide Challan No. 50038 both dated 28/11/20012 (total Rs.8,00,000/-) towards their duty liability. It, further, appears from the scrutiny of document No. 75 to 83 (RUD – 23/1 to 23/9) recovered from the premises 20-B, Mohkampur, Phase-I, Delhi Road, Meerut under panchnama dated 15/07/2011 revealed that these are the Panchwati estimate pads containing details of payment realization from the customers and the payments made to the suppliers of the raw material. These documents are for the period 01/03/2009 to 17/01/2009. The amount shown in these documents are in hundreds instead of full amount. For example, if payment of Rs.5,00,000/- was made to a supplier, the mode of payment like cheque, DD, Cash was also found in the said documents. Further the details of such payment to M/s SCL are compiled as Annexure- D to SCN. It appeared that during the period from 01/03/2009 to 17/11/2009, 3 Units of M/s PPPL have made payment of Rs.54,48,387/-. Out of the said payment, Rs.28,98,655/- was paid by cash or by demand draft. Further, it appeared that all payments by M/s PPPL, Roorkee was by cheque but all the payments by M/s PPPL to M/s SCL were by cash or by demand drafts. It further appeared that all the appellants colluded with each other in clearing the dutiable goods clandestinely and the Proprietor/Director of M/s PPPL have aided and abetted in receiving dutiable goods clandestinely.

4. On such allegations Show Cause Notice dated 4th September, 2012 was issued invoking the extended period of limitation demanding Central Excise duty amounting to Rs.16,30,613/- from M/s SCL for alleged clearance of Printed & Laminated Flexible Plastic Film in rolls & pouches form valued at Rs.1,49,29,423/-, during the period 01/08/2007 to 14/07/2011. Further the amount of Rs. 8 lakhs deposited during investigation was proposed to be appropriated. Further penalty was also proposed with further proposal to confiscate the packaging materials or goods valued at

Rs.1,49,29,423/- and as the goods were not available for confiscation, why penalty under Rule 25 (1) of Central Excise Rules, 2002, be not imposed. Further penalty under Rule 26 of Central Excise Rules, 2002 was proposed on the Director of M/s SCL - Mr. Surinder Kumar Gupta. Similar penalty was also proposed on the alleged buyer of the goods - M/s PPPL and also on its Director - Pankaj Goel.

5. Vide Order-in-Original dated 26/03/2014 the Show Cause Notice was adjudicated on contest. So far M/s SCL and its Director Mr. Surendra Kumar Gupta are concerned the proposed demand was confirmed along with appropriation as proposed with interest. Further penalty was imposed of equal amount under Section 11AC of the Central Excise Act read with Rule 25 (1) of Central Excise Rules, 2002, separate penalty of equal amount was also imposed under Rule 25 (1) of Central Excise Rules, 2002 upon M/s SCL in lieu of confiscation. Further penalty Rs. 5 lakhs was imposed on the Director of M/s SCL - Mr. Surinder Kumar Gupta under rule 26 of Central Excise Rules, 2002.

6. The other appellants – M/s PPPL & Shri Pankaj Goel did not file reply to Show Cause Notice and penalty was imposed, ex-parte, under Rule 26 of Central Excise Rules, 2002, Rs. 5 Lacs on M/s PPPL & Rs.2 lakhs on Shri Pankaj Goel.

7. Being aggrieved the appellant - M/s SCL & its Director Mr. Surinder Kumar Gupta filed appeals before ld.

Commissioner (Appeals) who was pleased to dismiss the appeal upholding the Order-in-Original. The other two appellants - M/s PPPL & Shri Pankaj Goel also filed appeals before Commissioner (Appeals) which was rejected vide separate Order-in-Appeal, upholding the penalties imposed.

8. Being aggrieved, the appellants are before this Tribunal.

9. The ld. counsel for the M/s PPPL states that the company and its Directors had moved before the 'settlement commission' and the dispute was settled vide Final Order dated 14/10/2015, in Settlement Application No. 4633/2015 relating to the period 01/07/2007 to 14/07/2011. The learned counsel have filed the copy of the order of settlement commission wherein they held that the applicant - M/s PPPL have accepted liability for the period 01/04/2011 upto the date of search. However, the applicant – M/s PPPL is not liable to pay the Central Excise duty up to 31st of March, 2011, because it has taken over the two units (proprietorship units of Shri Pankaj Goel & Mrs. Pooja Goel), with effect from 01/04/2011 only, and as per the agreement between the company and the proprietors, the Central Excise dues up to 31st of March, 2011 are to be paid by the respective units, which were taken over by M/s PPPL (Company) from 1st April, 2011. The Central Excise duty amounting to Rs.38,96,729/-, for the period 1st April, 11 to 14th July, 2011, was determined.

Sd/-

The applicant – M/s PPPL has indulged in clandestine clearance of the goods and therefore violated the law and hence are liable for penalty. The Bench observed that the applicant has made full and true disclosure and cooperated in the settlement proceedings. Accordingly, the disputes stood settled under Section 32F (3) of the Act on the terms – (i) Central Excise duty on the applicant – M/s PPPL is settled at Rs.38,96,729/-with interest. Finished goods valued at Rs.24,47,850/- seized vide seizure memo dated 20/07/2011, are held liable to confiscation under the provisions of the Act and the Rules. Such goods are ordered to be released on payment of redemption fine of Rs.50,000/-. Out of the excisable goods having assessable value of Rs.1,09,67,73,557/- manufactured and removed from 01/07/2007 to 14/07/2011, the excisable goods valued at Rs.9,22,28,840/- cleared during 01/04/2007 to 14/07/2011 are liable for confiscation. The rest of the goods were not manufactured by the applicant – M/s PPPL and hence not liable for confiscation under the Show Cause Notice. However, since no goods were seized or available for confiscation, the settlement commission refrains to impose any fine in lieu of confiscation on these goods. Further penalty Rs. 2 lakhs was imposed on the applicant – M/s PPPL. The learned counsel further states that in view of the dispute being settled by the settlement commission, So far these appellants are concerned, no further, penalty is imposable on them. It is further stated that so far the period prior to 01/04/2011 is concerned no separate Show Cause Notice have been issued. Accordingly, the learned counsel prays for dropping of the penalty on these appellants.

10. So far the other appellants - M/s SCL & its Director Mr. Surendra Kumar Gupta are concerned the learned counsel contended that no search was carried out in the premises of M/s SCL. All the documents, pen drive, hard disc etc. on the basis of which demand has been raised were recovered from the premises of M/s PPPL. He further urges that demand of duty cannot be confirmed on the basis of documents recovered from third-party. The learned counsel placed reliance on the rulings of this Tribunal in the case of Sakeen Alloys Pvt. Ltd. *Versus* Commissioner of Central Excise, Ahemedabad reported at 2013 (296) E.L.T. 392 (Tri. Ahemedabad), which was upheld by the Hon'ble Gujarat High Court in 2014 (308) E.L.T. 655 (Gujarat) and further upheld by the Apex Court in the case of Commissioner *Versus* Sakeen Alloys Pvt. Ltd. reported at 2015 (319) E.L.T. A117 (S.C.). The learned counsel have also relied on the ruling of this Tribunal in Naresh M Bali *Versus* Commissioner of Central Excise, being Final Order No. E/50025-50028/2016-EX(DB) (Tri). The learned counsel further states that neither there is any admission on the part of these appellants, nor there are any corroborative evidences on the basis of which demand can be sustainable. It is settled law that charge of

clandestine removal cannot be proved solely on the basis of third-party documents. The learned counsel relies on ruling of Hon'ble Karnataka High Court in the case of PV Verghese *Versus* CEGAT, 2008 (232) E.L.T. 420. Further, referring to the ruling of the Coordinate Bench of this Tribunal in the case of Arya Fibres Pvt. Ltd. versus Commissioner of Central Excise reported at 2014 (311) E.L.T. 529 (Tri. Ahmedabad), wherein after considering the earlier judgments, this Tribunal has laid down certain norms for establishing whether clandestine removal has taken place or not. There being no material evidence on record to establish any clandestine manufacture and removal, the demand is fit to be set aside along with penalty. The learned counsel further states that Revenue have placed heavy reliance on the Data obtained from pen drive, found in the possession of one of the employees of M/s PPPL. The said evidence is not admissible in view of the provisions of Section 36B of the Central Excise Act, 1944. The printout from the pen drive etc. have been taken by the DGCEI Officers in their office. The Data on the said pen drive was stated to be copied from the computer by the employee of M/s PPPL, which was used by them. There is no evidence, nor any pleading by the Revenue in the Show Cause Notice that the Data retrieved from the pen drive etc. was with respect to accounts maintained in regular course of business as required by Section 36B of the Act. Thus, neither the Data so obtained is from a computer maintained in the ordinary course of business and further there being no admission of the said Data by these appellants, no reliance can placed on the same. There is total lack of authenticity of such Data. Further, these appellants had requested for cross-examination of certain persons like punch witnesses who witnessed the recovery of the documents, computer hard disc, pen drives, etc. Further witness to the process of taking printouts, the persons who had maintained the Data on the computers and also obtained the copy from the computer in the pen drive. On the basis of such uncorroborated data and inadmissible evidences the demands confirmed with penalty is fit to be set aside. It is further contended that in view of the fact that settlement commission have settled the dispute M/s PPPL and held that no demand is sustainable for the period prior to 01/04/2011, and admittedly there is no separate show cause notice issued on the proprietor units of M/s PPPL for the period prior to 01/04/2011, the demand on these appellants is also unsustainable and fit to be set aside. The learned counsel further urges that as no goods being seized or available for confiscation, the penalty imposed in lieu of confiscation is bad and unsustainable.

11. The learned counsel further urges that prior to 01/04/2011, there were two separate units M/s Panchwati Prayogshala (Ayurvedic Division) located at Meerut. M/s Panchwati Prayogshala (Food Division) located at Meerut. On

similar allegations arising from the same investigation, Show Cause Notice dated 13/07/2012 was issued to M/s PPPL & its directors and others, alleging that they have manufactured and cleared goods clandestinely. The appellant is only a supplier of packing material, to "M/s PPPL". It is further stated that in the Order-in-Original arising from Show Cause Notice issued dated 13/07/2012 issued to M/s PPPL and its directors, these appellants M/s SCL & its Director Mr. Surendra Kumar Gupta were also made noticees and penalty under Rule 26 of the Act was imposed on them, vide Order-in-Original.

12. The learned A. R. for Revenue have relied on the impugned orders. The learned A. R. further submits that the demand is confirmed on the basis of documents and records resumed from the factory and office of M/s PPPL. These documents clearly show that M/s SCL cleared packing material to M/s PPPL both with and without cover of Central Excise invoices.

13. The learned A. R. further states that that M/s PPPL, in their application and submissions before the settlement commission have admitted that they resorted to clandestine manufacture and clearance of the finished products, as alleged by the Revenue. The settlement has been done mainly with respect to the period i.e. the cut-off date of 01/04/2011 was adopted, being the date on which M/s PPPL acquired the proprietorship business of M/s Panchwati Prayogshala owned

by Mr. Pankaj Goel and his wife Mrs. Puja Goel. Further, Mr. Surendra Kumar Gupta, Director of M/s SCL have in their statements recorded before the DGCEI in the course of investigation, have more or less admitted that they have supplied their finished products/packing material to M/s PPPL both with and without invoices. So far the issue of cross examination is concerned it is urged that these appellants did not make any specific request, that is, did not give the names of the persons who were intended to be cross-examined. He further referred to the observations of Commissioner (Appeals) – "I observe that appellants were asked by the Adjudicating Authority to specify the name of the persons for cross-examination, but they could not specify the name of any person for the same. Therefore, the Adjudicating Authority have rightly concluded that this issue was raised just to delay the adjudication proceedings."

14 Having considered the rival contentions and on perusal of the facts on record, I find that no search have been carried out in the premises of M/s SCL. All the documents, pen drive, computer hard disc, etc. on the basis of which demand had been raised, were recovered from the factory & office of M/s PPPL. I further find that the proposed demand had been mainly confirmed on the ground that the Director of appellant - M/s SCL have admitted the fact of clandestine removal, to M/s PPPL. On examining the statement of the appellant's Director – Shri Surendra Kumar Gupta dated 22/12/2011, I

find that he has admitted the supply of packing material against invoices to M/s PPPL. On being shown seized document No. 63, particularly page Nos. 138, 116 & 128 seized from the premises of M/s PPPL, Mr. Surendra Kumar Gupta stated that the entries therein in the name of "Spack", after having seen the entries, he signed as a token of having seen and stated that "we have supplied the goods as mentioned that page Nos. 138, 128 & 116 of seized document No. 63 vide invoice Nos. 1026 dated 10/08/2010, Nos. 1791, 1792, both dated 12/11/2010 & Nos. 2352 dated 22/01/2011." However, there is minor difference in quantity in Kg. as shown in our records and in seized documents, but number of rolls are the same. I have also been shown entries in the name "Spack" at page No. 158, 155, 153, 152, 150, 145, 143, 142, 97, 84 & 83 of document No. 63, and asked to confirm supply of packing material to M/s PPPL, Meerut. After having seen the said pages - in this regard, I have to state that we supplied packing materials to M/s PPPL, Meerut & Roorki Units since 2008. The entries in the name "Spack" in the seized document number 63 pertains to supplies of packing material to M/s PPPL (Ayurvedic Division), Meerut. I will check my accounts, to confirm whether goods are supplied on bills or not and revert back."

15. In the subsequent statement recorded on 12/01/2012 recorded before Senior Intelligence Officer, DGCEI, Mr. Surendra Kumar Gupta stated - "on being asked, I produce

copies of bills/invoices along with Ledger account of M/s PPPL, Roorki & M/s PPPL, Meerut. With respect to the entries in seized document No. 63 on various pages" referred hereinabove, he stated – (I have seen entries in name of "Spack" in question in seized document No. 63. It is stated that bill have been issued by us in respect of all the entries in question for supply of packing material to M/s PPPL (Ayurvedic Division), Meerut. I have been shown print out of account of "Spack" retrieved from the pen drive 'GB Data Traveller' seized from M/s PPPL located at 19-A Mohakampur, Delhi Road, Meerut and asked to comment. The continuing statement, (that is page 4 of the statement) is missing and it was stated in the course of argument that the same was not supplied by Department. Further, Mr. Surendra Kumar Gupta stated in the concluding portion of the statement – "I will deposit the duty on the goods supplied to M/s PPPL, Meerut amounting to Rs. 8 lakhs by 20/01/2012, voluntarily towards my duty liability.

16. I, further, find that in their reply dated 09/01/2014 to the Show Cause Notice, the appellants have categorically stated that the statement was recorded under duress and undue influence. The director of M/s SCL - Mr. Surendra Kumar Gupta, knew that Mr. Pankaj Goel Director of M/s PPPL had been arrested by the officers of DGCEI and was granted bail by the Magistrate Court only after few days. Accordingly, Mr. Surendra Kumar Gupta gave the statement

AO

as dictated to him and did not immediately complain about the nature of the statement (not being freely given) as he was afraid that he may be proceeded against including arrest. I further find that there is no corroborative evidence that the goods were legally entered in the documents/pen drive, etc. of M/s PPPL, had been manufactured and cleared from the factory of the appellant – M/s SCL, without payment of duty. I further find that the case of the Revenue is based solely on the basis of third-party records which are mainly the computer printouts. I further find that no evidence have been brought on record by Revenue in terms of Section 36B (2) of the Central Excise Act, which requires that for admissibility of data obtained from microfilms, computer printouts, etc., satisfaction have to be recorded that (i) the computer printout containing the statement was produced by the computer during the period over which the computer were used regularly to store or process information for the purpose of any activity regularly carried on, over that period by the person having lawful control over the use of the computer, (ii) during the said period there was regularly supplied to the computer in the ordinary course of the said activities, information of the kind contained in the statement or of the kind from which the information so contained is derived, (iii) throughout the material part of the said period, the computer was operating properly, or if not, then any aspect in which it was not operating properly or was out of operation during that part of that period was not such as to affect the production of the documents or the accuracy of the contents & (iv) the information contained in the statement reproduced or is derived from information supplied to the computer in the ordinary course of the said activities. In the present case, the printouts have been reproduced by the DGCEI Officers from a pen drive, seized from the possession of one of the employees of M/s PPPL, the data on which had been stated to be copied from the computer belonging to M/s PPPL which was used by them. For the purpose of adjudication of M/s SCL, such data being not maintained by M/s SCL, for their business activities, is not reliable or have no evidentiary value in the facts and circumstances. The person Mr. Amit Kumar Kansal – Accountant of M/s PPPL from whose possession, the said pen drive was recovered, in his statement have inter-alia stated that Shri Surendra Pal, GM Marketing used to tell him the details of goods cleared without bills/invoices from the factory of M/s PPPL and he made entries in the computer accordingly. Thus it is evident that the said Accountant was himself not knowing about the genuineness of the data entered by him in the computer. He made entries in the computer as per details provided by GM Marketing, which was not in the ordinary course of an activity done by him on behalf of M/s PPPL. Mr. Amit Kumar Kansal was not looking after any dispatch of finished goods, allegedly cleared without payment of duty, nor received any payment in respect of such finished goods. Further the said accountant, neither looked after receipts of any packing material from any supplier nor made payments in respect of the packing materials. He made entries on the oral instructions of the GM Marketing and Director, which cannot be recorded as having been made in the ordinary course of the business. Thus, there was no proper basis for maintaining records on the computer. Further, the data obtained on pen drive from the computer, is further prone to alterations and manipulations and hence not reliable. On the issue of cross examination, I find that the appellants have categorically stated in the reply to Show Cause Notice that they have observed some anomalies and inconsistencies in the allegations made in the Show Cause Notice with respect to documents and statements, relied upon. In order to establish genuineness and correctness of the said documents, statements and data they requested for cross-examination of – (i) panchas/witnesses who have witnessed recovery of the said documents/computer hardware/pen drives and process of taking printouts, (ii) persons whose statements have been used as evidence against the noticee/appellants, persons who have written or maintained various documents relied upon as evidence against the appellants and (iii) the DGCEI Officers who have investigated the case. It is further categorically stated that if the anomalies and inconsistencies as noticed are revealed the very purpose of cross-examination, may be defeated. I find that in spite of making a specific request for cross-examination the same have not been provided and neither the Revenue examined its witnesses in the course of adjudication proceedings. Thus, the impugned orders are also bad for violation of the provisions of Section 9D of the Central Excise Act. The said section categorically provides for examination of the witnesses by the Revenue, the statements of whom it wants to rely upon in any proceedings. Such examination is only complete after providing opportunity of cross-examination to the respondent/noticee. The word "corroboration" means, not mere evidence tending to confirm other evidence. The purpose of corroboration is not to give validity or credence to evidence which is deficient or suspect or incredible, but only to confirm and support that which as evidence is sufficient to satisfaction and credible, and corroborative evidence will only fill its role, if it, itself is completely credible. There can be, therefore, no corroboration of evidence, which is itself unworthy of credence. I further find that the demand for the period prior to 01/04/2011 cannot be sustained also on the ground that no Show Cause Notice has been issued to the proprietorship firms who were owning and running the business M/s PP (Ayurvedic Division) & (Food Division) with respect to the same investigation. I further find that Revenue have failed to establish certain fundamental criteria for the allegation of clandestine removal, as there is no tangible evidence of clandestine manufacture by these appellants, and the whole demand is based on mere assumptions and presumptions. There is no investigation with respect to usage of unaccounted or excess raw materials, discovery of any finished goods outside the factory, use of electricity far in excess than what is necessary for manufacture of goods, otherwise manufactured and validly cleared on payment of duty, proof of actual transportation of goods etc. Inferences cannot be drawn about such clearances merely on the basis of notebooks, diaries privately maintained or some computer data recovered from pen drives not maintained in the ordinary course of business. Further, the impugned orders are vitiated for not giving opportunity of cross-examination, including examination of the witnesses of the Revenue. The demand being mainly based on some private records, etc., maintained by third party – M/s Panchwati Prayogshala for their internal control cannot be the sole basis for raising demand against M/s SCL. Accordingly, I hold that the demand is not sustainable against M/s SCL. Accordingly, the appeals of M/s SCL & its Director - Surendra Kumar Gupta are allowed and the impugned orders relating to them is set aside.

17. So far M/s Panchwati Prayogshala Private Limited & its Director Mr. Pankaj Goel are concerned, I find that the matter been settled before the Settlement Commission, as noticed hereinabove and accordingly I set aside the penalties

imposed and confirmed against them, with consequential benefits to the appellants.

18. To sum up, all four appeals are allowed.

(Operative part of order pronounced in Court on conclusion of hearing)

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

Ansari

प्रमाणित प्रति/Cerified True Copy
16/05/2017
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