CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
SOUTH ZONAL BENCH
CHENNAI

S.No.	Appeal No.	Appellant	Respondent
1.	E/266/2012	Sri Sathuragiri Match Company	Commissioner of Central Excise & Service Tax, Madurai
2.	E/267/2012	G. Nagarajan	-do-
3.	E/268/2012	V. Shenbagakumar	-do-
Arising out of Order-in-Appeal No.03-06/2012 dt. 17.01.2012 passed by Commissioner of Central Excise (Appeals), Madurai			
4.	E/269/2012	The President Match Company	-do-
5.	E/270/2012	G. Nagarajan	-do-
6.	E/271/2012	V. Shenbagakumar	-do-
Arising out of Order-in-Appeal No.07-12/2012 dt. 17.01.2012 passed by Commissioner of Central Excise (Appeals), Madurai			
7.	E/283/2012 E/CO/27/2012	Commissioner of Central Excise & Service Tax, Madurai	The President Match Company
8.	E/284/2012 E/CO/18/2012	-do-	G. Nagarajan
9.	E/285/2012 E/CO/19/2012	-do-	R. Kaliraj
10.	E/286/2012 E/CO/20/2012	-do-	V. Shenbagakumar
11.	E/287/2012 E/CO/21/2012	-do-	K. Ramaraj
12.	E/288/2012 E/CO/25/2012	-do-	G. Ananthappan
Arising out of Order-in-Appeal No.07-12/2012 dt. 17.01.2012 passed by Commissioner of Central Excise (Appeals), Madurai			
13.	E/290/2012 E/CO/28/2012	-do-	Sri Sathuragiri Match Company
14.	E/291/2012 E/CO/22/2012	-do-	G. Nagarajan
15.	E/292/2012 E/CO/23/2012	-do-	R. Kaliraj
16.	E/293/2012 E/CO/24/2012	-do-	V. Shenbagakumar
Arising out of Order-in-Appeal No.03-06/2012 dt. 17.01.2012 passed by Commissioner of Central Excise (Appeals), Madurai			
17.	E/42416/2014	Raja Match Works	Commissioner of Central Excise & Service Tax, Tirunelveli
18.	E/42417/2014	J. Srithar	-do-
19.	E/42418/2014	G. Nagarajan	-do-
20.	E/42419/2014	V. Shenbagakumar	-do-
21.	E/42421/2014	Kanthakumar Match Works	-do-
22.	E/42422/2014	J. Srithar	-do-
23.	E/42423/2014	G. Nagarajan	-do-
24.	E/42424/2014	V. Shenbagakumar	-do-
Arising out of Order-in-Appeal No.91-100/2014dt.07.08.2014 passed by Commissioner of Central Excise (Appeals), Madurai			

Appeal Nos.E/266-271/2012
E/283-288/2012
E/290-293/2012
E/CO/19-25,27,28/2012
E/42416-42419/2014
E/42421-42424/2014

Appearance :

Shri S. Venkatachalam, Advocate
For the Assessees

Shri S. Govindarajan, AC (AR)
For the Revenue

CORAM :

Hon'ble Ms.Sulekha Beevi, C.S., Member (Judicial)
Hon'ble Shri Madhu Mohan Damodhar, Member (Technical)

Date of hearing / decision :17.07.2018

FINAL ORDER No. 42084-42107 / 2018

Per Bench

All these appeals since involving identical disputes, they are taken up for common disposal. For the sake of convenience, the parties involved hereinafter are referred to as assessee, co-noticees and the department.

2.1 The assessees in these batch of appeals are M/s.Sri Sathuragiri Match Co. (E/266/2012), The President Match Co. (E/269/2012), Raja Match Works (E/42416/2014) and Kanthakumar Match Works (E/42421/2014).

2.2 The appeals E/267, 270/2012, E/42418, 42423/2014 have been filed by Shri G. Nagarajan (Partner of President Match Co. and Partner in Shanmugam Match Company).

2.3 Appeals E/268, 271/2012, E/42419/2014, E/42424/2014 have been filed by K. Shenbagakumar (Partner in President Trading Co. and office-in-charge of the group companies concerned)

2.4 Appeals E/42417/2014 and E/42422/2014 have been filed by J. Srithar (Partner of Raja Match Works and Kanthakumar Match Works).

2.5 Above named persons have filed appeals against the duty liabilities and penalties confirmed by lower appellate authorities in each case.

2.6 Revenue is aggrieved by the setting aside / reduction of differential duty in respect of President Match Co. & Sri Sathuragiri Match Co. and setting aside / reduction of penalties in respect of the related Managing Partners / Partners of the concerned assessees and other co-noticees. Hence Appeal Nos. E/283-288/2012, E/290-293/2012 by Revenue.

3. The proceedings in all these appeals have emanated out of the common allegation that the assessee President Match Co. &Sri Sathuragiri Match Co. had suppressed production of match bundles in their factory, removed chemical dipped splints to various group units and other units without payment of duty, got them converted into match bundles by those units which were cleared without payment of duty, by accounting their numbers in the name of handmade match units or selling them through the trading concern, namely, President Trading Co. In support of these allegations, the concerned SCNs have alluded to a pocket note book maintained by one Shri R.Kaliraj allegedly the common office-in-charge of all these assesses, from which details of unaccounted production of matches were apparently obtained. It is also alleged that there was suppression of production of matches in these units. These proceedings culminated in Order in Original (OIO) by the original authorities which confirmed the proposals made in the respective SCNs for demand of differential duty liability with interest thereon and imposition of penalties on the noticees therein. On appeal, proceedings involving President Match Co. and Sri Sathuragiri Match Co., the Commissioner (Appeals) vide orders impugned, reduced the demand of duty as also ordered setting aside / reduction of penalties imposed on various co-

noticees. However, in respect of the proceedings against M/s.Raja Match Works and Kanthakumar Match Works the orders of the original adjudicating authorities were upheld by the Commissioner (Appeals) in the orders impugned. The details of the impugned orders and disputed amounts along with related appeals as submitted by the Ld. counsel are appended as under :

Sl. No.	Appeal No.	Appellants	Order in Original No & Date	Order in Appeal No & Date	Duty	Penalty	Demands as per OIO		Demands as per OIA	
							Duty	Penalty	Duty	Penalty
1	E/269/12	The President Match Company	10/2010 CE dt.31.8.10	07-12/12 dt.17/1/12	19,61,377	19,61,377	25,73,046	25,73,046	19,61,377	19,61,377
2	E/270/12	G.Nagarajan	10/2010 CE dt.31.8.10	07-12/12 dt.17/1/12	-	2,00,000	-	25,73,046	-	2,00,000
3	E/271/12	V.Shenbagakumar	10/2010 CE dt.31.8.10	07-12/12 dt.17/1/12	-	2,00,000	-	25,73,046	-	2,00,000
4	E/283/12	CCE Madurai [against dropping of demand]	10/2010 CE dt.31.8.10	07-12/12 dt.17/1/12	6,11,669	-	-	-	-	-
5	E/284/12	CCE Madurai	10/2010 CE dt.31.8.10	07-12/12 dt.17/1/12	-	For Enhancement of Penalty	-	-	-	-
6	E/286/12	CCE Madurai	10/2010 CE dt.31.8.10	07-12/12 dt.17/1/12	-	For Enhancement of Penalty	-	-	-	-
7	E/287/12	CCE Madurai	10/2010 CE dt.31.8.10	07-12/12 dt.17/1/12	-	For Enhancement of Penalty	-	5,00,000	-	Nil
8	E/288/12	CCE Madurai	10/2010 CE dt.31.8.10	07-12/12 dt.17/1/12	-	For Enhancement of Penalty	-	50,000	-	Nil
9	E/285/12	CCE Madurai	10/2010 CE dt.31.8.10	07-12/12 dt.17/1/12	-	For Enhancement of Penalty	-	10,00,000	-	25,000
10	E/266/12	Sri Sathuragiri Match Company	09/2010 CE dt.30.8.10	03-06/12 dt..17/1/12	4,27,061	4,27,061	11,30,337	11,30,337	4,27,061	4,27,061
11	E/267/12	G.Nagarajan	09/2010 CE dt.30.8.10	03-06/12 dt..17/1/12	-	50,000	-	11,30,337	-	50,000

Sl. No.	Appeal No.	Appellants	Order in Original No & Date	Order in Appeal No & Date	Duty	Penalty	Demand as per OIO		Demand as per OIA	
					-		Duty	Penalty	Duty	Penalty
12	E/268/12	V.Shenbagakumar	09/2010 CE dt.30.8.10	03-06/12 dt..17/1/12	-	50,000	-	11,30,337	-	50,000
13	E/290/12	CCE Madurai [against dropping of demand]	09/2010 CE dt.30.8.10	03-06/12 dt..17/1/12	7,03,276	-	-	-	-	-
14	E/291/12	CCE Madurai	09/2010 CE dt.30.8.10	03-06/12 dt..17/1/12	-	For Enhancement of Penalty	-	-	-	50,000
15	E/293/12	CCE Madurai	09/2010 CE dt.30.8.10	03-06/12 dt..17/1/12	-	For Enhancement of Penalty	-	-	-	50,000
16	E/292/12	CCE Madurai	09/2010 CE dt.30.8.10	03-06/12 dt..17/1/12	-	For Enhancement of Penalty	-	5,00,000	-	10,000
17	E/42416/14-DB	Raja Match Works	40/2013 CE DT.29.10.13	91-100/14 dt.7/8/14	2,01,466	4,02,932	2,01,466	4,02,932	2,01,466	4,02,932
18	E/42418/14-DB	G.Nagarajan	40/2013 CE DT.29.10.13	91-100/14 dt.7/8/14	-	2,01,466	-	2,01,466	-	2,01,466
19	E/42419/14-DB	V.Shenbagakumar	40/2013 CE DT.29.10.13	91-100/14 dt.7/8/14	-	2,01,466	-	2,01,466	-	2,01,466
20	E/42417/14-DB	J.Srithar	40/2013 CE DT.29.10.13	91-100/14 dt.7/8/14	-	2,01,466	-	2,01,466	-	2,01,466
21	E/42421/14-DB	Kanthakumar Match Works	41/2013 CE dt.30.10.13	91-100/14 dt.7/8/14	65,915	1,31,830	65,915	1,31,830	65,915	1,31,830
22	E/42423/14-DB	G.Nagarajan	41/2013 CE dt.30.10.13	91-100/14 dt.7/8/14	-	65,915	-	65,915	-	65,915
23	E/42424/14-DB	V.Shenbagakumar	41/2013 CE dt.30.10.13	91-100/14 dt.7/8/14	-	65,915	-	65,915	-	65,915
24	E/42422/14-DB	J.Srithar	41/2013 CE dt.30.10.13	91-100/14 dt.7/8/14	-	65,915	-	65,915	-	65,915

4. Today when the matter came up for hearing, on behalf of the assessees and the co-noticees, Ld. Advocate Shri S. Venkatachalam made common submissions as under :

i) Impugned orders have been passed in violation of principles of natural justice.

ii) Assessees in the cases involving Sri Sathuragiri Match Co. and other co-noticees have filed grounds of appeal running into 74 pages and 307 pages of documents and worksheets to disprove the allegations made in the SCN and confirmed in the related corresponding orders-in-original.

iii) Similarly, the proceedings relating to President Match Co. and others, 96 pages and 307 pages of documents and worksheets had been filed.

So also, the proceedings relating to Raja Match works and others, 52 pages and 307 pages of documents and worksheets had been filed.

In the proceedings relating to Kanthakumar Match Works & Others, nearly 54 pages and 307 pages of documents and worksheets had been filed.

However, none of the contentions and documents submitted by these noticees were considered by the lower authorities. In the result, the orders of both adjudicating authority and the Commissioner (Appeals) are prejudiced orders which have been passed without taking into consideration the various submissions, contentions and arguments put forth in the documents / worksheets submitted by the noticees.

iv) In proceedings related to President Match Co. and others, the assessee vide communication dt. 09.07.2009, had requested for cross examination of 7 witnesses and examination of 6 witnesses. However, cross examination of only one two witnesses was allowed.

In proceedings related to Sri Sathuragiri Match Co. and others, the assessee vide communication dt. 09.07.2009 they had requested for cross examination of 6 witnesses and examination of 6 witnesses. However, the adjudicating authority has allowed cross examination of only two witnesses for the reason that others are co-noticees.

In proceedings related to Raja Match works & others, the assessee vide communication dt. 08.07.2009 they had requested for cross examination of 5 witnesses and examination of 6 witnesses. However, no cross examination was allowed.

In proceedings related to Kanthakumar Match Works & Others also, no cross examination was allowed in spite of specific request made on 8.7.2009 for cross examination of 5 witnesses and examination of 6 witnesses.

Statements had been recorded from all the persons in respect of whom cross examination had been requested. Hence reliance on the statements of such persons without acceding to their request for cross examination is bad in law as has been consistently held by plethora of decisions of higher appellate forums for example, the Hon'ble High Court of Madras in the case of *Thilagarathinam Match works Vs CCE Tirunelveli – 2013 (295) ELT 195 (Mad.)* has held that persons who gave statements and who are witnesses alone are liable to be cross-examined by the petitioner and that once certain reports or statements are relied upon in an enquiry, it is fundamental that the author of the report and the persons from whom such statements are allegedly recorded should be made available for cross-examination. Ld. Counsel also placed reliance of decision of Hon'ble Punjab and High Court in the case of *G-Tech Industries Vs UOI* - 2016 (339) ELT 209 (P&H) wherein the Hon'ble High Court held that it is trite and well-settled position in law that statements recorded behind the back of an assessee cannot be relied upon, in adjudication proceedings, without allowing the assessee an opportunity test the said evidence by cross examining the makers of the said statements.

v) The documents which have been referred to in the statements and copy of the SCN have nonetheless not been relied upon in the SCNs and in fact these documents have been returned to the assessee as unrelied. For example, in the statement dt. 21.01.2008 of Sri Shenbagakumar reference has been made to many documents such as S.Nos.1-1/2, 2/2, 22, 30, 2-3/3, 3-1/3, 2/3, 3/3, 23, 28, 4-1/2, 2/2, 17/1/2, 2/2 21, 29, 5, 64, 6, 24, 7, 8 to 12 (24 files) and 46 (Mahazar drawn at Vilampatti office) and those documents are returned.

vi) The allegations are merely based on statements. Statements are stereotype in nature with identical usage of words, sentence formations etc. No persons while explaining a particular issue will use the same word and sentence formation will not be of same.In this regard, Ld. Counsel relies upon the decision of Tribunal in the case of *Nabha Steels Ltd. Vs CCE Chandigarh* - 2016 (344) STR 561 (Tri.-Chan.) which has inter alia held that identically worded statements cannot be relied upon.

(vii) Units like Appu Match Works, Raja Match Works, Balaguru Match Works, Kandakumar Match Works etc. do packing on duty paid match splints which does not amount to manufacture. In fact, some the units like Appu Colour Match works, Eshwari Match Works, Jai Hind Matches and Shanmuga Match Works were manufacturing handmade matches. The President Trading Co. is the trading unit of the group who procure machine made matches and handmade matches from these concerns and sell it in the market. The presumption that matches were removed under the invoices of President Trading Co. is not based on evidence. None of the documents of President Trading Co. are relied upon in the SCN.

viii) The basic question whether assessees purchased enough raw materials particularly Pottasium Chlorate and Sulphur has not been gone into. These two chemicals are controlled items which cannot be purchased in excess of the quota allotted by the Police Department, hence there should be corroborative evidence to establish that the assessees concerned had obtained or otherwise laid their hands upon the quantities of Pottasium Chlorate and Sulphur over and above quantities that were allotted to them. These two chemicals are vital ingredients which require for the manufacture of the match splints. Hence non-availability of such evidence in the concerned SCNs will only mean that the allegation of having undeclared production quantities for clandestine removals was not established by the department.

ix) There is also no evidence for sale of finished goods. No enquiry was conducted to ascertain whether purchasers of the alleged finished goods have purchased handmade boxes or machine made boxes. It is also submitted that only one person namely Shri R Kaliraj had maintained accounts of various units and he had written the accounts as per his convenience which only resulted in creating suspicion in the minds of investigating officers. It is settled law that suspicion howsoever strong cannot take the place of proof. Pocket note books relied upon are therefore totally unreliable. Therefore no evidence to prove that dipped splints were delivered to Raja Match works and Kanthakumar Match Works in excess of the accounted quantity.

x) In respect of Raja Match Works and others, the demand in show cause notice is only for the periods March 2006 to February 2007 whereas in the chart furnished in page 17 of the SCN the period mentioned is April, July and August 2007. Hence there is a mismatch even in the computation of the demand. So also in the case of Kanthakumar Match Works and others, in the SCN the demand is only for the period December 2006 to February 2007 whereas in the chart furnished in pages 16 & 17 of the SCN, the period mentioned is April to July 2007.

xi) It is submitted that along with normal brands manufactured by these assessees, they also manufactured matches for ITC Ltd. However, due to quality problem, the inspection group of ITC had asked for repacking which resulted in packing of same goods twice and as the assessee had to pay wages for repacking, the same was entered in the slip. However, the assessees entered actual quantity in the RG.1 and hence there is difference in production of match bundles.

xii) There was no shortages of quantity in any of the assessee's unit on the dates of visit of the officers. No proper stock taking was conducted by the officers and the units of Raja Match Works and Kanthakumar Match Works were not at all visited by the officers.

xiii) Coming to the department Appeal E/283/2012 filed against M/s.President Match Co., Ld. counsel submits that duty amount involved is only Rs.6,11,699/- which is below the prescribed limits for filing appeals before Tribunal as per the litigation policy of the Government. In the case of Sri Sathuragiri Match Company, the department has come in Appeal E/290/2012 against dropping of duty demand of Rs.7,03,276/- which is also below the minimum prescribed limits for filing appeals. In Galaxy Match Company similar orders were passed by the Commissioner (Appeals) in Order-in-Appeal No.94-98 & 124/2011 dt. 24.01.2012 and against which department had filed appeal, E/289/2012 which however was dismissed as withdrawn vide Final Order No.41425/2016 dt. 18.08.2016. The present appeals filed by the department also deserve to be dismissed for the same reasons.

xiv) Further, the averments made in the grounds of appeal are actuallyincorrect. There are no delivery notes / chitsavailable for the entire period of demand and there is no such allegation in the SCN. So also, the averment in grounds of appeal that assessee had obtained permission from department to send dipped flints to Shanmuga Match Works is not proved and there is no such allegation in the SCN.

xv) Department filed appeal against orders of the Commissioner (Appeals) setting aside / reduction of penalties in respect of some of the co-noticees does not have merit. In any case, as per the arguments already made even for the remaining amount, there cannot be any duty liability in case the various contentions and submissions made by them are taken into account.

xvi) For these reasons, Ld. counsel prays for remand of the matter with specific directions that the documents / worksheets provided by them earlier should be taken into account along with other matters made before this forum.

5. On the other hand, Ld. A.R Shri S. Govindarajan supports the impugned orders in respect of Raja Match Works and Kanthakumar Match Works. However, in respect of President Match Company and others, Revenue is aggrieved with the setting aside / reduction of penalties and also against reduction of duty liability. He also made the following submissions :

i) In respect of M/s.Raja Match Works and M/s.Appu Colour Match Works, M/s.President Match Company had obtained permission from the jurisdictional Divisional Officer to send the dipped splints for conversion into match bundles and subsequent clearance on payment of duty. Unaccounted dipped splints were also sent for conversion.

ii) M/s.Sri Rama Match Works and M/s.Universal Match Works purchased duty paid dipped splints and also received non-duty paid dipped splints.

iii) The production arising from non-duty paid / unaccounted dipped splints was not accounted and cleared without payment of duty to M/s.President Trading Company, a part of the respondent's group, or accounted as hand-made matches in the accounts of M/s.Shanmugha Match Works for ultimate clearance to the trading company.

iv) M/s.Sri Guru Match Works, M/s.Sri Rama Match Works and M/s.Universal Match Works have carried out such transactions with the pre-condition that the unaccounted match bundles would be cleared only to M/s.President Trading Company and the sale proceeds would be received only in cash.

v) The payments for duty paid removals are paid by cheque.

vi) These facts are admitted in the statements given before the investigating officers.

vii) Documentary evidence such as delivery notes / chits and pocket note book corroborate the facts admitted in the statements.

viii) The evidence also established the control of the respondent M/s.President Match Company over the suppression of production and ultimate clearances from the other five companies.

ix) The dipped splints were cleared with permission / on payment of duty to the other units only to facilitate the clearance of unaccounted raw material and subsequent clandestine removal of match bundles.

x) M/s.President Match Company has controlled the entire operation from supply of raw material, conversion and transportation of the finished products and cannot be absolved of duty liability by treating them as mere suppliers of raw material.

xi) Case law relied on by the Commissioner (Appeals) to hold that the respondent is a mere supplier of raw material and not a manufacturer is on entirely different facts and hence cannot be applied as precedents. Reliance is placed on the Hon'ble Supreme Court judgment in the case of Sri Kumar Agencies reported in 2009 (13) STR 13 wherein the Hon'ble Apex Court has held that precedents are to be applied only after discussion of similarity of facts.

6. Heard both sides and have gone through the facts of the case.

6.1 We find merit in the contentions of the Ld. Advocate that large quantum of documents / worksheets have not been considered by the lower authorities. We do not find any detailed analysis of these documents in the impugned orders. On the other hand, while the orders of the original authority in these cases are found to be more or less a reproduction of the allegations contained in the respective show cause notices and a mechanical confirmation of the proposals made therein. There is no attempt to sift, let alone apply the test of evidence or reason. We are also unable to fathom why cross examination has been denied in respect of persons from whom statements had been recorded, only on the grounds that they were co-noticees. While there has been some attempt made by the lower authorities concerned in respect of The President Match Co. and Sri Sathuragiri Match Co. and analyse the contentions of the concerned noticees and evidence put forth, which has in fact resulted in rejection of some part of the duty demand, the upholding of the remaining portion of the duty demands by these authorities has been done without required level of analysis or reasoning.

6.2 In the case of Raja Match Works and Kanthakumar Match Works, we find that the entire dispute has been disposed of with a finding constituting just two paragraphs. If this is not peremptory disposal of appeals, without any application of mind, then what it is ?

6.3 In the light of discussions and findings herein above, we are of the considered opinion that the appellants have not been given sufficient opportunity and consideration in the proceedings before both the lower authorities. This being so, in the interests of justice, it would be appropriate to remand the appeals filed by the assessees for de novo consideration to the original adjudicating authority as prayed by the Ld. Advocate on record. So ordered. In such de novo proceedings, the adjudicating authority concerned shall take cognisance of and analyse, the documents / worksheets claimed to have been submitted by the noticees in the original stage of adjudication and arrive at reasoned findings thereof. The adjudicating authority concerned shall also take note of the contentions of the Ld. Advocate in para (4) of this order. The request for cross examination of the persons from whom statements had been recorded should be re-examined and permitted as per law and as per the decisions of higher appellate forums on the same. The noticees shall be given sufficient opportunities to present their case including submission of additional documents / contentions if any.

6.4 Coming to the department appeals, we find that the amounts involved in these appeals are below the prescribed monetary limits under the Litigation Policy of the Government. We find merit in the submission of Ld. Advocate that in an identical case relating to *Galaxy Match Company* (Final Order No. 41425/2016 dt. 18.08.2016) the department appeal was dismissed as withdrawn under the Litigation Policy. Applying the same ratio, the appeals filed by the department will also similarly require to be dismissed on monetary limits. So ordered.

7. To sum up –

- Appeal Nos.E/266-271/2012, E/42416-42419/2014, E/42421-42424/2014 filed by assessees are allowed by way of remand on above terms.
- Appeal Nos. E/283-288/2012, E/290-293/2012 filed by department are dismissed on monetary limits under the Litigation Policy.
- The cross objections filed by assessees in department's appeals are disposed.

(dictated and pronounced in Court)

(Madhu Mohan Damodhar)
Member (Technical)

(SulekhaBeevi C.S)
Member (Judicial)

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