CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL
CHANDIGARH

COURT NO. I

Excise Appeal No. 61008 of 2018

[Arising out of the Order-in-Original No. 28/CE/CHD-II/2016 dated 18/04/2016 passed by The Commissioner of Central Excise, Chandigarh.]

M/s Jay Ambey Corporation, **Appellant**
66B and 67A, Birpur,
SICP Industrial Complex, Bari Bharamana,
Jammu – 181 133.

Versus

The Commissioner of Central Excise **Respondent**
Plot No. 19, Sector 17-C,
Chandigarh.

APPEARANCE

Shri Pawan Kumar Pahwa, Advocate – for the appellant.

Shri Atul Handa, Authorized Representative (DR) – for the Respondent.

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

FINAL ORDER NO. 61238/2019

DATE OF HEARING : 04/09/2019.
DATE OF DECISION : 04/09/2019.

C.L. MAHAR :-

The appellant namely, M/S Jay Ambey Corporation is in appeal against the impugned order wherein demand of recovery of refund claimed by them under Notification No. 56/2002-CE dated 14/11/2002 was confirmed.

2. The facts of the case are that the appellant 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. 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 purchase of the raw materials. 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 these investigations 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 them the Cenvat credit availed on the purported purchases of goods from J&K based suppliers. On 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 as the farmers are non existence, it appears that no raw material has been supplied by commission agents to the appellant unit and in the absence of evidence of manufacture by the appellant. Therefore, by way of the impugned order, the cash refund of the duty to the appellant, was sought to be demanded. Against the said order, the appellant is in appeals before us.

3. Learned Counsel appearing on behalf of the appellant and submits that during the relevant period, the appellant have manufactured and cleared the final products on payment of duty

by duly accounting the same in their prescribed records. The goods were manufactured by the appellant from the Inputs procured by them from the suppliers based in U.P. on the invoices duly supported by the documents of the Commercial Tax department of the State of UP and Jammu & Kashmir in relation to transit of the goods and consignment note of the transporter. The appellant have made the payment against the said supply, made by Suppliers of Crude Mentha Oil by account payee cheques and such purchases have also been recorded in their books of accounts which has not been disputed by the department. The suppliers of the Crude Mentha Oil have accepted the supply of goods to the appellant in their statements given to the department. The said Inputs have been used in the manufacture of final products which have been ultimately cleared on payment of duty as is evident from the verification reports submitted by the Range officers in connection with the refund claims of the appellant during the relevant period. The transporters of the goods, in their statements given to the department, have accepted the transportation of the goods which was manufactured by the appellant to the buyers of the appellant based in U.P. The appellant has taken transit Insurance of goods sold to the buyers and in the insurance document it is clearly mentioned that goods insured is Menthol Crystal & DMO. The crossing of Transport vehicles for transport of raw material through the Toll Posts is also not disputed. Further, the Toll authorities have confirmed that the vehicles crossing the Toll are randomly checked. Given the quantum of the goods involved, probable chances of not verifying even single Truck carrying the goods of the appellant is highly improbable. There has been no physical verification carried out by the department of manufacturing unit of the appellant during the investigation, to verify the production of the goods at the factory of the appellant. The appellant had installed the D.G. Sets in the factory as additional source of electricity for back up of the manufacturing process in case of power cuts. The installation of D.G. Sets had been physically verified by the Manager Marketing and Projects from the office of Director of Industries and Commerce while granting the incentive package to the appellant on account of subsidy on purchase and installation of D.G. Sets 82.5 KVA. Chief Electrical inspector J&K Government had visited the appellant Unit on 10.03.2006 and 20.11.2007 for inspection of D.G. Sets installed in the Unit of the appellant and found the D.G. Sets fit for energization. The electricity consumption and fuel consumption clearly shows that the plant was operational during the impugned period. The unit has been visited by the Central Excise authorities on various occasions including two visits for conducting the audit of the unit where in the visit lasted for as long as 5 days which in itself confirms the fact that the unit was operational.

The unit has been visited and assessed by VAT Authorities periodically.

The ESI record and statement of Contribution of PF shows that the appellant had engaged various employees in the factory for production of goods. The unit/ plant has been visited by the Labour Authorities who have also certified the workers registers during their visit to the plant.

The range officers on various occasions in connection with the refund claims of the appellant have reported the appellant to have cleared the goods on payment of duty. 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 **Commissioner of Customs, New Delhi v/s Texcomash Export 2015(322) E.L.T. 601 (S.C.)**, the duty cannot be demanded from the appellant.

4. He also submitted that, the show cause notice has been issued by invoking extended period of limitation, therefore, the same is not sustainable.

5. 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 holding that the said assessee is a manufacturer of goods.

6. On the other hand, the learned Departmental Representative has supported the findings of the impugned order.

7. Heard the parties and considered the submission.

8. We find that in this case the sole allegation against the appellant is based on the investigation conducted by Commissioner of Central Excise, Meerut, 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.

9. We further take note of the fact that, the investigation was not conducted at the end of the appellant and whole case has been based on the investigation conducted at Commissioner Central Excise, Meerut-II. Without investigation, it cannot be held that the appellant was not the 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 Meerut-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 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 Meerut-II."*

10. 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, Meerut, 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, Meerut 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, Meerut 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 Meerut-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 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 Meerut-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, Meerut, 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."*
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> *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, Meerut, 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.*
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> In view of this, we set aside the impugned order and allow the appeal with consequential relief if any."

11. In view of the above analysis, we hold that the appellant M/s Jay Ambey Corporation 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.

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

(Operative part of the order pronounced in the open court.)

(Ashok Jindal)
Member (Judicial)

(C.L. Mahar)
Member (Technical)

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