

GRAM : CEGCANAL

REGISTERED/A.D

THE CUSTOMS, EXCISE & GOLD (CONTROL) APPELLATE TRIBUNAL,

West Block No. 2, R.K. Puram, New Delhi - 110066.

Appeal No. E/Cross/112001-29/2001-NB(SM) BENCH NB(SM)
E/3335/200-NB(S)

Dated : 30/1/2001

CEGAT
NEW DELHI
To,

CCE Jaipur - II

In the matter of :

CCE Jaipur - II

Appellant

vs.

M/s United Marbles Sakhawat Ali

Respondent

I am directed to transmit herewith a certified copy of Final Order No. A/141/2001-NB(SM)
Dated : 19-1-2001 passed by the Tribunal under Section 35-C(1) of Central Excise
& Salt Act, 1944/Section 129 (B) of the Customs, Act, 1962.

Copy to : M/s United Marbles Sakhawat Ali
1. By Pass Road, Makarana, (Raj)

^{PL}
Asstt. Registrar
NB(SM)

2. CCE / EE / (Appeal) Jaipur
3. Chief Commissioner of Central Excise / Customs, Jaipur
4. Adv. / Consult. Shri Bipin Chandra Adv.,
B-I / 1738, Vasant Kunj
New Delhi - 70.
5. S.D.R
6. JCDR
7. Bar Association, CEGAT, New Delhi
8. Library, CEGAT, New Delhi
9. Director (Review), C.B.E.C. North Block, New Delhi
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11. M/s Deeparchic Publications, M-93, Marg-46, Saket, New Delhi.
12. M/s Centax Publications (P) Ltd., 1512-E, Bhisim Pitamah Marg, opp. Sachdeva P.T. College of
Defence Colony, New Delhi-110003
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Asstt. Registrar

**In the Custom, Excise & Gold (Control) Appellate Tribunal
New Delhi**

E/Cross/1/2001 & 9/2001/NB(S)
APPEAL NO. E/3335/2000/NB(S) 19 (.....)

ARISING OUT OF ORDER IN ORIGINAL APPEAL NO.

939 to 940 (KDT) CE/JPR-II/2000 dt: 3-9-2000 DATED.....

PASSED BY..... Commissioner (Appeals), Central
Excise Jaipur.....

Date of decision 19-1-2001.....

CCE JAIPUR.....

APPELLANT (S)

Represented by Sh./Smt. A.K.Jain, SDR.....

VERSUS

UNITED MARBLES

Sakhawat Ali.....

RESPONDENT (S)

Represented by Sh./Smt. Bipin Garg Advocate.....

CORAM :

SHRI V.K.AGRAWAL, MEMBER (TECHNICAL)

To be referred to the Reporter or not?

FINAL

ORDER NO. A/141/01/NB (S/m)

Per...V.K.AGRAWAL:.....

The Revenue has filed this appeal being aggrieved by the Order passed by the Commissioner (Appeal) setting aside the Adjudication Order passed by the Dy.Commissioner under which duty of Central Excise was confirmed and penalty

was imposed on the Respondents.

2. Shri A. K. Jain, Ld. DR, submitted that the Central Excise Officers visited the factory premises of M/s United Marbles Pvt. Ltd, on 13-6-97; that on physical verification only 20.9603 Cu. Mtrs. of irregular marble slabs were found in stock as against 76.0523 Cu mtrs shown in RG-I Register; that Shri Sakhawat Ali, authorised signatory, admitted shortage of marbles slabs and removal thereof without payment of duty; that the Respondents deposited the duty amount immediately before the issue of show cause notice . A show cause notice dt. 18-8-98 was issued only for imposition of penalty and appropriation of duty already deposited in Govt. account; that the duty once deposited can be refunded only under Section 11B of the Central Excise Act; that it is a case of clandestine removal of excisable goods and all cases of clandestine removal are suppression of facts from the Department and as such demand could be raised within 5 years; that Commissioner (Appeals) was not

justified in setting aside the Adjudication order accepting the submissions of the Respondents that the proviso to Section 11A was not invoked and for not specifying the Commission or omissions stated in the proviso to Section 11 A of the Central Excise Act.

3. On the other hand, Shri Bipin Garg, Ld. Advocate, submitted that the Department had neither invoked proviso to Section 11 A(1) of the Act while raising the demand in the show-cause-notice nor it put the Respondents to Notice specifically as to which of the various commissions or omissions stated in the said proviso had been committed by the Respondents and therefore the extended period cannot be invoked. The Ld. Advocate placed the reliance on the decision of the Supreme Court in the case of CCE Vs. HMM Ltd. 1995(76) ELT 497 (SC) wherein it was held that demand for extended period is not invocable unless show cause notice puts assessee to notice specifically as to which of the commissions/ommissions of the proviso had been committed. Reliance has been also placed on the decision in

the case of Raj Bahadur Narain Singh Sugar Mills Ltd. Vs. U.O.I. 1996(88) ELT 24(SC). The Ld. Advocate also submitted that the extended period of limitation under proviso 2 Section 11 A(1) of the Act cannot be invoked by implications; that penalty is not imposable unless Department is able to sustain its demand in show cause notice; that since the demand is hit by time limit no penalty is imposable on them.

3. I have considered the submissions of both the sides. The Dy. Commissioner had confirmed the demand holding that the extended period was invokable as the excisable goods were disposed of by suppressing the facts and Authorised Signatory had admitted the shortage in stock as well as clandestine clearance of the goods without issue of invoices and without payment of duty. The contention of the Ld. DR that the show-cause-notice was not issued for confirmations of demands is not correct as it is clearly mentioned in para-4 of the show cause notice dt. 18-8-98 that the Respondents is required to show

cause ~~notice~~ as to why Central Excise duty amounting to Rs. 49,583/- should not be demanded under Rule 9(2) of the Central Excise Rule read with Section 11A of the Central Excise Act. It is clearly mentioned in the show-cause notice that the duty is being demanded for removing marble slabs clandestinely. According to Webster Ninth New Collegiate Dictionary, the word 'clandestine' means "held in or conducted with secrecy: Surreptitious." The words "suppress" is defined as "to keep secret" and suppression means "an act or instance of suppressing: the state of being suppressed." As per proviso to Section 11 A(1), the extended period of limitation is invokable if the duty has not been levied or paid by reason of fraud, collusion or any wilful misstatement or suppression of facts of contravention of any of the provisions of the Central Excise Act or Rules made thereunder; Once show cause notice mentions the fact of demanding the duty on the goods removed clandestinely the Respondents has been put to notice, ~~that~~

by mentioning one of the specific Commission or Omission enumerated in proviso to Section 11 A(1). As held by the Supreme Court in HMM Ltd., supra, the show cause notice clearly mentions that the duty has not been levied or paid on account of suppression as the excisable goods were cleared without issue of invoice and without showing clearance in statutory records, and without payment of Central Excise Duty. As the Commissioner (Appeal) has not decided the matter on merit and had set aside the Adjudication Order on the ground of limitation, the matter is remanded to him for deciding the matter afresh on merit. The appeal of the Revenue is thus allowed by way of remand.

(V.K.AGRAWAL)

MEMBER (TECHNICAL)

SUNITA

19-1-2001