IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.

Date of Hearing: 23.11.2016
Date of Pronouncement: 03.02.2017

Appeal No. E/2058-2060/2010-CU.(DB)

(Arising out of common Order-in-Original No. 08/D-I/2010 dated 23.4.2010 passed by the Commissioner of Central Excise, New Delhi)

M/s Om Fragrances — Appellant
Shri Sumit Agarwal, Partner
Shri Rajeev Gupta, Supervisor

Vs.

CCE, New Delhi — Respondent

Appearance

Shri Prabhat Kumar, Advocate - for the appellant

Shri G.R. Singh, D.R. - for the respondent

CORAM: **Hon'ble Mr. Justice (Dr.) Satish Chandra, President**
Hon'ble Mr. Ashok K. Arya, Member (Technical)

Final Order No. 50635-50637/2017

Per Ashok K. Arya :

M/s Om Fragrances, Shri Sumit Agarwal and Shri Rajeev Gupta are in appeal against the order in original No. 8/2010 dated 23.4.2010 passed by the Commissioner, Central Excise, Delhi, whereunder *inter alia* Central Excise duty of Rs.96,47,361/- has been ordered to be recovered and equivalent penalty has also been imposed on the appellant M/s Om Fragrances. The impugned order also imposes penalty of Rs.25 lakhs on Shri Sumit Agarwal, partner and penalty of Rs.10 lakhs on Shri Rajeev Gupta, Supervisor.

2. The appellants have been represented by ld. Advocate Shri Prabhat Kumar and Revenue has been represented by ld. AR Shri G.R. Singh.

3. Based on appeal memorandum and the written submissions, the ld. Advocate for the appellants mainly submits as under:

(i) Wrong presumption of manufacture at Burari - It is categorically stated that there was no commercial production at Burari and there has been no seizure from the market of any goods manufactured by the appellant. Officers ignored completely the fact that gutkha clearly was bearing the name of the manufacturer as M/s Jain Enterprises with the details of the Central Excise registration number and trade mark owner.

(ii) There was no manufacturing activity at Burari – This is proven by the following facts and the legal position:

(a) No incriminating evidence other than machines and gutkha manufactured by M/s Jain Enterprises has been found.

(b) No diary, slips or any private record has been found to indicate any clandestine receipt of raw material and manufacture of the goods.

(c) No record of sale of gutkha was found.

(d) There is no recovery of gutkha with brand name 'India Gold' from the market.

(e) No dealers have been identified to whom goods were sold.

(f) There was no evidence of any transportation of the so called clandestinely manufactured gutkha.

(g) No names of any transporters have been indicated.

(h) No raw materials were found in the premises.

(iii) Case made out only on the basis of statements – Statements recorded by the officers are contrary to the facts on record and hence such statements must be discarded, particularly when no cross examination of the concerned persons was permitted by Commissioner.

(iv) There is no corroborative evidence for confirmation of demand- reliance is placed on the following decision:

(a) *TGI Poshak Vs. Hyderabad* – 2002 (140) ELT 187 (T).

4. The Revenue's main case is that the appellant M/s Om Fragrance were engaged in manufacturing excisable goods namely 'India Gold' gutkha without obtaining any central excise registration. They were clearing the said goods without payment of duty from December, 2007 till 4.8.2008.

4.1 Revenue's main submissions are that the appellant assessee evaded duty of Rs.96,47,361/-by way of clandestine manufacture and clearance of excisable goods viz. gutkha of 'India gold' brand. The main evidence against the appellants are Panchnama dated 4.8.2008;

statements of Shri Sumit Agarwal, partner and Shri Rajeev Gupta, Supervisor and Shri Jinesh Jain, proprietor of Jain Enerprises.

5. After careful consideration of the facts on record, the submissions of both sides and the case laws cited, it appears that the Commissioner during the adjudication proceedings has not taken into account the submissions of the appellants that there have not been direct or indirect corroborative evidences in the form of purchase/utilisation/consumption of raw materials, sale of finished goods and so on. The appellants have also argued that they were not given the opportunity of cross examination of the concerned persons whose statements and evidences are having bearing on the outcome of their case.

6. When it is so then we set aside the impugned order and remanded the matter to the original adjudicating authority to examine and decide afresh after giving the necessary opportunity of personal hearing and submissions of documents as per law to the appellants. It is expected that the matter be decided within four months after receipt of this order.

6. In the result, appeals are allowed by way of remand.

(Pronounced in Court on 03.02.2017)

(Justice Dr. Satish Chandra)
President

(Ashok K. Arya)
Member (Technical)

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