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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/6150/2004-6153/2004 - EX[DB] Date **10/08/2011**

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

To :
M/S MURARI LAL HARISH CHANDRA JAISWAL
P.LTD.
43,RAJENDRA NAGAR INDUSTRIAL AREA
GHAZIABAD
U.P

M/S MURARI LAL HARISH CHANDRA JAISWAL P.LTD. Appellant

Vs

C.C.E.GHAZIABAD Respondent

I am directed to transmit herewith a certified copy of **Final order No.714-717/ 2011 EX[DB]** dated 27-7-11 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.GHAZIABAD
C.G.O.COMPLEX-II KAMLA
NEHRU NAGAR GHAZIABAD U.P

2. Adv. / Consult SH. PRABHAT KUMAR, ADV.,
B-51, BASEMENT,
SARVODAYA ENCLAVE,
N. DELHI - 17

3. C.D.R
4. Bar association. CESTAT. New Delhi
5. Director Publications. Customs. Excise. I.P. Estate. New Delhi
6. M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi -
7. Company Law Institute of India Pvt Ltd.,No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
8. Taxmann Allied Service Pvt Ltd., 59/32. New Rohtak Road. New Delhi - 110005
9. Easy Service Tax Online Dot Com Pvt.Ltd.407A.Iscon Mall,Above Star India Bazar,Satellite Road, Ahmedabad-15
10. LAWCRUX Advisors Pvt Ltd. LAW House.1-8.Sector - 10. Faridabad 121003 (Haryana)
11. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor.Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
12. Office Copy
13. Guard file
14. HON'BLE PRESIDENT.

Assistant Registrar
(Excise Appeal Branch)

P.T.O. -2,

15. SH. MAHHENDRA KUMAR JAISWAL.
M/S MURARI LAL HARISH CHANDRFA JAISWAL PVT. LTD., 43,RAJENDRA NAGAR INDL.AREA GHAZIABAD U.P

16. SH. SANJAY KUMAR JAISWAL.
M/S MURARI LAL HARISH CHANDRA JAISWAL PVT. LTD.. 43,RAJENDRA NAGAR INDL.AREA GHAZIABAD U.P

17. SH. SUSHIL KUMAR JAISWAL.
M/S MURARI LAL HARISH CHANDRA JAISWAL PVT. LTD.. 43,RAJENDRA NAGAR INDL.AREA GHAZIABAD U.P

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No.2, R. K. Puram, New Delhi.

Date of hearing/decision 27.07.2011

For approval and signature:

Hon'ble Shri Justice R.M.S. Khandeparkar, President
Hon'ble Shri 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?	Seen
4	Whether Order is to be circulated to the Departmental authorities?	Yes

Excise Appeal No. 6150 of 2004
[All Arising out of common order-in-original No. 15/Commr/GZB/04 dated 25.10.2004 passed by the Commissioner, Central Excise, Ghaziabad]

M/s Murari Lal Harish Chandra Jaiswal Pvt. Limited Appellants

Vs.

CCE, Ghaziabad Respondent

AND

Excise Appeal No. 6151 of 2004

Sh. Mahendra Kumar Jaiswal, Director Appellants

Vs.

CCE, Ghaziabad Respondent

AND

Excise Appeal No. 6152 of 2004

Sh. Sushil Kumar Jaiswal, Director — Appellants

Vs.

CCE, Ghaziabad — Respondent

AND

Excise Appeal No. 6153 of 2004

Sh. Sanjay Kumar Jaiswal, Director — Appellants

Vs.

CCE, Ghaziabad — Respondent

Appearance:

Rep. by Sh. Prabhat Kumar & Sh. Somesh Arora, Advocate for the appellants.
Rep. by Sh. B.K. Singh, Jt. CDR for the respondent.

Coram: Hon'ble Sh. Justice R.M.S. Khandeparkar, President
Hon'ble Sh. Rakesh Kumar, Member (Technical)

FINAL ORAL ORDER NO. 714-717/2011-EX

Per: Shri Justice R.M.S. Khandeparkar:

Since common question of law and facts arise in all these appeals, they were heard together and are being disposed of by this common order.

2. We have heard at length the learned Advocate for the appellants and the Joint CDR and perused the records.

3. The present appeals arise from order dated 25.10.2004 passed by the Commissioner, Ghaziabad. By the impugned order, while holding that the appellants are guilty of clandestine removal of goods, duty demand of Rs.4,96,14,497/- has been confirmed against the appellants alongwith

interest thereon and equal amount of penalty. Confiscation of the plant, building & machinery of the appellants has also been ordered with liberty to redeem the same on payment of redemption fine of Rs. 10 lakhs. Further, penalty of Rs. 2 lakhs has been imposed against each of the three Directors. Being aggrieved by the said order, the appellants have preferred the present appeals.

4. Pursuant to the visit to the premises of the appellants at Ghaziabad on 13.11.2011 and on perusal of the records pertaining to the raw material, the Department was able to get the following details in relation to the period from 1998-99 to 2001-2002 and consequently a show cause notice dated 26.03.2003 came to be issued to the appellants:-

Period	Opening stock of raw tobacco as per financial records on 1.4.98 (Qtls.) (RUD-6)	Quantity of raw tobacco recd. As per Mandi Samiti Gate passes etc. (Qtls.) (Ann-II)	Closing stock of raw tobacco as on 13.11.01 as verified (Qtls)	Quantity of raw tobacco consumed (213-4) (Qtls)	Production as shown in RG-I/ RT-12 (Qtls.) Annex-III	Quantity of raw tobacco found unaccounted for (Qtls) (5-6)
1	2	3	4	5	6	7
1998-99 to 2001-02 (upto 12.11.01)	3470.39	2024.39	837.00	22875.23	882200	14053.23

5. It is the case of the appellants that whatever quantity of raw material, which was ascertained to have been received at the appellants' factory at Ghaziabad during the period 1998 to 2002 was not in relation to the production of the final product at the Ghaziabad unit itself but it was relating to their four units including the Ghaziabad unit. The other three units are situated at Mukharjee Nagar, Delhi; Holambi Kalan, Delhi; and Patparganj, Delhi, and, therefore, it was incorrect on the part of the Department to hold that the entire raw material, revealed from the records in relation to the said period, was used for manufacture of the final product at only one unit at Ghaziabad. In support of the said contention, the learned Advocate for the appellants submitted that, the appellants have produced balance sheet of each year which discloses actual sale of the final product and payment of duty thereon at each of the four units in accordance with law. It is the further case of the appellants that the impugned order is essentially based on the statements of the employees of the appellants and the records relating to the receipt of the raw material at the Ghaziabad factory. The authority below, however, has ignored the defence of the appellants that such raw material was received in the factory at Ghaziabad not only for the purpose of manufacture of the final product at Ghaziabad, but also in three other units mentioned above. According to the learned Advocate, the documents disclosing transfer of such product from the Ghaziabad factory to each of the other three units were also produced by the appellants before the authority below, but no credence whatsoever was given to the said documents. It is their further case that, there has been no verification done of such defence raised by the appellants by perusal of the records at their head office at

Delhi. It is also the contention on behalf of the appellants that no investigation has been done regarding disposal, sale or distribution of the final product by Ghaziabad unit which was disclosed under the balance sheet. It is their further case that, though the cross-examination of the witnesses was asked for, the same was refused without any justification. In view of non-corroborated statements, according to the learned Advocate, the authority below erred in relying upon them. It is also the case of the appellants that, though the claim related to the period from 1998 to 2002, the show cause notice was issued only on 26.03.2003, which was beyond the period of limitation, and that there was no case for invoking extended period of limitation. The liability to pay penalty is also sought to be disputed on behalf of the appellants. Reliance is sought to be placed in the decision in the matter of **Electronic Control Corporation vs. CCE, Cochin** reported in 2006 (197) ELT 291, **Devi Rubber Products vs. CCE, Cochin** reported in 2001 (135) ELT 797, **Nanhe Mal Export Ltd. vs. CCE, Delhi-I** reported in 2003 (157) ELT 481, **Kiran Udyog Ltd. vs. CCE, Jaipur** reported in 2002 (139) ELT 571, **Nissan Thermoware Pvt. Ltd. vs. CCE, Daman, Vapi** reported in 2009 (246) ELT 191, CCEC&ST, **Daman vs. Nissan Thermoware Pvt. Ltd.** reported in 2011 (266) ELT 45 (Guj.), **CCE, Chandigarh vs. Nachiketa Paper Ltd**. reported in 2008 (225) ELT 194 (P&H), **Galaxy Indo Fab Ltd. vs. CCE, Lucknow** reported in 2010 (258) ELT 254, CCE, **Madurai vs. N. Manikandan** reported in 2009 (246) ELT 349, **Vigirom Chem Pvt. Ltd. vs. CCE, Bangalore** reported in 2010 (251) ELT 544, **CCE, Meerut-I vs. R.A. Castings Pvt. Ltd**. reported in 2011

(269) ELT 337 (All.) & **R.A. Castings Pvt. Ltd. Vs. CCE, Meerut-I** reported in 2009 (237) ELT 674.

6. On the other hand, the Joint CDR, taking us through the impugned order and the statements recorded in the course of investigation submitted that, the defence of the appellants that they were maintaining consolidated records regarding receipt of the raw material at their head office was raised for the first time only in answer to the show cause notice and there was no whisper about the same in the statements recorded in the course of investigation. It was further submitted that, apart from the production of chart about the transfer of the raw materials from Ghaziabad to other units, inspite of giving ample opportunity, no evidence either in the form of transport receipt or otherwise was produced in support of such claim. He further submitted that, once the appellants had admitted of receipt of raw materials of certain quantity in the factory at Ghaziabad and it was their case that part thereof was transported to other factories for production of final product, onus was entirely upon the appellants to establish the same which they failed to discharge and, therefore, the contention in that regard sought to be raised by the appellants is without any basis. He further submitted that, the statements recorded of the employees of the appellants, apparently, lend support to the charge of clandestine removal inasmuch as there is nothing to disclose that any part of raw material was ever transported from Ghaziabad to any other unit. Taking into consideration the number of machines available in the premises at Ghaziabad and the undisputed statements regarding the quantity of production at Ghaziabad, there is hardly any room to doubt about the conclusions, which have been arrived at by the

authority below about clandestine removal of goods without payment of duty from Ghaziabad factory. Mere disclosure of sale of the final product by each of the units in the balance sheet, itself cannot amount to rebutting the presumption which arises against the appellants regarding the clandestine removal of the goods from Ghaziabad factory. The Jt. CDR submitted that it is pertinent to note that the employees have clearly admitted in their statements that the production of the final product is one to one co-relation in comparison to the raw material in the premises. He further submitted that there was no question of granting any cross-examination as it was not disclosed for what purpose the cross-examination was required. He placed reliance in the decision of **M.R. Compound & Allied Products (P) Ltd. vs. CCE, Kanpur** reported in 2008 (227) ELT 375, **Super Tyres Pvt. Ltd. vs. CCE, Panchkula** reported in 2009 (244) ELT 363 and **Shalini Steels Pvt. Ltd. vs. CCE, Hyderabad** reported in 2011 (269) ELT 485.

7. It cannot be disputed that the charge of clandestine removal of the goods against the appellants is essentially based on verification of records by the Department in relation to the period from 1998 to 2002 at Ghaziabad Factory. It is also not in dispute that the appellants have four factories at four different places and all the factories are engaged in manufacture of same product. Pursuant to the verification of the records, it was found by the Department that gate passes of Mandi Samiti revealed procurement of raw tobacco by the appellants in their factory at Ghaziabad in large quantity and considering the fact that the manufacture of the final product is in the ratio of one to one with the raw material in the absence of any evidence produced by the appellants about utilization of such raw material beyond the

factory at Ghaziabad, charge of clandestine removal was leveled against the appellants. It is also undisputed fact that the quantity of raw material ascertained to have been received at Ghaziabad factory had never been disputed by the appellants. Their defence has been that the entire such quantity was not utilized for production of final product at Ghaziabad only, but the same was utilized for manufacture in other three different units, mentioned above. In support of their contention, in that regard, they had sought to place on record alongwith reply to the show cause notice a chart regarding transfer of such raw materials to different such units for the relevant period. However, as rightly pointed out by the Jt. CDR that in spite of giving ample opportunity, the appellants did not produce best evidence available in relation to such defence. Certainly, challans and transport documents in relation to such goods, alleged to have been transferred to the different units from Ghaziabad, would have been a full proof in support of the plea sought to be raised by the appellants. The question therefore, arises in the matter is, whether failure in that regard would be sufficient to arrive at the conclusion about clandestine removal of goods from Ghaziabad factory by the appellants.

8. The Commissioner after taking into consideration the materials on record including the statements of the witnesses recorded has held thus:-

> "The contention of the noticee's advocate that the entire raw tobacco of the 4 units first arrived at Mohannagar unit and then was subsequently transferred to factories at Delhi after cleaning and sieving as per directions received from head office is prima facie incorrect as it is fact on record that no records of raw tobacco were being maintained at Mohannagar. Such claim of receipt and transfer of raw tobacco from Mohannagar unit to their other unit does not appear practicable or feasible on a day to day basis for as long as five

years, when no account/ record of raw tobacco was being maintained at Mohannagar".

In short, the contention sought to be raised by the appellants in response to the charge of clandestine removal has been disbelieved essentially on two grounds, namely, that no record of raw tobacco was maintained at Mohannagar and consequently that it is difficult to believe that the practice of transfer of such raw material to such units was being followed for a period of five years. Undoubtedly, the finding is also accompanied by reference to the statements of the witnesses recorded at the relevant time. There can be no grievance made about the failure on the part of the assessee –appellants to produce cogent evidence regarding the transfer of raw materials to the factory at Delhi. But, at the same time, it is a matter of record that the appellants had produced the balance sheets for every year in relation to the relevant period. The balance sheets disclose production of similar product in all those four units, sale thereof, the proceeds received therefrom by the appellants and the duty paid in relation to manufacture of such goods in each of the units. We do not find that at any time the Department having raised any doubt about the factum of production of such goods in three different units at Delhi and sale thereof and payment of duty thereof. It is also not the case of the Department that the raw material for manufacture of those final products in all three units was procured from any source other than transfer of goods from Mohannagar to these three units. In fact, there was no investigation carried out in this regard by the Department. While it is true that the party raising defence has to make that defence good by producing the best evidence in support thereof, but, at the same time, it cannot be forgotten that any plea raised in defence to any charge can be established not only by producing direct evidence in support of such plea, but also by relying upon either on the evidence produced by the others or on failure on the part of the investigating authority to collect the necessary materials. In the case in hand, once specific plea by the appellants was raised that the entire raw tobacco was received at one factory at Mohannagar and some part thereof was transferred to other units clearly establishing manufacture of similar goods, sale thereof and payment thereof, it was but expected from the Department to have further investigation to ascertain the manufacture of similar product in their three different units being from the raw material procured from the source other than from the alleged transfer of raw materials by the appellants in these three units. Indeed the investigation in this regard is totally silent.

9. It was sought to be pointed out that the plea regarding receipt of the entire tobacco at one unit and its subsequent transfer to other units was raised for the first time in reply to the show cause notice and no such plea was raised earlier in the course of recording of statements. In cases of serious charge, it is well established law that mere silence on the part of the person against whom the charges are sought to be leveled the same cannot be construed as an evidence against such party. Merely because the plea in that regard was not specifically raised in the course of recording of the statements, that cannot bar the appellants from placing appropriate defence in answer to the show cause notice. If there is a case of afterthought in relation to the any plea raised in answer to the show cause notice, certainly the Department can establish the same by disproving it either by producing necessary evidence in that regard or by pointing out the essential lapse on

the part of the assessee in establishing such plea. As already seen above, the fact that all three other units had manufactured same product is not in dispute, there is nothing on record to show that for the purpose of manufacture of such final product in those three units the appellants had procured raw material from sources other than supply of raw material from its units at Ghaziabad. Being so, we find it difficult to sustain the conclusion that whatever raw material was received at Ghaziabad must have been used only at Ghaziabad only and was not transferred to other units in Delhi. The onus lies on the part of the Department to bring cogent evidence against the removal of the goods by the appellants.

10. As regards the contention of denial of cross-examination of the witnesses, we, however, find that there is no substance in this contention. If we peruse the submission of the witnesses, they do not lend much support to the case of the appellants nor it discloses any prejudice being caused to the appellants. Being so, merely because the cross-examination in the case in hand was rejected that cannot be a ground to call that the order to be bad in law.

11. As we have been pointed out earlier that once it was established by the assessee that all four units were engaged in the manufacture of similar product accompanying with the specific defence that the entire raw material for the purpose was primarily received at Ghaziabad unit and thereafter was transferred to other units, and production pursuant to such transfer being reflected in the balance sheets with necessary details regarding the quantum of money received out of sale proceeds from clearance of such goods from

each of four units, payment of duty in respect thereof, merely because the evidence in the form of challans and transfer documents from Ghaziabad unit to other three units was not produced, that will not be sufficient to reject the contention sought to be raised on behalf of the appellants. It is settled law that in case of clandestine removal, the onus lies upon the Department to prove the same with cogent evidence. As observed above, we find serious lapses in this regard on the part of the investigation.

12. Considering the facts and circumstances of the case and the view we are taking in the matter, it is not necessary to deal with the grounds of limitation and penalty which are sought to be raised on behalf of the appellants.

13. Before we part with the matter, it would be necessary to refer to the case laws sought to be relied upon by the Department. In the case of **Shalini steels**, the A.P. High Court while dealing with the plea relating to denial of principles of natural justice on account of rejection of the request of cross-examination of the witnesses it was held thus:-

> "9. Cross-examination of a witness, on whose statement reliance is placed by the adjudicating authority, is no doubt a facet of the principles of natural justice. It is, however, well to remember that natural justice is no unruly horse, no lurking landmine, nor a judicial cure-all. If fairness is shown by the decision-maker to the man proceeded against, the form, features and the fundamentals of such essential propriety being conditioned by the facts and circumstances of each situation, no breach of natural justice can be complained of. Unnatural expansion of natural justice, without reference to administrative realities and other factors of a given case, can be exasperating. We can neither be finical nor fanatical but should be flexible yet firm in this jurisdiction . [Chairman, Board of Mining Examination and Chief Inspector of Mines v. Ramjee – (1977) 2 SCC 256]. Whether any particular facet of the principles of natural justice would be applicable to a particular situation, or whether there has been any infraction of the application of that principle, has to be

judged in the light of the facts and circumstances of each particular case. The basic requirement is that there must be fair play in action. [K.L. Tripathi v. State Bank of India – (1984) 1 SCC]. The doctrine of natural justice cannot be imprisoned within the strait-jacket of a rigid formula, and its application depends upon the nature of the jurisdiction conferred on the administrative authority, upon the character of the rights of the persons affected, the scheme and policy of the statute and other relevant circumstances disclosed in a particular case. [Union of India v. P.K. Roy – AIR 1968 SC 850, Channabasappa Basappa Happali v. State of Mysore – AIR 1972 SC 32]. It is not possible to lay down rigid rules as to when the principles of natural justice are to apply, nor as to their scope and extent. There is no such thing as a merely technical infringement of natural justice. The requirements of natural justice must depend on the facts and circumstances of the case, the nature of the inquiry, the subject-matter to be dealt with, and so forth. [Wade's Administrative Law 5th Edn. pp. 472-75].

10. To sustain the allegation of violation of principles of natural justice one must establish that prejudice has been caused by non-observance thereof, [Syndicate Bank v. Venkatesh Gururao Kurati – AIR 2006 SC 3542; K.L. Tripathi – (1984) 1 SCC 43; Rajendra Singh v. State of M.P. –AIR 1996 SC 2736; Aligarh Muslim University v. Mansoor Ali Khan (2000) 7 SCC 529 and State Bank of Patiala v. S.K. Sharma – AIR 1996 SC 1669], more so on the ground of absence of opportunity of cross-examination. [Jankinath Sarangi v. State of Orissa – (1969) 3 SCC 392; K.L. Tripathi – (1984) 1 SCC 43]. All that the Courts have to see is whether the non-observance of any of these principles, in a given case, is likely to have resulted in deflecting the course of justice. [State of U.P. v. Om Prakash Gupta –AIR 1970 SC 679]. Where, on the admitted and indisputable facts, only one view is possible no prejudice can be said to have been caused. [S.L. Kapoor v. Jagmohan – (1980) 4 SCC 379; Aligarh Muslim University – (2000) 7 SCC 529; Dr. Gurjeewan Garewal v. Dr. Sumitra Dash – (2004) 5 SCC 263]. Where the facts are not in dispute, an inquiry would be an empty formality. [Anil Bajaj (Dr.) v. Postgraduate Institute of Medical Education & Research –AIR 2002 SC 2414]. Violation of principles of natural justice may not, by itself, necessitate interference by this Court under Article 226 of the Constitution of India, in all cases. Interference would be justified only where manifest injustice would otherwise ensure or where larger public interest would so require".

14. As we have already held that in the facts and circumstances of the case, we find no fault with the authority rejecting cross-examination, the decision sought to be relied upon also lends support to the department case in this regard.

15. In **M.R. Compound & Allied Products** case, the Tribunal while dealing with the relevancy of raw materials found in the factory of the assessee, to support of the case of the clandestine removal, had held thus:-

> "**5.**We find that in this case admitted position is that the appellants are storing raw material as well as excess goods and finished goods in the premises which are not disclosed to the Revenue. In respect of the loose sheets showing the production and clearance of the goods which were not reflected in the statutory record, we find that the documents were recovered from Shri Devesh Rajan and Shri Karan Singh and who explained the entries. Shri Devesh Rajan accepted the entries and admitted manipulation on the advise of Shri S.K. Gupta, Managing Director. In these circumstances as the excess goods were found in the truck which were packed in systematic way to conceal the actual weight and recovery of excess raw material valued at Rs. 8,39,196/- and packing material valued at Rs. 15,10,222/-. In addition to this, the excess finished goods valued at Rs. 1,35,384/- were also found in the factory. In these circumstances, we find no merit in the contention of the appellant that excess raw material and packing material was received on that day regarding which no evidence was on record. In view of the documentary evidence showing the production and clearance of the goods not reflected in the statutory record, we find no merit in these appeals. The appeals are dismissed."

16. Apparently, the observations therein were in the peculiar facts of the case wherein there was clear admission that the assessee had stored raw material and excess goods and finished goods in the premises and the same facts were not disclosed earlier. It was also a case where the correct account of production and clearance of goods was not reflected in the statutory records. The same being established in the facts of that case, the decision

was arrived at as quoted above. Apparently, the facts therein were different from the facts of the case in hand.

17. In **Super Tyres'** case, to which one of us party (Justice R.M.S. Khandeparkar), it was after analyzing of the material facts on record held thus:-

> "**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".

18. Having taken note of the above facts, the Tribunal held that "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". In the case in hand, we have already pointed out the missing links and the same being sufficient to accept the contention sought to be raised on behalf of the appellants. Being so, this decision also can be of no help to the respondent.

19. As regards various decisions sought to be relied upon by the appellants, we do not think it necessary to refer to them in the facts and circumstances of the case. In the result, therefore, the appeals succeed and the same are allowed. The impugned order is hereby set aside.

[Justice R.M.S. Khandeparkar]
President

[Rakesh Kumar]
Member [Technical]

Pant