**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, WEST ZONAL BENCH AT MUMBAI**

REGIONAL BENCH - COURT NO. 02

**Excise Appeal No. 26 of 2009**

(Arising out of Order-in-Appeal No. PII/PAP/182/2008 dated 22.09.2008 passed by Commissioner of Central Excise (Appeal), Pune-II)

**Commissioner of Central Excise Pune-II** .....**Appellant**
ICE House, 41/A, Sasoon Rd., Opp. Wadia College, Pune-1

*VERSUS*

**M/s Quality Processors** .....**Respondent**
Ward No. 11/409, Station Road, Ichalkaranji, Dist.-Kolhapur

**Appearance:**

Shri Sanjay Hasija, Authorized Representative for the Appellant
Shri C.M. Sharma, Consultant for the Respondent

**CORAM:**
**Hon'ble Mr. S.K. Mohanty, Member (Judicial)**

**FINAL ORDER NO. A/85920 / 2019**

Date of Hearing: 18.01.2019
Date of Decision: 17.05.2019

**Per: S.K. MOHANTY**

Revenue has filed this appeal against the impugned order dated 13.10.2008 passed by the Commissioner (Appeals), Central Excise, Pune-II.

2. Brief facts of the case are that the respondent herein, was engaged in the manufacture of excisable goods namely, "Processed Fabrics" falling under Chapter 55 of the Central Excise Tariff Act, 1985. Based on intelligence, the officers of DGCEI searched the premises/residences of various persons. The search operation resulted in recovery of various documents including the Compact Disk (CD) seized from M/s Marudhar

Industries and computer system including CPU seized from M/s Mahalaxmi Fabrics on 23.08.2005. During the course of investigation, the department officers recorded the statements of various persons. Based on the sales particulars retrieved and print out from CPU/CD, the department initiated show cause proceedings, alleging that Shri Gautam Salecha had been financially helping Shri Amrit Chhajer with the understanding of adjusting the loan amount and that the latter had processed grey fabrics without bringing into account and removed the processed fabrics to the group companies of the former, without payment of goods. The show cause proceedings initiated by the department culminated into the adjudication order 31.01.2008, wherein central excise duty demand of Rs.48,87,050/- along with interest was confirmed and equal amount of penalty was imposed on the respondent. Besides, the said order also imposed penalties on various persons under erstwhile Rule 209A of the Central Excise Rules, 1944 read with Rule 26 of the Central Excise Rules, 2001/2002. On appeal filed by the respondent herein against the adjudication order, the Learned Commissioner (Appeals) vide the impugned order dated 13.10.2008 has allowed the appeal.

3. Heard both sides and perused the records.

4. I find that the Learned Commissioner (Appeals) at paragraph 5.3 and 5.4 has recorded the detailed facts of the case and upon proper analysis, has held that the department has not brought on any iota of evidence to book the offence case against the respondent. It is an admitted fact on record that except the statements and the print outs from CPU and CD, no other corroborating evidences are available to confirm the alleged demand on the respondent. The CPU was seized from M/s Marudhar Industries on 23.08.2005, whereas the respondent had closed its manufacturing operations on 30.06.2001. Thus, it

is evident that the data retrieved from the CPU of third party cannot be used to frame charges against the respondent without any proper corroboration. The print outs from the computer CPU/CD were not taken by the department at the time of search/seizure and thus, in terms of Section 36B(2) of the Central Excise Act, 1944, such print outs cannot be used as evidence regarding clandestine activities. Further, I also find that the evidences produced by the department for sustaining the duty demand has not been corroborated by detailed investigation. The law is well settled that charge of clandestine removal cannot be based on presumptions and assumptions and there should be tangible evidence of removal of goods, alleged to have been manufactured and cleared without payment of duty. In this case, the department has not brought on any evidence to sustain the alleged demand confirmed on the respondent. On careful examination of the observations made by the Learned Commissioner (Appeals), I find that contrary stand cannot be taken at this juncture for deciding the issue differently.

5. In view of above, I do not find any merits in the appeal filed by Revenue. Accordingly, same is dismissed.

(Order pronounced in the open court on 17/05/2019)

**(S.K.Mohanty)**
**Member (Judicial)**

*HK*