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

Dated: 23/02/2018

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/70390/2018-SM[BR] dated 21/02/2018

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/3038/2005	C.C.E. & ST, KANPUR 117/7 Sarvodaya Nagar Kanpur
		Name and Address of Respondent
2		KEYMEN LAMINATORS PVT.LTD. 66-B,Dada Nagar Kanpur,,

Copy To

3Advocate(s) / Consultant(s):

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

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/3038/2005-EX[SM]

(Arising out of Order-in-Appeal No. 240-241-CE/APPL/KNP/05 dated 28/04/2005 passed by Commissioner of Central Excise & Customs (Appeals), Kanpur)

Commissioner of Customs & Central Excise, Kanpur **Appellant**

Vs.

M/s Keymen Laminators (P) Ltd. **Respondent**

Appearance:

Shri Rajeev Ranjan, Deputy Commissioner (AR) for Appellant
Shri Amit Awasthi, Advocate for Respondent

CORAM:

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

Date of Hearing : 28/07/2017
Date of Pronouncement : 21/02/2018

FINAL ORDER NO- 70390/2018

Per: Anil Choudhary

The issue in this appeal by Revenue is whether the learned Commissioner (Appeals) have rightly held that the allegation of clandestine removal and/or manufacture, based on loose papers (recovered in search/inspection) is not proved against the respondent.

2. The brief facts of the case are that the respondent is engaged in manufacturing of printed laminated flexible packagings. Officers of Central Preventive Branch, Central Excise, Kanpur, visited the factory premises of M/s Keymen

Laminators (P) Ltd., 66-B, Dada Nagar, Kanpur on 10/05/2003. During the course of search and physical verification of stock of raw materials and finished goods, the officers found a shortage of 123 bags (25 kg. each) of HDPE Granules (a Cenvatable raw material) valued at Rs.1,15,312.50 as compared to its stock shown in the relevant Stock Register(s). The CENVAT Credit involved on short quantity of HDPE Granules @ 16% was worked out Rs.18,450.00. On further search of the Director's Room of the party situated in the factory premises itself, the officers recovered some private document/papers kept in two separate folders containing pages from 1 to 297 and pages from 1 to 123. During the course of interrogation Shri Manish Agrawal, Director of M/s Keymen Laminators (P) Ltd. Kanpur confirmed that the above said documents relate to unaccounted production and clearances of excisable goods pertaining to the party and no Central Excise duty had been paid on these clearances.

3. The other director Shri Siddhartha Gupta appeared before the officers on 12th May 2003, wherein he was shown the statement dated 10th May 2003 of Shri Manish Agarwal. After going through the papers in the two folders which were resumed from the room of the director situated in the factory, he expressed his inability to explain the details contained therein and requested that he will explain the queries about the said documents only after consultation with his

Production Supervisor. On 20th May 2003, Shri Manish Agarwal- Director again appeared in pursuance of summons before the Supt. Preventive. In his written statement on the same day, he expressed his agreement with the contents of the statement dated 12th May 2003 tendered by Shri Siddhartha Gupta. Shri Manish Agarwal further stated that Shri Siddhartha Gupta is in a better position to explain the details contained in the loose papers found in the resumed folders. Shri Siddhartha Gupta again appeared before the officers on 23rd May, 2003 and clarified the loose papers as follows: -

SI. No.	**Pages.**	**Clarification given by Shri Siddharth Gupta**
A.	**Folder No. 1 :**	
01.	Pages 01 to 167	Daily production report regarding the goods manufactured by the party alongwith details of inputs consumed.
02.	Pages 169 to 177 & 265 to 279	Details of rotographic cylinders.
03.	Page 179 & 281	Details of payment in respect of cylinders.
04.	Pages 181 to 257, Pages 261 to 263, Pages 289 to 295	Details of finished goods dispatched to different parties.
05.	Pages 283 to 287	Details of orders in respect of Raw materials.
B.	**Folder No. 2 :**	
01.	Page 1 to 57	Statutory records maintained on computer in place of RG-1 and RG-23A Pt. Etc.
02.	Page 58 to 61	Date wise details of raw materials consumed during April, 03.
03.	Page 63, Page 67 to 73	Details of production and consumption of inputs.
04.	Page 65	Physical stock of raw materials as on 31/03/03
05.	Pages 75 to 79, Pages 83 to 119	Date wise details of finished goods dispatched to various parties.
06.	Page 81	Details regarding sale of finished goods.
07.	Page 121 & Page 123	Not known

Am

4. On being asked about the average sale price in respect of different finished goods cleared by them Shri Siddhartha Gupta described the sale prices as follows –

(i) carry bags Rs. 60/- per KG,

(ii) laminated rolls (two layers) Rs. 110/- per KG,

(iii) laminated rolls (three layers) Rs. 130/- per KG.

5. He further submitted that on scrutiny of the resumed papers and its co-relation with the statutory records of production and sale, it is evident that some excise duty is involved. He further stated that pursuant to calculation, the duty shall be paid. On the very next day, that is 24th May 2003, Shri Siddharth Gupta – Director retracted his statement dated 23rd May 2003 and informed that the resumed papers do not belong to his company – Keymen Laminators Private Ltd. In response to the retraction, Shri Siddhartha Gupta by letter dated 27 May, 2003 was requested to explain the circumstances under which the said papers reached his unit, if they did not pertain to his unit. Further, he was again summoned to appear on 29th May 2003. Shri Gupta again appeared on 02 June, 2003, wherein he stated that he retracted under pressure and confirmed his earlier statement dated 23rd May 2003. The officers in presence of Shri Gupta scrutinized the papers placed on the two folders and a chart showing commodity wise clearance was prepared by the officers in his presence. As per the chart the total Central Excise Duty amounting to Rs. 17,87,303/-

was found to be evaded. The details of which were available in the resumed papers. The officers as well as Shri Gupta signed the chart (Annexure – X to the SCN) in token of correctness of the calculation of duty. On being asked about the abbreviation regarding the words (KP), appearing frequently on the resumed production slips and clearance slips, Shri Siddharth Gupta disclosed that – KP stands for **'Keymen Private'**, which had been used to denote the goods manufactured by **Keymen Laminators Private Ltd.** and intended to be sold without entering in their statutory records, whereas 'R' denoted the random sale in cash to different/valued customers, who do not appear in the regular list of purchasers and to whom they cleared the goods without entering in the statutory records.

6. Shri Gupta was asked to clarify the mode of sale of unaccounted finished goods manufactured in the factory. In reply he submitted in his statement dated 02 June, 2003 that they used to sell the said unaccounted goods to different parties in cash as per buyers specifications. Regarding the details of purchase of raw materials to manufacture the unaccounted goods, he deposed that they purchased the raw materials in cash from local market to manufacture and sell unaccounted goods. However, he also stated that in some cases, the buyers also provided the material for the purpose of lamination and printing. The Officers asked him to produce the purchase bills of raw materials used, to manufacture the

unaccounted goods. But Shri Gupta told officers that the same are not available with them. It was further informed that there is no regular supplier of the raw material.

7. In follow-up action the officers also visited following units, whose names were reflected in the clearance slips and production slips contained in the resumed folders to ascertain the movement of clandestinely cleared goods and its physical existence at the hands of its consumer/purchasers: -

Sl. No.	**Name of the Party**	**Brand/Commodity manufactured.**
(a)	M/s Parmatma Foods (P) Ltd., E-8, Industrial Estates, Site-1, Kanpur	Palki Buiscuits
(b)	M/s Kothari Food & Fragrances E-19, Panki Industrial Estate, Site-II, Kanpur.	Dum/Sathiya/Humdum/Gutkha & Pan Masala.
(c)	M/s Raghunath International Ltd. 84/12, Fazal Ganj Factory Area, Kanpur.	'Sir' Brand Pan Masala/Gutkha & Sir Carry Bags.

8. During the visit to **Parmatma Food Private Ltd.** on 24th June, 2003, the Director of the firm Shri Inder Pal Singh was interrogated and his statement was recorded. He was shown the clearance slips issued by respondent resumed from factory during search wherein the details of packaging materials of the brand Palki was found on the slips. Shri I.P.

Singh admitted that the packaging material, as detailed in the slips have been received by them is still lying in the factory. He further stated that the bill in respect of said packaging material have not been received from Keymen Laminators and as such the said material have not been consumed till date. On verification 209.650 KG of packing material to pack Palki brand biscuits was in the stock. Latter on Parmatma Foods Private Ltd. by their letter dated 23 August, 2003 informed the Department that a debit note dated 22 August, 2003 have been received from Keymen Laminators, wherein an amount of Rs. 35,606/- was paid by Parmatma Foods towards delivery of 209.45 KG laminates. It appeared that respondent had dispatched excisable goods – packing materials to Parmatama Foods without paying Central Excise Duty 218 and without the cover of any Central Excise Invoice.

9. During the investigation at Kothari Food and Fragrances on 24th June, 2003, statement of Authorized Signatory – Pradeep Kothari was recorded. On being shown the resumed slips wherein the details of clearances of packing materials bearing brand names: Dum Gutka, Sathiya, Humdum and Humdum Carry Bags, he accepted that the said slips contained the details of the goods pertaining to his firm and the goods mentioned in the slips have already been received in their factory. He also stated that no invoice covering the goods had been received from Keymen Laminators and a letter dated 10th May, 2003 was written to

them for providing the bills/invoices. In response thereto the Keymen Laminators issued debit note dated 18th May 2003 in their name, wherein it was stated that Rs. 89,122/- is to be paid by Kothari Food and Fragrances towards supply of 235.150 KG laminates valued at Rs. 39,975/-, at 214.850 KG +152.20 KG valued at Rs. 49,147/- delivered on 8th May 2003. Accordingly, it appeared that respondent had cleared excisable goods – packing material without issuing any invoice and discharging the duty thereon.

10 Raghunath International Ltd. was also visited on 25 July, 2003 and statement of Shri Rajesh Agarwal Authorized Signatory cum factory Manager was recorded. On seeing the resumed clearance slips containing details of clearances of packing materials of 'Sir' Brand Pan Masala/Gutkha and Meetha, he accepted that the goods covered by the slips have been received by them from respondent. But no invoice/bill was received. He, further, deposed that a letter dated 10th May, 2003, was written to Keymen Laminators to provide the said bills. In response to Keymen Laminators issued debit note dated 24 July, 2003, mentioning that an amount of Rs. 69,975/- is to be paid by Raghunath International Ltd. to them. Revenue also confirmed that the said material have been entered in their accounts, after receipt of the debit note. Accordingly, it appeared that the respondent had cleared finished goods without issuing any bill/invoice, or discharging the duty thereon.

11. Keymen Laminators Private Ltd. vide the letter dated 13 June, 2003 informed the Department that after taking into account the chart (Annexure – X of SCN) prepared on 02 June 2003, they have voluntarily deposited Central Excise Duty totaling Rs. 17,87,303/- vide five different Challans. Latter on a further amount of duty Rs. 3,131/- involved on clandestine removal of 260.80 KG of carry bag (mentioned at page 2 of Annexure – X) was not taken into account and the said amount was deposited on 17 June, 2003, under intimation to the Department. The interest involved on the delay payment of duty is calculated by the Department amounting to Rs. 37,067/-, was also deposited on 17 June, 2003 by Challan. It is further recorded in SCN that the respondent admitted the shortage of 123 bags the stock of HDPE Granules – raw material and debited an amount of Rs. 18,450/- being the Cenvat Credit involved vide PLA entry dated 10th May, 2003 and RG 23 A Part-II entry number 46 dated 10th May 2003. In view of the aforementioned facts and circumstances it appeared to Revenue that although the duty have been debited/paid the respondent is still liable for penal action as well as its director Shri Siddharth Gupta as well as Shri Manish Agarwal, Director and, accordingly, show cause notice dated 09 October, 2003 was issued proposing to demand Excise Duty of Rs. 18,450/-+ Rs. 17,90,434/- with proposal to appropriate from the amount already deposited alongwith interest and further penalty was also proposed on the

respondent company as well as the two directors namely Shri Siddharth Gupta and Shri Manish Agarwal.

12. The SCN was contested by the respondent company and its directors by filing defence reply stating that the proposed demand is based relying upon various unsigned computerized printed paper sheets and handwritten sheets found lying on the table of the director of the Keymen Laminators. These paper sheets were kept into folders and marked as RUD Nos. 2(2A) and RUD No. 2) and that the loose papers marked as nos. 58 to 123 (Set No. 2(b), RUD No. 2B) respectively. It was further stated that in the initial statement taken of the director at the time of search, Shri Manish Agarwal had stated explaining the loose papers that only some of those papers pertain to their business activity. Further on 12 May, 2003 Shri Siddharth Gupta the other director in response to Question No. 5 had stated that the Keymen Laminators manufacture carry bags for KP Pan Products and that no printed laminated Roll for them or under the brand were manufactured. He had also clarified that most of the loose papers could not be explained by him as he was not aware about the author of those papers. Further reliance was placed on the statement dated 20th May 2003 of Shri Manish Agarwal - Director, where he had clearly stated that he was not aware as to whom such loose papers belonged. Further, during investigation, it was categorically informed to the Assistant Commissioner Preventive, Kanpur vide letter dated

23rd May 2003 that the loose papers marked as RUD Nos. 63 to 73 and 83 to 123 and 1 to 119, 121, 122, 125, 127, 189 to 199 did not belong to the respondent company and those papers were found lying on table of the office, normally used to attend the visitors for business purposes. A total transaction aggregating 261 MT could not be added to the production of the respondent company. It was also clarified that the rolls of the sizes shown to have been manufactured in the said loose papers were of much higher size and width. Such rolls are not capable of being produced on the plant and machinery of the respondent company. However, proper investigations were not made and the respondent company was constrained to deposit the amount of the duty so calculated at the sweet will of the Department. All the statements of the directors of the respondent company recorded subsequent to the retraction letter dated 23rd May 2003 and 24th May 2003, are not to be relied upon. Further contended that the amount deposited during investigation towards duty may not be considered to have been paid towards duty voluntarily and such deposit would be treated as pre-deposit, having been made under protest. It was further explained that the particular loose papers as mentioned hereinabove did not belong to them and it appeared that some person visiting their factory, in connection with the normal course of business, had mistakenly left them. The investigating officers failed to consider the capacity of the plant and machinery, electrical consumption, diesel consumption in boiler, purchases, outcome of physical stock verification, the cylinders (size), used by them for printing the material of their buyers, the quantity of waste lying in stock as entered in production register, the quantity of the finished goods lying in stock as entered in production register, etc. But none of these facts/aspects were ever looked into by the Investigating Officers and the whole case of Revenue is on presumptions. Right from very first day of search the director(s) were under pressure to own these papers (loose papers), which actually did not belong to them. The investigating officer never attempted to find out the author of those papers. Thus, the loose papers not owned by them cannot be relied upon and/or used against them, being wholly unrelated. Unless the person or auther making such documents is examined or identified. No such effort was made during investigation. They had got examined the machines installed in their factory by an approved Chartered Engineer who has given a certificate showing per hour unit consumption of power by each of such machines. It was further submitted that they had a power connection of 99 KVA and their plant was generally operated on the Electricity only. The diesel purchased was normally used in boiler to produce hot air for use in printing and lamination. Further on examination of the loose papers, alleged to be belonging to the respondent, reveals that these papers belong to some factory where production was carried on only with the help of generator, example, RUD Nos. 47, 79, 83, 87, 91, 95 and 99 clearly indicated there was no production on the dates 23rd April, 22nd April, 21st April, 20th April and 19th April, 2003 because the generator was not in working condition. Whereas on these days, production in the factory of the respondent is duly accounted for in the production account. The comparative study clearly revealed that the aforementioned papers did not belong to them as being pleaded right from the beginning and elaborately explained in their letter dated 23rd May 2003, followed by letter dated 24th May 2003.

13. The SCN was adjudicated by the Additional Commissioner, confirming the proposed demand of Rs.18,450/-, relating to 123 bags of HDPE Granules found short and Rs.17,90,434/- involved on excisable goods allegedly cleared by the appellant-assessee clandestinely. As both the amount had been already deposited alongwith interest, the same stood appropriated. Further, equal amount of penalty Rs.18,08,884/- was imposed under Rule 25 read with Section 11AC of the Act. Another penalty of Rs.25,000/- was also imposed on Shri Sidhartha Gupta. Being aggrieved, the assessee preferred appeal before the learned Commissioner (Appeals) who vide the impugned order was pleased to allow the appeals in part, holding that the case of Revenue is not proved, but upholding the demand of duty

amounting to Rs.61,947/- and Rs.18,450/-. Penalty on the company was reduced to Rs.80,397/- and penalty on the Director Sidhartha Gupta was reduced to Rs.5,000/-. Being aggrieved, the revenue is in appeal before this Tribunal on the grounds–

'That the conclusion of the Commissioner (Appeals), that the Department had not succeeded in establishing the loose papers actually belonged to the respondent, is without appreciating the fact that Shri Sidhartha Gupta in his statement dated 02/06/2003 which was recorded in continuation of his earlier statement dated 23rd May, 2003 have categorically stated and admitted the records resumed where actually the daily production reports regarding the excisable goods manufactured by them."

"That the observations of the appellate authority are contrary in itself, on one hand he notices that– no doubt Shri Sidhartha Gupta had mentioned in his statement dated 02/06/2003 that he had agreed with the manner of calculation of the chart enclosed, as Annexure-2 of his statement whereas on the other hand he has mentioned, "however, the contents of that statement itself shows the manner of enquiry". This shows that the appellate authority was not sure in himself, as to which part of enquiry was not up to Mark."

14. Further, the appellate authority have erred in observing that Department has already failed to lay hands on actual

owner of those loose papers, because the loose sheets/papers contained in folders, resumed from directors room, and the retraction dated 24th May, 2003, was also later on withdrawn by Shri Sidhartha Gupta, as such, it cannot be concluded that documents do not belong to the party/respondents. Moreover, the burden to provide the name of the real owners, if any of the resumed documents was upon the person/party from whom the records were recovered. The learned Appellate Authority's observation that– "I do not find much substance in these findings of the Learned Adjudicating Authority in view of his categorical conclusion that the statement was being tendered under some pressure working upon the appellant. It is also not justified, in view of the fact that nowhere in his order he has discussed as to what pressure was applied by the Department. Contrary to this, the Appellate Authority having himself observed that the ingredients of any pressure upon the appellant are absent.

15. Further, the observation of the Commissioner (Appeals) that no enquiry from raw material supplier to establish the link of clandestine removal, is not correct, inasmuch as no details of input supplier was given by the respondent. The demand have been wrongly set aside, particularly when other evidences like admission and ownership of recovered documents by the Director, explaining the entries made therein, admission of clandestine removal and voluntary

deposit of duty establishing clandestine removal are available on record.

16. The Commissioner (Appeals) have erred in ignoring the evidence and setting aside the demand, reliance was also placed by the decision of this Tribunal in the case of CCE, Chandigarh Vs Pasupati Steel Alloys Pvt. Ltd. reported at 2004 (184) ELT 59 (Tri.-Bang.) wherein it was held that admission of director of company regarding clandestine removal of goods is a vital evidence and cannot be legally ignored. Accordingly, the learned A.R. for revenue have prayed for setting aside the impugned Order-in-Appeal and restoration of the Order-in-Original.

17. Opposing the appeal of revenue the learned counsel for the respondents Mr. Amit Awasthi has stated that there is no merit in the grounds of appeal. It is a matter of record that the author of loose paper has never been examined and no investigation appears to be made to unveil person behind the loose slips. The sole reliance of confirmation of alleged demand is based on alleged admission by shri Sidharth Gupta, Director of the respondent's company. That nowhere in his statements Shri Sidhartha Gupta has categorically admitted any clandestine removal of goods. The statement dated 23rd May, 2003 of Shri Sidhartha Gupta was retracted on the first available opportunity on 24th May, 2003 and again statement was drawn on 02/06/2003 and retraction was made in the reply. Even the Learned Adjudicating

Authority has observed that the statement was being tendered under some pressure working upon the respondent-assessee, but it is not clear that the pressure was applied by the Department. Further, the Adjudicating Authority has observed that Shri Sidhartha Gupta could not explain the contents of the resumed papers on 12/05/2003 and told officers that he would explain the same after consulting the supervisor of his factory. This clearly establishes that Shri Sidhartha Gupta was not aware about the nature of resumed documents and whatever explanation was given by him was only hearsay in nature.

18. The learned Commissioner (Appeals) has observed that "I do not find much substance in these findings of the learned Adjudicating authority in view of his categorical conclusion that the statement was being tendered under some pressure working upon the assessee/appellant. That no statement of the supervisor was recorded, that no positive or affirmative evidence establishing the charge of clandestine removal was adduced by Revenue. The entire confirmation of demand is based on probability, as is evident from the observation of the Adjudicating Authority in Para-7 of the Order-in-Original-wherein it has been observed that, it is almost impossible to recover/collect the direct evidences to establish with certainty that there has been suppression of production and clandestine removal. What is required to establish is the preponderance of probability and the revenue has established

such preponderance on the basis of slips found in the shape of loose papers. Further, the case relied upon by revenue is not applicable as there is no categorical admission of clandestine removal by the director Shri Sidhartha Gupta. Further, the alleged admission of clandestine removal has been retracted at the first instance. Further, it is stated that the charge of clandestine removal is a serious charge on respondent-assessee and Revenue prove its case by positive, cogent and affirmative evidence. There is no room for presumptions and assumptions. The standard proof in the case of clandestine removal is the proof beyond doubt and not that of preponderance of probabilities. The Revenue have erred in confirming the allegation of clandestine removal on the basis of loose slips, which lack any corrobor. Further, the learned Commissioner (Appeals) has rightly adjudicated, in the facts and circumstances and also taken into account the installed capacity of the factory, raw material utilisation, labour employed, power consumption, goods actually manufactured and packed etc. and no recovery of excess stock of raw material and no evidence of use of holo film. Accordingly, the learned counsel prays for dismissing the appeal filed by revenue.

19. Having considered the rival contentions and the facts on record, it is seen that the whole case of revenue is based on the loose papers which were found lying in the office of the one of the directors. It is the contention of the respondents

from the very beginning that the papers do not belong to them and appears to be left by some visiting client, which they are unable to identify. I find that revenue have not brought on record any material to show the purchase of raw materials or sale of alleged finished goods. Further, non availability of production capacity, work force and the very fact that the loose papers actually related to some other factory who was engaged in manufacture of holo laminated films exclusively, on the power generated by D.G. set. Whereas the respondents are using power, the generator was used only for emergency as a standby. The case of the Department is that the loose papers belong to the respondents and Shri Sidhartha Gupta director of the company had owned the calculations made on the basis of those loose papers & signed in token of having agreed with the manner of calculation, in his statement dated 02/06/2003 and in view of his admission no further proof is required from the facts and contentions on record. I am satisfied that the Department has not succeeded in establishing that the loose papers actually belonged to the respondents. Agreeing to the manner of calculation with respect to the loose papers, does not amount to categorical admission of clandestine removal by the director of the respondent's company. Moreover, there have been repeated retraction, verifying the position and as such the alleged admission is of no help to revenue. Further, I find that Shri Sidhartha Gupta was not examined in the course of the adjudication proceedings, which is also in gross violation of Section 9D of the Act. Thus, the statements recorded during investigation cannot be the basis of confirmation of demand. Further, the products mentioned in the loose sheets are output not manufactured by the respondents in their works. Further, the quantity of waste lying in stock as entered in production register, the quantity of fresh goods lying in stock as entered in production register, there was no material mismatch, the respondent had got examined the machines installed in their factory, duly verified by the Chartered Engineer who have given a certificate, showing per hour unit consumption of power by each of such machines. The connected load of 99 KVA was available in the plant of the respondent. They generally operated on electrical energy supplied by the Electricity Board. They used diesel in boiler to produce hot air for use in printing and lamination. Whereas the loose papers, so found revealed that they belong to some factory where production was carried on only with the help of generator, particularly RUD Nos.47, 79, 83, 87, 91, 95 and 99 which indicate that there was no production on the dates 23rd April, 22nd April, 21st April, 20th April and 19th April, 2003 because the generator was not in working condition. Whereas on these days there was production in the factory of the respondent and the same is duly accounted, in the books of accounts and records maintained in the ordinary course of business. Thus, the comparative study clearly sets out that the loose papers found at the time of inspection or search do not belong to the respondents and as such the learned Commissioner appeals have rightly set aside the demand based on the loose papers. Further, it is settled legal position that the documentary evidence prevails over the oral evidence. Further, I hold that the Department has not discharged the burden of proof, as required in the matters of alleged clandestine removal.

20. Accordingly, I uphold the impugned Order-in-Appeal and dismiss the appeal filed by Revenue. The respondent-assessee shall be entitled to consequential benefits, in accordance with law.

(Pronounced in Court on-21/02/2018)

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

akp

प्रमाणित सही/Certified True Copy
13/03/18
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अपील अधिकरण(C.E.S.T.A.T.)
38, एम. जी. मार्ग, इलाहाबाद-211001
38, M. G. MARG, ALLAHABAD-211001