# Commissioner of Central Excise Vs. Madras Suspensions Ltd.

Commissioner of Central Excise Vs. Madras Suspensions Ltd.

**SooperKanoon Citation** : sooperkanoon.com/31438

**Court** : Customs Excise and Service Tax Appellate Tribunal CESTAT Tamil Nadu

**Decided On :** Jul-02-2003

**Reported in** : (2003)(156)ELT807Tri(Chennai)

**Judge** : S Peeran

**Appellant** : Commissioner of Central Excise

**Respondent** : Madras Suspensions Ltd.

**Judgement** :
1. The revenue is aggrieved with the Orders-in-Appeal Nos. 89 and 90/2002 (MDU) (GVN), dated 17-5-2002 passed by Commissioner of Central Excise (Appeals) by which he has held that there has been no clandestine re moval and demands cannot be sustained on the basis of chits/notes and has also found that there is no corroborative evidence on record. The findings recorded in Paras 3 and 4 are extracted herein below : "3. I have given my careful consideration to the facts and circumstances of the case and the submissions made in the ground of appeal. Shri Rajkumar Appasamy, Advocate appeared for personal hearing and reiterated the submissions made in the appeal. I take both the appeals together for passing a common order. M/s. Madras Suspension Ltd. is manufacturing leaves and assembly falling under chapter Heading 7320 of the GET A, 85. The company has 3 units.

Unit-I and III in Madurai and Unit II at Karnataka. Only Unit-Ill is at present functioning. Unit-I stopped production on 21-10-1998. The distance between Unit-I and III is around 10 kms. There is no other evidence adduced by the department other than the chits/notes. No statement is recorded from the security who maintained the chit and note. Unit-I has stopped functioning from 21-10-1998. That is the reason for around 30 MT of scrap. The invoice on 26-10-1998 relates to 48 assembly cleared around 17.20 Hrs. to Pondicherry. The entry in the chit/note on 27-10-1998, relates to clearance of 48 assembly by the same lorry. A mahazar is drawn at Unit-Ill on 27-10-1998 at 14.30 Hrs. It is not possible to be in Pondicherry and Madurai at the same time. Regarding the entry "Billing at Unit-Ill" the appellant stated that the lorry after loading at Unit-Ill must have stopped at Unit-I since there are shops near Unit-I the transport staff must have parked the lorry inside Unit-I. In the case of modvated inputs, there is no discrepancy in the case of purchases, opening stock, issues, closing stock and physical verification. They stated that what is legally permissible need not be done clandestinely. They stated that inter-unit transfer has taken place and no debit has been made. There was a delay in recording of inter-departmental memo. Both leaves and assembly fall under same subheading. An assembly consist of 12 to 18 leaves. The lower authority has dropped a demand of Rs. 26,801/- mentioned in the chit and note (Modvat) holding that they were covered under proper documents. This will substantiate that there cannot be a demand based on the chit and note since there may be documents for the same. In the absence of other evidence like clandestine purchase of raw materials, clandestine manufacture, statement from security staff statement from transporter, buyer, discrepancy in stock of modvated inputs and physical stock. The demand based on clandestine removal based on chit/note is not sustainable. Reliance placed on the following judgments 2001 (130) E.LT. 344 in the case of MTK Gurusamy. It has been held that Demand clandestine removal - private note book maintained by a part time employee containing unauthenticated entries and over writings not to be relied on for establishing clandestine removal in absence of any corroboration in the form of seizure of goods or invoice or purchase of raw materials, etc. "1989 (39) E.L.T. 655 (T) in the case of Kashmir Vanaspathi (P) Ltd. wherein it has been held that demand - clandestine removal - note book maintained by labourers containing unauthenticated entries and over writings not a dependable record to establish clandestine removal unless same supported by other evidence such as raw material consumed, goods actually manufactured and packed/etc. In the case of Raman Ispat (P) Ltd. reported in 2000 (121) E.L.T. 46 (T) has held that clandestine manufacture and removal - evidence - allegation - show cause notice based on a private note book seized from the factory premises - no evidence collected in support of the alleged receipt of inputs and the presumed manufacture in excess of the recorded figures - writer of the diary not examined - person in charge of the place of recovery also not examined. Traders to whom some scrap alleged to be removed only on paper not traced or examined.

4. In view of the above discussion, I set aside the order and allow the appeals." 2. The Revenue contend in this appeal that the statement itself indicate the purchase of inputs illicitly and its clandestine removal of goods. Further reliance is made on the Tribunal's judgment rendered in the case of Haryana Acrylic Manufacturing Co. Pvt. Ltd. v. CCE as reported in 2001 (130) E.L.T. 562 wherein demands have been confirmed on the basis of statement and the entries made by the watchman in the registers which showed the removal of goods in the gate. It is stated that in a similar circumstance demands have been confirmed on the basis of shortage. Therefore, in the present case the demands are required to be confirmed. It is stated that the Commissioner (Appeals) has erred in not confirming the demands and hence this appeal.

3. Heard ld. DR, Shri P. Devaladu who took me through the entire record and both the impugned orders and submitted that there are clear admissions made by the assessee and the staff and based on the private chits and therefore the demands are required to be confirmed.

4. Shri Rajkumar Appa Swamy, Advocate contended that in the cited case, the Tribunal had noticed the evidence of clandestine manufacture and removal of goods. There was shortage in the physical stock of the raw materials and that shortage was not explained. They also found inputs in other places than the notified place. There were several other pieces of evidence which established the manufacture and clearance of goods clandestinely and the Tribunal has not departed from the ruling that the demands cannot be confirmed on the basis of private chits, note books as has been held in the case of Kashmir Vanaspati (P)

Ltd. v. CCE as reported in 1989 (39) E.L.T. 655 which has been followed in large number of judgments. He placed before the Bench one of the orders of this Bench rendered in the case of K. Rajagopal v. CCE, Madurai as reported in 2002 (142) E.L.T. 128 wherein large number of judgments have been noted and a consistent view has been taken that there has to be sufficient evidence to disclose the purchase of raw materials and sale of the goods clandestinely and demands cannot be confirmed solely on the basis of entries made on the private chits/notes which cannot be considered as a conclusive piece of evidence. He submitted that the officers were asked to give statements in terms of the chits/notes recovered. It is not a categorical admission of final goods cleared clandestinely. He also pointed out that the revenue has not brought out any piece of evidence of purchase of raw materials, utilisation of electricity and sale of goods clandestinely. Therefore, Commissioner was justified in setting aside the demands.

5. On a careful consideration, I notice that the lower authority has examined the issue in the light of the admissions recorded and on the basis of chits and notes. There is no supportive evidence found by the revenue with regard to receipt of inputs, place from where inputs are purchased, nor there is shortage of inputs as per RG I register, electricity consumption have not been challenged to show that there was excess consumption. The Tribunal in large number of judgments have held that for confirmation of demands there has to be purchase of inputs, excess utilisation of power consumption, shortage of raw materials in terms of entries made in RG I register, sale of final product clandestinely, evidence of transport, etc., to establish the production of sale of final goods. In the present case no such evidence has been placed on record. Therefore, the Commissioner (Appeals) after due consideration found that there was no evidence on record and based on the Tribunal's judgment has set aside the demands. He has also noted that the lower authority had dropped a demand of Rs. 26,801/-mentioned in the chit and note on the ground that they were covered under proper documents. The revenue has relied on the judgment rendered in the case of Haryana Acrylic Manufacturing Co. Pvt. Ltd. v. CCE as reported in 2001 (130) E.L.T. 562. On perusal of the judgment it is seen that there was shortage of inputs and the inputs had been removed from the stores and had been placed in a different place. They also found documents of removal supported by the transport documents from head office to factory and

various other pieces of circumstantial evidence to establish the fact of receipt of inputs, manufacture of goods and sale of the same. In view of that Tribunal upheld the discharge of clandestine removal. In the present case, except the chits and the admissions which is based on the chits, revenue has not produced any other evidence like shortage of raw materials, purchase of inputs, excess power consumption, payment made to suppliers of raw materials, excess of profit and all other evidence which is required to establish clandestine manufacture removal and sale of the product. Therefore, Commissioner (Appeals) after due examination satisfied himself that the revenue did not establish clandestine removal. Even before us the revenue has not produced any document to support their charge of clandestine removal. They have only produced the copies of Order-in-Original and Orders-in-Appeal. There is no material available before the Bench also to come to a conclusion that there was material available for confirming the demands. In that view of the matter, Commissioner (Appeals) order is legal and proper. There is no merit in this appeal and hence it is rejected.