CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
CHANDIGARH

~~~~~

REGIONAL BENCH – COURT NO. 1

Appeal No. E/60628/2016

[Arising out of OIO No. 125-130/CE/CHD-II/2016 dated 22.07.2016 passed by the Commissioner of Central Excise, Customs & Service Tax, Chandigarh]

Aar Bee Industries
Lane No. 4 Phase-ii, Sidco Industrial Complex Bari,
Bari Brahmana, Jammu-181133
Jammu & Kashmir **: Appellant (s)**

Vs

Commissioner of Central Excise,
Chandigarh-II
Plot No. 19, Central Revenue Building
Sector 17-C, Chandigarh **: Respondent (s)**

WITH
Appeal No. E/60624,60626-60627/2016

[Arising out of OIO No. 125-130/CE/CHD-II/2016 dated 22.07.2016 passed by the Commissioner of Central Excise, Customs & Service Tax, Chandigarh]

Flavours International
Lane No. 4, Greater Kailash, Jammu & Kashmir

Shri Arun Kumar Aggarwal
Partner, M/s Aar Bee Industries
Lane No. 4 Phase-ii, Sidco Industrial Complex Bari,
Bari Brahmana, Jammu-181133
Jammu & Kashmir **: Appellant (s)**

S B Traders
Canal Road , New Rajiv Colony
Ward No. 5, Bari Brahamana Jammu & Kashmir

Vs

Commissioner of Central Excise,
Chandigarh-II
Plot No. 19, Central Revenue Building
Sector 17-C, Chandigarh **: Respondent (s)**

APPEARANCE:
Shri S. K. Malhotra, CA for the Appellant
Shri A. K. Saini, Authorised Representative for the Respondent

CORAM : HON'BLE Mr. ASHOK JINDAL, MEMBER (JINDAL)
HON'BLE Mr. C L MAHAR, MEMBER (TECHNICAL)
~~~~~

FINAL ORDER No. 60507-60510 / 2019

Date of Hearing: 03.04.2019
Date of Decision:03.04.2019

Per : Mr. Ashok Jindal

The appellants are in appeals against the impugned order.

2. The facts of the case are that an investigation was started at the end of the office of Commissioner of Central Excise, Merrut-II against various units located in their jurisdiction who were purchasing Menthol Solution and Dementholised Oil from Jammu & Kashmir based units. The Meerut Commissionerate searched the premises of various commission agents and buyers as well as sellers of Manthol Solution & DMO. The officers found that commission agents are neither maintaining proper record of sale of raw material nor purchased the raw material. The commission agents had issued Kissan Kharid Patra to various farmers whereas the investigation conducted at the end of farmers indicates that the farmers are non existence. On the basis of investigation at the end of commission agents and farmers, the Merrut Commissionerate concluded that J&K based units are not purchasing raw material, so there is no question of manufacture of finished goods by J&K based units the goods manufactured were sold to UP based manufacturers who in turn partially exported their finished goods and partially sold in domestic market. The Merrut Commissionerate issued show cause notices to UP based manufacturers to deny cenvat credit availed on goods purchased from J&K based suppliers and at the insistence of Meerut Commissionerate, the jurisidictional Commissionerate issued show cause notices to various J&K based manufactures raising demand of duty refunded to them who are

availing area based exemption under Notification No. 56/2002-CE dated 14.11.2002. The adjudicating authority has confirmed demand on the grounds that the farmers are non existence ensuring non supply of raw material by commission agents to J&K based units and absence of evidence of power by the appellants. Therefore, by way of the impugned order, the cash refunded to the appellants were sought to be demanded. Against the said order, the appellants are before us.

3. The ld. Counsel for the appellants submits that as in the impugned order itself, all the vehicles used for transportation of alleged raw material are trucks. There can be no case where hundreds of consignments moved from one place to another place on papers and all the vehicles are trucks. The existence of trucks itself prove the case of appellants. The Revenue has raised demand in respect of all the consignments whereas as per these reports itself maximum consignments found reported at the barriers. It is his further submissions that the appellants under RTI sought information from Excise and Taxation Commissioner, Punjab as well as Deputy Commissioner, Toll Post Lakhanpur and as per the report, the goods were transported to the appellant's factory and there were movements from the appellant's factory to the buyers. The Commissioner of Central Excise, Jammu vide report dated 21.05.2010 questioned issue of show cause notice wherein it has been opined that entries of raw material DIC Officers had regularly verified purchase consignments; range officers time to time visited factories and nothing adverse was reported . A similar report dated 28.04.2010 was prepared by preventive staff, Jammu. On the identical allegations demand was raised from a North East based units. The said party had also

purchased raw material from one of commission agents of appellants and the Commissioner of Central Excise, has dropped the proceedings against them. The DIC, officials time and again visited factory premises of the appellants and verified receipt of raw material. The officers of the department visited the factory premises of the appellants and physically verified stock and manufacturing activity. No adverse report was prepared. The appellants got transit insurance of raw material and the insurance company. The buyers of the appellants have exported the substantial goods. It is impossible to manufacture and export goods without purchase of raw material. The appellants have installed DG sets. The same was inspected by Chief Electrical Inspector who issued fitness certificate. Pollution Control Department also visited time to time and granted permission. All these evidences shows that, the appellant's unit was manufacturing, therefore, it cannot be said that the appellants neither received the inputs and nor cleared the goods, therefore, the proceedings against the appellants are not sustainable.

4. On the other hand, the ld. AR reiterated the finding in the impugned order.

5. Heard the parties and considered the submissions.

6. We find that in this case the sole allegation against the appellants is based on the investigation made by Commissioner of Central Excise, Merrut, and as per the investigation, it is alleged that farmers from whom the inputs were purchased were non-existence. Therefore, commission agents never supplied inputs to the appellants and the appellants did not manufacture the goods. Consequently, they

have not sold the goods and it was alleged that the appellants have not manufactured the goods at all.

7. We also take a note of the fact that on identical issue a show cause notice was issued to one ***M/s Nanda Mint and Pine Chemical Ltd.*** and in that case, this Tribunal after examining the above said records similar in the case of the appellant observed as under:-

> *"7. We take a note of the fact that the check post movement of trucks which were carrying inputs as well as finished goods were found entered. We further take note of the fact that the appellant has produced the evidence of the entry of all the transport vehicles i.e. trucks which have entered in the state of Punjab and have left the state of Punjab, as the same has been certified by the Punjab Sales Tax Department having entries of entry and exit all the vehicles, therefore, it cannot be said that the raw material/finished goods have never entered or left in the state of Jammu & Kashmir, therefore, the allegation on the basis of the investigation conducted by the Commissioner of Central Excise, Merrut is not sustainable. 8. Further, we take note of the fact that during the period of investigation itself, the appellant continued their activity by procuring inputs from U.P and selling the goods after manufacturing to the U.P based buyers and the Department allowed to continue the same during the course of investigation which shows that the allegation on the basis of investigation conducted at the end of Commissioner of Central Excise, Merrut is not sustainable that the appellant is not manufacturer the goods. Admittedly, duty is payable on the manufacture of goods and as per the report of the Commissioner of Central Excise, Jammu dated 25.02.2010, it has been revealed as under:*
>
> *" 5. Thus the officers of Merrut-II Commissionerate, instead of selecting the consignments where no excisable goods were manufactured/supplied, have generalized that all the purchases*
> *of crude Mentha oil by these Mentha units located at Jammu were bogus units, these units did not have any infrastructure to manufacture the said products, were non-functional and Transporters who did not tum up for tendering statements were declared non-existent etc. however, on close scrutiny of the records, the following facts emerges:*
> *(i) Most of the consignments of raw material were found entered at the Toll barrier.*
> *(ii) The Officers of District Industry Centre, who have assessed and fixed the capacity of manufacturing units, have been regularly verifying their purchase consignments.*
> *(iii) The Range staff had also been visiting these units for PBC Checks/verification of plant/machineries and reported nothing adverse against these units. 6. Therefore, it may not be strongly alleged with certainty that during the period 2005-2006 to 2008-2009, these 27 units have not purchased crude Mentha oil and therefore have not manufactured any Menthol products in their units at all. There is hardly any time left for further investigation to strengthen the case as process is very time consuming and most of these of units have closed their factories due to withdrawal of Central Excise Duty on all Mentha products w.e.f 27.02.2010. Thus, the investigation may not be in tune with the investigations conducted by the Central Excise Commissionerate Merrut-II." 9. The said report*

also support the case of the appellant wherein it has been clearly mentioned that during the periodical checks by the departmental officers, the appellant found manufacturing the goods. Moreover, no discrepancy was found and on toll barriers it was found that the vehicles carried inputs/finished goods found entered. Moreover, the District Centre also certified the said fact. 10.We further take note of the fact that the various other departments namely Pollution Control Department, District Industries Department, Electrical Department have visited the factory of the appellant and found functioning. All these facts have not been disputed by the Revenue. As there is no corroborative evidence to show that the appellant were not manufacturing the goods, therefore, the allegation alleged in the show cause notice is not sustainable. 11.We further take note of the fact that on the basis of the same investigation conducted by the Commissioner of Central Excise, Merrut, the case was booked against the various parties namely M/s Arora Aromatic & Others Vide Final Order No. 71939-71959/2017 dated 01.11.2017, this Tribunal observed as under: " 10. Having considered the rival contentions and on perusal of the facts on record, we find that the basic allegations in the Show Cause Notice was that M/s Arora Aromatics did not receive inputs on which they availed Cenvat credit basically on the contention of Revenue that M/s Ruchi Infotech System, Jammu did not have facility to manufacture the inputs received by M/s Arora Aromatics and that the goods did not move from Jammu & Kashmir to the appellants factory and therefore, Cenvat credit was not admissible. The evidence submitted by the appellant inthe form of Order-in-Original passed by Commissioner of Central Excise, Jammu on 31/03/2008, wherein it was held that M/s Infotech System, Jammu was manufacturing the goods was not accepted by the Original Authority stating that the said Commissioner, Jammu did not see himself that the goods have been manufactured. If such a logic is accepted then the basic system of assessment by Authorities under tax statute needs to be concluded to have been not properly understood by the Adjudicating Authority. The present system of assessment in Central Excise is record based. The Officer assessing the duty is not required to be present when the goods are being manufactured to witness the process of manufacture. The adjudication is to be done on the basis of evidence produced before the Adjudicating Authority. As per Evidence Act evidence in totality is to be taken into consideration and therefore, finding recorded in the impugned Order by the Original Authority who passed the said Order dated 29/01/2010 is bad in law. The Original Authority did not understand the process either of assessments or of adjudication. Further the investigations were not undertaken to find out wherefrom the inputs were received by the appellant for the goods they manufactured and on which they paid duty and which were exported, if they had been received the inputs from M/s Ruchi Infotech System, Jammu or the other suppliers of inputs. Further, the additional evidence submitted by the appellant indicated that in respect of units in Jammu, Central Excise Officers visited the factory premises and seen that the manufacturing process going on was evidence by them and such evidences being on record and submitted by the appellant it was the duty of the Original Authority to accept them and not to discard by saying that the Officers have not seen the goods being manufactured by their own eyes. Further, the receipt of inputs was verified by the Officers of Central Excise Department and sample of the same were also drawn and forwarded for Chemical Examination. Such evidence was also not accepted by the Original Authority, Therefore, it appears that the Original Authority was pre-determined to adjudicate the matter in the manner in which he has decided the issue and he was not just and fair and did not discharge his duty as an independent adjudicator. We, therefore, set aside both the impugned Ordersin-Original dated 29/01/2010 & 29/03/2011 and allow all the appeals

> *filed by appellant. The appellant shall be entitled for consequential relief. All the demand and penalties imposed are also set aside. All the Miscellaneous/Stay Applications stand disposed, as infructuous." 12.In view of the above observations, we hold that without bringing any concrete evidence against the appellant on record, the proceedings against the appellant are not sustainable, therefore, the show cause notice issued to the appellant is only on the basis of the assumption and presumption and investigation conducted by the Commissioner of Central Excise, Merrut, but without conducting any investigation at the end of the appellant, therefore, on the basis of evidences available on record, we hold that the appellant were manufacturing unit in the state of Jammu & Kashmir is entitled for benefit of the exemption Notification No. 56/2002-CE dated 14.11.2002 and claimed the refund of duty paid through PLA.*
>
> In view of this, we set aside the impugned order and allow the appeal with consequential relief if any."

As there is no adverse report against the appellant by the Jurisdictional Central Excise Authorities, therefore, we hold that the appellant M/s Aar Bee Industries is a manufacturer located in the state of Jammu & Kashmir and is entitled to claim refund of the duty paid in cash in terms of Notification No. 56/2002-CE dated 14.11.2002. Therefore, no proceedings are sustainable against the appellants. Accordingly, the impugned order is set-aside and allow the appeals with consequential relief, if any.

(Dictated & pronounced in the Court)

(Ashok Jindal)
Member (Judicial)

(C. L. Mahar)
Member (Technical)

G.Y.