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CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066

EXCISE APPEAL BRANCH

Appeal No. E/4672/2004 - EX[DB] Date 06/11/2009

Assistant Registrar
C.E.S.T.A.T, New Delhi

To :
M/S SUPER TYRES PVT. LTD.
G.T. ROAD, KARNAL

M/S SUPER TYRES PVT. LTD. Appellant
Vs
C.C.E. PANCHKULA Respondent

I am directed to transmit herewith a certified copy of **Final order No. 864/ 2009 EX[DB]** dated 04-11-09 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(Excise Appeal Branch)

Copy to :
1. Respondent
   C.C.E. PANCHKULA
   SCO-407-408, SECTOR-8, PANCHKULA
2. Adv. / Consult
   MR.BALBIR SINGH
   MASTAN & CO,C-5/9,SAFDARJUNG DEVELOPMENT AREA ,
   OPP. IIT GATE,N.DELHI
3. C.D.R
4. ~~J.C.D.R.~~
5. Bar association, CESTAT, New Delhi
6. Director Publications, Customs, Excise. I.P. Estate, New Delhi
7. M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi - 3
8. Commercial Laws of India Pvt Ltd. Post Bag No. 1033, No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
9. Raghuraman's 44-B, Regal Flat,Shipra Suncity, Indirapuram - 201010,Ghaziabad, DT. U.P.
10. M/s Manupatra Information Solutions Pvt Ltd. Excise & Customs Cases B-37, Sector - 1, Noida - 201301, Gautam Budh Nagar, (UP)
11. M/s. Deeparchie Publications, M-93, Marg. 46, Saket, New Delhi 110017
12. Taxindiaonline.com Pvt.Ltd, B-XI/8183,Vasant Kunj, New Delhi - 110070
13. Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh, New Delhi - 110026
14. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road,Ahmedabad-15
15. LAWCRUX Advisors Pvt Ltd, LAW House,1-8,Sector - 10, Faridabad 121003 (Haryana)
16. Office Copy
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18. HON'BLE PRESIDENT.

Assistant Registrar
(Excise Appeal Branch)

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI PRINCIPAL BENCH, COURT NO. I

Excise Appeal No. 4672 /2004- Ex(BR)

[Arising out of Order-in-Original No. 8/Com/PKL/2004 dated 18.6.2004 passed by Commissioner of Central Excise, Panchkula]

For approval and signature:

Hon'ble Shri Justice R.M.S. Khandeparkar, President
Hon'ble Shri M. Veeraiyan, Member (Technical)

1.	Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982.	Yes
2	Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	Yes
3	Whether Their Lordships wish to see the fair copy of the Order?	Seen
4	Whether Order is to be circulated to the Departmental authorities?	Yes

M/s. Super Tyres Pvt. Ltd. — Appellants

Vs.

Commissioner of Central Excise
Panchkula — Respondent

Appearance:

Shri Balbir Singh, Advocate for the Appellants
Shri Surender Shah, DR for the Respondent

CORAM:

Hon'ble Mr. Justice R.M.S. Khandeparkar, President
Hon'ble Mr. M. Veeraiyan, Member (Technical)

Date of Hearing : 02.09.2009
Date of decision : 04.11.2009

FINAL **ORAL ORDER NO. 864/2009-EX.**

Per M. Veeraiyan (for the Bench):

This is an appeal against the order of the Commissioner dated 18.6.2004 which itself was passed in pursuance of the remand order of the Tribunal vide final order No.A/232/2000-NB (DB) dated 27.3.02.

2. Heard both sides.

3. The relevant facts, in brief, as are as follows:

a) The officers visited the factory premises of the appellants on 21.1.88 and 4.2.88 and verified the stock of finished goods and commenced further investigations. They found 818 numbers of tyres of different sizes and 2357 numbers of tubes of various sizes which were not accounted for in the RG-1 register. They also resumed certain statutory records and private records like batch register, monthly returns submitted by the appellants to the Rubber Board, the Rubber Board Register, store register, despatch advices, mixing formulation register and certain loose slips.

b) Separate proceedings were initiated by show cause notice dated 18.7.88. in respect of goods seized on the date of visit of the officers and the case was adjudicated confiming the offending nature of the goods and the said order was upheld by the Tribunal.

c) The appellant was procuring and using natural rubber, RMA and they were periodically submitting report to the Rubber Board. As per the report to the Rubber Board, during the year 1986-87, they have consumed 4,10,000 kgs of rubber and for the year 1987-88, they have consumed 3,36,200 kgs of rubber. However, the excise records indicated consumption of only 3,53,416 kgs during the year 86-87 and 2,86,453 kgs during the year 87-88. Thus, it appeared that they have consumed more quantity of principal raw material than what has been accounted in the raw material account maintained for excise purposes. It also appeared that the appellant have procured sulphur yellow powder and other ingredients without bills as the use of such materials were confirmed from the loose sheets recovered. As already mentioned, there was unaccounted stock of 818 tyres and 2,357 tubes on the date of visit and the said goods were seized and subjected to separate proceedings. The loose slips seized also indicated removal of finished goods and they were not able to correlate the entries in the said loose slips with the entries in the statutory records like RG-1 register and gate passes evidencing clearance of the said goods on payment of duty. The entries in the batch register containing details of different batch of productions did not correspond to the goods shown to have been produced in that batch as per the statutory records like RG-1 register. In view of the above, show cause notice dated 18.7.88 was issued alleging that there was suppression of actual consumption of raw materials, that there was unaccounted production and clandestine removal of the same and, accordingly, proposing demand of Rs.2,76,48,219/- under Rule 9(2) of CER, 1944 read with Section 11A and imposition of penalties.

d) The show cause notice was adjudicated by the Commissioner vide order dated 30.10.92 and ,on appeal by the party, the Tribunal vide final order No.A/232/2000-NB (DB) dated 27.3.02.remanded the matter for de novo consideration.

e) The matter was adjudicated in de nova proceedings by the Commissioner vide order dated 18.6.2004, confirming a demand of Rs.2,76,48,219/- and imposing penalty of Rs.10 lakhs.

4. The learned advocate made the following submissions:-

a) The register showing receipt and disposal of rubber was being maintained under the provisions of The Rubber Act and the monthly reports submitted to the Rubber Board on the consumption of RMA under the said Act. The reports submitted to the Rubber Board need not correspond to the figures in the central excise records as the raw material accounted in central excise records relate to only issues for the purpose of manufacture of excisable goods and that it did not include issues for other purposes like, use in manufacture of exempted goods, and use in research.

The stock taking conducted did not include materials lying in the shop floor as in process material which also contributed to the difference.

b) "Mixing formulation register" maintained by Bhopal Singh contained verbatim copy of personal notes prepared by him during the diploma course undergone by him in Rubber Technology from the Rubber and Plastic Research Institute, New Delhi during the years 79-80. The said register also contained details on various subjects, many of them not related to the activities in the appellant company. For example, it contained notes relating to belt manufacture, white side wall, bead composition, details of turn over of the Good Years as Rs.92 crores which were not related to company' activities.

c) The turnover of Good Year recorded in the mixing formulation register was for the year 82-83; further the front page of the mixing formulation register indicated the year as 82-83 and last page had the date 22.1.84. Therefore, this register can not belong to the period in dispute.

d) The rubber-carbon black mixture is known as master batch; the master batches are in various combination; they can be reformulated to suit any particular requirement by subsequent reprocessing; that the title such as capital ADV, 400-8, 13 no, airbags ,etc. do not refer to the final batch and therefore, do not indicate the type of the tyres actually manufactured. The batch registers refer to mixing of rubber and carbon black on the Banbury. The entries made in the batch register refers to the compounds only and not the names of the tyres /tubes sought to be manufactured.

e) The appellant has not got any compounding done by M/s.Ralson India Ltd. They have only resold some quantity SMR 20 to the said M/s.Ralson India Ltd. who after undertaking the process of mastication found the material of no use to them and returned the said material to the appellant company along with debit note at 45 paise per kg towards cost incurred on the mastication. The normal rate of rubber compounding was Rs.1.50. Therefore, the inference drawn that compounding was done by M/s.Ralson India Ltd. for the appellant company on job work basis is incorrect.

f) The appellant had about 8 to 10 open mixing mills installed in the factory and to keep the said open mixing mills fully occupied all other compounds are mixed through open mixing mills..

g) The appellant never had infrastructure to manufacture 1,8789 number of tyres of sizes 400x08 in one year. They did not even have the mould to manufacture the said item.

5. The learned DR submitted that each of issues raised by the appellant has been dealt with by the Commissioner in his order. In particular, he made the following submissions. On the date of visit there was unaccounted stock of finished goods; the quantity of rubber consumed as per Central Excise records is much lower than the quantity

of rubber consumed as per the records and returns to the Rubber Board and the variation has not been explained by the appellant. The claim that Mixing formulation register recovered contained verbatim copy of personal notes prepared by Bhopal Singh when he did his diploma course in rubber technology should be not be accepted as the said register clearly mentions the name of the appellant company and carries the title as Mixing formulation register and that Shri Bhopal Singh was the chief chemist of the appellant company and the entries in the said register were, in some cases, found to tally with entries in the loose papers maintained by Shri Chawla.

6.1. We have carefully considered the submissions from both sides and perused the records. The matter is before the Tribunal for the second time. The dispute relates to the period 1986-1988 and the same was adjudicated by order dated 10-10-92. On appeal, the matter was remanded to the Commissioner by the Tribunal's order dated 27-3-2002. for fresh decision with the following observations/directions:

" (1) The Collector had not given adequate consideration to the appellant's contention that 'Nulkees' shown in the store register, could also go into the production of ADV Tyres & Air bags apart from use in the production of tubes.

(2) The Collector had not examined the claim of the appellants that Kaccha challans were supported by corresponding gate passes.

(3) All removals had been entered in their regular books at Ghaziabad Depot and all removals from there were against invoices and other documents.

(4) The appellants had given supporting documents Annexure 62 & 68 to reply to SCN and these appeared to not have given due consideration.

(5) The demand appeared to have been calculated on assumption basis."

6.2. It is to be noted that the matter was remanded to the original authority granting opportunity to the appellants to present the case and to enable the original authority to consider all the relevant issues afresh. We find that the appellant has sought for adjournment in the remand proceedings before the Commissioner on 6 occasions, i.e. on 10-9-2002, 9-10-2002, 13-2-2003, 3-4-2003, 17-4-2003, and 10-6-2003 and appeared on 5-12-2003 and again sought for 15 days time to file reply; with out submitting reply appeared again for hearing on 27-2-2004 with a synopsis of reply filed in earlier proceedings. Subsequently, vide their letter dated 5-3-2004 after two years from the date of remand submitted paper book in six volumes before the commissioner.

6.3. The Commissioner by the impugned order has held that the appellant has indulged in manipulation of accounts relating to raw materials, suppression of production and clandestine removal of the said suppressed production with out payment of duty and accordingly confirmed the demand of duty and imposed penalty and for coming to the conclusion he has relied on both official and private records seized from the appellant's premises.

6.4. The appellants' defence version is that the variation in the quantity of rubber consumed as per returns submitted to Rubber Board and quantity of rubber consumed as per excise records is due to their not accounting rubber consumed in the non-dutiable products, not accounting rubber sent for research purposes and the Department not taking into account the raw material in process in the shop floor. The appellants also claim that they have not got any compounding work done on job work basis. It is also case of the appellants that the master batches prepared have not always been used for the purposes noted in the mixing formulation register but they were reformulated and used for other purposes. It is also the case of the appellants that the batch register maintained by them did not relate to the final products. If the above contentions of the appellants are accepted then the findings of the Commissioner that the appellants involved themselves in suppression of production and clandestine removal cannot be sustained.

7.1. Any assessee was under obligation to maintain statutory records relating to manufacture and clearance of the excisable goods under Rule 53 of Central Excise Rules 1944 applicable during the period of dispute.

The said records should be maintained on a day to day basis inter alia containing details namely,

(a) description of goods

(b) opening balance

(c) quantity manufactured

(d) quantity deposited to the store-room, or other place of storage approved by the Collector under rule 47

(e) quantity removed, after payment of duty from such store-room or other place of storage or from the place or premises specified under rule 9

(f) quantity delivered from the factory without payment of duty for export or other purposes, and

(g) the rate of duty and the amount of such duty.

They are also required to file returns of other goods manufactured in terms of Rule 54. They are also required to maintain accounts relating to receipt and disposal of principal raw materials and submit returns as prescribed under Rule 55 of the Central Excise Rules. Such return has to truly state the quantity of raw materials used in the manufacture of excisable goods and the quantity of each description of finished goods produced. Such accounts and returns have to be in the prescribed format. The appellant was working under the Self Removal Procedure (SRP). In the case of assessees working under SRP, the private records, maintained by them, for the above purpose can be accepted in lieu of statutory records provided they contained the relevant particulars. However, they are required to disclose their own records maintained for the said purpose in terms of Rule 173(G). The purpose is to ensure that the entire production of excisable goods are properly accounted and duty due thereon is paid. The Commissioner has held that the appellant has not disclosed the maintenance of private records like stock register, Rubber Board register, Mixing Formulation register maintained by the appellant. This finding has not been refuted by the appellant.

7.2. As per the report to the rubber board, during the year 1986-87, they have consumed 4,10,000 kgs of rubber and for the year 1987-88, they have consumed 3,36,200 kgs of rubber. However, the excise records indicated consumption of only 3,53,416 kgs during the year 86-87 and 2,86,453 kgs during the 87-88. Thus there is an excess consumption of 1,06,331 kgs. of rubber when compared to the total quantity of 6,39,869 kgs. shown as consumed in excise records. The excess consumption is more than 16%. This factual position is not being disputed. It was sought to be contended that the report submitted to the Rubber Board need not correspond to the figures in the central excise records as the raw material accounted in central excise records relate to only issues for the purpose of manufacture of excisable goods and it did not include issues for manufacture of exempted goods, or issues for other purposes like research activities. A claim has been made that rubber is also used for development of test batches as evident from the abrasion test register.

It was also sought to be canvassed that not taking into account the material lying in the shop floor was also one of the reasons for the difference. It was also sought to be contended that the raw material utilised for manufacture of exempted goods have not been accounted as consumption in excise records. The law requires that the excisable goods and other goods manufactured should be accounted and returns submitted of production and clearances. That being the case, it is required that the entire raw materials received in the factory are accounted. Further, no evidence regarding their claim that there were issues for other purposes have been produced before the Commissioner. Further, the variation is very high being about 16% and the explanation offered is not at all convincing. No evidence has been produced that any significant quantity has been used for such other purposes. In other words, the findings of the Commissioner that the appellant has consumed more quantity of principal raw materials than what has been accounted in the raw material account maintained for excise purposes can not be faulted. Further, it is not denied that only one "Nulky" is required for manufacture of one "Tube". The records indicate use of 12, 350 nulkies during the period when only 4350 tubes were shown to have been manufactured.

7.3. The Mixing formulation register was admittedly recovered from the custody of Shri Bhopal Singh who was the chief chemist of the appellant company. It was claimed to be verbatim copy of personal notes prepared by him during the period 79-80 as a student of diploma course in rubber technology. It is not disputed that the said register carried the name of the appellant company and carried the title as Mixing formulation register and that Shri Bhopal Singh was the chief chemist of the appellant company. It was recorded by the Commissioner that the entries in the said register were found to tally with entries in the loose papers maintained by Shri Chawla. This fact is not being disputed. Further, the register contains the entries relating to turn over of the Company Good Year for the year 82-83; further the front page of the mixing formulation register indicated the year as 82-83 and last page had the date 22.1.84. Shri Bhopal Singh from whose custody the mixing formulation register was resumed has not appeared in spite of several summons and clarified the actual position before the investigating authorities. It has been recorded by the Commissioner that Shri Banarasi Lal Chawla , the Director stated that Shri Bhopal Singh was on long leave and that though he had assured to send him to the investigating authorities for giving his statements, he has not appeared before the investigating authorities and given his statement. He has chosen to give an affidavit dated 13th December 1991 regarding the nature of mixing formulation register. This affidavit does not deal with several relevant facts. It has not been explained how the personal notes taken by him have been entered in the company's register. He has not explained how the name mixing formulation register came to be written if the said register contained only his personal notes. He has merely claimed that the said register was his personal note book which was kept by him in the appellant company. He also submitted that the note book did not contain any record of verification done by him of the length , width and weight of the tyres. He also submitted that the lab mill , lab extruder and lab curing pressure used in the laboratory for developing , designing of recipe and compounds for testing in the laboratory and that the test results, receipts/compounds prepared in the laboratory were also reflected in the abrasion test register. These claims in the affidavit are contrary to his claim that the said register contained only notes taken by him as a student in a Diploma course. Therefore, the claim that Mixing formulation register was copy of personal notes prepared as a student of diploma course undergone by Shri Bhopal Singh, the chief chemist of the appellant company is devoid of merits and rightly rejected by the Commissioner.

7.4. It is claimed that the rubber-carbon black mixture, known as master batch, can be reformulated to suit any particular requirement by subsequent reprocessing. This might be possible. The issue is not whether it is possible or not. They have shown production of huge quantity of ADV tyres which are exempted from payment of duty. The records indicate 1,90, 996 kgs RMA having been used for the purpose of manufacture of ADV tyres. Mixing formulation register did not show mixing having been done exclusively for compound meant for ADV tyres. It does not stand to reason that formulation meant for production of major variety was not done directly but reformulated from formulation meant for other varieties. Further, the claim that they reformulated the compound has not been substantiated by any documentary evidence. It is not conceivable that they have prepared giving certain title to the compound which was to be reformulated but have not maintained any records of such reformulated compound with details such as description and quantity so produced. Thus, there was no evidence produced that the master batches were reformulated as per requirements for further manufacture of tyres or other products. Therefore, it is not convincing that the title such as ADV, 400-8, 13 no, airbags ,etc. do not refer to the final batch and therefore, do not indicate the type of the tyres actually manufactured. There is also a claim that the batch register was relating to compound only and not to the tyres sought to be manufactured. It is common knowledge that the batch identification is aimed also at keeping a watch on possible complaints from the ultimate customers. When the final products are tyres, the claim that no batch register is maintained for such final product but maintained only for the intermediate product is rather strange and can not be accepted.

7.5 One of the grounds on which the Tribunal remanded the matter to the Commissioner for fresh consideration is to consider their claim that "All removals had been entered in their register books at Ghaziabad Depot and all removals from there were against invoices and other documents". When kachcha slips maintained by them indicated certain quantity and produced or cleared on various dates, it was necessary for them to show that such production and clearances were accounted in the records maintained at the factory. Whatever shown as cleared from the factory should have been entered in their statutory records as production and clearances from the factory and that appropriate duty should have been paid. The appellant has failed to establish that the said clearances were accounted as above in spite of opportunity granted by the adjudicating authority. There can be no doubt or dispute about the obligation of a manufacturer to maintain proper accounts at the licensed premises for the excisable goods manufactured or cleared from the factory. It is not understood as to how the alleged maintenance of records at the depot can absolve them of their obligation to maintain the records at the factory premises. The claim of the appellants in this regard has no merits. Further, there is allegation that the Kachha challans contained code numbers for tyres which were different from code numbers used in statutory records. There is no explanation to the allegation in the show cause notice about the use of such code by the appellant which was uncovered from the despatch advices with corresponding GR numbers of despatches from the branch offices.

7.6 It was claimed that the typed list shows the RMA consumption in manufacture of each and every size of tyre and tube; that this is a generalised statement and that this cannot be considered as indicative of use of excess RMA in the manufacture of tyres. In other words it has been claimed that the typed list cannot be relied upon to come to a conclusion that the entries therein represent the RMA consumption per tyre and tube. It is seen that the typed list shows the consumption of RMA per tyre and tube separately and carries the heading as follows:

"RMA CONSUMPTION SLIP FOR EACH AND EVERY SIZE OF TYRE & TUBE"

The appellant has not been able to refute the excess use of principal raw material namely, rubber. They are also not able to refute the contents of the loose papers recovered which indicated use of other chemicals required for manufacture of tyres/tubes. The documents like typed list, loose slips recovered and Mixing Formulation Register maintained by them indicated only activities of their unit, contrary to the claims made by them. It is also found by the Commissioner that RMA consumption shown in the kachcha slip showing the RMA consumption tally with those mentioned in the mixing formulation register.

7.7. It was claimed that the appellant had about 8 to 10 open mixing mills installed in the factory and to keep the open mixing mills fully occupied all other compounds are mixed through open mixing mills. The batch registers refer to mixing of rubber and carbon black on the Banbury. The batch register refers to certain compounds. They have not produced any registers to show the mixing of compounds through those mixing mills. They also claim to have done job work for others by using the said mixing mills. No records have been produced by them in support of this claim. The mixing of compounds without bringing on record is clearly suggestive of unaccounted production. If they have maintained register in respect of certain categories of compounds prepared in bunbury, it does not stand to reason why they have not maintained such registers for production of compounds in other machines.

7.8 It is claimed that the batch register refers to only certain compounds. If batch register is maintained for mixing compounds of rubber and carbon black, it is also not explained as why similar registers are not maintained for mixing of other compounds as claimed by them.

7.9 Submissions have been made that various pages of batch register/ stock register indicate merely the rubber- carbon black combination which can be reformulated into hundreds of different ways/applications;

that the entries made in the batch register pertain to dip solution and carbon-rubber –carbon black mixture which is master batch; that the stock register/ batch register indicate the name of the compound and not the ultimate tyre manufactured as could be seen by the fact that no compound has been shown to have been mixed as per the stock/batch register for several sizes of tyres and tubes which are accounted in RG-1. These claims by the appellant, when considered in the light of the fact that the appellant has failed to explain short accountal of principal raw materials, non-maintenance of records relating to mixing of compounds in the open mixing mills, inability to tally the entries relating to clearances on various dates in the loose slips with the duty paying documents, it is apparent that the same deserve to be rejected.

8. Ample opportunity was given by us to demonstrate from the records placed before us that the findings of the Commissioner on the core issues like excess use of raw materials, the relevance of mixing formulation register/batch register for determining the nature and quantum of finished products manufactured by the assessee and the finding that the appellants were not able to show that entries made in the loose slips regarding clearances have been accounted were erroneous or perverse. The appellant could not show that there was any such error. It is not disputed by the appellant that the details regarding consumption of RMA furnished to the Rubber Board by them are in correct. Records also indicate

that the appellants have received orders from dealers for supply of tyres which are not shown as accounted in the statutory records and have also received payments. The conclusion is inescapable that the appellants have indulged in unaccounted production of such varieties of tyres. The loose sheets indicating clearances of goods which were not correlated with duty paying documents are also evidences clandestine removals.

9. From the above, the following emerge:

a) On the date of visit by the officers, there was unaccounted stock of finished goods.

b) The quantity of rubber accounted as consumed as per Central Excise records is about 16% lower than the quantity of rubber consumed as per the records and returns to the Rubber Board.

c) When only one "Nulky" is required for manufacture of one "Tube", the records indicate use of 12, 350 nulkies during the period when only 4350 tubes were shown to have been manufactured.

d) The entries in the abrasion note book on the testing relating to various varieties for the period 20-10-86 to 3-12-87 do not match with varieties accounted in the RG-1 register.

e) The appellant has not been able to correlate the entries in the loose slips with the entries in the statutory records like RG-1 register and gate passes evidencing clearance of the said goods on payment of duty. The appellants have received orders from dealers for supply of tyres which are not shown as accounted in the statutory records and have also received payments.

f) The Kachha challans contained code numbers for tyres which were different from code numbers used in statutory records which was uncovered from the despatch advices with corresponding GR numbers of despatches from the branch offices.

g) The statutory records maintained by them for excise purposes do not reflect the true position. The appellant has not disclosed the maintenance of private records like stock register, Rubber Board register, Mixing Formulation register maintained by them.

h) The private records like, the Mixing Formulation Register, Batch Register/ Stock Register, "Typed List" , and Abrasion Note Book relate to the day to day activities of the appellant company.

10. If the above facts and circumstances are taken in totality, on the yardstick of preponderance of probability, the conclusion reached by the Commissioner that the appellant has indulged in suppression of production and clandestine removal appears legal and proper. When the appellant has chosen to deal in clandestine activity, the department is left with no alternative but to rely on the private records for working out the suppressed production and clandestine removal. Under these circumstances, the demand of duty confirmed by the Commissioner

based on the short accounted principal raw material, using the formula/norms as revealed from the private records resumed from them can not be faulted. The penalty imposed is also justified.

11. The appeal , therefore, is rejected.

(Justice R.M.S. Khandeparkar)
President

(M. Veeraiyan)
Member(Technical)

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