

**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHENNAI**

Regional Bench – Court No. IV

Excise Appeal No. 491 of 2011

(Arising out of Order-in-Original No. 18/2011 dated 29.07.2011 passed by the Commissioner of Central Excise, Chennai-I Commissionerate, 26/1, Mahatma Gandhi Road, Nungambakkam, Chennai – 600 034)

M/s. Central Machine Shop, Thiruvotriyur, : **Appellant**
(A Division of Union Carbide India Ltd.)
(Presently known as M/s. Eveready Industries India Ltd.)
1075, Thiruvotriyur High Road, Chennai – 600 019

VERSUS

The Commissioner of G.S.T. & Central Excise, : **Respondent**
Chennai North Commissionerate,
26/1, Mahatma Gandhi Road, Nungambakkam,
Chennai – 600 034

WITH

Excise Appeal No. 492 of 2011

(Arising out of Order-in-Original No. 18/2011 dated 29.07.2011 passed by the Commissioner of Central Excise, Chennai-I Commissionerate, 26/1, Mahatma Gandhi Road, Nungambakkam, Chennai – 600 034)

M/s. Metal and Ores Co., Guindy, : **Appellant**
(A Division of Union Carbide India Ltd.)
(Presently known as M/s. Eveready Industries India Ltd.)
1075, Thiruvotriyur High Road, Chennai – 600 019

VERSUS

The Commissioner of G.S.T. & Central Excise, : **Respondent**
Chennai North Commissionerate,
26/1, Mahatma Gandhi Road, Nungambakkam,
Chennai – 600 034

APPEARANCE:

Shri. Raghavan Ramabadrn, Advocate for the Appellant

Shri. B. Balamurugan, Authorized Representative for the Respondent

CORAM:

HON'BLE MR. MADHU MOHAN DAMODHAR, MEMBER(TECHNICAL)
HON'BLE MR. P. DINESHA, MEMBER (JUDICIAL)

FINAL ORDER NOS. 40683-40684 / 2019

DATE OF HEARING: 12.03.2019

DATE OF DECISION: 12.03.2019

PER MADHU MOHAN DAMODHAR :

The facts of the case are that M/s. Central Machine Shop, presently known as M/s. Eveready Industries India Ltd., (hereinafter referred to as 'M/s. CMS') were manufacturers of Battery Making/Manufacturing Machineries, Parts and Components thereof.

2.1 On 05.03.1992, Central Excise Officers of Preventive Unit of erstwhile Madras-III Division visited the premises of one M/s. Metal and Ores Co. (hereinafter referred to as 'M/s. MOC'). At the time of visit, the officers found in the premises a number of machineries packed in wooden and gunny cases. From the enquiries conducted it appeared that :

- (i) The machineries were battery making machineries belonging to M/s. CMS.
- (ii) M/s. MOC did not have any knowledge of the nature of the said goods and that they had not obtained any permission from their jurisdictional Excise authorities to receive and store the same in their premises.
- (iii) M/s. CMS used to clear such machineries and parts to M/s. MOC under delivery challans of the former without payment of duty.
- (iv) The machineries and parts were received for storage purposes. The goods were to be sent back to M/s. CMS whenever required by them under delivery challans with endorsement "stored goods returned as per the letter reference"

2.2 It appeared that the impugned goods had been cleared without payment of duty from the premises of M/s. CMS. The said goods were placed under seizure on 10.06.1992.

2.3 In the statements dated 10.03.1992 and 10.06.1992, Shri. S. Thiagarajan, Cost Accountant of M/s. CMS, *inter alia* stated that :

- (a) Due to shortage of space at M/s. CMS, machineries/parts had been sent to M/s. MOC. They had also sent certain old machineries received by them for repair/re-conditioning;

- (b) Most of the machineries detained at M/s. MOC were fully finished and some of them required only minor finishing touches; some of them were received for repairs;
- (c) They cleared machineries only to their group companies and not to any outsiders;
- (d) He furnished the ground plan of M/s. MOC with endorsement by the Range Officer, Range V-B as "Approved the portion marked 'A' for storing machineries";
- (e) No documentation was done for storage of goods as there was an approval by the Superintendent in the ground plan of Guindy unit. M/s. CMS paid duty on the new machineries manufactured by them and stored at Guindy on the notional value and they would pay appropriate duty on the actual value at the time of clearance of complete machineries after adjusting the duty paid by them.

3. The Department took the view that the endorsement in the ground plan of Guindy unit by the Superintendent did not appear to show that permission was accorded to M/s. CMS to remove and store their non-duty paid goods at the premises of M/s. MOC; that the provisions of Rule 47 of the Central Excise Rules, 1944, as it stood at that time, did not contain any provision to permit such storage in a place outside the factory premises in which such goods were manufactured; that verification also revealed that M/s. CMS have not furnished appropriate value of the goods, but have given only notional value of certain goods; that therefore it appeared that the goods were removed without payment of duty and contravening certain Central Excise provisions.

4.1 Accordingly, a Show Cause Notice dated 04.09.1992 was issued to M/s. CMS *inter alia* proposing demand of differential duty of Rs. 14,24,560/- , confirmation and adjustment towards appropriate duty payable of an amount of Rs. 16,42,425/- paid by M/s. CMS on provisional basis based on notional value, confiscation of goods seized from the premises of M/s. MOC and imposition of penalty under Rule 173Q of the Central Excise Rules, 1944 on M/s. CMS and under Rule 209A of the Central Excise Rules, 1944 on M/s. MOC. Subsequently, a corrigendum to the Show Cause Notice was issued whereby the duty demanded was worked out as Rs. 15,65,921.19/- and value of seized goods was indicated as Rs. 90,77,804/-.

4.2 In the first round of adjudication, the adjudicating authority vide an Order dated 15.11.1993 *inter alia* demanded the sum of Rs. 15,12,454/- from M/s. CMS, confirmed the duty of Rs. 16,42,425/- already paid by them and adjusted the same against the above demand, confiscated the seized goods; however, gave an option to redeem the said goods on payment of fine of Rs. 1.5 Lakhs in lieu of confiscation and ordered enforcement of Bank Guarantee to the extent of Rs. 12 Lakhs. Other seized goods valued at Rs. 3,09,958/- were held not liable for confiscation. Penalty of Rs. 3 Lakhs was imposed on M/s. CMS under Rule 173Q *ibid* and penalty of Rs. 30,000/- was imposed on M/s. MOC under Rule 209A *ibid*.

5.1 In appeal, the Tribunal vide Final Order No. 1452/2000 dated 16.10.2000 set aside the order under appeal and remanded the matter back to the Original Authority for *de novo* adjudication with certain directions. In *de novo* adjudication, the Commissioner of Central Excise vide the impugned Order No. 18/2011 dated 29.07.2011 found that in terms of the Tribunal Final Order dated 16.10.2000, the issue before him was to decide :

(a) Whether the goods which were held to be excisable are indeed excisable or not in the light of the submissions made by M/s. CMS; and

(b) To determine the conduct on the part of M/s. CMS as to whether any mala fide existed.

5.2 The adjudicating authority *inter alia* held that removal of the goods in dispute without payment of duty cannot be deemed to have taken place with the knowledge and permission of the Department and once again confirmed the demand of Rs. 15,12,454/- and adjusted the said demand from Rs. 16,42,425/- being the excise duty paid by M/s. CMS on provisional basis. The seized goods valued at Rs. 11,29,741/- were confiscated and redemption fine of Rs. 1.5 Lakhs was imposed in lieu of confiscation; the said fine was appropriated from an amount of Rs. 1.5 Lakhs already paid by M/s. CMS while taking possession of the said goods earlier. With regard to the other seized goods valued at Rs. 76,38,105/-, the adjudicating authority held that the goods are liable for confiscation under Rule 173Q *ibid*, but as the goods were released provisionally pending adjudication in terms of Rule 206(3) of the Central Excise Rules, 1944, he ordered appropriation of an amount of Rs. 12 Lakhs which was already recovered by encashing the Bank guarantee furnished by M/s. CMS. Penalty of Rs. 3 Lakhs under Rule 173Q *ibid* was imposed on M/s. CMS and penalty of Rs. 30,000/- under Rule

209A ibid was imposed on M/s. MOC. Hence, the appellants are once again before the Tribunal in Appeal Nos. E/491/2011 and E/492/2011.

6. When the matter came up for hearing, on behalf of the appellants, Ld. Advocate Shri. Raghavan Ramabadrn made oral and written submissions which are broadly summarized as under :

- (i) The clearance of the impugned goods for storage purposes is authorized by the Department. This can be seen from the attestation of the Superintendent, Madras V Range in the layout of Guindy unit. This fact was intimated to the Department vide the appellant's letter dated 16.03.1992. It is not in dispute that the impugned goods were received back by M/s. CMS for further processing and then cleared on payment of appropriate excise duty. Thus, excise duty payable on the impugned goods stands paid at the time of clearance from the factory. In view of the above, clearance of goods to Guindy unit for storage purposes cannot be said to be clearance without payment of excise duty.
- (ii) Even assuming the clearance of non-duty paid goods i.e., without payment of duty is not permitted by the Department, it is merely a procedural lapse. Such a technical lapse does not warrant confiscation of goods or imposition of penalty under Rule 173Q of the Central Excise Rules.
- (iii) The impugned Order-in-Original holds that the impugned goods were liable for confiscation on the only ground that M/s. CMS has cleared the goods for storage without the express permission of the Department. This finding is contrary to the remand direction of the Tribunal.
- (iv) It is not disputed that the appellant clears the machineries only to their sister units. The excise duty paid by M/s. CMS would be available as MODVAT Credit in the hands of the sister units. This being the case, M/s. CMS achieves no benefit by suppressing the fact of clearances with intention to evade payment of excise duty. Thus, the entire exercise is revenue neutral and therefore, *mala fide* intention cannot be alleged on the assessee. It is a settled position that *mala fide* intention cannot be attributed to the assessee in a revenue neutral situation. Reliance is placed on the following decisions :

a. *M/s. Nirlon Ltd. Vs. C.C.E. – 2015 (320) E.L.T. 22 (S.C.);*

b. *C.C.E. Vs. M/s. Tenneco RC India (P) Ltd. – 2015 (323) E.L.T. 299 (Mad.)*

(v) It follows that the impugned Order-in-Original holding that the impugned goods are liable for confiscation is not sustainable and penalty is not imposable.

(vi) The impugned goods were cleared from the appellant's Tiruvottiyur factory between 29.06.1990 and 20.02.1992. The impugned Show Cause Notice was issued only on 04.09.1992 and therefore, the demand of Rs. 14,16,079/- pertaining to the period from 29.06.1990 to 31.01.1992 is barred by limitation. Extended period of limitation is not invocable since no *mala fide* intention can be attributed on the appellant for the reasons stated *supra*.

(vii) The remand order of the Tribunal required the adjudicating authority to decide whether M/s. CMS had *mala fide* intention or not based on the procedure followed by them, viz., entries being made in RG 1 and other accounts. The Ld. C.C.E., however, acted beyond the remand order and has held that M/s. CMS acted with *mala fide* intention on the ground that the Gate pass were not issued though the entries were made in the RG 1. Thus, while the remand order requires determination of the *bona fide* of M/s. CMS based on the procedure followed by them, the Ld. C.C.E. had concluded the intention of M/s. CMS based on the procedure not followed by them. Thus, the impugned Order-in-Original has travelled beyond the scope of the remand direction of the Tribunal.

(viii) It is a settled position that the adjudicating authority cannot travel beyond the scope of remand. Reliance is placed on the decision of the Hon'ble High Court of Bombay in ***Commissioner of Cus. (EP) Vs. M/s. National Steel & Agro Industries Ltd. reported in 2015 (322) E.L.T. 690 (Bom.)***. The appeal against the said decision was dismissed by the Hon'ble Apex Court in ***Commissioner Vs. M/s. National Steel & Agro Industries Ltd. reported in 2015 (323) E.L.T. A79 (S.C.)*** on grounds of delay. Thus, the impugned Order-in-Original holding that the impugned goods were liable for confiscation and penalty under Rule 173Q *ibid* is incorrect.

(ix) In any case, the following goods were admitted in para 3.10 of the impugned Order-in-Original, semi-finished when they were cleared for storage from M/s. CMS' factory to the Guindy unit :

- a. AA Poly-sleeving machine [90% complete]
- b. Candy cup machine LH/RH [90% complete]
- c. ABE machines [90% complete]
- d. Spin Mixer Solution Tanks [60% complete]

The aforesaid goods are incomplete and therefore, not marketable. No excise duty is leviable on the same.

(x) Without prejudice, the *de novo* adjudication, vide the impugned Order-in-Original, was done after ten years from the remand direction of the Tribunal. The dispute was not taken up for adjudication inspite of repeated letters by M/s. CMS requesting the Department to take up the adjudication. It is a settled legal position that inordinate delay in adjudication is fatal to the demand and therefore, demand cannot sustain. Reliance is placed on the following:

- a. *M/s. Lavin Synthetic (P) Ltd. Vs. C.C.E. - 2015 (322) E.L.T. 429 (Bom.);*
- b. *M/s. Shirish Harshavardhan Shah Vs. Deputy Director - 2010 (254) E.L.T. 259 (Bom.)*

(xi) The impugned Order-in-Original imposes penalty of Rs. 30,000/- on M/s. MOC (Guindy unit) without stating any reason for the same. Thus, the penalty merits to be set aside on this ground only.

(xii) Further, it is a settled legal position that penalty under Rule 209A of the Central Excise Rules cannot be imposed on company. Reliance is placed on the Larger Bench decision of the Tribunal in ***M/s. Steel Tubes of India Ltd. Vs. Commissioner of C.Ex., Indore reported in 2007 (217) E.L.T. 506 (Tri. - LB)***

7.1 On the other hand, on behalf of the Department, Ld. AR Shri. B. Balamurugan supported the impugned order. He drew our attention to paragraph 3.26 of the impugned order wherein the adjudicating authority has analysed the endorsement of the Superintendent of Central Excise, Madras-V Division, Group B on the ground plan of M/s. MOC and has concluded that the endorsement simply meant that a portion was earmarked for the storing machineries. It does not in any manner state or imply that the portion was earmarked for storing of the machineries manufactured and to be cleared without payment of duty from M/s. CMS, Tiruvottiyur. No express permission was granted to M/s. CMS for removing excisable goods manufactured by them without payment of duty.

7.2 Further, at that point of time, there was no provision available in the Central Excise Law permitting such removal of excisable goods without payment of duty. Hence, the endorsement made in the ground plan cannot be taken as a permission given by the Department to remove the excisable goods by M/s. CMS without payment of duty to Guindy. Hence, the Department can rightly demand duty on excisable goods removed without payment of duty by M/s. CMS.

7.3 For these reasons, there is no infirmity in the impugned order and as a consequence, the appeals do not have any merit.

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

9.1 This is the second occasion that these appeals are coming up before this Tribunal. In the earlier round of litigation, the Tribunal, after considering the submissions and materials on record, vide Final Order No. 1452/2000 dated 16.10.2000 had *inter alia held* as under :

"The order impugned therefore, needs to be set aside and remanded back to the original authority for de novo adjudication with direction that the appellants may be given hearing in the matter to submit all such materials to prove how the goods which have been held to be excisable were not excisable when they were removed from the premises of Tiruvattiyur to Guindy premises and also to determine the conduct on the part of the appellants as whether any mala fide existed."

9.2 It is also relevant to note the following findings of the Tribunal in the said Final Order :

"(a) The fact has been established by obtaining an amendment to ground plan at Guindy that storage at Tiruvatriyur factory was a physical problem which was sorted out by seeking storage at their own premises at Guindy. The appellants have not been able to show any specific written permission of any authority for storing the non-duty paid machines nor any entry in the gate pass, yet the fact remains with the amendment of Rule 47 of the Central Excise Rules with effect from 10.05.1989. The Central Board of Excise & Customs, in exceptional circumstances having regard to the shortage of storage space at the premises of manufacturer where the goods are made, permit such a manufacturer to store his goods in any other space outside such premises without payment of duty. No such permission of CBEC has been obtained or produced but this enabling clause of amendment of 1989 indicates that when there is a shortage of space, it is cause enough to permit the storage outside and such permission being procedural should not visit the appellant with a heavy liability of confiscation on such goods.

(b) We also find that, in the facts of this case, a majority part of the goods on which duty of Rs. 15,12,454/- determined were subsequent to provisional release cleared on payment of duty of Rs. 16,42,425/- and therefore, we cannot come to any conclusion that there was any intent to evade payment of duty and if there has been any contravention of Rule 173Q it would be only contravention of Rule 173Q(1)(a) in the facts of this case.

(c) We find that photocopies of R.G.1, which were produced before us, were part of the seized records and were available to the adjudicator to determine whether there was a mention to cover the present goods under seizure or otherwise of having been stored at Guindy and whether the Commissioner has considered this vital piece of evidence to prove the bona fide of the appellants is not known or coming out from the impugned order. We would therefore, find that this case to be a fit case to remand back to the adjudicator to go through the seized documents and to re-determine whether there was any mala fide intention on the part of the appellants to have violated the procedure and only thereafter to determine the penalty and in our opinion the penalty cannot be imposed on mere technical lapse or breach of Rule 173Q(1)(a). Therefore, it is essential that the matter needs to be re-considered in the light of the procedure which was followed by the appellants, inasmuch as they were entering the goods in R.G.1 and other accounts which has to be considered by the original authority and thereafter commented upon...."

9.3.1 From the above extracted portion of the earlier Final Order, it is evident that the Tribunal had taken into cognizance that storage at M/s. CMS's factory was a physical problem which was sorted out by seeking storage at their own premises at Guindy by way of obtaining an amendment to the ground plan of the Guindy unit. The Tribunal also observed that

although the appellants have not been able to show any specific written permission of any authority for storing the non-duty paid machines, all the same there is a provision to permit a manufacturer to store his goods in any other space outside his premises without payment of duty by way of the amendment of Rule 47 of the Central Excise Rules with effect from 10.05.1989. Though no such permission of the CBEC had been obtained or produced, the Tribunal observed that the amendment of 1989 enabled grant of such permission and in any case, such permission being only procedural, any inadequacy in that regard should not visit the appellant with a heavy liability of confiscation of such goods.

9.3.2 The Tribunal had also very clearly flagged the fact of the R.G.1 returns having been part of the seized records and had directed the adjudicator to go through the said seized documents to re-determine whether there was any *mala fide* intention on the part of the appellants to have violated the procedure. The Tribunal further made it clear that penalty cannot be imposed for a mere technical lapse or breach of Rule 173Q(1)(a).

9.3.3 No doubt, the adjudicating authority has taken note of the CESTAT remand directions to allow the appellants to submit all materials to prove "*how the goods which have been held to be excisable were not excisable were not excisable when they were removed from the premises of Tiruvatriiyur to Guindy premises...*". However, in response, the adjudicating authority has concluded in paragraph 3.14 of the impugned order that :

"...what is required to be seen is whether the goods are capable of being marketed. It is not necessary that the goods have to be actually marketed and it is enough if the goods are capable of being marketed."

Even this goalpost of "excisability" arrived at by the adjudicating authority has been subsequently changed by the adjudicating authority in paragraph 3.17, as under :

"As long as a goods is a result of manufacturing process and have mobility and marketability and find place in the schedule to the Central Excise Tariff, they are excisable goods."

9.3.4 We are unable to appreciate such reasonings adopted by the adjudicating authority to hold that all the goods removed from the premises of M/s. CMS are excisable goods.

Interestingly, even in paragraph 3.10 of the impugned order, the adjudicating authority has agreed that the following goods are semi-finished when cleared from M/s. CMS :

S. NO.	DESCRIPTION OF THE MACHINES	JOBS COMPLETED AT THE TIME OF SEIZURE	JOBS TO BE PERFORMED AFTER PROVISIONAL RELEASE
1	Candy Cup LH Candy Cup RH	Basic machine with frame, cams punch & dies, blocks, Guide rails, Paper feed sub-assembly & Carrier feed sub-assembly. Approximately 90% completed.	Drive unit for paper feed to be assembled; trials of paper feeding and blanking, installing of 24 volt DC probe for paper feeding & 24 Volt coil for solenoid valve; Inspection & painting touch up to be done;
2	ABE – 4 Nos	Drive assembly tamper turret, mix turret & discharge turret sub assembly; tool spindles sub assembly; spindle drive sub assembly. Approximately 90% completed.	Compressed air line layout, installation of 24 V DC Sensor & Coils; Trial running; Inspection, coating, painting. Fixing conveyor brackets.
3	AA Poly-sleeving Machine RH/LH and conveyor	Basic machine with frame conveyors, feeding arrangement discharge set up poly-roll arrangement, cell insertion unit with auto off, etc. 90% completed	Integrating & assembly, fitting sensors, lub. Arrangements, guards, etc. Painting, inspection, trial.
4	Spin Mixer – 2 Nos	Frame with 1 No. measuring tank & pressurized tank assembly with inlet ball valves for measuring tank & pressuring tank. About 60% completed.	To fix the 2 nd measuring tank, fixing inlet & outlet ball valves, diaphragm, valves. Inspection, coating and painting.
5	..	..	..

(Emphasis added)

9.3.5 Further, the appellants have been consistently maintaining that goods like Cooker Parts, Channels, Channels Long, Can Yoke Assy/ Overload, Clutch, Cam indexing unit, Cooker tank, Cooker legs are bought-out items and had produced invoices in support of that contention. However, the adjudicating authority has not accepted the veracity of these invoices and in paragraph 3.21 of the impugned order has merely concluded *"I also find that the cooker parts are identifiable goods with a distinct use and they have mobility and marketability"*. He further notes that the act of removal of parts from M/s. CMS's factory *"made them ineligible for the exemption under Notification No. 217/86 as amended..."*

10. In the event, we find that the impugned order is only a rehash of the earlier adjudication order No. 37/1993 dated 15.11.1993. There has been no attempt to seriously apply the observations, findings and directions of the Tribunal in the remand order dated 16.10.2000.

11.1 As succinctly observed by the Tribunal in the earlier Final Order dated 16.10.2000, the issue of removing the goods from M/s. CMS to M/s. MOC was only due to the constraint of space and size of the machines which were partly assembled. For this reason, the ground plan of their sister unit viz., M/s. MOC was got amended with endorsement by the jurisdictional Range Superintendent: "Approved portion marked 'A' for storing machineries". There is no allegation that the same machineries were being manufactured by M/s. MOC. It therefore will only appear to reason that the said amendment was caused about only for the purpose of storing, in M/s. MOC, such items removed from M/s. CMS due to constraint of space.

11.2 No doubt, this is surely not the proper procedure for obtaining permission to store such goods. The adjudicating authority has even taken the stand that the provisions of Rule 47 of the Central Excise Rules, 1944, as it stood at that time, did not contain any provision to permit such storage in a place outside the factory premises in which such goods were manufactured. However, as pointed out by the Tribunal in the earlier Final Order dated 16.10.2000, the amendment of Rule 47 *ibid* had been caused about with effect from 10.05.1989 whereby *"the CBEC in exceptional circumstances having regard to the shortage of storage space at the premises of manufacturer where the goods are made, permit such a manufacturer to store his goods in any other space outside such premises without payment of duty."* It is pointless to hypothesize at this point of time whether such permission would have been given by the CBEC if any such application had been made by the appellant. All the same, the ingredients

which necessitated such amendment in Rule 47 *ibid* were very much present in the case of the appellant and it would be reasonable to expect that if they had made an application to that effect, they may very well have been granted permission to store their goods outside their factory premises.

11.3 In the present case, the impugned goods were being stored outside the factory premises of M/s. CMS. They were thus only being stored in the premises of their sister unit. Removals of goods have been meticulously entered in the R.G. 1 returns required to be filed by M/s. CMS from time to time. There is also no allegation that some or all of the goods which had been so shifted from M/s. CMS to M/s. MOC had been clandestinely removed therefrom or diverted without discharge of duty liability. On the other hand, as per the facts on record, M/s. CMS had paid duty on the machineries manufactured by them and transferred to Guindy unit, albeit on a notional value, and, at the time of clearance of complete machineries, they would pay the appropriate duty on the actual value, after adjusting the duty earlier paid by them.

12. From the facts on record, we also find that in respect of the impugned goods, such duty amount paid on provisional basis based on the notional value amounted to Rs. 16,42,425/-, which was, in any case, more than even the enhanced duty demand of Rs. 15,65,921.19/- proposed to be demanded in the corrigendum to the Show Cause Notice.

13. We find that all these factoids had been conveyed to the Department by the appellant in their letter dated 16.03.1992 pursuant to the visit of the officers on 05.03.1992. It is also pertinent to note that Shri. S. Thiagarajan, Cost Accountant of M/s. CMS in his statements dated 10.03.1992 and 10.06.1992 had very much reiterated the same facts. We therefore find that there was nothing *mala fide* about the practice being followed by M/s. CMS. All the removals, though done only on delivery challans, had been reflected in their R.G. 1 returns. Though specific permission for such removals was not obtained, it cannot be denied that M/s. MOC had got their ground plan endorsed with a portion approved by the jurisdictional Range Superintendent for storing machineries.

14. As discussed *supra*, the appellants could very well have qualified for permission to store the finished goods outside their factory premises in terms of the amendment brought about in Rule 47 *ibid* with effect from 10.05.1989. At the most, there has been some procedural lapse in not having followed the correct protocol for removal of such goods. We are

constrained to note that such a procedural lapse which could have been resolved by suitable warning and/or advice from the Department, has been blown up to this extent. If this is not making a mountain of a mole hill, then what is?

15. In the event, we are of the considered opinion that the impugned order cannot be sustained and will require to be set aside, which we hereby do.

16. In consequence, both the appeals viz. Appeal Nos. E/491/2011 and E/492/2011 are allowed with consequential benefits, if any, as per law.

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

(MADHU MOHAN DAMODHAR)
MEMBER (TECHNICAL)

(P. DINESHA)
MEMBER (JUDICIAL)

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