

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066
EXCISE APPEAL BRANCH

Appeal No. E/2170/2005-2173/2005 - EX[DB]

Date 12/08/2010

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

To :
M/S GALAXY INDO FAB LTD.
REGD OFFICE ST 19/X-I, KRISHNAPURAM, KANPUR.
M/S GALAXY INDO FAB LTD. & ORS.

C.C.E. LUCKNOW

Appellant

Vs
Respondent

I am directed to transmit herewith a certified copy of Final order No. 555 - 558/
passed by the Tribunal under Section 35-C(1) of Central Excises Act, 1944

2010 EX[DB] dated 14-7-10


Assistant Registrar
(Excise Appeal Branch)

Copy to :

1. Respondent

C.C.E. LUCKNOW

7-A, ASHOK MARG, LUCKNOW.

2. Adv. / Consult

MR. PANKAJ BHATIA, ADVOCATE

B-21, JANGPURA EXTN, NEW DELHI-110014

21. SHRI AMIT AWASTHI, ADV,
113/145, SWARUP NAGAR, KANPUR

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 Publications Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi - 3

8 Company Law Institute of India Pvt Ltd., No. 2 (Old No. 36), Vaithyaram Street, T. Nagar, Chennai - 17

9 M/s. Deeparchie Publications. M-93, Marg. 46, Saket, New Delhi 110017

10 Taxmann Allied Service Pvt Ltd., 59/32, New Rohtak Road, New Delhi - 110005

11 Easy Service Tax Online Dot Com Pvt Ltd. 407A, Iscon Mall, Above Star India Bazar, Satellite Road, Ahmedabad-15

12 LAWCRUX Advisors Pvt Ltd, LAW House, 1-8, Sector - 10, Faridabad 121003 (Harvana)

13 TaxIndiaOnline.com Pvt Ltd., Unit No. 1, 2nd Floor, Vasant Arcade, Nelson Mandela Road, Vasant Kunj, New Delhi - 110070

14 Office Copy

15 Guard file

16. HON'BLE PRESIDENT.

17. PAWAN KUMAR AGARWAL DIRECTOR OF M/S GALAXY INDO FAB LTD.

REGD. OFFICE 19/X-I KRISHNAPURAM KANPUR

18. SHRI M. P. AGARWAL,
M/S GALAXY INDO FAB LTD.

REGD. OFFICE AT 19/X-I KRISHNAPURAM KANPUR

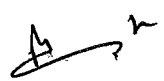
19. SHRI ALOK AGARWAL, DIRECTOR

M/S. AMBIKA TRADING CO.

19/X-1, KRISHNAPURAM KANPUR

20. BIDINGARG, ADV,

B-1/1239-A, VASANTKUNJ, N. DELHI-70


Assistant Registrar
(Excise Appeal Branch)

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI**

PRINCIPAL BENCH - COURT NO. 1

DATE OF HEARING : 14.07.2010

DATE OF DECISION : .0 .2010

FOR APPROVAL AND SIGNATURE :

HON'BLE MR. JUSTICE R.M.S. KHANDEPARKAR, PRESIDENT
HON'BLE MR. RAKESH KUMAR, 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 ?	See
4.	Whether Order is to be circulated to the Departmental Authorities?	Yes

(i) Excise Appeal No. 2170 of 2005

(Arising out of Order-in-Original No. 03/COMMR/LKO/2005 dated 18.03.2005 passed by the Commissioner of Central Excise, Lucknow).

M/s Galaxy Indo Fab Ltd.

....

Appellants

(Rep by Sh. Bipin Garg &
Sh. Amit Awasthi, Adv.)

VERSUS

CCE, Lucknow

....

Respondent

(Rep. by Sh. Amit Khanna, DR)

AND

(ii) Excise Appeal No. 2171 of 2005

(Arising out of Order-in-Original No. 03/COMMR/LKO/2005 dated 18.03.2005 passed by the Commissioner of Central Excise, Lucknow).

Shri Alok Agarwal

....

Appellants

(Rep by Sh. Bipin Garg &
Sh. Amit Awasthi, Adv.)

VERSUS

CCE, Lucknow

....

Respondent

(Rep. by Sh. Amit Khanna, DR)

AND**(iii) Excise Appeal No. 2172 of 2005**

(Arising out of Order-in-Original No. 03/COMMR/LKO/2005 dated 18.03.2005 passed by the Commissioner of Central Excise, Lucknow).

Sh. Pawan Kumar Agarwal

Appellants

(Rep by Sh. Bipin Garg &
Sh. Amit Awasthi, Adv.)

VERSUS

CCE, Lucknow

Respondent

(Rep. by Sh. Amit Khanna, DR)

AND**(iii) Excise Appeal No. 2173 of 2005**

(Arising out of Order-in-Original No. 03/COMMR/LKO/2005 dated 18.03.2005 passed by the Commissioner of Central Excise, Lucknow).

Sh. M.P. Agarwal

Appellants

(Rep by Sh. Bipin Garg &
Sh. Amit Awasthi, Adv.)

VERSUS

CCE, Lucknow

Respondent

(Rep. by Sh. Amit Khanna, DR)

**CORAM : HON'BLE MR. JUSTICE RMS KHANDEPARKAR, PRESIDENT
HON'BLE MR. RAKESH KUMAR, MEMBER (TECHNICAL)**

FINAL ORAL ORDER NO. 555 TO 558 / 10-EX

PER JUSTICE R.M.S. KHANDEPARKAR :

Heard at length the learned advocate for the appellants
and the learned DR for the respondent.

2. All these appeals arise from order dated 18th March, 2005 passed by the Commissioner, Lucknow. By the impugned order, the Commissioner has confirmed the demand of excise duty amounting to Rs. 2,96,08,491/- along with interest thereon and has imposed penalty of equal amount besides penalty of Rs. 50 lacs on Shri Pawan Kumar Agarwal, Director of M/s Galaxy Indofab Ltd., and penalty of Rs. 10 lacs each on Shri M.P. Agarwal, Director of M/s Galaxy Indofab Ltd. as also Shri Alok Agarwal, Director of M/s Ambika Trading Co.

3. The appellant company was engaged in the manufacture of processed fabrics, pillows, cushions and quilted fabrics classifiable under Chapters 52, 54, 55, 58 and 84 of the Central Excise Tariff Act, 1985. The appellants had obtained grey fabrics in bales with each bale containing 8 to 9 pieces of approximately 100 meters each. The pieces required to be dyed in the same colour were segregated from different bales and 15 to 16 of those pieces were stitched together to form fabric length of 1500/1600 meters known as a lot. Before stitching, each of the fabric pieces was given piece number and a common lot number was marked at both the ends of those pieces. Before commencement of processing, the grey fabric was thus given running lot number and piece number of each lot number and the same information was entered in the packing slip. The manufacturing activity was being carried out with the aid of power and the appellants were availing modvat credit facility.

4. It is the case of the appellants that pursuant to the intelligence report received by the Department about suppression of some of the production of excisable goods by the appellants, search was conducted at the factory/office-cum-residence/godown premises of the appellants as well as at the premises of their transporters on 18.11.1998. The search, so conducted, revealed that the appellants had three units, two of which were engaged in fabric processing and the third one was a quilting-cum-furnishing unit. On the verification of the stock and the fabric in process, it was found that there was excess unaccounted stock of grey fabric and semi-processed finished fabric. Under the belief that the same was meant for clandestine removal of the final product, it was seized under Panchnama and the investigation was conducted.

5. Pursuant to the investigation stated to have been carried out, a show cause notice dated 23rd July, 2001 came to be issued to the appellants. The appellants contested the proceedings denying the claim of the respondents. The learned Commissioner, however, confirmed the demand, as stated above, under the impugned order. Hence the present appeal.

6. The learned Commissioner under the impugned order has held that the grey fabrics received by the appellants from the resumed grey challans were not at all entered in the Form-IV register, whereas only the grey fabrics received under resumed grey purchase invoices were entered in the statutory records and this fact was admitted by Shri Deepak Srivastava, Excise Assistant, and Shri B.P. Singh, Folding Master, of the appellants. Further, the

Commissioner has held that, the statements recorded of the Director of the appellants as well as the employees of the appellants established the clandestine removal of finished fabrics without complying with the statutory provisions and payment of excise duty.

7. The learned advocate appearing for the appellants, taking us through the impugned order and various other materials on record, submitted that the Commissioner has passed the order without any cogent evidence and merely on the basis of assumptions and surmises in spite of the fact that he was fully aware that he was dealing with a matter of alleged clandestine removal of the goods wherein heavy burden lies upon the Department to prove such allegations, and that mere statements of various persons regarding the manner of maintaining internal records disclosing some procedural irregularities could not be a substitute for the cogent evidence. There is no material or evidence of whatsoever nature produced on the record regarding alleged clandestine removal of goods. There is no statement of any of the supplier of raw-materials brought on record. He further submitted that, admittedly, the premises were visited and searched by the Officers of the Department on 16.01.1998, 22.04.1998 and 18.08.1998 and various records were taken into possession, however, at no point of time any variation in the records for the period prior to 18th August, 1998 could be noticed. Therefore, merely on the basis of assumption, the respondents could not have assumed that the appellants had clandestinely removed the goods

during the period June, 1998 to August 1998. The conclusions in that regard arrived at by the Commissioner are purely on conjectures and surmises. Besides, the show cause notice came to be issued only on 23.07.2001 without disclosing any reason for delay in issuing the same. There is no evidence of disposal of the final product which could relate to the alleged clandestine removal of the goods. There is not a single statement of any purchaser of such goods nor the investigation revealed any identity of any such purchaser. The Department has not been able to prove the flow back of money either by referring to balance sheet or otherwise in relation to any consideration pertaining to the alleged clandestinely removed goods. In the absence of any convincing evidence in support of the allegation of clandestine removal of the goods, according to the learned advocate, the learned Commissioner could not have arrived at the finding adverse to the appellants only on the basis of the statement of the Directors of the Company along with those of their employees to hold the appellants to be guilty of such malpractices. The Commissioner failed to address to the main issue raised by the appellants relating to the impossibility of production of huge quantity of the product at the appellants' factory as alleged by the Department. There has been no verification with any of the transporters of the appellants' Company with regard to alleged clandestine removal. There is no evidence of excess use of electricity or any flow back of the funds with regard to sale of alleged clandestinely removed the goods. The burden having not been discharged by the Department in this regard, the uncorroborated statements of the parties and the total

absence of any other evidence, clearly justified dismissal of the demand against the appellants. Without prejudice to these submissions, the learned advocate has also argued that the claim was clearly barred by limitation and there was no justification for invocation of extended period of limitation. In spite of the fact that the appellants had asked for cross-examination of all the deponents, no such opportunity was given to the appellants in respect of some relevant witnesses as also in relation to vital documents. The Department did not bother to ascertain the capacity of the machinery to produce the goods and without ascertaining the same, allegations were levelled against the appellants. Reliance is placed in the decisions in the matter of **Commissioner of Central Excise, Mangalore vs Pals Microsystems Ltd.**, reported in 2009 (234) ELT 428 (Kar.); **M/s Mohan Bakers Pt. Ltd. vs CCE, Kolkata-IV**, reported in 2008 (221) ELT 308 (T); **Commissioner of Central Excise, Delhi-IV vs Escorts Limited (Ted), Faridabad**, reported in 2009 (235) ELT 55; **ECE Industries Ltd. vs CCE, New Delhi**, reported in 2004 (164) ELT 236 (SC); and **Oudh Sugar Mills Ltd. vs Union of India**, reported in 1978 (2) ELT 172 (SC). It is further contended that there is absolutely no material to justify imposition of penalty.

8. On the other hand, the learned DR submitted that the impugned order is not based solely on the statements but also on consideration of the records placed before it and the goods seized in the course of investigation. The admission about non-entering

of some of the bale numbers in the statutory records clearly disclosed non-accountal of the material. The statements recorded under Section 14 of the Central Excise Act, 1944 are admissible in evidence and deemed to be correct unless duress is established. The charge of clandestine removal need not be proved with mathematical precision. Since the clandestine production and the clearance was being done in a planned manner, there was no question of evidence being available thereof as possibly the same was destroyed. It was further contended that the appellants' Company is closely held by the Members of a single family. Shri Ashok Kumar Agarwal, Director of M/s Ambika Trading Co. is the brother of Shri Pawan Kumar Agarwal, Managing Director of the appellants' Company. Reliance is placed in the decisions in the matter of **Haroon Haji Abdulla vs State of Maharashtra**, reported in 1990 (110) ELT 309 (SC); **Ureka Polymers Ltd. vs CCE, New Delhi**, reported in 2001 (127) ELT (618); **Surjeet Singh Chhabra vs Union of India**, reported in 1997 (89) ELT 646 (SC); **KTMS Mohd. & Anr. Vs Union of India**, reported in AIR 1992 SUPREME COURT 1831; **P.K. Ravindran vs Commissioner of Central Excise, Cochin**, reported in 2003 (156) ELT 182; **Sai Machine Tools Pvt. Ltd. vs CCE&C, Indore**, reported in 2006 (203) ELT (15) (MP); and **Prakash Industries vs CCE, Vapi**, reported in 2010 (251) ELT 428 (T).

9. Perusal of records apparently disclose that the appellants had specifically raised the point relating to the impossibility of production capacity from the appellants factory to

the extent of demand made by the Department. However, the adjudicating authority seems to have totally ignored the said specific ground of defence that the installed capacity could not permit production of huge quantity of processed fabrics as has been calculated by the Department. The records clearly disclose that as per the Department the total quantity of processed PB fabrics during the period from 01.06.1998 to 16.11.1998 was 7794848 mtrs. against the declared quantity of 1207490 mtrs. in the records maintained by the appellants. Curiously, the competent authority had under its order dated 18th December, 1998, few days after the raid by the Department had fixed the annual capacity of the production by the appellants' unit and had determined their monthly liability to the tune of Rs. 15 lacs and the same was communicated to the appellants under letter dated 18th December, 1998. This point was specifically raised by the appellants but has not at all been considered by the adjudicating authority, though the fact that the said point had been raised in defence was clearly recorded in the order itself.

10. The said point in relation to the total capacity of production in the appellants' unit goes to the root of the matter. If the competent authority after taking into consideration the production capacity of the appellants' unit was convinced in December, 1998 of monthly liability of the appellants to be Rs. 15 lacs, one fails to understand as to how the calculations regarding production of the goods worth Rs. 15,01,18,759/- warranting the duty liability of Rs. 2,96,08,491/- for a period of 5½ months during

the period from August to November, 1998, and that too without any documentary or other cogent materials in support thereto, can be accepted as true and correct calculations of the production from the appellants factory and corresponding duty liability of the appellants. It is nobody's case that subsequent to the day of raid, the appellants had reduced their production capacity. At the same time, undisputedly, the Department had not verified in the course of the investigation the production capacity of the appellants factory. Even the electricity consumption record in respect of the appellants factory was not checked. In these circumstances, it will be absurd to believe the claim of the Department about the possibility of huge production and clearance thereof without payment of duty by the appellants from their factory during the relevant period.

11. According to the respondent's own case, no records pertaining to the alleged clandestine removal of the goods by the appellants were available and the allegations in that regard are made solely on the basis of the calculations done by the Department on the basis of certain statements by the employees of the appellants and the information gathered from the Directors of the Company in the course of the investigation. As rightly pointed out by the learned advocate for the appellants such calculations are not corroborated by any cogent and independent material on record. The statements of the employees were stated to have been received under coercion and duress. During the investigation no material could be gathered to justify the allegation of any

clandestine removal of the goods for the period prior to the said investigation. No inquiry of whatsoever nature was made with any of the transporters or the suppliers of the raw-materials or the purchasers and/or transporters of the clandestinely removed materials. Not a single piece of clandestinely removed product could be apprehended. No verification of the capacity of the total production of the factory was ascertained and/or verified. Not even an attempt in that regard was ever made. No records regarding the electricity consumption were either checked or even perused. No records regarding the staffing pattern and the labour employment was ever gathered. No measurements of the space available for stocks or for stocking the raw-materials and the final product was verified. No account books and bank records of the appellants were checked to ascertain about the flow back of money particularly in relation to the alleged clandestinely removed material. The accounts record also could not lend any support to the allegations of any consideration having been received by the appellants from the alleged clandestinely removed goods. In short, no investigation in relation to the relevant aspects of the matter was carried out by the Department either before the issuance of the show cause notice or even thereafter. Entire investigation appears to be lopsided, half-hearted and half-backed.

12. Apparently, the calculations about clandestinely removed goods was made on the basis of charts and those charts were prepared on the basis of some of the documents which were

not corroborated by any other reliable or cogent material on record.

13. The allegation of use of coercion and duress in recording the statements stood established in view of the fact that the employees of the appellants in the course of cross-examination clearly confirmed the fact of use of duress and coercion having been utilized while recording the statements. Clear statements in that regard by the employees were neither controverted nor even there was an attempt to examine the officer who had recorded their statements to establish that no coercion or duress was ever used while recording their statements. The concerned officers and witnesses were not produced for cross-examination, though the same was asked for. Undoubtedly, the statements recorded by the excise officers in the course of the investigation are admissible in evidence and can be relied upon. But, in the facts and circumstances of the case in hand wherein the calculations are based solely on uncorroborated documents and apparently the qualification of the production appear to be exaggerated in view of the Department's own finding about annual production capacity at much lesser quantity, there is every reason to doubt the genuineness of the statements recorded in the course of the investigation.

14. The Department appears to be helpless while conceding the fact of non-availability of any other evidence in support of the allegation of clandestine removal of the goods by the appellants, apart from contending that no such evidence was available, as

possibly the same was destroyed by the appellants. No investigating agency can expect the offender to serve the agency on platter with the incriminating evidence against the offender. It is for such agency to dig out the relevant evidence in that regard. No explanation is forthcoming from the Department as to what prevented the Department from conducting the investigation in relation to the matters referred to above. The conclusion of the possibility of destruction of the evidence regarding the clandestine removal by the appellants cannot be arrived at merely on the basis of assumptions. Even to arrive at the said conclusion, there must be something on record to suggest the same and for a prudent person to believe it.

15. The Department has also placed reliance upon some of the private records stated to have been maintained by some of the employees of the appellants. However, such records were sought to be relied upon on the basis of the statements of those employees, but in the course of the inquiry it has been clearly established that the statements of those employees were recorded under duress and coercion and the same was not challenged by the Department, neither there was any cross-examination of the deponents on the said issue nor the officers who had recorded the statement of those employees were examined.

16. The learned advocate for the appellants is also justified in making grievance about non-consideration of absence of any incriminating materials being seized at the office of the transporters of the appellants and failure on the part of the

Department to investigate with the transporters whose names were specifically disclosed by the appellants.

17. The learned advocate for the appellants is also justified in making the grievance about inordinate delay in issuing the show cause notice. Apart from preparation of the charts and recording of some statements of the Directors during the said period, there is nothing on record to justify three years' period between the date of the visit by the officers to the factory premises and the date of issuance of show cause notice. Undoubtedly, in case of clandestine removal of the goods extended period of limitation can be invoked. But when the Department fails to establish the clandestine removal of the goods, question of invocation of extended period of limitation does not arise.

18. As a consequence of cumulative effect of all the above circumstances and the factors, it is difficult to accept the allegations against the appellants about clandestine removal of goods during the relevant period. The findings in this regard by the authority below are not borne out from the records.

19. In **Pals Microsystems Ltd.**'s case (supra), the Karnataka High Court after noting the fact that the suppression of duty payable goods by the assessee was noticed by the Superintendent of Central Excise when he had visited the premises on 25th October, 1996, whereas the show cause notice was issued on 26th June, 2000 held that, the Tribunal was right in recording a finding of fact stating that the initiation of the proceedings against

the assessee and the assessment order passed by the assessing authority was barred by limitation.

20. In **Mohan Bakers Pvt. Ltd.**'s case (supra), the learned Single Member of the Tribunal noted that the Department had without finding a clear cut case on the date of inspection brought the appellant to frivolous charges by a show cause notice issued after two years from the date of inspection. While observing that such action was not appreciated by the Tribunal in the case of *Gammon India Ltd. vs CCE, Goa*, reported in 2002 (146) ELT 173, following its earlier decision in *J.S.L. Industries Ltd. vs CCE*, reported in 1999 (109) ELT 316 and that any belated initiation of proceeding was not appreciable as was held by the Apex Court while dismissing the SLP in the case of *Commissioner vs Gammon India Ltd.*, reported in 2002 (146) ELT A313, held that in the absence of any explanation for initiation of proceeding after two years of inspection, the appellant could not be said to have been dealt with fairly and was deprived of due process of justice and the belated decision for initiation of the proceedings had made the case of the Revenue fatal while relying on the said decision.

21. In **Escorts Limited (Ted)**'s case (supra), the Punjab & Haryana High Court after taking note of various decisions of the Apex Court including the decision in the case of *ECE Industries Ltd. vs Commissioner*, reported in 2004 (164) ELT 236 (SC); *Hyderabad Polymers Pvt. Ltd. vs Commissioner*, reported in 2004 (166) ELT 151 (SC); *Nizam Sugar Factory vs Collector*, reported in 2006 (197) ELT 465 (SC); *P and B Pharmaceuticals Pvt. Ltd. vs*

Collector, reported in 2003 (153) ELT 14 (SC); and Pahwa Chemicals Pvt. Ltd. vs Commissioner, reported in 2005 (189) ELT 257 (SC), held that, mere failure to declare does not amount to wilful mis-declaration or wilful suppression and there must be some positive act on the part of the party to establish either wilful mis-declaration or wilful suppression and that when all the facts are before the Department and when the assessee does something under the belief that whatever the assessee is doing would make no difference and would not require specific declaration in that regard, then it would not be a case of wilful mis-declaration or wilful suppression.

22. In **ECE Industries Ltd.**'s case (supra), the Supreme Court held that, the extended period of limitation is not available in case of second show cause notice even though there are allegations of wilful suppression or the mis-statement alleged in the second show cause notice.

23. In **Oudh Sugar Mills Ltd.**'s case (supra), the Apex Court ruled that in a factory where the operations conducted in which the human element plays a significant role, it would not be right to base calculations on the surmise that overfilling of the tanks was being practiced systematically. It was further held that, no doubt, during the test, when the tanks were slightly over filled on nine out of ten occasions, the same could be attributed to a failure of the human element resulting from the fact that a special operation was being conducted by the operators in the presence of the Government officials. It was also held that it is not always

possible to draw conclusion about the total output from the factory merely on the basis of experiment carried out in relation to the production capacity of a factory. There has to be some other evidence to support the findings to be arrived at the test proceedings.

24. In **Haroon Haju Abdulla's** case (supra), the Apex Court held that, when the allegations of duress and torture in the course of the recording of the statements are made by the defendant months after the recording of the statement, it is impossible to give any importance to such allegations. The Apex Court was dealing with the matter wherein a batch of 18 persons were tried jointly before the Chief Presidency Magistrate, Bombay, for offences under Section 120B of the Indian Penal Code read with Section 167(81) of the Sea Customs Act and certain offences under the Foreign Exchange Regulations Act, 1947.

25. In **Ureka Polymers Ltd.'s** case (supra), the Tribunal held that the Managing Director of the firm was concerned with the manufacturing and selling, and was dealing in the excisable goods and, therefore, the penalty was justifiably imposable upon him. That was a case where taking into consideration the statements of the raw-material suppliers, the transporters of the goods as well as of various other persons, the fact that the excess raw-materials received was reflected from the records, the fact that the figures available in the ledger and other accounts in relation to the raw-materials, having regard to the fact that 21 rolls of finished goods were seized in the premises and having regard to the fact that

there were production slips for a period of about 15 days which clearly revealed clandestine manufacture and clandestine removal of the goods, the allegations were clearly established in all those regards, and hence the Tribunal had held that the duty demand was rightly confirmed. The appeal filed against the same by **Ureka Polymers Ltd.** was ultimately withdrawn in the course of the hearing.

26. In **Surjeet Singh Chhabra's** case (supra), the Petitioner had confessed that he had purchased the gold and had brought the same in contravention of the provisions of the Customs Act as well as FERA. In the background of his clear confession of the facts, even otherwise established, the Apex Court held that, mere failure to give opportunity to cross-examine some of the witnesses would not amount to violation of principles of natural justice.

27. In **KTMS Mohd.'s** case (supra), the Apex Court had held that, any authority or Court intending to act upon inculpatory statement as a voluntary one should apply its mind to the retraction and reject the same. It was further ruled that even in passing a detention order on the basis of an inculpatory statement of a detainee who has violated the provisions of FERA or the Customs Act, the detaining authority should consider the subsequent retraction and record its opinion before accepting the inculpatory statement, lest the order will be vitiated.

28. In **P.K. Ravindran's** case (supra), the Madras High Court, while observing that the conclusions reached by the Commissioner and confirmed by the Tribunal were not based on any one single factor but was the result of the cumulative effect of all the factors placed before them, and in those circumstances, held that, "the fact that the electricity consumption was allegedly in a quantity less than that which would be sufficient to manufacture the total quantity removed allegedly clandestinely is not decisive. It is also well known fact that clandestine consumption of electricity by industries goes unmetered either on account of the misuse of the facility by the consumer, or on account of the clandestine activity of such consumer in collusion with the officials of the concerned Electricity Board".

29. In **Sai Machine Tools Pvt. Ltd.'s** case (supra) the issue was, whether the authority could have imposed penalty in a fact situation wherein duty was paid prior to issuance of show cause notice, and the same was answered in favour of Revenue as ignorance of law can be no excuse and it was held that if the assessee fails to pay duty or is short paid, then the provisions of Section 11-AC get attracted.

30. In **Prakash Industries's** case (supra), the issue related to the obligation of the statutory authority to impose amount of penalty equal to the duty liability in view of the decisions of the Apex Court in **Union of India vs Dharmendra Textile Processors**, reported in 2008 (231) ELT 3 (SC) and **Union of India vs**

Rajasthan Spg. & Wvg. Mills & Anr., reported in 2009 (238) ELT 3 (SC).

31. The fall out of the above discussion is that the impugned order cannot be sustained and is liable to be set aside.

32. Accordingly the appeals succeed. The same are allowed and the impugned order is set aside with consequential relief.

(JUSTICE R.M.S. KHANDEPARKAR)
PRESIDENT

(RAKESH KUMAR)
MEMBER (TECHNICAL)

Golay