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: 12/09/2017

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/70940-70942/2017-SM[BR] dated 06/09/2017

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/70547/2016	**COMMISSIONER OF CUSTOMS, CENTRAL EXCISE & SERVICE TAX-Agra** 113/4, SANJAY PLACE, AGRA AGRA U.P. 282002
2	E/70548/2016	**COMMISSIONER OF CUSTOMS, CENTRAL EXCISE & SERVICE TAX-Agra** 113/4, SANJAY PLACE, AGRA AGRA U.P. 282002
3	E/70549/2016	**COMMISSIONER OF CUSTOMS, CENTRAL EXCISE & SERVICE TAX-Agra** 113/4, SANJAY PLACE, AGRA AGRA U.P. 282002

		Name and Address of Respondent
4		Yunus S/0 Ajenti R/o Nai Ka Nagla,,, HATHRAS ,U.P.204101
5		Sanjay Agarwal S/o Radhey Shyam R/o Nai Ka Nagla,, HATHRAS ,U.P.204101
6		Kasim S/o Ajenti R/o Nai Ka Nagla,,, HATHRAS U.P.204101

Other Appellants and Respondents as per Annexure

Copy To

7 Bar Association, CESTAT, Allahabad

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

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

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

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

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

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

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

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

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

17 C.D.R. 18 Office Copy 19 Guard File

Asstt. Registrar

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
Old Red Building, 38 M.G. Marg, Civil Lines, Allahabad – 211 001

COURT NO. II

<u>DATE OF HEARING : 06/09/2017.</u>
<u>DATE OF DECISION : 06/09/2017.</u>

Excise Appeals No. 70547-70549 of 2016 (SM)

[Arising out of the Order-in-Original No. AGA/EXCUS/000/COM/0039/15-16 dated 08/03/2016 passed by The Commissioner, Customs, Central Excise & Service Tax, Agra.]

CCE & ST, Agra   Appellant

Versus

Shri Yunus S/o Ajenti]
Shri Kasim S/o Ajenti]   Respondents
Shri Sanjay Agarwal S/o]
Shri Radhey Shyam]

<u>Appearance</u>

Shri Pawan Kumar Singh, Authorized Representative (DR) – for the Appellant.

None – for the Respondents.

CORAM: **Hon'ble Shri Ashok Jindal, Member (Judicial)**

Final Order No. 70940-70942/2017 Dated : 06/09/2017

<u>Per. Ashok Jindal :-</u>

These appeals have been filed by the Revenue against the impugned order to demand duty from the respondents.

2. The brief facts of the case are that on 19th-20th December 2009, the Revenue visited Hathras at Mohalla Sri Nagar, Nayi

Ashok Jindal

Basti, wherein two persons namely Shri Yunus and Kasim were found engaged in manufacturing activity of Gutkha on one gutkha pouch packing machine and recovered 05 katta plastic bag containing each 50 packets "Rajshree" gutkha (each packet containing 55 pouches), 01 katta containing 22 packets of "Rajshree" gutkha, 01 katta containing empty pouches of "Rajshree" "Amarshree" brand of gutkha, 01 katta containing loose gutkha masala of approx. 1.5 kg., 1 kata containing one roll of 'Rajshree' gutkha, one roll of 'Amarshree' gutkha, 09 empty roles, 01 sewing machine for sewing sacks (bori), 01 small weighing machine (tarazu), 02 sealing machine. The statement of Shri Yunus was recorded who stated that Shri Sanjay Agarwal is the main person who has provided them the machine for packing the gutkha and all other relevant material. He also stated that Shri Kasim is his brother as these two persons were in jail and further statement of Yunus was recorded on 24th July, 2012 wherein he stated that he does not know anything about the sale of gutkha and purchase of raw material related to it as Shri Sanjay Agarwal providing the mixture of gutkha and he was required to pay back of gutkha of Rajshree and Amarshree brands to him only. Whereas, Shri Kasim stated that his brother is working as a labourer with Shri Sanjay Agarwal and he was never engaged in the said work at all, and selling only vegetables. He has gone to call Shri Yunus on the date of raid. Shri Sanjay Agarwal in his statement has stated that he has no connection with the gutkha seized by the police and also stated that from 2000 to 2005 he was engaged in manufacture of sweet supari and from 2003-2004 he manufactured of "Charminar" brand gutkha and "Rajvansh" pan masala and both i.e. Shri Yunus and Shri Kasim were his employees. He also stated that he is suffering from cancer and unable to move. Investigation was conducted with father of Shri Sanjay Agarawal, Shri Radhey Shyam, who stated that through a letter that Shri Sanjay Agarwal is suffering from Cancer and he has nothing to do with the machines and further stated that his Yunus, Kasim and their father Shri Ajenti were working in his son's factory 5-6 years ago which has been closed in 2004. As there were contradictory statements, one show cause notice issued to the respondents to demand duty jointly from them for the gutkha seized during the raid and to impose penalty thereon. The matter was adjudicated. In the adjudication, it was found that Shri Yunus and Kasim was the labourer are not the manufacturer and, therefore, duty cannot be demanded from them and it was also held that Shri Sanjay Agarwal has been wrongly implicated in the case on the statements of Shri Yunus and Shri Kasim. No other evidence is on record to implicate Shri Sanjay Agarwal, therefore proceeding against Shri Sanjay Agarwal was dropped. It was held in the adjudication order duty is payable on the gutkha seized during the course of investigation from the owner of the gutkha but did not demand duty from all the respondents in the adjudication order, penalties on Yunus and Kasim were imposed. No penalty was imposed on Shri Sanjay Agarwal. Aggrieved from the said order, Revenue is before me.

3. The learned AR submitted that these appeals the duty is to be demanded from the respondents jointly and severally.

4. Heard the learned AR considered his submissions.

5. I find that as per Section 3 of the Central Excise Act, 1944 duty is to be demanded from the manufacturer of excisable goods. In this case, Revenue has failed to ascertain who is the manufacturer of the impugned goods. By filing these appeals, it reveals that Revenue wants demand duty from all the respondents, whereas duty is to be demanded from the manufacturer only and that could be only one person not all person. As the case of the Revenue is that the duty is demanded jointly or severally from the respondent which is against the mandate of law.

6. Therefore, I do not find any merits in the appeals filed by the Revenue.

7. Accordingly, these appeals are dismissed.

(Dictated and pronounced in open court.)

Sd/-

(Ashok Jindal)

PK Member(Judicial)

प्रमाणित प्रति/Cerified True Copy
26/09/17

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