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/71333-71336/2017-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/1176/2006	**DEEP JYOTI RUBBER PVT. LTD.** A-32, SECTOR-5, NOIDA.
2	E/1177/2006	**SHRI D.K. JAIN** A-32, SECTOR-V,NOIDA
3	E/1178/2006	**SHRI ABHISHEK JAIN** A-32,SECTOR-5, NOIDA
4	E/1179/2006	**SHRI RAJESH TEWARI.** A-32,SECTOR-5,NOIDA
		Name and Address of Respondent
5		-C.C.E. NOIDA C-56/42, Sector-62, Noida-201307
6		-C.C.E. NOIDA C-56/42, Sector-62, Noida-201307
7		-C.C.E. NOIDA C-56/42, Sector-62, Noida-201307
8		-C.C.E. NOIDA C-56/42, Sector-62, Noida-201307

Other Appellants and Respondents as per Annexure

Copy To

9Advocate(s) / Consultant(s):

Rajesh chibber
FA-9, KAVI NAGAR,
GHAZIABAD,
UP

10 Bar Association, CESTAT, Allahabad

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

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

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

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

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

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

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

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

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

20 C.D.R. 21 Office Copy 22 Second Folder Copy 23 Guard File

Asstt. Registrar

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

APPEAL No. E/1176, 1177, 1178 & 1179/2006-EX[DB]

(Arising out of Order-in-Appeal No. 137-140/CE/APPL/NOIDA/2005 dated 30/12/2005 passed by Commissioner of Central Excise & Customs (Appeals), Meerut-II at Noida)

M/s Deep Jyoti Rubber Pvt. Ltd. (In Appeal No. E/1176/2006),

Shri D. K. Jain (In Appeal No. E/1177/2006),

Shri Abhishek Jain (In Appeal No. E/1178/2006) &

Shri Rajesh Tewari (In Appeal No. E/1179/2006) **Appellant**

Vs.

Commissioner of Central Excise, Noida **Respondent**

Appearance:

Shri Rajesh Chhibber, Advocate, for Appellant
Shri Gyanendra Kumar Tripathi, Assistant Commissioner (AR), 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. 71333-71336/2017

शुल्क एवं सेवा कर अपीलीय अधिकरण CUSTOMS, EXCISE & SERVICES TAX APPELLATE TRIBUNAL

Per: Anil G. Shakkarwar

The present four appeals are arising out of common Order-in-Appeal No. 137-140/CE/APPL/NOIDA/2005 dated 30/12/2005 passed by Commissioner of Central Excise & Customs (Appeals), Meerut-II at Noida, hence they are taken together for disposal.

2. The brief facts of the case are that the appellants were engaged in the manufacture of Rubber Sheet, Rubber Pipe, PVC Pipe, PVC Hand Rail & PVC Water Stopper. The

manufacturing unit was inspected by Central Excise Officers on 26/03/2003 wherein they had found some hand written paper slips showing some information about incoming and out~~coming~~ goods. Investigations were carried out and various statements were recorded. It appeared to Revenue that the said paper slips were record of clandestinely manufactured and cleared goods by the manufacturer-appellant. Further, it appeared to Revenue that manufacturer-appellant cleared approximately 25% of the goods manufactured by them to M/s Rubber Traders India Pvt. Ltd. It was noticed by Revenue that there were some common Directors in M/s Rubber Traders India Pvt. Ltd. and the manufacturer-appellant. Therefore, it appeared to Revenue that the price at which goods were sold by M/s Rubber Traders India Pvt. Ltd. should be the assessable value for the goods manufactured and cleared by the manufacturer-appellant. So, on the basis of said data duty calculation charts for the Financial Years 2001-02 & 2002-03 were prepared. Duty calculation chart for the Financial Year 2001-02 arrived at actual value of clearance during the Financial Year 2001-02 as Rs.1,11,21,547/- which included value of clearance of Rs.13,20,797/- in respect of which there were allegations that the said value was related to the goods clandestinely cleared without issue of invoices. The said actual value of clearance also included Rs.3,54,329.10/- as the differential value realized by the manufacturer-appellant thorough M/s Rubber

Traders India Pvt. Ltd. Similarly, chart prepared for Financial Year 2002-03 as indicated that Revenue has arrived at actual value of clearance during the Financial Year 2002-03 Rs.1,23,53,403/- including Rs.23,12,128/- on account of allegations of clandestine clearance of goods without issue of invoices and Rs.3,69,252.50/- on account of differential value realized through M/s Rubber Traders India Pvt. Ltd. On the basis of said two calculation charts, it appeared to Revenue that manufacturer-appellant had crossed their SSI Exemption of Rs.1 Crore for each financial year and therefore, the appellants were issued with a Show Cause Notice dated 06/11/2003 demanding Central Excise duty amounting to Rs.5,55,992/- under Section 11A of the Central Excise Act, 1944 and further there were proposals for imposition of penalty under Rule 26 of the Central Excise Rules, 2002 ~~as~~ on the other appellants to this appeal. The demand of duty was raised against appellant – M/s Deep Jyoti Rubber Pvt. Ltd. The appellants contested the said Show Cause Notice and submitted before the Original Authority that the various statements were recorded which did not establish as who is the author so-called loose slips/sheets and therefore, the said loose slips/sheets were not credible evidence to level the charge of clandestine of removal against the appellants. Further, they contended before the Original Authority that there was no evidence to support that the factory manufactured the final products out of raw-materials which were not accounted for and final goods were clandestinely removed without payment of duty and that the value shown in the hand written paper slips was not sustainable in law and the allegations of clandestine removal was only on presumptions and assumptions. They further submitted before the Original Authority that the demand was not sustainable and prayed that the Show Cause Notice dated 06/11/2003 may be dropped. They further contended that there was no investigation to establish as to how the raw-materials were brought and to whom the goods were sold and that there was no evidence to establish the clandestine manufacture and removal of goods. They further submitted through additional reply 22/12/2004 in respect of goods transferred to M/s Rubber Traders India Pvt. Ltd. that there was no allegation that the goods transferred to M/s Rubber Traders India Pvt. Ltd. were at a price lower than the price at which the goods were sold at factory gate and therefore, the allegation of under valuation was not sustainable. The Original Authority did not appreciate the arguments putforth and confirmed the demand and impose equal penalty on appellant - M/s Deep Jyoti Rubber Pvt. Ltd. and further imposed penalty of Rs.1,00,000/ each on Shri D. K. Jain, Director of M/s Deep Jyoti Rubber Pvt. Ltd., Shri Abhishek Jain S/o Shri D. K. Jain under Rule 26 of the Central Excise Rules, 2002. Further imposed penalty of Rs.10,000/- on Shri Rajesh Tiwari, Gate Keeper of M/s Deep Jyoti Rubber Pvt.

Ltd. through Order-in-Original dated 29/07/2005. Being aggrieved by the said order, appellants preferred appeal before Commissioner (Appeals). The ld. Commissioner (Appeals) decided the said appeal through impugned Order-in-Appeal No. 137-140/CE/APPL/NOIDA/2005 dated 30/12/2005, wherein the ld. Commissioner (Appeals) upheld the said Order-in-Original dated 29/07/2005. Being aggrieved by the said order, appellants preferred appeal before this Tribunal.

3. Heard the ld. Counsel for the appellants who has submitted that if it is established that the allegations of clandestine removal and under valuation are not sustainable then the actual value of clearance, in respect of both Financial Years 2001-02 & 2002-03 will arrive at value less than Rs.1 Crore each and therefore, the manufacturer-appellant will be eligible for SSI Exemption. He has further submitted that it is an undisputed fact that the author of the loose slips/sheets could not be established by Revenue. He has also further submitted that in the proceedings it has emerged that the allegations by Revenue was that the said loose slips/sheets were maintained by Gate Keeper/Security Guard. He has further submitted that when the ownership on such loose slips/sheets is denied and no further corroborative evidence is adduced by Revenue from buyers, transporters & raw-material suppliers, then such notice does not sustain as held by this Tribunal in the case of Commissioner of Central

Excise, Raipur *Versus* Heliwal Polypackers Pvt. Ltd. reported at 2016 (340) E.L.T. 204 (Tri. – Delhi). He has further submitted that similar finding has been recorded by this Tribunal in the case of Yashwant Shell Sand Mfg. Co. *Versus* Commissioner of Central Excise, Pune reported at 2007 (211) E.L.T. 585 (Tri. – Mumbai). He has further submitted that the proceedings have established that about 25% of the goods were sold to M/s Rubber Traders India Pvt. Ltd. and 75% goods were sold to independent buyers and the price at which goods were sold to both of them were same. He has further submitted that this Tribunal has held in the case of Motorol Speciality Oils Ltd. *Versus* Commissioner of Central Excise & Customs, Vadodara reported at 2009 (243) E.L.T. 449 (Tri. – Ahmedabad) that it is necessary that the adoption of price charged by related person on the basis for arriving at assessable value arise only when the assessee so arranges that all the goods are sold by him only through the related person. He has submitted that it is an admitted fact that all the goods were not sold through M/s Rubber Traders India Pvt. Ltd. and therefore, the allegations of under valuation does not sustain. He has further submitted that since both allegations of clandestine manufacture of goods and undervaluation do not sustain, the value of clearance for both the years will be less than Rs.1 Crore which is threshold value for SSI Exemption and therefore, the appeal on merits to be allowed.

4. Heard the ld. A. R. for Revenue, who has submitted that it is undisputed fact that the said hand written slips were found within the factory premises and therefore, they should be accepted as evidence of clandestine removal.

5. Having considered the rival contentions and on going through the case laws relied upon by the ld. Counsel for the appellant, we find that Revenue did not carried any investigation in respect of procurement of raw-materials, manufacture of goods alleged to be clandestinely removed, transporters of the goods alleged to have been clandestinely removed and the purchasers of said goods. Further, Revenue also did not investigate into flow back of money on clearance of alleged clandestinely manufactured goods. Therefore, we find that the ratio of the final order in the above stated case law of in the case of Commissioner of Central Excise, Raipur (supra) is squarely applicable in the present case. We, therefore hold that clandestine manufacture of goods by M/s Deep Jyoti Rubber Pvt. Ltd. alleged in the said Show Cause Notice dated 06/11/2003 is not established. We, further find that the manufacturer-appellant did not arrange sale of goods manufactured by them only through M/s Rubber Traders India Pvt. Ltd. Therefore, as held by this Tribunal in the above stated case of Motorol Speciality Oils Ltd. (supra) under valuation is not established. We, therefore, accept the contention of ld. Counsel for the appellant that the value of clearance for both the years 2001-02 & 2002-03 was less

than threshold limit of Rs.1 Crore and therefore, the said Show Cause Notice 06/11/2003 does not sustain. We, therefore, set aside the impugned Order-in-Appeal dated 30/12/2005 and allow all the appeals. The appellants 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
05/12/17
सहायक पंजीकार/Asstt. Registrar
C.E.S.T.A.T.
38, M. G. MARG, ALLAHABAD-211001