FAX : 0532-2400149

REGISTERED / AD

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
38,MG Marg Civil Lines,Old Red Building,Allahabad-211001
Regional Branch, Allahabad

To

Dated: 10/11/2017

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/71327/2017-EX[DB] dated 06/11/2017

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/144/2012	**TRIVENI ENGINEERING & INDUSTRIES LTD.** SUGAR UNIT- RAMKOLA, DISTT. KUSHINAGAR (U.P.)
		Name and Address of Respondent
2		-C.C.E Allahabad 38,M.G.Marg, civil Lines, Allahabad

Copy To

3Advocate(s) / Consultant(s):

R. Krishnan
297-E, Pocket-II, Phase-I,
Mayur Vihar,
Delhi
110091

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, Opp ICICI Bank of Defence Colony 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 Second Folder Copy 17 Guard File

Asstt. Registrar

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

REGIONAL BENCH : ALLAHABAD

COURT No. I

APPEAL No. E/144/2012-EX[DB]

(Arising out of Order-in-Appeal No. 217/CE/ALLD/2011 dated 13/10/2011 passed by Commissioner of Central Excise (Appeals), Allahabad)

Triveni Engineering & Industries Ltd. **Appellant**

Vs.

Commissioner of Central Excise, Allahabad **Respondent**

Appearance:

Shri R. Krishnan (Advocate) for Appellant
Shri Pawan Kumar Singh (Supdt.) AR for Respondent

CORAM:

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

Date of Hearing	:	06/11/2017
Date of Decision	:	06/11/2017

FINAL ORDER NO. 71327/2017

Per: Anil Choudhary

Heard the parties.

2. The issue herein relates to levy of appropriate duty by way of reversal under Rule 6(3) of CCR, 2004 on Bagasse on the appellant-assessee a manufacturer of sugar.

3. We find that the issue herein clearly covered by the ruling of Hon'ble Supreme Court in the case of DSCL Sugar Ltd. 2015 (322) ELT 769 (S.C.) wherein it have been held that Bagasse have not a manufacture product it being only

agricultural waste the provisions of Rule, 6(3) are not adjudicated. Accordingly, this appeal is allowed and set aside the impugned order. The appellant shall be entitled for consequential benefit in accordance with law.

(Dictated and pronounced in Court)

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

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

Ankit

प्रमाणित प्रति/Certified True Copy
30/11/17
सहायक पंजीयक/Asstt. Registrar
सीमाशुल्क, उत्पादशुल्क एवं सेवा कर
अपील अधिकरण(C.E.S.T.A.T.)
M. G. MARG, ALLAHABAD-211001

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: 14/11/2017

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. **A/71328-71332/2017-EX[DB] dated 26/09/2017**

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/3602/2006	CCE, KANPUR 117/7, SARVODAYA NAGAR, KANPUR-208005.
2	E/3603/2006	CCE, KANPUR 117/7, SARODAYA NAGAR, KANPUR-208005.
3	E/3604/2006	CCE, KANPUR 117/7, SARVODAYA NAGAR, KANPUR-208005.
4	E/3605/2006	CCE, KANPUR 117/7,SARVODAYA NAGAR, KANPUR-208005.
5	E/3606/2006	CCE, KANPUR 117/7, SARVODAYA NAGAR, KANPUR-208005.
		Name and Address of Respondent
6		L. KANT PAPER MILLS LTD. BISAYAKPUR, RANIA, KANPUR (DEHAT).,,
7		SH SANJAY AGARWAL, PROP. M/S OM TEXTILES 55/67-B RAJA MARKET, KAHOO KOTHI, KANPUR.,,
8		SH SURESH CHHABARIA, PROP. M/S SAGAR TRADING CO. 55/67-B, RAJA MARKET, KAHOO KOTHI, KANPUR.,,

9

SH ANIL AGARWAL, PROP.
M/S ANIL STEEL, 401,
RAMNIKA APARTMENTS,
7/186, SWAROOP NAGAR,
KANPUR.,,

10

SH LAXMI KANT AGARWAL,
DIRECTOR,
M/S L.KANT PAPER MILLS
LTD, BISAYAKPUR, RANIA,
KANPUR (DEHAT),,

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

AMIT AWASTHI
ADVOCATE
7/116A, H-1, 1ST FLOOR,
RADHEY APARTMENT,
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KANPUR- 208002

12 Bar Association, CESTAT, Allahabad

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

14 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, Opp ICICI Bank of Defence Colony New Delhi-3

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

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

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

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

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

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

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

22 C.D.R. 23 Office Copy 24 Second Folder Copy 25 Guard File

Asstt. Registrar

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

APPEAL No. E/3602, 3603, 3604, 3605 & 3606/2006-EX[DB]

(Arising out of Order-in-Appeal No. 358-362-CE/APPL/KNP/2006 dated 31/07/2006 passed by Commissioner of Central Excise & Customs (Appeals), Kanpur)

Commissioner of Central Excise, Kanpur **Appellant**

Vs.

M/s L. Kant Paper Mills Ltd. (In Appeal No. 3602/2006),

Shri Laxmi Kant Agarwal, Director (In Appeal No. 3603/2006),

Shri Sanjay Agarwal, Proprietor (In Appeal No. 3604/2006),

Shri Suresh Chhabaria, Proprietor (In Appeal No. 3605/2006),

Shri Anil Agarwal, Proprietor (In Appeal No. 3606/2006),

Respondent

Appearance:

Shri Pawan Kumar Singh, Superintendent (AR), for Appellant
Shri Amit Awasthi, Advocate, for Respondent

CORAM:

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

Date of Hearing & Date of Decision : 26/09/2017

FINAL ORDER NO. 71328 - 71332/2017

Per: Anil G. Shakkarwar

The above stated five appeals have been filed by Revenue and are directed against common Order-in Appeal No. 358-362-CE/APPL/KNP/2006 dated 31/07/2006 passed by Commissioner of Central Excise & Customs (Appeals), Kanpur.

2. The brief facts of the case are that the respondents – M/s L. Kant Paper Mills Ltd. were engaged in the

manufacture of M. S. Ingots, Poster Paper & Media Paper & Processing of Man Made Fabrics. The manufacturing premises were inspected by the Central Excise Officers on 25/09/2003. On the basis of investigation a common Show Cause Notice 22/03/2004 was issued to all the respondents. The said Show Cause Notice included proposals for confiscation of 59.701 MT of M. S. Ingots valued at Rs.6,56,711/-, 8040 kgs. of Poster Media Paper valued at Rs.1,04,520/-, 3426 Sq. Mtrs. of finished/processed fabrics valued at Rs.54,816/- & 179794.9 Mtrs. of Grey Fabrics valued at Rs.19,77,743/- which were seized at the manufacturing premises of respondents – M/s L. Kant Paper Mills Ltd. Further, there were proposals as follows:-

> *"3. 250 bales containing 1316pcs. of processed fabrics in bales totally valued at Rs.23,01,684/- and 1009 lumps of processed fabrics totally valued at Rs.16,98,600/- seized at the trading premises of M/s Om Textiles & M/s Sagar Trading situated at 55/67 B Raja Market, Kahu Kothi, Kanpur should not be confiscated under Rule 25 of the Central Excise Rules, 2002 and why Central Excise duty amounting to Rs.1,35,888/- BED & Rs.33,972/-AED on 1009 lumps of processed fabric seized at these premises and Central excise duty amounting to Rs.1,84,135/- BED & Rs.46,034/- AED on 250 bales containing 1316 pcs. of processed fabrics seized at the above premises should not be demanded*

and recovered from M/s L. Kant Paper Mills Ltd. under Section 11A of the Central Excise, Act, 1944.

4. Processed fabrics in 120 lumps valued at Rs.1,79,566/- seized by the officers of DGCEI, Kanpur at the godown premises of M/s Om Textiles, 55/113, Generalganj, Kanpur should not be confiscated under Rule 25 of the Central Excise Rules, 2002 and why Central Excise duty amounting to Rs.14,365/- BED & Rs.3,591/- AED on the said goods should not be demanded and recovered from M/s L. Kant Paper Mills Ltd. under Section 11A of the Central Excise Act, 1944.

5. 81 bales of grey fabrics valued at Rs.7,13,840/- seized at the godown of M/s Calcutta Express Transport Service situated at 133/213-A, T.P. Nagar, Kanpur and shifted to the factory premises i.e. M/s L. Kant Paper Mills Ltd., Rania, Kanpur Dehat for sale custody, should not be confiscated under Rule 25 of the Central Excise Rules, 2002.

6. Penalty should not be imposed upon them under Rule 25 of the Central Excise Rules, 2002 for violation of Rule 4, Rule 6, Rule 8 & Rule 11 of the Central Excise Rules, 2002, as discussed in the foregoing paras;

Shri Anil Agarwal, Proprietor M/s Anil Steels, Kanpur is also required to show cause to the Additional Commissioner, Central Excise Commissionerate, Kanpur as to why cash amounting to Rs. 7.00 lacs seized from *the residential premises of Shri Anil Agarwal should not be confiscated under Section 121 of the Customs Act, 1962, as made applicable to Central Excise matters vide Notification No. 68/63-CE dated 04/05/1963 issued under Section 12 of the Central Excise Act, 1944."*

3. The issue was adjudicated through Order-in-Original No. 05/Joint Commissioner/2006 dated 20/02/2006 The order of the Original Authority is reproduced below:-

"1) I confiscate the 59.701 MT of Ingots valued at Rs.6,56,711/-, 8040 kgs. Paper valued at Rs.1,04,520/- & 3426 sqms. of Processed Fabrics valued at Rs.54,816/- under Rule 25 of the Central Excise Rules, 2002. However, I give an option to redeem the same on payment of redemption fine of Rs.1,35,000/-, Rs.21,000/- & Rs.11,000/- respectively.

2) I confiscate the 166 bales of Grey Cloth comprising 179794.mtrs. of cloth valued at Rs.19,77,743/- under Rule 25 of the Central Excise Rules, 2002. However, I give an option to redeem the same on payment of redemption fine of Rs.3,95,000/-.

3) a) I confiscated the 250 bales containing 1316 pcs. of Processed Fabrics valued at Rs.23,01,684/- & 1009 lumps of Processed Fabrics valued at Rs.16,98,600/- under Rule 25 of the Central Excise Rules, 2002. However, I given an option to redeem the same on *payment of redemption fine of Rs.4,60,000/- & Rs.3,40,000/- respectively.*

b) Further I also confirm the demand of duty amounting to Rs.1,35,888/- BED + Rs.33,972/-AED on 1009 lumps of Processed Fabrics & Rs.1,84,135/- BED + Rs.46,034/- AED on 250 bales of Processed Fabrics 9Total duty Rs.4,00,029/-) on M/s L. Kant Paper Mills Ltd., and the same is to be recovered from them under Section 11A of the Central Excise Act, 1944.

4)a) I confiscate the 120 lumps of Processed Fabrics valued at Rs.1,79,566/- under Rule 25 of the Central Excise Rules, 2002 with an option to redeem the same on payment of redemption Fine of Rs.36,000/-.

b) Further, I also confirm the demand of duty Rs.14,365/- BED + Rs.3,591/- AED (total Rs.17,956/-) on M/s L. Kant Paper Mills. Ltd. and the same is to be recovered from them under Section 11A of the Central Excise Act, 1944.

5) I confiscate the 81 bales of Grey Fabrics valued at Rs.7,13,840/- under Rule 25 of the Central Excise Rules, 2002 with an option to redeem the same on payment of redemption fine of Rs.1,42,000/-.

6) I imposed penalty of Rs.4,17,985/- on M/s L. Kant Paper Mills Ltd. under Rule 25 of the Central Excise Rules, 2002.

7) I confiscated the Cash amounting to Rs.7,00,000/- under Section 121 of the Customs Act, 1962, as made *applicable to Central Excise matters vide Notification No.68/63-CE dated 04/05/1963 issued under Section 12 of the Central Excise Act, 1944.*

8) I impose a penalty of Rs.2,00,000/- on Shri Laxmi Kant Agarwal, Director of M/s L. Kant Paper Mills Ltd. under Rule 26 of the Central Excise Rules, 2002.

9) I impose a penalty of Rs.10,000/- on Shri Anil Agarwal, Proprietor of M/s Anil Steels under Rule 26 of the Central Excise Rules, 2002.

10) I impose a penalty of Rs.25,000/- on Shri Sanjay Agarwal, Proprietor of M/s Om Textiles under Rule 26 of the Central Excise Rules, 2002.

11) I impose a penalty of Rs.25,000/- on Shri Suresh Chhabariya, Proprietor of M/s Sagar Trading Co. under Rule 26 of the Central Excise Rules, 2002."

4. Being aggrieved by the said order, the respondents preferred appeals before Commissioner (Appeals). The ld. Commissioner (Appeals) decided the said appeals through impugned Order-in-Appeal No. 358-362-CE/APPL/KNP/2006 dated 31/07/2006, wherein the ld. Commissioner (Appeals) reduced redemption fine in respect of M. S. Ingots, Poster & Media Paper & Finished/Processed Man Made Fabrics. Further the ld. Commissioner (Appeals) dropped the demand on Processed Fabrics at the trading premises of M/s Om Textiles and M/s Sagar Trading Co. and also dropped proceedings in respect of Processed Fabrics found at the

godown of M/s Om Textiles. The ld. Commissioner (Appeals) also reduced the redemption fine on Grey Fabrics found at the godown of the M/s Calcutta Express Transport Service and ordered to release cash of Rs. 7 lakhs seized from the residential premises of Shri Anil Agarwal. Being aggrieved by the said order, the Revenue preferred present appeals before this Tribunal.

5. The grounds of appeal preferred by Revenue are as follows:-

> *"1. Commissioner (Appeals) has wrongly observed that the adjudication order dated 20/02/2006 was passed in haste and without giving the opportunity before filing of the reply by the main party ie. M/s L. Kant Paper Mills Ltd., Kanpur (Dehat). The fact is that the Show Cause Notice dated 22/03/2004 and same was served upon the party on 24/03/2004 and O-I-O was passed on 20/02/2006 after a lapse of more than 2 years of the service of the Show Cause Notice. In such a large space of 2 years, the main party M/s L. Kant Paper Mills Ltd., Kanpur (Dehat) did not care to reply the notice. The party neither submitted the defence reply nor attended the personal hearing despite repeated reminders as is evident by O-I-O No. 05/JC/2006 dated 20/02/2006. This aspect has been completely overlooked in the appeal proceedings while making the aforesaid observation.*

2. Confiscation of Grey Fabrics in the factory premises was vacated in the appeal proceedings on the grounds that the same was accounted in the RG 23 A Part-I. At this juncture it is important to add that the discrepancy in the stock of the raw material was observed on the day of search i.e. 25/09/2003 and no explanation was furnished with respect of the said stock. The party failed to submit any explanation for the unaccounted stock till 12/10/2003 ever after 18 days of search. The said RG 23 A part-I was submitted on 13/10/2003 and the delay in submission of the said register was not explained and it appears that the same remained unexplained ever during the adjudication as well as appeal proceedings. The perusal of the entries of the said RG 23 A part-I register clearly shows that old consignments of Grey Fabrics were entered in RG 23 A part-I during the month of September in order to reduce the quantity of unaccounted Grey Fabrics. At this juncture it is also important to take cognizance of the statement of Shri S. K. Yadav tendered on 13/10/2003 wherein he confessed that the entries in the said RG 23 A part-I register was manipulated in order to justify the genuineness of the major portion of the stock of Grey Fabrics. It appears that these clear out evidences, as above, were not considered in the appeal proceedings while deciding the confiscation of the Grey Fabrics. Hence the vacation of the *confiscation of the Grey Fabrics beyond the quantity of 8908 meters during the appeal proceedings appears to be improper.*

3. The confiscation of the seized goods of M/s Sagar Trading Co. & M/s Om Textiles and demand against such goods from M/s L. Kant Paper Mills Ltd. were dropped during the appeal proceedings. In this context it is stated that the search was conducted on 25/09/2003 and the said finished fabrics were seized in the following circumstances:

(a) There were no supporting documents on the day of search i.e. 25/09/2003 in respect of the finished fabrics lying at the common trading premises of the two parties i.e. at 55/67 B, Raja Market, Kahu Kothi, Kanpur.

(b) There were no supporting documents on the day of search i.e. 25/09/2003 in respect of the finished fabrics lying at the godown of M/s Om Textiles.

(c) These two parties were unable to support the stock of respective processed fabrics the period 25/09/2003 to 12/10/2003 ever after 18days of search.

The purchase documents submitted after a substantial period of time clearly indicates that the documents namely invoices, bills etc. were not genuine and they were simply managed to support the stocks lying their *premises. Further, Shri Suresh Chhabaria in his statement dated 09/03/2004 admitted that they were receiving the processed fabrics mainly from M/s L. Kant Paper Mills Ltd., Kanpur. He further added that they were receiving fabrics on payment of duty and also without payment of duty. From the statement dated 13/10/2003, 09/03/2004 & 25/09/2003 of Shri Sanjay Agarwal, Shri Suresh Chhabaria, it was evident that all the seized goods were not supported by any duty paying documents and were manufactured by M/s L. Kant Paper Mills Ltd., Kanpur. Hence the said stocks were rightly confiscated in the O-I-O. Such evidences were not properly considered in the appeal proceedings while vacating the confiscation and dropping the demand pertaining to such goods.*

4. The redemption fine was drastically reduced in respect of the goods seized at the factory premises/transporters premises. In this context it is added that the evidences as mentioned above were not properly considered during the appeal proceedings.

5. Confiscation of Rs.7,00,000/- seized from the premises of Shri Anil Agarwal, was vacated during the appeal proceedings citing reason of absence of the evidence that the said cash was sale proceeds of clandestinely removed excisable goods. At this juncture it is important to add that the said cash seized from the *residence of Shri Anil Agarwal who was also present on the spot and he could not explain the said cash on the spot. Shri Anil Agarwal explained that Rs.3 lakhs was withdrawn from the bank but it was found that the denomination of notes were different that the one given by the bank. Hence, his explanation was not found correct. Further he has not given any plausible explanation about remaining Rs.4 lakhs during investigation. Therefore, it is evident that the explanation given during investigation and fresh explanation given during the appeal proceedings was an afterthought only and the same cannot be accepted. Therefore, the dropping of the confiscation of the said amount during the appeal proceedings appears to be improper.*

6. Dropping of the personal penalty on Shri Anil Agarwal, Sanjay Agarwal, Suresh Chhabaria and reduction of penalty on Shri Laxmi Kant Agarwal also does not appear proper because the vacation of confiscation of the excisable goods of Shri Sanjay Agarwal & Shri Suresh Chhabaria were improper. Further the vacation of the confiscation of seized cash was also improper. Hence, setting aside of the penalty on the aforesaid grounds is not proper. As regards the reduction of penalty of Shri Laxmi Kant Agarwal is concerned, he was the key person who designed and implemented the entire unaccounted transactions not *only in this case but also in other case of evasion of duty to the tune of Rs.4.43 Crore pending adjudication against the party."*

6. Heard the ld. A. R. for Revenue, who has presented the grounds of appeal, as hereinabove.

7. Heard the ld. Counsel for the respondents, who has submitted his written submission and refuted the grounds of appeal filed by Revenue. The submissions by the ld. Counsel for the respondents are as follows:-

"1. Refutation of Ground No. 1 and 2 of Revenue Appeal

i) In respect of Ground No. 1 and 2 taken by the Revenue, it is submitted that in any view of the matter Raw material and Finished Goods within the factory cannot be held liable for seizer or confiscation. Reliance is placed on Final Order No. A/70434-70438/2017-EX[DB] dated 12.04.2017 in the case of Kashi Laminators Pvt. Ltd. & others

ii) That only 8908 Mtrs. of Grey Cloth were not entered in statutory records in comparison to the quantity declared by the Respondent in RG23A Part -1, but such excess of raw material were within the factory and the same was not liable for seizure /confiscation under Rule 25 of the Central Excise Rules, 2002. There is no evidence that such non *accountal of goods still in the factory was with an intent to evade payment of duty. Confiscation under Rule 25 of the Central Excise Rules, 2002 not attracted on mere non accountal of goods in RG-1.*

iii) It is on record that quantity of 179794.9 Mtrs. of Grey Cloth has been ascertained on the basis of figure provided by the Respondent and no actual verification was done by the investigation. This fact has also been taken note in Adjudication Order, vide Para 4 of O-I-O.

2. *Refutation of Ground No. 3*

i) In respect of Ground No. 3, it is submitted that Commissioner Appeal has rightly held that Revenue could not correlate the goods with M/s L. Kant Paper Mills. Moreover, Ownership of goods had been admitted by the Revenue by way of provisionally releasing the goods to M/s Om Textiles and M/s Sagar Trading Company. The finding by ld. Commissioner (Appeals) in impugned Order at Para 17 & 18 read as under : -

"Regarding Confiscation of goods seized at the trading premises/ godown of M/s Sagar Trading and M/s Om Textiles, I observe that after the search operation on 25.09.2003, the appellants have sought provisional release of the seized goods, vide letter dated 13.10.2003 giving details of licit

purchase of goods either from M/s L. Kant Paper Mills Ltd. on cover of invoices or from open market supported with the Bills & Ledgers. Subsequently the goods were provisionally released to M/s Om Textiles & M/s Sagar Trading Co. vide Order dated 23.02.2004. In this regard, it is strange to observe that once the goods have been seized from the premises of M/s Om Textiles & M/s Sagar Trading Co. and have been provisionally released to them accepting their ownership, no Show Cause Notice has been issued to M/s Om Textiles & M/s Sagar Trading Co. for confiscation of goods. The Show Cause Notice itself mentions that there was no verifiable identification marks on the detained goods, which could prove their place of Origin. I am surprised to observe that no verification has been done in respect of the documentary proofs submitted by the Appellants as early on 13.10.2003 to support licit purchase of goods and the Show Cause Notice which was issued on 22.03.2004 is totally silent about this major aspect. In light of the circumstances, I hold that in absence of any proof that the material was non-duty paid and in absence of any Show Cause Notice to M/s Om Textiles & M/s Sagar Trading Co. neither the goods seized from the godown / trading premises *of M/s Om Textiles & M/s Sagar Trading Co. can be ordered to be confiscated nor the Appellant No. 1 can be held liable to duty on said goods & consequent equivalent penalty . Accordingly, I set aside the confiscation of the goods seized from the godown /trading premises of M/s Om Textiles & M/s Sagar Trading Co. and I also set aside the duty liability in respect of said goods & equivalent penalty imposed upon Appellant no. 1 in this regard."*

3. *Refutation of Ground No.4 of Revenue Appeal*

i) So far as Respondent No. 1 is concerned in as much as Finished Goods and Raw Material found within the factory are not liable to seizure or confiscation under Rule 25 of the Central Excise Rules, 2002. As such no redemption fine was warranted in the matter. Moreover, it is a settled principle of law that there are no estoppels against the law.

ii) That it is also well settled law that that though an admission is extremely important piece of evidence, it cannot be said to be conclusive and it is open to the person who has made the admission to show that it is incorrect. Reliance is placed on the decision of *Hon'ble High Court, Delhi in the* *case of Dhingra Metal Works reported in 2010-TIOL-693-HC-DEL-IT.*

iii) Although, Respondent No. 1 has not preferred any Appeal in this regard to avoid litigation and buy peace of mind.

4. *Refutation of Ground No.5 of Revenue Appeal*

i) With regard to the cash recovered from the Premises of M/s Anil Steels there is no attempt on the part of the Adjudicating Authority to ascertain its link with the goods alleged to have been removed clandestinely . The link cannot be established on mere assumption and there must be some material on record which is to be ascertained by analyzing the same. As such the Learned Commissioner Appeals has rightly set aside the confiscation.

ii) That on the basis of assumption presumption and surmises the alleged cash has been seized and held liable for confiscation by the Adjudicating Authority without discharging the Burdon heavily cast upon the Revenue.

5. *Refutation of Ground No. 6 of Revenue Appeal.*

i) That in absence of any contumacious conduct or deliberate violation of statute the penalty has rightly been set aside by the Learned Commissioner (Appeals).

ii) Further it is on record that no role of individual has been specified for imposition of penalty under Rule 26 of the Central Excise Rules, 2002.

iii) Further when Finished goods and Raw material found within the factory are not liable to confiscation, as such no penalty was warranted upon Shri Laxmi Kant Agarwal Director of M/s L. Kant Paper Mills. Although, to avoid litigation and buy peace no appeal has been preferred by him."

8. Having considered the rival contentions and on perusal of the facts on record, we find that the ground at Serial No. 1 is not tenable in law. The ground at Serial No. 2 is in respect of reduction of redemption fine on raw-materials. We do not find any provision in Central Excise Act and Rules made thereunder to confiscate raw-materials. Therefore, we do not accept the ground at Serial No. 2. Further in view of last Para of Order-in-Appeal as contended by ld. Counsel for the respondents, as stated above, the goods seized at the trading premises and godown of M/s Om Textiles & M/s Sagar Trading Co. were returned to M/s Om Textiles & M/s Sagar Trading Co. by the representatives of Revenue on 13/10/2003. Therefore, we accept the contentions raised by the ld. Counsel for the respondents in respect of ground at Serial No. 3. Similar is the position of other grounds. Therefore, we hold that none of the above stated appeals filed

by Revenue merit to be allowed. We, therefore, dismissed all the appeals filed by Revenue. The respondents shall be entitled for consequential relief, as per law.

(Dictated & Pronounced in Court)

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

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

Ansari

प्रमाणित प्रति/Certified True Copy
30/11/17
सहायक पंजीकार/Asstt. Registrar
सीमाशुल्क, उत्पादशुल्क एवं सेवा कर
अपील अधिकरण/C.E.S.T.A.T.
59, एम.जी.मार्ग, इलाहाबाद-211001
59, M. G. MARG, ALLAHABAD-211001