# CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
# CHANDIGARH

REGIONAL BENCH - COURT NO. I

## Excise Appeal No. 60353 of 2023

[Arising out of Order-in-Appeal No. LUD-EXCUS-001-APP-193-2023 dated 14.03.2023 passed by the Commissioner (Appeals), CGST, Ludhiana]

**M/s SJS International** **......Appellant**
Saini Colony, Chhota Saipur,
Jalandhar, Punjab-144004

*VERSUS*

**Commissioner of CGST & Central Excise, Jalandhar** **......Respondent**
CGST Division-I, Central Revenue Building, Jalandhar,
Punjab-144001

**APPEARANCE:**

Shri Sudhir Malhotra, Advocate for the Appellant

Shri Shivam Syal, Authorized Representative for the Respondent

**CORAM: HON'BLE MR. P. ANJANI KUMAR, MEMBER (TECHNICAL)**

## FINAL ORDER NO.60477/2025

DATE OF HEARING: 12.03.2025
DATE OF DECISION: 07.04.2025

The appellants, M/s SJS International, filed this appeal E/60353/2023-SM challenging the order dated 14.03.2023 passed by Commissioner (Appeals).

2. Briefly stated the facts of the case are that officers of central excise visited the premises of the appellant from 19.11.2011 to 23.11.2011; shortage/ excess was found in finished products; accordingly, a show cause notice dated 15.05.2012 was issued to

the appellants; further, a corrigendum dated 02.03.2017 was issued to the appellants alleging that 1319.493 MT of raw material, totally valued at Rs.4,61,82,255/-, involving a CENVAT credit of Rs.47,56,772/- was issued to the appellants; the proposals in the show cause notice were confirmed by the original authority vide order dated 10.12.2019 along with equal penalty under Section 11AC and penalty of Rs.5000/- under Rule 25 of CENVAT Credit Rules.

3. Shri Sudhir Malhotra, learned Counsel for the appellants, submits that the show cause notice is barred by limitation as a show cause notice dated 17.06.2016 was issued on completion of investigation and corrigendum was issued on 02.03.2017. Learned Counsel for the appellants submits that the show cause notice is categorical in holding that the purchase of the raw material and inputs were got verified from the concerned divisional office and were found to be in order. He relies on the cases of Nizam Sugar Factory – 2006 (197) ELT 465 (SC) and Malleable Iron and Steel Casting Co. Pvt. Ltd. – 1998 (100) ELT 8 (SC) and submits that the subsequent show cause notice cannot be issued extending the limitation. He also submits that it was held in Omkar Textiles Mills Ltd. – 1999 (107) ELT 787 (T); Arulmigu Kumaragiri Spinning Mills Pvt. Ltd. – 2008-TIOL-1380-CESTAT-MAD and Kanam Foam Industries – 1993 (68) ELT 368 that show cause notice requires to be issued within 06 months of the Department coming to know of the facts.

4. Learned Counsel for the appellants submits also that the show cause notice was issued on 17.06.2016 and decided on 10.12.2019; Principal Bench vide Final Order No.59511-59720/2021 dated 25.11.2024 has set aside the impugned orders therein on the grounds that the order was passed beyond the stipulated period provided under sub-Section (11) of Section 11A of Central Excise Act, 1944; therefore, the impugned order is not sustainable.

5. Learned Counsel for the appellants submits further that the shortage is Raw materials was ascertained without taking in to account manufacturing losses, input contained in work-in-progress etc., as is evident by Para 4 of the Show Cause notice. He submits that as no evidence in the form of, at least, a statement/buyer of such alleged clandestinely cleared raw material was produced, demand cannot be sustained; the onus to prove clandestine removal is on the department. as held in L.R. Steel Union Pvt Ltd 1987(31) ELT 375(T) and Krishna @Company 1998(97) ELT 74(T).

6. Shri Shivam Syal, learned Authorised Representative, for the Revenue reiterates the findings of OIO and OIA.

7. Heard both sides and perused the records of the case. I find that in the impugned case, central excise officers visited the premises of the appellants on 19.11.2011 and they have taken around 04 years to complete the investigation and issued a show cause notice on 17.06.2016 on the alleged excess/ shortage found during the physical stock taking. They have further taken some time to issue a corrigendum dated 02.03.2017 alleging that the appellants have

clandestinely removed the raw materials on which CENVAT credit was taken. The show cause notice, demanding the CENVAT credit has been issued, on the basis of a calculation shown in the show cause notice. Apparently, the due allowance was not given, to the manufacturing losses and input contained in work in progress, as contended by the appellants. I find that this is not the correct manner to arrive at the quantity of raw material alleged to have been clandestinely removed. Moreover, I find that having alleged clandestine removal of raw material, Revenue has not questioned any of the transporters or buyer to establish that there was a clandestine removal of raw material. I understand that clandestine removal cannot be established with a mathematical precision. At the same time, I am of the considered opinion that clandestine removal cannot be alleged only on the basis of a mathematical formula or arithmetic calculation. Any such allegation needs to be termed as assumption/ presumption or conjecture/ surmise. It cannot be evidence in itself to uphold the alleged demand.

8. I find that the coordinate Bench of the Tribunal, in the matter of *Nova Petrochemicals* v. *CCE, Ahmedabad-II*, in its Final Order Nos. A/11207-11219/2013, dated 26-9-2013, held as under (in Para 40):

> *"After having very carefully considered the law laid down by this Tribunal in the matter of clandestine manufacture and clearance, and the submissions made before us, it is clear that the law is well settled that, in cases of clandestine manufacture and clearances, certain fundamental criteria have to be established by Revenues which mainly are the following:*
>
> *(i) There should be tangible evidence of clandestine manufacture and clearance and not merely inferences or unwarranted assumptions;*

> *(ii) Evidence in support thereof should be of:*
>
> *(a) Raw materials, in excess of that contained as per the statutory records;*
>
> *(b) Instances of actual removal of unaccounted finished goods (not inferential or assumed) from the factory without payment of duty.*
>
> *(c) Discovery of such finished goods outside the factory*
>
> *(d) Instances of sales of such goods to identified parties.*
>
> *(e) Receipt of sale proceeds, whether by cheque o by cash, of such goods by the manufacturers or persons authorized by him;*
>
> *(f) Use of electricity for in excess of what is necessary for manufacture of goods otherwise manufactured and validity cleared on payment of duty*
>
> *(g) Statements of buyers with some details of illicit manufacture and clearance;*
>
> *(h) Proof of actual transportation of goods, cleared without payment of duty*
>
> *(i) Links between the documents recovered during the search and activities being carried on in the factory of production; etc.*

9. I also find that there is considerable force in the submission of the appellants on legal issues that the show cause Notice is barred by limitation and the adjudication order was issued beyond the time period specified under Section 11A(11) of the Central Excise, Act, 1944. However, we find that the appellants have a strong case on merits and as such other issues are required to be considered.

10. In view of the above, the appeal is allowed.

(Order pronounced in the open court on 07/04/2025)

**(P. ANJANI KUMAR)**
**MEMBER (TECHNICAL)**

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