

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
DELHI BENCH: 'A' NEW DELHI**

**BEFORE SHRI SAKTIJIT DEY, VICE PRESIDENT  
AND  
DR. B.R.R. KUMAR, ACCOUNTANT MEMBER**

ITA No.5076/Del/2017  
Assessment Year: 2008-09

**With**

ITA No.5077/Del/2017  
Assessment Year: 2009-10

**With**

ITA No.5078/Del/2017  
Assessment Year: 2011-12

**With**

ITA No.5079/Del/2017  
Assessment Year: 2010-11

**With**

ITA No.5080/Del/2017  
Assessment Year: 2013-14

**With**

ITA No.5081/Del/2017  
Assessment Year: 2014-15

**With**

ITA No.5082/Del/2017  
Assessment Year: 2012-13

ACIT, Central Circle-19, New Delhi	<b>Vs.</b>	M/s. Sharp Mint Ltd., Plot No.9, 1 <sup>st</sup> Floor Sagar Centre, Gujrawalan Town, Delhi
<b>PAN :AABCS3644N</b>		
<b>(Appellant)</b>		<b>(Respondent)</b>

Assessee by	Sh. V.K. Bindal, CA & Mrs. Rinki Sharma, ITP
Department by	Sh. P. Praveen Sidharth, CIT(DR)

Date of hearing	20.04.2023
Date of pronouncement	11.07.2023

**ORDER**

Captioned appeals by the Revenue relate to the same assessee and arise out of separate orders of learned Commissioner of Income Tax (Appeals)-27, New Delhi, for the assessment years 2008-09, 2009-10, 2010-11, 2011-12, 2012-13, 2013-14 and 2014-15.

2. The major issue, which is common in all these appeals, relate to deletion of addition made of various amounts in different assessment years on account of bogus purchases from certain entities. Of course, there is a related issue of disallowance of manufacturing expenses which also arises in all these appeals. Since, the facts relating to these issues are more or less identical in all the assessment years under dispute, only difference being variation in figures, for the sake of brevity, we propose to deal with the facts involved in ITA No. 5076/Del/2017 for assessment year 2008-09.

3. Briefly the facts are, the assessee is a resident corporate entity stated to be engaged in the business of manufacturing and trading in Mentha Oil products. As stated by the Assessing Officer, the assessee is the flagship company of the group and the

group has established four partnership firms, namely, M/s. Ambika International, M/s. Shiva Mint Industries, M/s. Jay Ambey Aromatics and M/s. Fine Aromatics. The aforesaid partnership firms are located in Jammu and were availing deduction under Section 80IB of the Income-tax Act, 1961 (hereinafter referred to as 'the Act'). He observed, as per an investigation carried out by the Central Excise Department, Jammu, it was found that the aforesaid four partnership firms have indulged in booking expenses towards purchases from non-existing parties solely for the purpose of getting refund of the excise duty paid on account of benefit granted to manufacturing units in the state of Jammu & Kashmir. He observed, the four partnership firms having manufacturing units in Jammu, claimed to have purchased the raw materials from petty dealers/agents and thereafter undertaking some processing, delivered products to the assessee and other group entities in Delhi and Biwari. In this context, he observed that the four partnership firms belonging to the assessee group claimed to have purchased goods from two parties, namely, M/s. Paras Trading Co. and M/s. Om Trading Co. However, on investigation, both the entities, namely, M/s. Paras Trading Co. and M/s. Om Trading Co. admitted that

they have not sold any product/raw material to the four partnership firms of the assessee group having manufacturing units in Jammu. The Assessing Officer observed, in course of search and seizure operation conducted in case of M/s. Paras Trading Co., the proprietor of the said firm in statement record under section 132(4) of the Act admitted that he never supplied any material, i.e., Mentha Oil to M/s. Sharp group entities. Thus, based on such material available on record, the Assessing Officer, ultimately, concluded that the entire transaction relating to the purchase of raw materials by the four Sharp group entities in Jammu is not only bogus but the sale, in turn, by those four entities to the assessee, are also bogus. Accordingly, he treated the entire purchases of raw materials by the assessee from M/s. Ambika International, M/s. Fine Aromatics, M/s. Jay Ambey Aromatics and M/s. Shiva Mint Industries, as bogus and added back to the income of the assessee in the respective assessment years, while making identical addition on protective basis at the hands of the concerned four entities.

4. The assessee contested these additions before learned first appellate authority. After considering the submissions of the assessee, in the context of fact and materials available on record,

learned Commissioner (Appeals) observed that in assessments completed under section 143(3) of the Act in respect of the four partnership firms M/s. Ambika International, M/s. Fine Aromatics, M/s. Jay Ambey Aromatics and M/s. Shiva Mint Industries, the entire purchases and sales have been accepted as genuine. He further observed that the purchases have not only been duly recorded in the books of account of the assessee, but all other supporting evidences, including transportation details and quantitative details of the goods purchased have been maintained by the assessee. He observed that the assessee has furnished relevant records and documents, such as, stock register, factory gate register, books of account, vouchers etc. in support of the purchases. He also observed that the assessee produced toll tax receipts with proper stamping as well as purchase bills bearing the stamping of the Border Check Post. Thus, he observed that the purchases cannot be treated as bogus. Accordingly, he deleted the additions made by the Assessing Officer.

5. Before us, learned Departmental Representative took us through the observation of the Assessing Officer in the assessment order and submitted, not only the investigation

carried out by the Central Excise Department but even in course of search and seizure operation conducted by Income Tax Department, it was found that the entities from whom the suppliers of the assessee purchased raw materials/goods were non-existent/bogus entities, hence, the purchases made from them were also bogus. He submitted, since, the purchases made by the four Jammu bases entities are bogus; the sales made by them, in turn, to the assessee are certainly bogus. He submitted, as per the investigation carried out by the Central Excise Department and the Investigation Wing of the Department, the group entities of the assessee at Jammu were set up only for availing deduction under section 80IB of the Act without carrying out any real business activity. He submitted, in course of assessment proceeding, the Assessing Officer has carried out thorough investigation to bring on record material facts indicating that the purchase of raw materials by the assessee from its four group entities located at Jammu are non-genuine. He submitted, without properly verifying the facts and evidences brought on record by the Assessing Officer, learned Commissioner (Appeals) has deleted the additions, which is improper.

6. Per contra, learned counsel appearing for the assessee strongly relied upon the observations of the first appellate authority and submitted that the assessee is an exporter of Mentha Oil and has disclosed huge export turnover. He submitted, simply based on certain investigation carried out by the Central Excise Department, Jammu, the Assessing Officer has concluded that the purchases of raw material by the assessee are non-genuine. Whereas, he submitted, in course of proceedings before the departmental authorities, the assessee has furnished all supporting evidences to establish the genuineness of the purchases. He submitted, though, the Assessing Officer has placed strong reliance upon the Investigation carried out by the Central Excise Department, however, while deciding the appeals of M/s. Shiva Mint Industries, M/s. Fine Aromatics, M/s. Jay Ambey Aromatics and M/s. Ambika International, the Custom, Excise and Service Tax Appellate Tribunal (CESTAT) has passed number of orders categorically holding that the purchases made by these parties are genuine. Thus, he submitted, once the CESTAT held the purchase made by the four Jammu based entities to be genuine, the sales made by them to the assessee cannot be considered to be non-genuine.

7. Further, he submitted, while deciding the appeals filed by the Revenue in case of M/s. Jai Ambay Aromatics, the Income Tax Appellate Tribunal has upheld the decision of learned first appellate authority in deleting the addition made on account of non-genuine purchase, firstly, on the ground that the additions were not based on any incriminating material found as a result of the search and secondly because the materials and evidences brought on record clearly revealed that the purchases are genuine. Thus, he submitted, once the CESTAT and the ITAT have held the purchases made by Jammu based entities to be genuine, the sales of those materials effected by them to the assessee cannot be treated as non-genuine. Thus, he submitted, since, the additions were not based on any incriminating material found as a result of search, the additions cannot be sustained. In support of such contention, he relied upon the decision of the Hon'ble Supreme Court in case of PCIT Vs. Abhisar Buildwell Pvt. Ltd reported in 149 taxmann.com 399 (SC).

8. We have considered rival submissions and perused the materials on record. A careful reading of the assessment order clearly reveals that based on information/material received as a result of investigation carried out by the Central Excise

Department, Jammu, the Assessing Officer found that certain purchases made by the four Jammu based partnership firms belonging to the assessee group are non-genuine. Since, such purchases by the four partnership firms were held as non-genuine, the corresponding sales of finished products, which are raw materials for the assessee, were held to be non-genuine and accordingly additions have been made. However, from the facts and materials on record, it is observed, in course of proceedings before the departmental authorities, the assessee had furnished all documentary evidences to establish the genuineness of purchases made by it from the four Jammu based entities.

9. In fact, in the first appellate order, learned first appellate authority has exhaustively dealt with supporting evidences furnished by the assessee to prove the genuineness of the purchase. Not only the purchases have been recorded in the books of account of the assessee, but the corresponding invoices, transport bills containing the stamping of border check post were furnished before the departmental authorities. The payments towards purchases have been made through banking channels. It is also a fact on record that the major part of the sales effected by the assessee were export sales and the remaining sales were

made to reputed multinational companies. Therefore, a question would automatically arise whether, in absence of purchase of raw materials, the corresponding sales could have been effected by the assessee?. The answer to the aforesaid question would be an emphatic 'no'. It is also relevant to observe, while deciding the appeals filed by the four Jammu based entities, viz., M/s. Ambika International, M/s. Fine Aromatics, M/s. Jay Ambey Aromatics and M/s. Shiva Mint Industries, the CESTAT in order dated 05.12.2018 has categorically held that the purchases made by them to be genuine. In this regard, the following observations of CESTAT would be relevant:

*“9. We find that in this case the sole allegation against the appellant is based on the investigation conducted by Commissioner of Central Excise, Merrut, and as per the investigation, it is alleged that farmers from whom the inputs were purchased were nonexistence. Therefore, commission agents never supplied inputs to the appellant and the appellant did not manufacture the goods. Consequently, they have not sold the goods and it was alleged that the appellant has not manufactured the goods at all.*

*10. We further take note of the fact that, the investigation was not conducted at the end of the appellants and whole case has been based on the investigation conducted at Commissioner Central Excise, Meerut-II. Without investigation, it cannot be held that the appellants were not manufacturer of the finished goods during the impugned period. Moreover, the entries of vehicles at the toll barriers also certified that the movements of raw material and finished goods. We further take note of the fact that the during the period of investigation itself, the appellants were allowed to continue their activity by procuring inputs from*

*UP based supplier and selling goods manufacturing to their buyers. During the course of investigation, itself shows that the allegation is only on the basis of the assumption and presumption, therefore, it cannot be held that the appellants had not manufactured the goods during the impugned period. Moreover, as per the report of Jurisdictional Commissioner to Chief Commissioner dated 21.05.2010 reveals as under:*

*"5. Thus, the officers of Meerut-II Commissionerate, instead of selecting the consignments where no excisable goods were manufactured/supplied, have generalized that all the purchases of crude Mentha oil by these Mentha units located at Jammu were bogus units, these units did not have any infrastructure to manufacture the said products, were non-functional and Transporters who did not turn up for tendering statements were declared non-existent etc. however, on close scrutiny of the records, the following facts emerges:*

*(i) Most of the consignments of raw material were found entered at the Toll barrier.*

*(ii) The Officers of District Industry Centre, who have assessed and fixed the capacity of manufacturing units, have been regularly verifying their purchase consignments.*

*(iii) The Range staff had also been visiting these units for PBC Checks/verification of plant/machineries and reported nothing adverse against these units.*

*6. Therefore, it may not be strongly alleged with certainty that during the period 2005-2006 to 2008-2009, these 27 units have not purchased crude Mentha oil and therefore have not manufactured any Menthol products in their units at all. There is hardly any time left for further investigation to strengthen the case as process is very time consuming and most of these of units have closed their factories due to withdrawal of Central Excise Duty on all Mentha products w.e.f. 27.02.2010. Thus, the investigation may not be in tune with the investigations conducted by the Central Excise Commissionerate Merrut-II"*

*11. We further take of the fact that the similar issue on identical facts came up before this Tribunal in the case of Nanda Mint and Pine Chemicals Ltd. vide Final Order No. 63177 / 2018 dated 28.08.2018, wherein this Tribunal observed as under:*

"6. We find that in this case the sole allegation against the appellant is based on the investigation made by Commissioner of Central Excise, Merrut, and as per the investigation, it is alleged that farmers from whom the inputs were purchased were non-existence. Therefore, commission agents never supplied inputs to the appellant and the appellant did not manufacture the goods. Consequently, they have not sold the goods and it was alleged that the appellant has not manufactured the goods at all.

7. We take a note of the fact that the check post movement of trucks which were carrying inputs as well as finished goods were found entered. We further take note of the fact that the appellant has produced the evidence of the entry of all the transport vehicles i.e. trucks which have entered in the state of Punjab and have left the state of Punjab, as the same has been certified by the Punjab Sales Tax Department having entries of entry and exit all the vehicles, therefore, it cannot be said that the raw material/finished goods have never entered or left in the state of Jammu & Kashmir, therefore, the allegation on the basis of the investigation conducted by the Commissioner of Central Excise, Merrut is not sustainable.

8. Further, we take note of the fact that during the period of investigation itself the appellant continued their activity by procuring inputs from UP and selling the goods after manufacturing to the U.P based buyers and the Department allowed to continue the same during the course of investigation which shows that the allegation on the basis of investigation conducted at the end of Commissioner of Central Excise, Merrut is not sustainable that the appellant is not manufacturer the goods. Admittedly, duty is payable on the manufacture of goods and as per the report of the Commissioner of Central Excise, Jammu dated 25.02.2010, it has been revealed as under:

“5 Thus the officers of Merrut-II Commissionerate, instead of selecting the consignments where no excisable goods were manufactured/supplied, have generalized that all the purchases of crude Mentha oil by these Mentha units located at Jammu were bogus units, these units did not have any infrastructure to manufacture the said products, were non-functional and Transporters who did not turn up for tendering statements were declared non-

existent etc. however, on close scrutiny of the records, the following facts emerges:

(i) Most of the consignments of raw material were found entered at the Toll barrier.

(ii) The Officers of District Industry Centre, who have assessed and fixed the capacity of manufacturing units, have been regularly verifying their purchase consignments.

(iii) The Range staff had also been visiting these units for PBC. Checks/verification of plant/machineries and reported nothing adverse against these units.

6. Therefore, it may not be strongly alleged with certainty that during the period 2005-2006 to 2008-2009, these 27 units have not purchased crude Mentha oil and therefore have not manufactured any Menthol products in their units at all. There is hardly any time left for further investigation to strengthen the case as process is very time consuming and most of these of units have closed their, factories due to withdrawal of Central Excise Duty on all Mentha products w.e.l 27.02.2010. Thus, the investigation may not be in tune with the investigations conducted by the Central Excise Commissionerate Merrut-II."

9. The said report also support the case of the appellant wherein it has been clearly mentioned that during the periodical checks by the departmental officers, the appellant found manufacturing the goods. Moreover, no discrepancy was found and on toll barriers it was found that the vehicles carried inputs/finished goods found entered. Moreover, the District Centre also certified the said fact.

10. We further take note of the fact that the various other departments namely Pollution Control Department, District Industries Department, Electrical Department have visited the factory of the appellant and found functioning. All these facts have not been disputed by the Revenue. As there is no corroborative evidence to show that the appellant were not manufacturing the goods, therefore, the allegation alleged in the show cause notice is not sustainable.

11. We further take note of the fact that on the basis of the same investigation conducted by the Commissioner of Central Excise, Merrut, the case was booked against the various parties namely M/s Arora Aromatic & Others Vide Final Order No. 71939-71959/2017 dated 01.11.2017, this Tribunal observed as under:

*“10. Having considered the rival contentions and on perusal of the facts on record, we find that the basic allegations in the Show Cause Notice was that M/s Arora Aromatics did not receive inputs on which they availed Cenvat credit basically on the contention of Revenue that M/s Ruchi Infotech System, Jammu did not have facility to manufacture the inputs received by M/s Arora Aromatics and that the goods did not move from Jammu & Kashmir to the appellants factory and therefore, Cenvat credit was not admissible. The evidence submitted by the appellant in the form of Order-in-Original passed by Commissioner of Central Excise, Jammu on 31/03/2008, wherein it was held that M/s Infotech System, Jammu was manufacturing the goods was not accepted by the Original Authority stating that the said Commissioner, Jammu did not see himself that the goods have been manufactured. If such a logic is accepted then the basic system of assessment by Authorities under tax statute needs to be concluded to have been not properly understood by the Adjudicating Authority. The present system of assessment in Central Excise is record based. The Officer assessing the duty is not required to be present when the goods are being manufactured to witness the process of manufacture. The adjudication is to be done on the basis of evidence produced before the Adjudicating Authority. As per Evidence Act evidence in totality is to be taken into consideration and therefore, finding recorded in the impugned Order by the Original Authority who passed the said Order dated 29/01/2010 is bad in law. The Original Authority did not understand the process either of assessments or of adjudication. Further the investigations were not undertaken to find out wherefrom the inputs were received by the appellant for the goods they manufactured and on which they paid duty and which were exported, if they had been received the inputs from M/s Ruchi Infotech System, Jammu or the other suppliers of inputs. Further, the additional evidence submitted by the appellant indicated that in respect of units in Jammu, Central Excise Officers visited the factory premises and seen that the manufacturing process going on was evidence by them and such evidences being on record and submitted by the appellant it was the duty of the Original Authority to accept them and not to discard by saying that the Officers have not seen the goods being manufactured by their own eyes. Further, the receipt of inputs was verified by the Officers of Central Excise Department and sample of the same were also drawn and forwarded for Chemical Examination. Such evidence was also not accepted by the Original Authority, Therefore, it appears that the Original Authority was pre-determined to adjudicate the matter in the manner in which he has decided the issue*

*and he was not just and fair and did not discharge his duty as an independent adjudicator. We, therefore, set aside both the impugned Orders-in-Original dated 29/01/2010 & 29/03/2011 and allow all the appeals filed by appellant. The appellant shall be entitled for consequential relief All the demand and penalties imposed are also set aside. All the Miscellaneous/Stay Applications stand disposed, as infructuous."*

*12. In view of the above observations, we hold that without bringing any concrete evidence against the appellant on record, the proceedings against the appellant are not sustainable, therefore, the show cause notice issued to the appellant is only on the basis of the assumption and presumption and investigation conducted by the Commissioner of Central Excise, Merrut, but without conducting any investigation at the end of the appellant, therefore, on the basis of evidences available on record, we hold that the appellant were manufacturing unit in the state of Jammu & Kashmir is entitled for benefit of the exemption Notification No. 56/2002-CE dated 14.11.2002 and claimed the refund of duty paid through PLA.*

*In view of this, we set aside the impugned order and allow the appeal with consequential relief if any."*

*12. We also take note of the fact that in appeal No.E/61568/2018 in the case of Fine Aromatics and Appeal No.E/61569/2018 in the case of Ambika International, the show cause notices were issued earlier on the ground of undervaluation, prior to issue of impugned show cause notices and charge of undervaluation has been dropped. When there is charge of undervaluation against the appellants and the said charge has been dropped, therefore, the impugned show cause notices alleging that the appellants are not manufacturing the goods and only issuing the cenvatable invoices enabling the buyers to avail inadmissible Cenvat credit, are not sustainable.*

*13. In view of the above analysis, we hold that the appellants are manufacturers during the impugned period and paid the duty on the goods manufactured by them, therefore, duty on account of erroneous refund cannot be demanded on the allegation that the appellants were not manufacturers."*

10. Thus, once the CESTAT has held the purchases made by four Jammu bases entities to be genuine, the entire case of the

Revenue based on the investigation carried out by Central Excise Department, Jammu would fall flat. It is further relevant to observe, while deciding the appeals filed by the Revenue in case of M/s. Jai Ambay Aromatics, one of the four Jammu based entities from whom the assessee had purchased raw materials, the Tribunal in ITA No.5031/Del/2017 and Ors., dated 15.07.2021 has upheld the decision of the first appellate authority in deleting the additions made by the Assessing Officer on account of bogus purchases. Thus, once, the CESTAT and the Tribunal have held the purchases made by the four Jammu based entities to be genuine, the corresponding sales effected by them to the assessee have to be accepted as genuine.

11. In that scenario, in our considered view, learned first appellate authority was justified in deleting the additions made on account of non-genuine purchases. Once the purchases are held to be genuine, then there cannot be any doubt regarding manufacturing activity of the assessee. Therefore, the manufacturing expenses claimed by the assessee have to be allowed. In this view of the matter, we do not find any infirmity in the decision of learned Commissioner (Appeals). Accordingly, we uphold the same by dismissing the grounds raised by the

Revenue. Our aforesaid decision will apply mutatis mutandis to rest of the appeals under consideration.

12. In the result, all the appeals of the Revenue are dismissed.

***Order pronounced in the open court on 11<sup>th</sup> July, 2023***

***Sd/-***  
**(DR. B.R.R. KUMAR)**  
**ACCOUNTANT MEMBER**

***Sd/-***  
**(SAKTIJIT DEY)**  
**VICE PRESIDENT**

Dated: 11<sup>th</sup> July, 2023.

RK/-

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar, ITAT, New Delhi