

Commissioner of Central Excise Vs. Rainbow Instruments (Pvt.) Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Aug-30-2006

Reported in : (2006)(112)ECC429

Judge : S T S.S., K Kumar

Appellant : Commissioner of Central Excise

Respondent : Rainbow Instruments (Pvt.) Ltd.

Judgement :

1.1 Revenue is in appeal. A case of manufacture and clearance of speedometers without accounting in the statutory records and discharge of duty thereon was made and after due enquiries a show cause notice was issued to the Respondent Company, an assessee engaged in the manufacture of branded speedometers for well known, three wheeler manufacturers cleared on payment of duty and speedometer with their own brand name "RAINBOW" cleared under states exemption available to SSI unit. The notice was issued to various other persons, who were employees. Directors of the assessee, distributors & others.

1.2 The lower authority confirmed the demands of duty on speedometers cleared during the period 1.3.96 to 11.11.99 with interest & imposed penalties under Section 11AC on the assessee and under Rule 209A on the other notices.

1.3 The Commissioner (Appeals), as it is submitted in the appeal, has set aside the order by taking cognizance of the contention made that the Department has

not supported their allegations by corroborative evidence such as - In fact, while ascertaining the production the department has relied upon documents showing the components tally & issue thereof. As regards Sr.No. 2 above, since a one to one correlation cannot be established between manufacture of speedometers & consumption of electricity, no great significance can be attached to it. The point at Sr.No. 3 above need not be commented upon since the statements of the officers controlling production planning have been recorded and are on record.

Hence it is not necessary to record the statement of each of the workers of M/s RIPL to establish the veracity of the private records maintained by them. As for Sr.No. 4 above, the same is redundant since the department has based its case on the authenticity of private documents and falsification of statutory records by the assessee with intent to evade the duty of excise. As regards the point at Sr.No. 5 since the goods have not been seized in transit, it is not possible to obtain evidence from the transporters and the same holds good for point at Sr.No. 7 unless they are seized from the premises of the Respondent.

As for Sr.No. 6 & 9, the following observations made by the adjudicating authority abundantly cover the point raised by the assessee. During searches conducted on 12.01.2000 at the premises of M/s RIPL, 1340 branded speedometers of various firms were found packed in retail packs which were to be cleared to their dealers. The representatives of M/s RIPL present during the Panchnama admitted that the speedometers packing in retail packs found lying in their production area were meant to be cleared to their dealers. They have also admitted in their statements recorded during the investigations that supplies to then OE manufacturers are always in bulk (in a carton pack) and not in single retail packs. Moreover, during searches conducted at the premises of M/s Ashvee Motors, Mumbai on 13.01.2000, 1232 branded speedometers affixed with the brand name of M/s Bajaj, M/s TVS, M/s Rajdoot and M/s Kinetic were found. The investigations further revealed that since June 1997 branded speedometers were not cleared by M/s RIPL to M/s. Ashvee Motors, Mumbai and only unbranded speedometers were cleared to the said dealers. The point at Sr.No. 8 does not need any rebuttal since the entire case of the department hinges on the statements of Shri Rajesh Ghanekar & Shri Sawansukha, the two persons expressly responsible for the daily

production reports. As for the point at Sr.No. 10, the prerogative as to which documents are to be relied upon is with the department. Further the assessee has not pointed out specifically as to which documents have been ignored by the department and how the same would be beneficial to the assessee if not ignored. The other contention put up by the assessee accepted by the Commissioner (Appeals) is that the rejections received under Rule 173H of the Central Excise Rules, 1944 and recorded in the D-3 Register which amounted to a total of 60784 speedometers out of alleged excess production of 108931 speedometers is considered as production by the worker for bonus / incentive. The issue of D-3 register is an entirely new issue. The assessee had enough opportunity to produce this register before the adjudicating authority in support of their claim, which was not done by them. Hence it clearly an arrangement made by the assessee subsequently to cement their defense. Further while accepting the above contentions of the assessee, the Commissioner (Appeals) has erred in overlooking the fact of seizure of duplicate sets of invoices whereby the assessee had cleared different quantities of speedometers to two different customers under same invoice number & same date. Further Shri Sawansukha had clearly directed one of the customers to destroy these documents upon receipt of the goods (Para 92 & 93 OF THE order in Original). These facts clearly establish the culpability of the assessee and their intent to defraud the department. In view of the above, the documents produced anew by the assessee cannot be accepted.

Further the Commissioner (Appeals) has erred in accepting the contention of the assessee that the product speedometer consists of several parts hence there is a lot of online rejection at the time of manufacture, which is again counted as production by the workers and hence the private records of manufacture & clearance exceed the statutory records. This contention of the assessee should not have been accepted since the assessee has not supported this contention with any corroborative evidence. In the absence of any documentary evidence, private or statutory, maintained by the assessee for showing accountal of raw materials being utilized or any records to show that there were any online rejections, it is only a strategy adopted by the assessee to defend their position. The Commissioner (Appeals) has also erred in accepting the contention of the Assessee that the department verified from the suppliers that the supply of a

component viz. magnet, which has a one to one correlation with the final product speedometer was tallying with the production shown in the RG-1 Register. The assessee further produced copies of the summons & the letters from the said suppliers of magnets before the Commissioner (Appeals). However, it is pertinent to note that these letters are produced by the assessee and hence would not be relevant for consideration since the assessee have not been able to show specific record maintained by them in respect of receipt & issue of the magnets. Further, while arriving at the figures of production, the department has relied upon the statements of the components stock & their issue for production, which confirm the figures of production as per the private record maintained by the assessee. The facts set out above are clearly covered in the Order of the Hon'ble Tribunal in the case of M/s Bute Cosmetics v. Commissioner of Central Excise Trichy wherein it has been held that 'Coded entries in files recovered by department suggesting clandestine removal with corroboration from statements of persons in authority who had powers even to control & modify dealership, with corroboration also coming from dealers who purchased such goods, all add up to preponderance of probability establishing goods to have been clandestinely removed.' The Commissioner (Appeals) has further erred in accepting the assessee's contention that the 1232 speedometers seized from the premises were out of a total of 3510 speedometers supplied by the assessee to M/s Ashvee Motors in as much as the assessee have failed to produce any proof to that effect. Further, whether the said seized lot was out of the 3510 speedometers or not, it was incumbent upon the assessee to fulfill the duty liability on it since the said speedometers were branded. In absence of any proof to that effect, the said speedometers have to be treated as cleared without payment of duty under the guise of unbranded ones. Further, in the instant cases since the documents seized from various premises and the statements of the persons of authority corroborate each other to confirm the departmental contention of clandestine removal & removal of branded goods under the guise of branded ones, the case law in respect of Shally Thapar v. Collector of Customs Tribunal which states that it may be that in a given case the rule of an Audi alter am par tem may import a requirement that witnesses whose statements are sought to be relied upon by the authority holding the enquiry should be permitted to be cross examined by the party affected while in some

other cases it may not (cited from). In the circumstances of this case when corroboration of material facts about the sale of car by Haren P.Choksey to Shally Thapar was available, denial of Shally Thapar's cross examination did not result in violation of principles of natural justice. Hence the Commissioner (Appeals) has erred in holding that cross examination of the persons whose statements have been relied upon is denied to the appellants hence the argument of denial of natural justice is factually correct.

The Commissioner (Appeals) has further erred in overlooking the fact of maintenance of two separate registers by M/s Loguss Auto, one for the receipt of speedometers without payment of duty under Kacha Note & the other for receipt of speedometers under Central Excise Invoice. This in fact is the most important corroborative evidence for establishing the charge of clandestine removal and the intent of both the supplier as well as the customer to employ a modus operandi for evading Central Excise Duty.

Further the Commissioner (Appeals) has erred in summarily setting aside the order about imposition of penalty on the concerned establishments & persons in as much as all of them were fully aware of the reasons of employing various strategies as set out above and had all the intentions of evading Central Excise Duty. Shri Lalani, Shri Ghanekar & Shri Sawansukha appear to be the master minds behind this entire operation and they are the ones who have directly defrauded the department and hence are required to be severely penalized.

In fact, while ascertaining the production the department has relied upon documents showing the components tally & issue thereof. As regards Sr.No. 2 above, since a one to one correlation cannot be established between manufacture of speedometers & consumption of electricity, no great significance can be attached to it. The point at Sr.No. 3 above need not be commented upon since the statements of the officers controlling production planning have been recorded and are on record.

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on the authenticity of private documents and falsification of statutory records by the assessee with intent to evade the duty of excise. As regards the point at Sr.No. 5 since the goods have not been seized in transit, it is not possible to obtain evidence from the transporters and the same holds good for point at Sr.No. 7 unless they are seized from the premises of the Respondent.

As for Sr.No. 6 & 9, the following observations made by the adjudicating authority abundantly cover the point raised by the assessee. During searches conducted on 12.01.2000 at the premises of M/s RIPL, 1340 branded speedometers of various firms were found packed in retail packs which were to be cleared to their dealers. The representatives of M/s RIPL present during the Panchnama admitted that the speedometers packing in retail packs found lying in their production area were meant to be cleared to their dealers. They have also admitted in their statements recorded during the investigations that supplies to their OE manufacturers are always in bulk (in a carton pack) and not in single retail packs. Moreover, during searches conducted at the premises of M/s Ashvee Motors, Mumbai on 13.01.2000, 1232 branded speedometers affixed with the brand name of M/s Bajaj, M/s TVS, M/s Rajdoot and M/s Kinetic were found. The investigations further revealed that since June 1997 branded speedometers were not cleared by M/s RIPL to M/s. Ashvee Motors, Mumbai and only unbranded speedometers were cleared to the said dealers. The point at Sr.No. 8 does not need any rebuttal since the entire case of the department hinges on the statements of Shri Rajesh Ghanekar & Shri Sawansukha, the two persons expressly responsible for the daily production reports. As for the point at Sr.No. 10, the prerogative as to which documents are to be relied upon is with the department. Further the assessee has not pointed out specifically as to which documents have been ignored by the department and how the same would be beneficial to the assessee if not ignored. The other contention put up by the assessee accepted by the Commissioner (Appeals) is that the rejections received under Rule 173H of the Central Excise Rules, 1944 and recorded in the D-3 Register which amounted to a total of 60784 speedometers out of alleged excess production of 108931 speedometers is considered as production by the worker for bonus / incentive. The issue of D-3 register is an entirely new issue. The assessee had enough opportunity to produce this register before the adjudicating authority in support of their claim, which was

not done by them. Hence it clearly an arrangement made by the assessee subsequently to cement their defense. Further while accepting the above contentions of the assessee, the Commissioner (Appeals) has erred in overlooking the fact of seizure of duplicate sets of invoices whereby the assessee had cleared different quantities of speedometers to two different customers under same invoice number & same date. Further Shri Sawannsukha had clearly directed one of the customers to destroy these documents upon receipt of the goods (Para 92 & 93 OF THE order in Original). These facts clearly establish the culpability of the assessee and their intent to defraud the department. In view of the above, the documents produced anew by the assessee cannot be accepted.

Further the Commissioner (Appeals) has erred in accepting the contention of the assessee that the product speedometer consists of several parts hence there is a lot of online rejection at the time of manufacture, which is again counted as production by the workers and hence the private records of manufacture & clearance exceed the statutory records. This contention of the assessee should not have been accepted since the assessee has not supported this contention with any corroborative evidence. In the absence of any documentary evidence, private or statutory, maintained by the assessee for showing accountal of raw materials being utilized or any records to show that there were any online rejections, it is only a strategy adopted by the assessee to defend their position. The Commissioner (Appeals) has also erred in accepting the contention of the Assessee that the department verified from the suppliers that the supply of a component viz. magnet, which has a one to one correlation with the final product speedometer was tallying with the production shown in the RG-1 Register. The assessee further produced copies of the summons & the letters from the said suppliers of magnets before the Commissioner (Appeals). However, it is pertinent to note that these letters are produced by the assessee and hence would not be relevant for consideration since the assessee have not been able to show specific record maintained by them in respect of receipt & issue of the magnets. Further, while arriving at the figures of production, the department has relied upon the statements of the components stock & their issue for production, which confirm the figures of production as per the private record maintained by the assessee. The facts set out above are clearly covered in the Order of the Hon'ble Tribunal in the

case of M/s Bute Cosmetics v. Commissioner of Central Excise Trichy wherein it has been held that Coded entries in files recovered by department suggesting clandestine removal with corroboration from statements of persons in authority who had powers even to control & modify dealership, with corroboration also coming from dealers who purchased such goods, all add up to preponderance of probability establishing goods to have been clandestinely removed. The Commissioner (Appeals) has further erred in accepting the assessee's contention that the 1232 speedometers seized from the premises were out of a total of 3510 speedometers supplied by the assessee to M/s Ashvee Motors in as much as the assessee have failed to produce any proof to that effect. Further, whether the said seized lot was out of the 3510 speedometers or not, it was incumbent upon the assessee to fulfill the duty liability on it since the said speedometers were branded. In absence of any proof to that effect, the said speedometers have to be treated as cleared without payment of duty under the guise of unbranded ones. Further, in the instant cases since the documents seized from various premises and the statements of the persons of authority corroborate each other to confirm the departmental contention of clandestine removal & removal of branded goods under the guise of branded ones, the case law in respect of Shally Thapar v. Collector of Customs Tribunal which states that it may be that in a given case the rule of an Audi alter am par tem may import a requirement that witnesses whose statements are sought to be relied upon by the authority holding the enquiry should be permitted to be cross examined by the party affected while in some other cases it may not (cited from). In the circumstances of this case when corroboration of material facts about the sale of car by Haren P.Choksey to Shally Thapar was available, denial of Shally Thapar's cross examination did not result in violation of principles of natural justice. Hence the Commissioner (Appeals) has erred in holding that cross examination of the persons whose statements have been relied upon is denied to the appellants hence the argument of denial of natural justice is factually correct.

The Commissioner (Appeals) has further erred in overlooking the fact of maintenance of two separate registers by M/s Loguss Auto, one for the receipt of speedometers without payment of duty under Kacha Note & the other for receipt of speedometers under Central Excise Invoice. This in fact is the most important

corroborative evidence for establishing the charge of clandestine removal and the intent of both the supplier as well as the customer to employ a modus operandi for evading Central Excise Duty.

Further the Commissioner (Appeals) has erred in summarily setting aside the order about imposition of penalty on the concerned establishments & persons in as much as all of them were fully aware of the reasons of employing various strategies as set out above and had all the intentions of evading Central Excise Duty. Shri Lalani, Shri Ghanekar & Shri Sawansukha appear to be the master minds behind this entire operation and they are the ones who have directly defrauded the department and hence are required to be severely penalized.

1) With regard to grounds of appeal mentioned at Sr. No. 1, Respondent say and submit that the Appellant has not at all commented on Excess Purchase and consumption of Raw Material, Respondent say and submit that this is the basic requirement to prove Excess production and its clandestine removal. Respondent say and submit that the Honorable Commissioner (Appeals) have gone in depth and accepted the contention of the Respondent that there is no fact of Excess production and its clandestine removal.

2) With regard to grounds of appeal mentioned at sr.No. 2 of review memorandum, respondent say and submit that the appellants contentions is not in consonance with the decision delivered by the Honourable Tribunal in the case of Rhino Rubbers Pvt Ltd. v. CCE 1996 (85) ELT-260 (T) 263. The Appellant should have proved excess consumption of electricity for the excess production.

3) STATEMENT OF WORKERS REGARDING EXCESS PRODUCTION: Respondent say and submit that statement of the officers controlling production planning have not been recorded. Hence inference drawn by the Appellant is not justified. Further the Respondent submits that if the statements of Workers on line were recorded it would have substantiate, that they had not produced any excess speedometers.

The Appellant have failed to discharge their burden to prove their allegation.

4) COMPARISON OF BANK STATEMENTS WITH STATUTORY RECORDS: Respondent say and submit that they had produced Bank Hypothecation Statements showing the stock of finished goods with the RG-1 which found tallied by the Department for the period prior to the search of the premises. Similarly they produced Balance Sheets, which found tallied with RG-1. The Honourable Commissioner (Appeals) agreed with the factual position. Hence the statement of Appellant that comparison of Bank Statement with statutory record is redundant since Appellant based their opinion on the private documents are not correct. Such opinion based on the private record is not at all justifiable as held by the Honorable Tribunal in the case of (1) Krishna & Co. v. CCE & (2) Punjab Fibres Ltd. v. CCE . The Appellant has not brought out any evidence that the Respondent has falsified the statutory records maintained by the Respondent. Respondent say and submit that the Honourable Commissioner(Appeals) found that the Department has not brought out any substantial evidence contrary to the above.

5) EVIDENCE FROM TRANSPORTS REGARDING EXCESS QUANTITY: Respondent say and submit that the Department failed to prove beyond doubt after conducting investigation at the Transporters' end that they carried excess quantity from the place of Respondent.

6) OCTROI RECEIPTS: The Respondent say and submit that the Department should have investigated these facts of clandestine removal from the Octroi Department after going through Octroi Receipts. Without any proper Bills, no goods could be allowed to pass through Octroi Naka. Further the Respondent say and submit that the Department has not effected any seizure of any goods cleared clandestinely either at the Transporters Godown/ In transit / Distributors Premises / Dealers Premises or any other place. Hence to prove the charge of clandestine removal, direct physical evidence effecting seizure of the goods that is one of the obligations on the Department should have been brought on record but the Department failed on this account. Hence this charge of clandestine removal could not be established as held by the Honorable Tribunal in the case of Associated Cylinder Industries Ltd. v. CCE have held as under: For establishing the charge of Clandestine Removal, either direct physical evidence by way of seizure of goods or documents was required or there must be sufficient circumstantial evidence to

show preponderance of probability". Honorable Tribunal in the case of Prabhavati Sahakari Soot Girini Ltd. v. CCE and Roxy Enterprises Pvt Ltd. v. CCE 1992 (40) ECR 361 (T-NRB) have held as under: The charge of suppressions of production and clandestine removal has to be established beyond reasonable doubts". The Honorable Commissioner(Appeals) has accepted the above contentions put forth by the Respondent.

7) EVIDENCE OF EXCESS QUANTITY FROM DEALERS OR THE ASSESSEE & SEASURE OF UNACCOUNTED GOODS: The Respondent say and submit that the submissions made at Sr.No. 5 & 6 are equally applicable. Respondent say and submit that the Department has not found any evidence of excess quantities or unaccounted quantities with the dealers or with the Respondent. There is no seizure of any unaccounted goods.

The Honorable Commissioner (Appeals) observed that in view of the evidence produced by the Respondent substantiating their say, there was no excess production and clandestine removal. With regard to 1340 Nos. Branded Speedometers of various firms were found packed in retail packs, which were to be cleared to their dealers were tallied with the stock of the RG-1.

With regard to the contention of the Appellant that 1232 Branded Speedometers affixed with the Brand Name were found at M/s Ashvee Motors Mumbai, the Respondent say and submit that the department should have verified punch of Month and year of Manufacturing of speedometer on the casing of the speedometers. If this exercise would have been carried out by the Department they would have admitted the contention of the Respondent that the Quantity of 1232 Nos. seized at Ashvee Motors Mumbai is out of supply of 3510 Nos.

Branded Speedometers made by the Respondent and there would not have been any case.

The Honorable Commissioner (Appeals) have accepted these facts on the basis of evidence submitted to the Honorable Commissioner (Appeals). Hence the contention of Appellant is baseless and hence not sustainable.

8) STATEMENT OF PERSONS PREPARING DAILY PRODUCTION REPORT:

The Respondent say and submit that statements of persons preparing daily production reports were not recorded by the Department. Hence the Department should have enquired into this aspect to bring out the truth. Mr. Ghanekar and Mr. Sawansukha had prepared daily production slip and not daily production report and actual production figures have been taken and shown in Production Slip Book duly authenticated by the Incharge officers. The book contains Serial Numbers. These books were seized and later on released to Respondent. Though the said books were true and correct, they are not relied upon by the Department.

9) DEPARTMENT HAS IGNORED CERTAIN STATEMENTS: Respondent say

and submit that the Department has ignored the statement of Mr. R.S. Ranawat, Dy.Gen.Manager (Works / Production) and has not recorded full facts. Further Respondent say and submits that the Department had not recorded statement Under Section 14 of the concerned persons who prepared the said projected / estimated reports for the reasons best known to them. Respondent further say and submit that, if the said statements were recorded all facts would have come to the light / surface and the same would have gone very much in Respondents favour. In any case Respondent strongly content that this is one of the biggest lacuna in the investigation.

10) It is a fact that, repairing of rejection is considered as a production only from the workers point of view for their Bonus etc.

At the same time of search, the searching authority already seized all records and taken away the same with them. Hence the Appellant cannot allege that it is a clearly arrangement made by the Assessee subsequently to cement their defense. All these records and registers were audited by the statutory auditors and time to time by Range Superintendent. And also Respondent filed D-3 Declaration with Range Superintendent when rejections were received in the factory premises. All records and documents were produced before the Commissioner (Appeals). Hence the allegation of the Appellant that it is an arrangement by the assessee subsequently to cement their defense is imaginary and without any substance.

11) With regard to Rejections, the Respondents argued that rejections were received under Rule 173H of the Central Excise Rules, 1944 and recorded in D-3 register which amounts total of 60784 Nos. Speedometers out of alleged excess production of 108931 Nos. Speedometers. This quantity is considered as production by the workers for Bonus and Incentive but is not an actual production.

This D-3 register was submitted for the perusal of the Lower Adjudicating Authority. The Adjudicating Authority for the reason best known to them has ignored this fact. Hence Department's assumption with regard to this point is not tenable under the Law, since Appellant's assumption is not supported.

12) With regard to seizure of duplicate sets of Invoices, the Respondent say and submit that there is no seizure of Duplicate sets of Invoices. The Appellant has not categorically mentioned the Duplicate Sets of Invoices.

13) With regard to para 92 & 93 of the Order-In-Original Respondent say and submit that the letters at Exhibit 'P' and 'Q' of SCN are prior to the period covered by the Show Cause Notice and hence are irrelevant for the purpose of establishing the charges made in the Show Cause Notice. In any case, the relevant Invoices have been duly recorded in RG-1 register and the appropriate duty thereon stands debited in PLA/ RG23-A, as the case may be. The letter at Exhibit 'R' and at Exhibit "T" are innocuous for the following reason: Exhibit "R" It only states "after the delivery of consignment kindly arrange to send us all the, papers" this is innocuous request and there is nothing uncommercial about it.

Exhibit T : This is a mere invoice and statement, which doesn't contain any direction and hence is irrelevant. In any event it was found in the office of Ajay Joshi who is not an employee of Respondent.

Without prejudice to the aforesaid, and in any event these four documents do not establish clandestine removal for the entirety of the period covered by the Show Cause Notice. If this was the practice as alleged, the department would have recovered several hundred documents on the same footing.

14) With regard to Online Rejection the Respondents say and submit that they have 2% Line Rejection / Q.C. Rejection and this is accepted principle in the industries manufacturing speedometers and this is permissible. The said rejection has been taken for rectification but counted as manufactured by the labours for the purpose of Bonus and incentive. Hence Respondents say and submit that the Honorable Commissioner (Appeals) has not erred in accepting the contention of the Respondent.

15) With regard to verification of supply of Magnets from the suppliers, Respondent has relied upon summons issued by the Department to the suppliers and information supplied by. The suppliers to the Department, which is the valid, genuine, having documentary evidence. Comparing the production of the Speedometers with the 1:1 ratio of the Magnet, the production of final speedometers tallying with the purchased magnets. These supplies of the magnets have been properly accounted for in the RG23A (Part-I) and (Part-II) register. All the copies of the Modvat Invoices has been duly defaced by the Departmental Officer: It is surprised to note that as to how the Department viewed that" these letters are produced by the Respondent and hence would not be relevant for consideration without any legal backing under the law. Under the prevailing law the Respondent is not debarred from producing evidence though collected by the Department to prove their bona fides with regard to the production of the speedometers. These documents namely Modvat Invoices with RG23A (Part-I) were submitted for the perusal of the Adjudicating Authority during the course of Personal Hearing. However the Adjudicating Authority ignored the same for the reasons" best known to him. However, these facts were verified by the Honorable Commissioner (Appeals) and considered the same. Hence the Departments contention is without any legal backing, and not tenable.

16) With regard to 1232 Nos. speedometers seized from the premises of Ashvee Motors, Respondent refer to the facts discussed above. In view of the same, the contention of the Appellant does not hold good.

17) With regard to with the issue relating to maintenance of two separate registers by M/s. Loguss Auto, we requested cross examination of concerned and

authorized person so as to the adduce the truth in the statement or the said person. Respondent denies that they had 'supplied any speedometers without payment of duty.

Further Respondent observed from the photo copy the Register provided with the Show Cause Notice that there is balance in the Stock Register but as per the Panchanama there was no stock. Hence the genuineness of the Register/Documents maintained by the Loguss is questionable.

18) Respondent have asked for Cross Examinations at some of the persons namely 1) Ajay Joshi, (2) Govindan Nair, (a) B.L. Parmar (4) Ajay Shah, but the Adjudicating Authority has not considered Respondent's request for the reasons best known to him. This contention has been accepted by the Honorable Commissioner (Appeals).

19) In the circumstances, Respondents say and submit that the grounds for Challenge the Order-In-Appeal are unsustainable.

20) So far as suppression of facts is concerned, the Respondents have not suppressed any of the information, documents from the knowledge of the 'Department. As and when CERA Audit Party, Central Excise Internal Audit party and Other Departmental Officers visited the Respondent all the statutory and non statutory i.e. private records were made available to them. Departmental Officers have visited the unit of Respondent on the following dates.

Respondent submitted that CERA Audit Party, and Internal Audit Party of the Department have inspected thoroughly the statutory records as well as private records such as Production Reports maintained by the workers. These documents were audited with reference to Balance Sheets, Sales Tax Returns, Tax Audit Report, Bank Statements, and Revenue Figures, Purchase Orders placed by buyers of the Respondents and verified the Stock of finished goods and raw material with records (Statutory as well as Private) maintained by the Respondent.

Hence knowledge of the records by the Internal Audit party and CERA Audit is the knowledge of the Department. Hence extended period of limitation cannot be

invoked as held by the Honorable Tribunal in the case of United Cables v. CCE and CCE Respondent argued that the charge of suppression of facts and clandestine removal has to be established beyond reasonable doubt as held by the Honorable Tribunal in the case of Prabhavati Sahakari Soot Girni Ltd. v. CCE ; and Roxy Enterprises Pvt.

Ltd. v. CCE 1992 (40) ECR 361 (T-NRB). However, the investigating officers have failed completely on this account.

21) Respondent say and submit that Honorable Commissioner Central Excise Pune-I admits in his Authorisation letter under Section 35B(2) of the Central Excise Act, 1944 that: And whereas I am of the opinion that the Order-in-Original not legal and proper.

21. After hearing both sides & considering the submissions, it is found - (a) there is no merit in Revenue's appeal & in the grounds taken therein.

(b) The cross objections taken by Respondent & the grounds taken by Revenue have been extracted in extension and a perusal thereof would indicate that there is no merits in the appeals to call for setting aside the order of the Ld Commissioner (Appeals).

(c) The order of the original authority ignoring relevant statements on record and statements not recorded of important persons who could have greatly assisted in arriving at facts would induce us to arrive at a finding of paucity of evidence in the Revenues case to uphold Revenue's charges.

(d) The most important input for speedometers are magnets. The department in the present case made enquiries with the two suppliers marketing to the Respondent Co. One magnet is used per speedometer.

The enquiry revealed that the Respondent company had received 1937436 magnets and the production shown in the statutory record during the relevant period was 1936460 pieces. This shows that the number of magnets purchased by the Respondent Co corresponds to the correct production shown in the statutory records. It is settled law that the department must disclose the evidence collected

in favour of the notice. (See M.S. Naina v. Collector of Customs, Calcutta I 2000 (123) ELT 39 (Cal). Despite making enquiries since the department did not disclose the same, the Respondent company in its reply dated 3rd January 2002 to the show cause notice brought this evidence on record in paragraph 4 before the adjudicating authority.

This was also referred to in paragraph 4 of the first reply dated 19th December, 2001 filed by the Respondent company with the adjudicating authority. The evidence of consumption of magnets conclusively proves that the Respondent Company did not manufacture any unaccounted speedometer, as alleged or at all & the manner in which this vital evidence was ignored by the original authority only confirms our finding at para (c) above.

(e) The submission on bar of limitation & the authorisation as made in the cross objection are not sustained as on merits, we do not uphold the finding and on perusal of the authorization, we do not find any such interpretation on Additional Commissioner's order as is urged before us.

(f) The vital lacunae on part in the investigations & thereafter the conduct the adjudicator in denial of cross examination would be fatal to Revenue case and the appeal before us. The order of the Commissioner (Appeals) cannot be assailed & set aside in this case.

3.1 In view of the findings arrived, we find no merits in these appeals, the same are rejected upholding the Ld Commissioner (Appeals) order.

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