

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
CHANDIGARH

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REGIONAL BENCH – COURT NO. 1

**Appeal No. E/61900/2018**

[Arising out of OIO-CHD-GST-CEX-COM-06-23-2018 dated 29/08/2018 passed by the Commissioner (Appeals) of Central Excise-CHANDIGARH-II]

**Neeru Enterprises**

**: Appellant (s)**

6 Saleem Manzi Civil Lines  
Rampur, Uttar Pradesh-244901

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**Vs**

**CCE-Chandigarh-ii**

**: Respondent (s)**

Plot No. 19. Central Revenue  
Building, Sector 17-C,  
Chandigarh-160017

APPEARANCE:

Shri B. L. Narsimhan and Mr. Anurag Mishra, Advocate for the Appellant  
Shri Atul Handa, Authorised Representative for the Respondent

**With**

**Appeal No. E/60806/2018**  
**E/60059-60062/2019**

[Arising out of OIO-64-CE-CHD-II-2016 dated 25.05.2018 passed by the Commissioner of Central Excise and Service Tax-CHANDIGARH-II, OIA-JNK-EXCUS-000-APP-53-56-17-18 dated 27/10/2017, OIA-JNK-CEX-000-01-17-18 dated 17.07.2017 passed by the Commissioner (Appeals) of Central Excise-JAMMU & KASHMIR]

**M/s Abay Chemicals,**  
**Mr. Sudhanshu Agarwal**  
**Mrs. Himanshu Agarwal**  
**M/s Abay Chemicals,**  
**Mis Siddhant Chemicals**  
**Vs**

**: Appellant (s)**

**CCE-Chandigarh-ii**

**CCE-Jammu & Kashmir**

**: Respondent (s)**

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

**FINAL ORDER No. 60368-60373 / 2019**

Date of Hearing/Decision: 02.04.2019

***Per : Mr. Ashok Jindal***

The appellants are in appeals against the impugned orders wherein demand of recovery of erroneously refund claimed by M/s Abhay Chemicals under Notification No. 56/2002-CE dated 14.11.2002 was confirmed. Further, cenvat credit sought to be denied to M/s Siddhant Chemicals and M/s Neeru Enterprises, the recipient of the goods in question and penalties on the co-appellants.

2. The facts of the case are that M/s Abhay Chemicals is located in the state of Jammu & Kashmir and is manufacturing Menthol, Menthol flakes and De-Mentholised Oil and availing benefit under Notification No. 56/2002-CE dated 14.11.2002. Further, M/s Siddhant Chemicals and M/s Neeru Enterprises are located in the state of U. P. And procuring Menthol products manufactured by M/s Abhay Chemicals on payment of duty and availing cenvat credit.

3. The facts of the case are that an investigation was started at the end of the office of Commissioner of Central Excise, Meerut-II against various units located in their jurisdiction who were purchasing Menthol Solution and De-mentholised Oil from Jammu & Kashmir based units. The Meerut Commissionerate searched the premises of various commission agents and buyers as well as sellers of Menthol 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 Meerut 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 Meerut 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 jurisdictional 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 manufacture by the appellants. Therefore, by way of the impugned order, the cash refunded to the appellants, namely, Abhay Chemicals was sought to be demanded and cenvat credit availed by M/s Siddhant Chemicals & M/s Neeru Enterprises was denied and penalties on all the appellants were imposed. Against the said orders, the appellants are in appeals before us.

3. Ld. Counsel appearing on behalf of the appellants and submits that no investigation was conducted at the end of the appellants to ascertain the fact whether the appellant is manufacturer or not. Moreover, the case has been booked only on the basis of investigation

conducted by the Commissioner Merrut-II. He further submits that all the vehicles used for transportation alleged raw material/trucks and there cannot be 100% of consignments moved one place to another on papers. The existence of trucks itself prove the case of the appellant. Moreover, the entries of movement of trucks at excise toll post at Lakhanpur and Madhopur toll post Punjab certified that all the raw materials and manufactured goods have been crossed this toll borders which itself prove that raw material was received by the appellants and after manufacturing the goods were sold to the buyer located in the state of U.P. As these reports itself prove that raw material as well as finished goods has crossed the boarders, therefore, it cannot be said that the appellant has not manufactured the goods. It is also submitted that during the course of investigation, itself the appellants were allowed to continue their manufacturing activity, shows that the appellant was manufacturer during the impugned period. Otherwise, Revenue could not have allowed to continue the movements of trucks carrying raw material as well finished goods during the impugned period. He further submits that the appellant submitted the copy of GRs, Form 21, Form VAT-58, Toll receipts issued at Lakhanpur, copy of agreement between appellant and its supplier issued by the office of Deputy Commissioner Excise, Toll Post, Lakhanpur alongwith computerized list of consignments having (Truck No., quantity, date) imported by the appellant during the period which itself shows that the appellant had manufactured the goods during the impugned period. Moreover, the Central Excise Hq. Preventive Staff, Jammu visited their factory premises of appellant and found that the

appellant was manufacturer during the impugned period. He also submits that the insurance surveyor also physically verified the goods cleared by the appellants with regard to loss of material which substantiate clearance of the goods by the appellant. He further submits that the officers of the Department visited the factory premises of the appellant periodically and physically verified the stock and manufacturing activity and no adverse was reported. It is impossible to manufacture and export of the goods without purchase of raw material. He further submits that the appellant has installed DG sets and got the approval for installation of those DG sets from General Manager, DIC, Jammu and also got the consent of Pollution Control Board and its installation, Chief Engineer, Elect. Maintt. & R.E. have also granted permission to install the transformers against the sanctioned load. He also submits that report was sought from the preventive staff, Jammu by the Commissioner, Merrut-II ,with regard to the activity of the appellant and as per report dated 28.04.2010, it was opined that entries of raw material DIC officers was regularly verified purchase consignments, Range Officers time to time visit the factory and nothing adverse was reported. He was further submits that the appellant was operating under Notification No. 56/2002-CE dated 14.11.2002 and filing refund claim of the duty paid through PLA and all the refund claims have been sanctioned to then after due verification by the Jurisdictional Range Officer by passing speaking orders. He further submits that raw material received by the appellant were used in manufacture of goods by the buyers. The adjudicating authority has ignored the following facts:-

- (a) The certificate from Commercial Tax Officer, Jammu.
- (b) The certificate from General Manager, District Industries Centre, Jammu.
- (c) Permission for running the factory into three shifts throughout the year from Inspector of Factories and Boilers, Jammu.
- (d) Permission for installation of additional machinery for enhancing its capacity/ manufacturing additional product inter-alia on the condition that unit will operate on DG sets.
- (e) Annual financial statement in form ER-4 and Annual Installed capacity production.
- (f) The periodic returns submitted to inspector of Factories.
- (g) Annual returns relating to employee i.e. ESI & EPF return submitted to the State Government of Jammu & Kashmir.
- (h) The audited financial statement of the appellant for the year 2007- 2008, 2008-2009 and 2009-2010.
- (i) The certificate issued from Chartered accountant dated certifying total cost of the project of appellant.
- (j) The letter issued by the Inspector of Factories Jammu permitting installation of boiler.

4. It is also submitted that procedure under Section 9-D of Central Excise Act, has not been followed by the Ld. adjudicating authority wherein as in the case of ***CCE, Delhi-I vs. Kuber Tobacco Industries. reported in 2016 (338) ELT 113 (Tri. Del.)*** this Tribunal held that if the adjudicating authority is relying on certain statement then the witnesses is required to be called for examination in chief and thereafter, the adjudicating authority has to form the

opinion that the statements given by the witnesses are correct and offer for cross examination to the assessee. The same procedure has not been followed, therefore, the demand of duty cannot be confirmed against the appellants. Moreover, it is his submission that refund claim sanctioned under Notification No. 56/2002-CE dated 14.11.2002, have not been challenged by the Revenue, therefore, in the light of the decision of ***Flock India Pvt. Ltd. Reported in 2000 (120) ELT 285 (SC) and C.EX., Shillong Vs. Jellalpure Tea Estate – 2011 (268) ELT 14 (Gau.)***, the duty cannot be demanded from the appellants.

5. He also submitted that the Jurisdictional Commissioner has sent report to the Chief Commissioner dated 21.05.2010 and the same has not been considered by the adjudicating authority. Moreover, the show cause notice has been issued by invoking extended period of limitation, therefore, the same is not sustainable.

6. He also submitted that the department drew samples for final product on various occasions. Moreover, PBC checks were undertaken, he also submits that in case of Nanda Mint and Pine Chemical Ltd. , a similar show cause notice were issued and demand of duty was confirmed but this Tribunal in ***Appeal No. E/60052/2016 vide Final order No. 63177 / 2018*** set aside the demand and held that the said assessee is a manufacturer of goods.

7. On the other hand, the Id. AR reported the findings of the impugned order.

8. Heard the parties and considered the submission.

9. We find that in this case the sole allegation against the appellants are based on the investigation conducted 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 appellant and the appellant did not manufacture the goods. Consequently, they have not sold the goods and it was alleged that the appellant has not manufactured the goods at all.

10. We further take note of the fact that, the investigation was not conducted at the end of the appellants and whole case has been based on the investigation conducted at Commissioner Central Excise, Merrut-II. Without investigation, it cannot be held that the appellant was not manufacturer during the impugned period. Moreover, the entries of vehicles at the toll barriers also certified that the movements of raw material and finished goods. We further take note of the fact that the during the period of investigation itself, the appellants were allowed continue their activity by procuring inputs from UP based supplier and selling goods manufacturing to their buyers. During the course of investigation, itself shows that the allegation is only on the basis of the assumption and presumption, therefore, it cannot be held that the appellants were not manufactured the goods during the impugned period. Moreover, as per the report of Jurisdictional Commissioner to Chief Commissioner dated 21.05.2010 reveals 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 nonfunctional and Transporters who did not turn 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."

11. We further take of the fact that the similar issue on identical facts came up before this Tribunal in the case of Nanda Mint and Pine Chemicals Ltd. (Supra), wherein this Tribunal observed as under:

*"6. We find that in this case the sole allegation against the appellant 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 nonexistence. Therefore, commission agents never supplied inputs to the appellant and the appellant did not manufacture the goods. Consequently, they have not sold the goods and it was alleged that the appellant has not manufactured the goods at all.*

*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 turn 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 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 in the 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 Orders in 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.”*

12. In view of the above analysis, we hold that the appellant M/s Abhay Chemicals was the manufacturer during the impugned period and paid the duty on the goods manufactured by them, therefore, duty cannot be demanded on the allegation that the appellant was not

a manufacturer. Consequently, the cenvat credit can't be denied to the recipient of goods located in the State of U.P i.e. M/s Siddhant Chemicals and M/s Neeru Enterprises. Therefore, no penalty is imposable on the appellants.

In view of the above, we set aside the impugned orders and allow the appeals with consequential relief.

*(Dictated & pronounced in the Court)*

**(Ashok Jindal)**  
Member (Judicial)

**(C. L. Mahar)**  
Member (Technical)

G.Y.