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

Dated: 21/11/2017

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. **A/71463-71475/2017-EX[DB]** dated **27/09/2017**

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/2412/2006	**Ridhi Enterprises Prop.Mr.Rajiv Mahindru** Mission Road Pathankot Punjab
2	E/2443/2006	**Surya Food & Agro Ltd.** Plot No-14,surajpur Greater Noida
3	E/2444/2006	**Sh.B.P.Agarwal** Plot No-14,Surajpur Greater Noida
4	E/2445/2006	**Sh.Naveen Agarwal** Food & Agro Ltd.plot No-14,surajpur Greater Noida
5	E/2446/2006	**Sh. Vijay Choudhary Proprietor Of Shri Mansa Distributions** 429,sector-28,noida
6	E/2447/2006	**Mansa Enterprises** 8/146/13-f,new Market Jeoni Mandi Agra
7	E/2448/2006	**J.B.Distributors** Vasudev Gila 139/140 Sonal Link Industrial Estate Linking Road Malad Mumbai
8	E/2449/2006	**Damini Enterprises** 1466-e/13 Govindpuri Kalkaji New Delhi
9	E/2450/2006	**Shivam Marketing** Shop No-4,shivam Apartments Laxmi Nagar Ulhasnagar Distt Thane Maharashtra
10	E/2451/2006	**Maa Durga Traders** 160/2 Bagh Bhatiari Ram Nagar Kirana Mandi Ghaziabad
11	E/2452/2006	**Mohit Agencies** C-11,patel Nagar-ii,Ghaziabad
12	E/2453/2006	**Jagadamba Distributors** E-4/57,Sector-82,Noida

13 E/2611/2006 **Daya Singh Proprietor**
House No 36, Ram Nagar
SHAHJAHANPUR
UP

Name and Address of Respondent

14 C.C. & C.E. & S.T.-Noida
C-56/42...SECTOR 62,
NOIDA,
UTTAR PRADESH-201307

15 C.C. & C.E. & S.T.-Noida
C-56/42...SECTOR 62,
NOIDA,
UTTAR PRADESH-201307

16 C.C. & C.E. & S.T.-Noida
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NOIDA,
UTTAR PRADESH-201307

Other Appellants and Respondents as per Annexure

Copy To

27Advocate(s) / Consultant(s):

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& Hrishikesh (Advocates),
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COLVIN ROAD, LOHIA
MARG ALLAHABAD-211001

28 Bar Association, CESTAT, Allahabad

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

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

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

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

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

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

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

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

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

38 C.D.R. 39 Office Copy 40 Second Folder Copy 41 Guard File

Asstt. Registrar

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

REGIONAL BENCH : ALLAHABAD

COURT No. I

APPEAL No. E/2611 & 2412/2006 & E/2443-2453/2006-EX[DB]

(Arising out of Order-in-Original No. 02/Commissioner/Noida/2006 dated 31/01/2006 passed by Commissioner of Central Excise, Noida)

Daya Singh, Proprietor of M/s Bharat Traders (In Appeal No. E/2611/2006),

M/s Ridhi Enterprises ~~Rajiv~~ - Proprietor, Rajiv Mohindru, (In Appeal No. E/2412/2006),

Surya Foods & Agro Ltd. (In Appeal No. E/2443/2006),

B. P. Agarwal, MD of M/s Surya Foods (In Appeal No. E/2444/2006),

Shri Naveen Agarwal, Director M/s Surya Foods (In Appeal No. E/2445/2006),

Shri Vijay Choudhary, Proprietor of M/s Shri Mansa Distributors (In Appeal No. E/2446/2006),

Shri Vinod Sharma, Proprietor of M/s Mansa Enterprises (In Appeal No. E/2447/2006),

Shri Vasudeve Gilda, Partner of M/s J.P. Distributor (In Appeal No. E/2448/2006),

Shri Sudarshan Handa, Manager & A. R. of M/s Damini Enterprises (In Appeal No. E/2449/2006),

Shri Chandan Kundandas Raichandani, Proprietor of M/s Shivam Marketing (In Appeal No. E/2450/2006),

Shri Kishore Kumar, Proprietor of M/s Maa Durga Traders (In Appeal No. E/2451/2006),

Shri Vijendra Kumar Garg, Proprietor of M/s Mohit Agencies (In Appeal No. E/2452/2006) &

Shri Vinod Kumar Garg, Propretor of M/s Jagdamba Distributors (In Appeal No. E/2453/2006)

Appellant

Vs.

Commissioner of Central Excise, Noida **Respondent**

Appearance:

Shri B.L. Narasimhan, Advocate,
Shri Atul Gupta, Advocate &
Shri Hrishikesh, Advocate, for Appellant
Shri Sandeep Kumar Singh Deputy 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 : 27/09/17

FINAL ORDER NO. 71463 - 71475/2017

Per: Anil G. Shakkarwar

The above stated appeals are directed against the common Order-in-Original No. 02/Commissioner/Noida/2006 dated 31/01/2006 passed by Commissioner of Central Excise, Noida. Therefore, these are taken together for decision.

2. The brief facts of the case are that the M/s Surya Food & Agro Ltd. (hereinafter referred as 'M/s Surya' for short) were manufacture-appellant and remaining appellants were co-noticees on whom penalties have been imposed through impugned Order-in-Original dated 31/01/2006. M/s Surya were engaged in the manufacture of Biscuits, classifiable under Chapter Sub-heading 1905.11 of Schedule to the Central Excise Tariff Act, 1985. M/s Surya had announced a sales promotion scheme called "Swarn Jayanti Dhamaka" for promotion of sale of goods manufactured by them. The Central Excise Officers visited the factory premise of M/s Surya on 06/09/2003. They found that sales promotion

scheme called as "Swarn Jayanti Dhamaka" involved distribution of various types of gifts for fulfillment of target by retailers. The gifts were Wall Clock, Cello Jug, Thali Set, etc. and the sales target of Rs.1,500/- was fixed for Wall Clock and at the highest end, a retailer selling biscuits worth Rs.1,00,000/- would get LG Colour Television of 14 inch. The sale promotion was during the period from 1st October, 2001 to 20th Mach, 2002. The officers also visited business premises of Direct Distributors, Distributors & Super Stockists. The Head Office of M/s Surya used to maintain card summary sheets which contained the information about purchases made by the retailers and the gifts distributed to them. On the basis of gifts distributed, as recorded in the card summary sheets and the sales target required to be eligible to get a particular gift were taken into consideration and a Show Cause Notice was issued since it appeared to Revenue that on the basis of such calculation the sales reflected in the record of card summary sheets was much beyond the clearances made by M/s Surya as reflected in records. The card summary sheet in respect of M/s Bharat Traders, reflected purchase by M/s Bharat Traders to the tune of Rs.54,36,025/- whereas party ledger of M/s Surya maintained in respect of M/s Surya by M/s Bharat Traders reflected purchase of Rs.12,87,898/-. Similar exercise was done in respect of M/s I. K. Food, M/s Mohit Agencies, M/s Krishna Trading Company, M/s Goyal Sales Corporation, M/s

Himani Agencies, M/s S. S. Company, M/s Shree Mansa Enterprises, M/s Maa Durga Traders, Damani Enterprises, M/s Ridhi Enterprises, M/s Shivam Marketing & M/s J. P. Distributors. On the basis of similar exercise as reflected in card summary sheets and ledgers of said distributors, stockists, etc, it appeared to Revenue that the sales figures reflected in card summary sheets was more than the purchase reflected in ledgers maintained by above stated distributors & stockists, etc. Therefore, it appeared to Revenue that M/s Surya evaded Central Excise duty to the tune of Rs.60,60,087/- during the period from 1st October, 2001 to 20th March, 2002. Therefore, M/s Surya was called upon to show cause as to why Central Excise duty to the tune of Rs.60,60,087/- should not be recovered from them under proviso to Section 11A of Central Excise Act, 1944 and why Central Excise duty amounting to Rs.75,984/- should not be appropriated. Further all the remaining appellants were called upon to show cause as to why penalty under Rule 26 of Central Excise Rules, 2001/02 should not be imposed upon them. On contest, the issue was decided through impugned Order-in-Original dated 31/01/2006, wherein the Original Authority confirmed the demand and appropriated Rs.75,984/-. Further the Original Authority imposed equal penalty on M/s Surya under Section 11AC of the Central Excise Act, 1944. The Original Authority also imposed penalties under Rule 26 of the Central Excise Rules, 2001/02 to the tune of Rs.50,00,000/- upon Shri B. P. Agarwal, Rs.25,00,000/- upon Shri Naveen Agarwal, Rs.16,00,000/- upon Shri Vijendra kumar Garg, Proprietor of M/s Mohit Agencies, Rs.2,50,000/- upon Shri Sudarshan Handa, Manager & Authorized Representative of M/s Damini Enterprises, Rs.17,00,000/- upon Shri Kishore Kumar, Proprietor M/s Maa Durga Traders, 2,90,000/- upon Shri Vinod Sharma, Proprietor of M/s Mansa Enterprises, Rs.4,00,000/- upon Shri Daya Singh, Proprietor of M/s Bharat Traders, Rs.1,85,000/- on Shri Vinod Kumar Goyal, Proprietor of M/s Jagdamba Distributors, Rs.1,95,000/- upon Shri Vijay Choudhary, Proprietor of M/s Shri Mansa Distributors, Rs.2,73,000/- upon Shri Rajiv Mohindru, Proprietor of M/s Ridhi Enterprises, Rs.13,00,000/- upon Shri Chandan Kundandas Raichandani, Proprietor of M/s Shivam Marketing & Rs.13,00,000/- upon Shri Vasudev Gilda, Partner of M/s J. P. Distributor. Being aggrieved by the said order, above stated appellants are before this Tribunal.

3. The grounds of appeal are as follow:-

(i) The sales figures maintained by retailers were totally unauthenticated and unchecked and the card summary sheets were not part of the books of account nor the part of the Central Excise record maintained by the appellant and therefore, the information contained therein cannot be construed as authenticated record of the transactions entered into by the appellant.

(ii) It totally violative principles of law and fairplay to assume the sales figure reflected in card summary sheets without corroborating the same with the statutory records maintained by the appellant.

(iii) Revenue did not check the correctness of the figures mentioned in card summary sheets with the statutory records and did not arrive at correct conclusion.

(iv) The Show Cause Notice was issued with assumptions and presumptions.

(v) The appellant had requested for cross-examination of the 9 witnesses on whose written statement the Department had placed reliance which were denied by the Original Authority. Denial of cross-examination of witness by the Original Authority is denial of natural justice.

(vi) For allegations of clandestine removal, Revenue did not adduce any evidence of manufacture of such huge quantity of biscuits, consumption of electricity, payments to labourers, purchase of raw materials in the manufacture of goods allegedly cleared in the clandestine manner, procurement of packing materials and payments made by the purchasers to the appellant and therefore the clandestine manufacture is not established.

4. Heard the ld. Counsel for the appellant, who has submitted that during the search operation shortage of raw

material was detected and the provision of Central Excise Act do not authorize Central Excise Officers to deal with raw material on which Cenvat credit is not availed. He further submitted that for remaining charges, it was necessary that the information contained in card summary sheets should have been compared with the clearances made by the manufacturer and Department was required to establish that as compared as to the statutory records maintained by the appellant quantum manufactured was not tallying with the information contained in card summary sheets. He further submitted that Annexure-10 to the Show Cause Notice has shown the value of goods cleared by the manufacturer – M/s Surya during the period of Show Cause Notice as Rs.43,84,58,438.26/- whereas the value of goods arrived at on the basis of sale value of biscuit per gift and number of gifts distributed arrived at Rs.10,95,18,500/-. Therefore, it was necessary on the part of Revenue to establish that Rs.10,95,18,500/- clearances were in addition to the clearance of Rs.43,84,58,438.26/- reflected in the statutory record and said exercise was not carried out and therefore the Show Cause Notice is not sustainable. The ld. Counsel has further relied on the Final Order Nos. 70821-70826/2017 dated 07th August, 20017 passed by this Bench in respect of M/s Varanasi Bottling Company Ltd. & Others *Versus* Commissioner of Central Excise, Allahabad reported at 2017 (9) T.M.I 443–CESTAT Allahabad.

5. Heard the ld. A. R. for Revenue who has supported the impugned Order-in-Original dated 31/01/2006.

6. Having considered the rival contentions and on perusal of the facts on record, we find that the Show Cause Notice has not established that the alleged quantity of clandestinely cleared goods valued at Rs.4.25 Crores was in addition to the clearance of goods valued Rs.43,84,58,438.26/- as reflected in the record. Further value of alleged clandestinely cleared goods was based on such records of third party which are not covered by any accounting standards. Revenue did not ascertain the value of clearance from the statutory record and the information in the books of account maintained by the M/s Surya in the normal course of business to establish that the statutory records and books of account are not reliable. We also find that that this Tribunal has recorded the finding at Para 5 of the said Final Order Nos. 70821-70826/2017 dated 07th August, 20017 passed by this Bench in respect of M/s Varanasi Bottling Company Ltd. & Others *Versus* Commissioner of Central Excise, Allahabad reported at 2017 (9) T.M.I –CESTAT Allahabad as follows:-

> "5. *Having considered the rival contentions we find that the issue to be decided is whether figures available in the record of the supplier of NABB are more authentic as compared to the figures reported in RT-12 returns submitted to the Jurisdictional Range Superintendent.*

Period involved in the above stated show cause notices is from February, 1988 to July, 1993. During the said period each manufacturer appellants would have submitted more than 50 monthly RT-12 to the Jurisdiction Range Superintendent. The responsibility of the Jurisdictional Range Superintendent was to assess the goods to Central Excise Duty and issue the assessment memorandum in respect of each RT-12. In those circumstances we find that it is not sustainable to hold that the appellants under reported the figures in the returns filed before the Range Superintendent and, therefore, we find that the figures of the production available on the record of the supplier of NABB cannot be more authentic than the figures reflected in Statutory record like RG-1 and reported in Statutory returns like RT-12. Further, as argued by the learned counsel for the appellants that Revenue could not produce any evidence of procurement of all the raw materials for manufacture of the alleged quantity, clearance of alleged quantity, transportation of the same and receipt of monetary transactions of the same. We, therefore, find that all show cause notices dealt with in these appeals are totally presumptive in nature and, therefore, they are not sustainable. We, therefore, set aside all the impugned Orders-in-Original and allow all the appeals. The *appellants shall be entitled for consequential relief as per law."*

In respect of inputs found short, no evidence has been produced to establish that they were used in the manufacture of goods clandestinely manufactured goods and its clandestine clearance.

6. In view of our findings above, we hold that the present Show Cause Notice is presumptive in nature and therefore, we set aside the impugned Order-in-Original dated 31/01/2006 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
06/12/17
सहायक पंजीकार/Asstt. Registrar
सीमाशुल्क, उत्पादशुल्क एवं सेवा कर
अपील अधिकरण/(C.E.S.T.A.T.)
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38, M. G. MARG,ALLAHABAD-211001