CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
BANGALORE
REGIONAL BENCH - COURT NO. 2

Central Excise Appeal No. 23560 of 2014
(Arising out of Order-in-Original No. 32/2014 (De Novo) dated 31.07.2014 passed by the Commissioner of Central Excise, Bangalore I Commissionerate, Bangalore.)

M/s. Sakthi Electronics
No. A-59, KSSIDC Industrial Estate,
Bommasandra,
Bangalore,
Karnataka – 560 099. ……….**Appellant(s)**

VERSUS

Commissioner of Central Excise,
Bangalore – I Commissionerate,
Post Box No. 5400,
C.R. Building, Queen's Road,
Bangalore – 560 001. ……..**Respondent(s)**

WITH

Central Excise Appeal No. 23561 of 2014
(Arising out of Order-in-Original No. 32/2014 (De Novo) dated 31.07.2014 passed by the Commissioner of Central Excise, Bangalore I Commissionerate, Bangalore.)

Shri. R. Kandasamy, Partner of
M/s. Sakthi Electronics
No. A-59, KSSIDC Industrial Estate,
Bommasandra,
Bangalore,
Karnataka – 560 099. ……….**Appellant(s)**

VERSUS

Commissioner of Central Excise,
Bangalore – I Commissionerate,
Post Box No. 5400,
C.R. Building, Queen's Road,
Bangalore – 560 001. ……..**Respondent(s)**

APPEARANCE:

Mr. Pradyumna. G. H, Advocate for the Appellant.
Mr. Money Jain, Joint Commissioner (AR) for the Respondent.

CORAM:

HON'BLE MR. P.A. AUGUSTIAN, MEMBER (JUDICIAL)
HON'BLE MR. PULLELA NAGESWARA RAO, MEMBER (TECHNICAL)

Final Order Nos. 20532-20533 /2026

Date of Hearing: 12.08.2025
Date of Decision: 06.02.2026

PER: P.A. AUGUSTIAN

The brief facts are the Appellant is manufacturing batteries, Uninterrupted Power Supply (UPS) and plates for batteries. The department Alleging that the Appellant had manufactured and cleared excisable goods i.e. batteries and battery plates without payment of central excise duty in excess of SSI exemption limit, proceedings were initiated. When search was conducted in the factory and warehouse premises, it is observed that the warehouse premises was used to stock fully finished batteries from April 2009 onwards either received from their factory premises or from M/s Clear Acid, Bangalore after charging. As a result of search operation 615 Nos. of fully finished batteries were seized and they were allowed to be released provisionally. Thereafter detailed investigation was conducted and after recording statements from various persons, 2(two) show cause notices were issued to the Appellant for the confiscation of seized batteries and one for demand of duty on the batteries and plates cleared from the year 2005-2006 to 2009-2010 (up to October 2009). Thereafter Adjudication Authority as per the Order-in-Original No. 31/2011 dated 30.09.2011 confirmed the demand along with interest and also imposed penalty on Shri. R. Kandaswamy, Partner of the Appellant under Rule 26 of the Central Excise Rules, 2002. Aggrieved by said order, an appeal was filed before this Tribunal along with petition for stay and while considering the issue, this Tribunal as per the Final Order No. 20212-20213/2014 dated 11.02.2014 observed that:-

> *"According to Revenue, in this case, there was clandestine removal whereas according to the appellant there was no clandestine removal but there is trading activity. But documents*

and evidence required relating to trading activity were not furnished to the satisfaction of the original adjudicating authority. In fact, application filed by assessee seeking to submit additional evidence also is pending before the Tribunal. Learned counsel submits that if the appellant is given another opportunity, they can produce evidence before the original adjudicating authority to prove that allegation of clandestine removal made in the show-cause notice would not be correct".

2. As directed by this Tribunal, Appellant vide letter dated 30.06.2014 made additional submission and also produced large number of documents including the Annual declaration filed by the Appellant as per Notification No. 8/2003-CE dated 01.03.2003, specimen delivery challan, balance sheet, yearly abstract of movement of batteries from office to factory and factory to office, copies of delivery challan evidencing movement of batteries from office to customers in the year 2006-2007 and large number of documents to substantiate their claim. After extending opportunity for hearing to the Appellant, Adjudication authority as per the impugned order confirmed the demand and also imposed penalties against both the show cause notices.

3. When the appeals came up for hearing, the Learned Counsel for the Appellant draws our attention to the statement recorded from Shri. R Kandaswamy on 18.11.2009 and submits that there is no admission of any illegality as held by the Adjudication Authority. Relevant extract of the statement is produced below:-

"Q.9. You have mentioned that in addition to manufacture, you are undertaking trading activity of batteries. Please indicate from whom you have purchased the finished batteries and from when you are undertaking trading activity.

A 9. We are undertaking trading of batteries from 2004-05. We are purchasing finished batteries from M/s. Surya Batteries, Salem, M/s. Agarwal Traders, Bangalore, M/s. Pooja Trading, Bangalore, M/s. Yelantra Enterprises, Bangalore, M/s. Sam Technologies Bangalore, M/s. KRSNA Energies, Bangalore, etc. The said suppliers normally supply finished batteries in pre-packed condition under cover of sale invoices. We are in turn raising sale invoices from our office".

Q 10. Please explain the movement of batteries purchased for trading.

A 10. The finished batteries purchased for trading purposes are invoiced by our suppliers to our office address located at no. 231, 1st main, 3rd Cross, KSRTC Layout, 2nd Phase J.P. Nagar, Bangalore- 560078. We are storing the purchased finished batteries meant for trading only in our office address located at no. 231, 1st main, 3rd Cross, KSRTC Layout, 2nd Phase J.P. Nagar, Bangalore- 560078. To the best of my knowledge, none of the purchased finished batteries meant for trading have come to our factory located at A-59, KSSIDC Industrial Estate, Bommasandra, Bangalore-560099. As already mentioned above, the finished batteries meant for trading come in pre-packed condition. We sell the batteries as such. In stray cases where we find that the packing has been damaged, we re-pack the same at our office or at our warehouse located at B-20, KSSIDC Industrial Estate, Bommasandra, Bangalore-560099. The finished purchased batteries are moved from our office to the warehouse under cover of Delivery Challans".

Q 11. Please see Mahazars dated 22.10.2009 drawn at your factory, warehouse and office, wherein documents as mentioned in the Annexure to Mahazars have been seized. Amongst the documents are stock transfer delivery challans raised for batteries cleared from your factory located at A-59, KSSIDC Industrial Estate, Bommasandra, Bangalore-560099 and your warehouse located at B-20, KSSIDC Industrial Estate, Bommasandra, Bangalore-560099 to your office at J.P. Nagar. Please indicate as to whether the batteries cleared under above referred stock transfer delivery challans are batteries manufactured by M/s. Sakthi Electronics or batteries purchased for trading.

A 11. I wish to state that prior to April 2009, the batteries stock transferred under delivery challans from our factory at A-59, KSSIDC Industrial Estate, Bommasandra, Bangalore-560099 to our office at J.P. Nagar are all manufactured by us at our above referred factory premises. After April 2009, the batteries stock transferred from our warehouse at B-20, KSSIDC Industrial Estate, Bommasandra, Bangalore-560099 to our office includes batteries received from our factory or M/s Clear Acid and batteries purchased for trading. However, even after April 2009, all batteries stock transferred from our factory to M/s Clear Acid or our warehouse have been manufactured by us at our factory. In other words, I wish to state that to the best of my knowledge all batteries cleared by us till date from our factory to our office or warehouse or M/s Clear Acid have been manufactured by us".

4. Learned Counsel also draws our attention to the declaration filed on 15.04.2007 by the Appellant related to SSI unit and as per said declaration, Appellant had manufactured goods including batteies and Uninterrupted Power Supply (UPS) amounting to Rs. 97,87,770/- and also involved in trading, buying and selling of batteries and Uninterrupted Power Supply (UPS) amounting to Rs. 1,94,04,948/-. Similar declarations were made for the subsequent period on 15.04.2009 and Learned Counsel also draws our attention to Annexure-B worksheet prepared by the Revenue and submits that the source of said information is not forthcoming in the impugned order or in the show cause notice and in the absence of any non-compliance of the statutory provisions, said document cannot be considered as admissible evidence to confirm the demand as done by the Adjudication Authority.

5. Learned Counsel further submits that details of inputs relied for alleging such huge quantities were also not produced and as per the impugned order a vague finding is given that the Appellant has not

disputed the manufacturing activities in the factory premises and it is held that the statement confirmed the fact that the batteries manufactured by the Appellant prior to April, 2009 were stock transferred to their office premise under the delivery challan. It is manufacturing in the factory premises situated and further it is held that Appellant has not adduced any proof of sending the traded batteries to the factory for charging. As regards the statement relied in the show cause notice, Learned Counsel submits that though the so-called production and delivery of goods are allegedly recovered from the computer printout maintained by the Appellant, same cannot be admitted as having evidentiary value without complying the condition under Section 36B of the Central Excise Act, 1944. None of the conditions prescribed in Section 36B has been followed and as such there is no evidential value. In the absence of any other evidence and when these print outs are taken as standalone evidence, it is absolutely mandatory to comply with the conditions prescribed in this situation.

6. Learned Counsel also draws our attention to the specific direction given by this Tribunal while considering the issue in the previous round of litigation and draws our attention to Annexure-2 Mahazar dated 22.10.2009 drawn in the premises which includes trading, sales invoices for the relevant period, huge number of documents, details of raw material procurement, delivery challans, VAT payments. Learned Counsel also draws our attention to the documents seized while preparing the Mahazar dated 22.10.2009 which includes trading sale invoices, delivery challan and the details regarding the procurement of raw material, VAT returns, daily production /sales details from January 2006 to March, 2009, balance sheet for 2006-2007, purchase register, sales register, etc. However, in the first round of litigation, none of the above documents relied upon and even as per the impugned order considered the trading transactions as the goods manufactured by the Appellant even after producing such valuable documents seized during investigation.

7. Learned Counsel also draws our attention to Para 41 of the impugned order where Annual declaration made by the Appellant for the year 2006-2010 were considered which include value of goods cleared on account of production, value of goods cleared on account of trading. The details are in the Mahazars dated 22.10.2009 reproduced below;

ANNEXURE to Mahazar dated 22-10-2009 drawn at the premises of M/s. Sakthi Electronics, No. A-59, KSSIDC Industrial Area, Bommasandra, Hosur Road, Bangalore.

BOX FILES

1) Trading Sales Invoice – 01.04.2008 – 30.11.2008
2) Trading Sales Invoice - 01.12.2008 - 31.03.2009
3) Trading Purchase Invoice- 2007-08
4) Production Sales Invoices-01.04.2008 – 30.11.2008
5) Production Sales Invoices-01.12.2008 -31.03.2009
6) Production Sales Invoices -01.04.2009 – 31.07.2009
7) Production Sales Invoices -01.08.2009 onwards.
8) Trading Sales Invoices - 2009-10
9) Purchase file of Raw Material - 2007-08

FLAT FILES

10) Delivery Challans(DC) for stock transfer - 2005-06
11) Delivery Challans(DC) - 2006-07
12) Delivery Challans(DC) - 2007-08
13) Delivery Challans(DC) - 01.04.2008 to 31.12.2008
14) Delivery Challans(DC) - 01.01.2009 – 31.03.2009
15) Delivery Challans(DC) - 01.04.2009 onwards
16) VAT-515 Forms - 01.01.2009 to 31.03.2009
17) VAT-515 Forms - 01.04.2009 onwards
18) Delivery Challans received for Battery repair
19) Delivery Challans received for Battery repair
20) Delivery Challans received for Battery repair
21) Daily Production/Sales details from Jan'06 to Oct'09 & Balance Sheet for 2006-07, 07-08 & 08-09.
22) Purchase Register (PRO) – 2009-10.
23) Sales Register(PRO) – 2009-10.

Typed by me

(B.N.GOVINDARAJU)
Inspector of Central Excise
HPU, Bangalore I Commissionerate,
Bangalore

Witness No. 1
22/10/09

Witness No. 2
22/10/09

Before Me

(C.Venkatesh)
Inspector of Central Excise
HQ Preventive, Bangalore I Commissionerate
Bangalore

22/10/09

SAKTHI ELECTRONICS
A-59, KSSIDC Industrial Estate
Bommasandra, Anekal Taluk
Hosur Road
BANGALORE - 560 099

ANNEXURE TO MAHAZAR DATED 22.10.2009 DRAWN AT THE PREMISES OF OFFICE CUM RESIDENCE OF M/S SHAKTHI ELECTRONICS,NO. 231, 1ST MAIN, 3RD CROSS, KSRTC LAYOUT, J.P.NAGAR, 2ND PHASE, BANGALORE 560078

1. Purchase paid file 09-10 (box file)
2. Purchases production – unpaid 09-10 (Box file)
3. Manika Moulds P Ltd.- purchases 08-09 (box file)
4. Bank Statement File 2009-10 (Flat file).
5. SBH from 1.4.2008 (Flat File).
6. Production DC1-1 2009-10 (Box file)
7. PO sent file 2009-10 (flat file)
8. PO file from 01.04.09 (box file)
9. PO sent file from 08-09 (flat file)
10. PO File from NOV 05-Nov 07 (box file)
11. Production Sales VAT output Register 2008-09
12. Trading purchase Register 2008-09
13. Trading sales register 2008-09
14. Purchase Production VAT input register 2008-09
15. Purchase register (purchase order sent) (2006-07)
16. Purchase register (purchase order received) (2006-07)
17. Stock from 01.04.08 (register)
18. S.E Trading invoice 2007-08 (Box file)
19. Garuda Power Systems Cash/Credit Bill (Bill No 009 to 50)
20. Sales Register (Tra) 2009-10
21. Garuda Power Systems - Sales Register 09-10
22. Purchase Register (Tra) 2009-10
23. Garuda Power Systems Sales Register 08-09
24. Outstanding from 01.04.09 (Box file).
25. Solar from 09.09.06 to 24.07.09 (box file)
26. S.E Quotation file 08-09 and 09-10 (box file)
27. Garuda Power Systems Sales file 09-10 (flat file)
28. Garuda Power Systems Sales file 08-09 (flat file)
29. Garuda Power Systems Purchase Register 08-09
30. Traction Battery (Box File)
31. Erode Colleges Quotations (Box File)
32. Solar 3- from 01.08.09 (Box File)
33. Factory DC file 01.04.07 to 30.09.2007 (box file)
34. Garuda Power System Sales Invoices 06.02.09 to 31.03.2009 (flat file)
35. Garuda Power System Sales Invoices 02.04.08 to 03.10.2009 (flat file)
36. Factory D.C file from 01.08.09 to 22.10.2009 (box file)
37. Factory D.C file from 01.04.09 to 31.07.2009 (box file)
38. Message Books – 5 Nos. (Notebooks- marked as 38-1,2,3,4,5)
39. Flat File containing miscellaneous papers
40. Cheque book details – 3 Nos. (Notebooks- marked as 40-1,2,3)
41. Pocket Diary

22/10/09

Prepared by me 22/10/09
(M. Gunasheelan)
Inspector of Central Excise
HPU, Bangalore III Commissionerate

Witness No. 1: Shri S. Palani

Witness No. 2: Shri P. Siddaraju
22/10/09

"Before Me" 22/10/09
(MARCUS PEREIRA)
Superintendent of Central Excise
HQ Preventive, Bangalore III Commissionerate

SAKTHI ELECTRONICS * BANGALORE 22/10/09

1 Seen 18/11/09

8. As regards non-compliance of the provision of Section 36B, Learned Counsel draws our attention to the decision in the matter of **CC Vs. M/s. Shivam Steel-(2023) 2 Centax 259 (Ori.)** wherein it is held that if department relied on computer print-out, they had burden to fulfil requirements of law regarding admissibility, even if they had not seized computer from where print-out was taken - If department was unable to produce required certificate, then person-in-charge of computer who was aware of its working had to give such certificate.

9. Learned Counsel also draws our attention to the communication dated 19.11.2009 where it is specifically stated that there are some duplications in the dispatch report which is finally summarized where in the error noticed with regard to the battery cells for charging being recorded as dispatched, batteries received back from customers for service being recorded as dispatched. As regarding records, it is clarified that some traded batteries do come to factory and were send to warehouse due to reason of logistics and at the time of testing and in case of packing being damaged for repacking such items after testing or repacking were sent to warehouse. Therefore, the delivery challan could also to be raised from the factory for traded batteries and the same was stated while recording the statement. As regards Appeal No. E/23561/2014, learned counsel for the appellant submits that once alleged illegality committed by the main appellant is unsustainable, penalty on appellant alleging abetment of said illegality is also unsustainable. Learned Counsel also draws our attention to the decision of the Hon'ble High Court of Gujrat in the matter of **Pravin N Shah Vs. CC- 2014 (305) E.L.T 480 (Guj)** wherein it is held that where no specific Rule is attributed to the partner in the firm, then once firm has already been penalised, separate penalty cannot be imposed upon the partner because a partner is not a separate legal entity and cannot be equated with employee of a firm.

10. Learned Authorized Representative (AR) reiterated the finding in the impugned order and also draws our attention to the judgment of Hon'ble High Court of Himachal Pradesh in the matter of **M/s. MIS International Cylinders Pvt. Ltd.,** and the decision of the Tribunal relied in the impugned order and submits that law is settled that once illegality is confirmed, it is for the appellant to prove and rebut that the presumption is wrong. As regards the Annexure-M details of production and clearance made by the Appellant, it has to be admitted since it is recovered from the document maintained by the Appellant.

11. Heard both sides and perused the records.

12. We find that as directed by this Tribunal, Appellant vide letter dated 30.06.2014 made additional submission and also produced large number of documents including the Annual declaration filed by the Appellant as per Notification No. 8/2003-CE dated 01.03.2003, specimen delivery challan, balance sheet, yearly abstract of movement of batteries from office to factory and factory to office, copies of delivery challan evidencing movement of batteries from office to customers in the year 2006-2007 and large number of documents to substantiate their claim. Further as evident from the Mahazars dated 22.10.2009, drawn on the Industrial Area and the Office cum Residence of the appellant, large number of documents including details of VAT payment were recovered and inspite of giving specific direction by this Tribunal, no attempt is made by the Adjudication Authority to verify the evidence available on record and even in Denovo Adjudication, vague findings were given that the appellant has not disputed the manufacturing activities in the factory premises. In view of the above discussion, impugned order confirming the demand along with interest and imposition of penalty on the appellant is unsustainable and liable to be set aside.

13. Accordingly, demand of duty along with interest and imposition of penalty on the appellant in Appeal No. E/23560/2014 is set aside. Further penalty on Shri. R. Kandaswamy, Partner of the Appellant in Appeal No. E/23561/2014 is also unsustainable and is set aside.

(Order pronounced in Open Court on 06.02.2026)

(P. A. AUGUSTIAN)
MEMBER (JUDICIAL)

(PULLELA NAGESWARA RAO)
MEMBER (TECHNICAL)

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