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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ **CEAC 62/2014 & CM No.11312/2014**

COMMISSIONER OF CENTRAL EXCISE,
DELHI-1 ..... Petitioner

Through: Ms Sonia Sharma, Senior Standing Counsel.

versus

VISHNU & CO. PVT. LTD. & ORS. ..... Respondents

Through: Dr Seema Jain, Mr Ajay K. Jain and Mr Dushyant K. Mahant, Advocates.

WITH

\+ **CEAC 73/2014 & CM Nos.16426-27/2014**

COMMISSIONER OF CENTRAL EXCISE ..... Petitioner

Through: Ms Sonia Sharma, Senior Standing Counsel.

versus

G.G. CARRIERS ..... Respondent

Through: Dr Seema Jain, Mr Ajay K. Jain and Mr Dushyant K. Mahant, Advocates.

WITH

\+ **CEAC 74/2014 & CM No.16497/2014**

COMMISSIONER OF CENTRAL EXCISE ..... Petitioner

Through: Ms Sonia Sharma, Senior Standing Counsel.

Versus

LAXMI FREIGHT CARRIERS(P), LTD. ..... Respondent
Through: Dr Seema Jain, Mr Ajay K. Jain and Mr Dushyant K. Mahant, Advocates.

WITH

\+ **CEAC 75/2014 & CM No.16500/2014**

COMMISSIONER OF CENTRAL EXCISE ..... Petitioner
Through: Ms Sonia Sharma, Senior Standing Counsel.

versus

MOHAMMED KAYUM KHAN ..... Respondent
Through: Dr Seema Jain, Mr Ajay K. Jain and Mr Dushyant K. Mahant, Advocates.

WITH

\+ **CEAC 76/2014 & CM No.16503/2014**

COMMISSIONER OF CENTRAL EXCISE ..... Petitioner
Through: Ms Sonia Sharma, Senior Standing Counsel.

versus

R. K. TRIPATHI ..... Respondent
Through: Dr Seema Jain, Mr Ajay K. Jain and Mr Dushyant K. Mahant, Advocates.

WITH

\+ **CEAC 77/2014 & CM No.16506/2014**

COMMISSIONER OF CENTRAL EXCISE ..... Petitioner
Through: Ms Sonia Sharma, Senior Standing Counsel.
versus

SANTOSH TOBACCO ..... Respondent

Through: Dr Seema Jain, Mr Ajay K. Jain and Mr Dushyant K. Mahant, Advocates.

WITH

\+ **CEAC 78/2014 & CM No.16509/2014**

COMMISSIONER OF CENTRAL EXCISE ..... Petitioner

Through: Ms Sonia Sharma, Senior Standing Counsel.

versus

GOPI ROAD LINES ..... Respondent

Through: Dr Seema Jain, Mr Ajay K. Jain and Mr Dushyant K. Mahant, Advocates.

WITH

\+ **CEAC 79/2014 & CM No.16512/2014**

COMMISSIONER OF CENTRAL EXCISE ..... Petitioner

Through: Ms Sonia Sharma, Senior Standing Counsel.

versus

VISHNU & CO. PVT. LTD. ..... Respondent

Through: Dr Seema Jain, Mr Ajay K. Jain and Mr Dushyant K. Mahant, Advocates.

WITH

\+ **CEAC 80/2014 & CM No.16515/2014**

COMMISSIONER OF CENTRAL EXCISE ..... Petitioner

Through: Ms Sonia Sharma, Senior Standing Counsel.

versus

H. SUNDER ..... Respondent
Through: Dr Seema Jain, Mr Ajay K. Jain and Mr Dushyant K. Mahant, Advocates.

WITH

\+ **CEAC 81/2014 & CM No.16518/2014**

COMMISSIONER OF CENTRAL EXCISE ..... Petitioner
Through: Ms Sonia Sharma, Senior Standing Counsel.

versus

HARSH TRANSPORT PVT. LTD, ... Respondent
Through: Dr Seema Jain, Mr Ajay K. Jain and Mr Dushyant K. Mahant, Advocates.

\+ **CEAC 82/2014 & CM No.16521/2014**

COMMISSIONER OF CENTRAL EXCISE ..... Petitioner
Through: Ms Sonia Sharma, Senior Standing Counsel.

versus

SINGHAL TRANSPORT CO. ..... Respondent
Through: Dr Seema Jain, Mr Ajay K. Jain and Mr Dushyant K. Mahant, Advocates.

WITH

\+ **CEAC 83/2014 & CM No.16524/2014**

COMMISSIONER OF CENTRAL EXCISE ..... Petitioner
Through: Ms Sonia Sharma, Senior Standing Counsel.

versus

PARAMJEET SINGH KAKKAR ..... Respondent
Through: Dr Seema Jain, Mr Ajay K. Jain and Mr Dushyant K. Mahant, Advocates.

WITH

\+ **CEAC 84/2014 & CM No.16527/2014**

COMMISSIONER OF CENTRAL EXCISE ..... Petitioner
Through: Ms Sonia Sharma, Senior Standing Counsel.

versus

DELHI INDORE TRANSPORT CO. ..... Respondent
Through: Dr Seema Jain, Mr Ajay K. Jain and Mr Dushyant K. Mahant, Advocates.

WITH

\+ **CEAC 85/2014 & CM No.16530/2014**

COMMISSIONER OF CENTRAL EXCISE ..... Petitioner
Through: Ms Sonia Sharma, Senior Standing Counsel.

versus

PARAMJIT SINGH KAKAR ..... Respondent
Through: Dr Seema Jain, Mr Ajay K. Jain and Mr Dushyant K. Mahant, Advocates.

WITH

\+ **CEAC 86/2014 & CM No.16533/2014**

COMMISSIONER OF CENTRAL EXCISE ..... Petitioner

Through: Ms Sonia Sharma, Senior Standing Counsel.

versus

VISHNU & CO. PVT. LTD. ..... Respondent
Through: Dr Seema Jain, Mr Ajay K. Jain and Mr Dushyant K. Mahant, Advocates.

WITH

\+ **CEAC 87/2014 & CM No.16536/2014**

COMMISSIONER OF CENTRAL EXCISE ..... Petitioner
Through: Ms Sonia Sharma, Senior Standing Counsel.

versus

GOPI ROAD LINES ..... Respondent
Through: Dr Seema Jain, Mr Ajay K. Jain and Mr Dushyant K. Mahant, Advocates.

WITH

\+ **CEAC 88/2014 & CM No.16539/2014**

COMMISSIONER OF CENTRAL EXCISE ..... Petitioner
Through: Ms Sonia Sharma, Senior Standing Counsel.

versus

LAXMI PARAKSH GUPTA ..... Respondent
Through: Dr Seema Jain, Mr Ajay K. Jain and Mr Dushyant K. Mahant, Advocates.

WITH

+ **CEAC 89/2014 & CM No.16542/2014**

COMMISSIONER OF CENTRAL EXCISE ..... Petitioner
Through: Ms Sonia Sharma, Senior Standing Counsel.

versus

VISHNU & CO. PVT. LTD. ..... Respondent
Through: Dr Seema Jain, Mr Ajay K. Jain and Mr Dushyant K. Mahant, Advocates.

AND

+ **CEAC 90/2014 & CM No.16650/2014**

COMMISSIONER OF CENTRAL EXCISE ..... Petitioner
Through: Ms Sonia Sharma, Senior Standing Counsel.

versus

SH. GOPAL KRISHAN PARASHAR ..... Respondent
Through: Dr Seema Jain, Mr Ajay K. Jain and Mr Dushyant K. Mahant, Advocates.

CORAM:
JUSTICE S. MURALIDHAR
JUSTICE VIBHU BAKHRU

O R D E R

% 02.12.2015

Dr. S. Muralidhar, J.:

CM APPL No. 11312/2014 (for delay) in CEAC 62/2014
CM APPL No. 16426/2014 (for delay) in CEAC 73/2014
CM APPL No. 16497/2014 (for delay) in CEAC 74/2014
CM APPL No. 16499/2014 (for delay) in CEAC 75/2014

CM APPL No. 16502/2014 (for delay) in CEAC 76/2014
CM APPL No. 16505/2014 (for delay) in CEAC 77/2014
CM APPL No. 16500/2014 (for delay) in CEAC 78/2014
CM APPL No. 16511/2014 (for delay) in CEAC 79/2014
CM APPL No. 16514/2014 (for delay) in CEAC 80/2014
CM APPL No. 16517/2014 (for delay) in CEAC 81/2014
CM APPL No. 16521/2014 (for delay) in CEAC 82/2014
CM APPL No. 16523/2014 (for delay) in CEAC 83/2014
CM APPL No. 16527/2014 (for delay) in CEAC 84/2014
CM APPL No. 16530/2014 (for delay) in CEAC 85/2014
CM APPL No. 16533/2014 (for delay) in CEAC 86/2014
CM APPL No. 16536/2014 (for delay) in CEAC 87/2014
CM APPL No. 16539/2014 (for delay) in CEAC 88/2014
CM APPL No. 16542/2014 (for delay) in CEAC 89/2014
CM APPL No. 16550/2014 (for delay) in CEAC 90/2014

1. For the reasons stated therein, the delay in filing the present appeals are condoned.

2. The applications are disposed of.

CEAC Nos. 62/2014, 73/2014, 74/2014, 75/2014, 76/2014, 77/2014, 78/2014, 79/2014, 80/2014, 81/2014, 82/2014, 83/2014, 84/2014, 85/2014, 86/2014, 87/2014, 88/2014, 89/2014 & 90/2014

3. These appeals under Section 35G of the Central Excise Act, 1944 ('Act') are directed against the final order dated 21st October 2013 passed by the Customs, Excise and Service Tax Appellate Tribunal ('CESTAT') whereby the appeals of the Respondents were allowed and the orders-in-original dated 9th June 2005 and 21st November 2005 passed by the Commissioner of Central Excise, Delhi-I ('CCE'), New Delhi were set aside.

Background facts

4. The facts in brief are that Vishnu & Co. Pvt. Ltd. ('VCPL') (the

Respondent in CEAC No. 62 of 2014), having its office at Rama Road, Shivaji Marg, New Delhi, was engaged in the manufacture of *gutka* and pan masala under the brand name 'Vimal', falling under the Chapter Heading No. 21 and 24 of the Central Excise Tariff Act, 1985. It was registered with the Central Excise Department ('Department') and was not availing CENVAT credit on any of the inputs or packing material or capital goods.

5. The Department received an intelligence that VCPL was indulging in large scale evasion of central excise duty, by suppressing the actual production of *gutka* and was also indulging in clandestine removal without payment of duty. The intelligence further indicated that some more manufacturing units were associated with VCPL in the supply of unaccounted raw materials/ inputs/packing materials. Specifically it was alleged that VCPL had (i) misled its capacity of production, procured unaccounted raw material and packing material which was not reflected in the books of account maintained by it; (ii) manipulated the stock account register for finished goods as well as stock of raw material which included *supari* and tobacco; (iii) suppressed its production figures, clandestinely removed the finished goods without payment of duty and transported such goods surreptitiously to the godowns of certain transporters for onward dispatch to their dealers outside Delhi; (iv) not maintained any account of several other inputs and the entire packing material.

6. Simultaneous searches were conducted on 5th July 2003 by the officers of Directorate General of Central Excise of Intelligence ('DGCEI') on the premises of VCPL and several other premises including those of five

transporters, i.e., GG Carriers, Harsh Transport Pvt. Ltd, Singhal Transport Company, Delhi Indore Transport Company/Star Transport and Gopi Road Lines, who are Respondents in the separate appeals in this batch. Further, follow-up searches were conducted at various dealers of VCPL in various cities.

The first search on 5th July 2003

7. According to the Department, the searches resulted in the recovery and seizure of incriminating records or documents from such premises which was annexed to the respective *panchnamas* drawn on the spot by the search team. The documents recovered pertained to the period from 1st April 2002 to 5th July 2003. The officers of the DGCEI also seized finished goods/Vimal brand *gutka* at several places since valid documents showing the payment of duty were not available in respect of the finished goods. They also seized raw materials/inputs and packing materials from the factory of VCPL and other places, including godowns of some of the transporters and their vehicles. The quantities of inputs found in excess of the recorded balances were in respect of both *supari* and tobacco. It was further observed that no account was being maintained in the factory in respect of other inputs and packing material. In the absence of any stock register for these inputs or packing material, the actual physical balances were recorded under the panchnama drawn and the goods found unaccounted were seized. No stock of either jute bags, used for packing their products or menthol, one of the important ingredients, was found in the factory of VCPL. The goods after seizure were handed over to Mr. H. Sunder, Director of VCPL (who is also the Respondent in CEAC No. 80 of

2014). Searches were also carried out in the premises of M/s. Ashoka Tobacco, M/s. Lalwani Convertors, M/s. Pragati International (P) Ltd. from whose premises further seizures were made of unbranded loose chewing tobacco and printed laminated rolls meant for packing Vimal brand *gutka*.

The first Show Cause Notice

8. A show cause notice ('SCN') was issued on 24th December 2003 to VCPL and 14 other entities/persons which included transporters whose premises were searched. The noticees included H. Sunder, the Director of VCPL, Ashoka Tobacco Company (from whose premises raw chewing tobacco and a host of inputs into the making of *gutka* were seized), Lalwani Convertors and Pragati International Pvt. Ltd. (from both of whose premises flexible laminated film material used for packing was seized), Mohd. Kayum Khan (owner of a temp truck used to transport 40 bags from the factory of VCPL to Singhal Transport Co.), Paramjeet Singh Kakkar (Proprietor of M/s Singhal Transport Company and the owner of the truck HR 38D 4117, which was found parked near the godown of the transport company, from which 40 bags of *gutka* were seized), Santosh Tobacco of Chhindwara, Kamal Stores in Jaipur and Laxmi Prakash Gupta of Seoni (all three of whom were supposed to have received, stored and dealt with Vimal brand *gutka*). Most of the noticees are Respondents in the various appeals in this batch.

9. The said SCN dated 24th December 2003 *inter alia* required the noticees to show cause why a demand of Rs. 12,85,58,100 being the excess duty corresponding to the removal of 38957 bags of Vimal brand *gutka*

clandestinely from the factory during the period from 1st April 2002 to 5th July 2003 (as detailed in Chart No. 5 annexed to the SCN) along with interest; central excise duty amounting to Rs. 6,93,000 in respect of 210 bags of Vimal brand *gutka* valued at Rs. 23,10,000 (MRP) seized from the premises of M/s. Singhal Transport Co.; central excise duty amounting to Rs. 39,141 in respect of quantities of Vimal brand *gutka* seized from the godowns of M/s. Harsh Transport Pvt. Ltd., the business premises of Lakshmi Prakash Gupta, Seoni and the common business premises of M/s. Kamal Store and M/s. Gobind Store, Jaipur should not be raised against VCPL. The SCN also proposed confiscation of 9356 kgs of *supari*, 466 kgs of tobacco, 1200 kgs of *gutka* mixture, printed packing laminates weighing 6355 kgs, 404000 pieces of poly pouches, 5450 cotton (canvas bags) and other inputs and packing materials.

10. Annexed to the SCN was the report of the Shri Ram Institute of Industrial Research (SIIR), the findings of which when compared with the consumption of various raw materials as shown by VCPL in its records, revealed that there was excess consumption of *supari* and menthol, the two essentials ingredients of *gutka.*

11. The SCN had noted that VCPL had voluntarily deposited a sum of Rs. 6,93,000 towards payment of duty on 210 bags of Vimal *gutka* seized on 9th July 2003 and total of Rs. 1.96 crore voluntarily deposited on 5th July 2003, 15th July 2003 and 4th August 2003 towards duty not paid on past clearances. It also proposed to appropriate the said deposits towards the duty demand of Rs. 12,92,90,241.

12. The SCN proposed confiscation of other seized materials and imposition of penalties against each of the other noticees under Rules 25 and 26 of the Central Excise Rules 2002 ('CE Rules').

The second search and subsequent Show Cause Notice

13. A second SCN dated 1st March 2004 was issued pursuant to searches conducted in the office-cum-godown premises of M/s. Gopi Roadlines, M/s. Singhal Transport Company and M/s. Laxmi Freight Carrier (P) Ltd on 3rd September 2003. The second SCN was issued to VCPL, its Director H. Sunder, its Manager, Mr. R.K. Tripathi and three transporters, M/s. Gopi Roadlines, M/s. Singhal Transport Company and M/s. Laxmi Freight Carriers (P) Ltd. It noted that the statements of the respective employees of the abovementioned transport companies were recorded at the time of the search. The SCN also referred to the search of VCPL and the statements recorded of its Director, Mr. H. Sunder and Manager Mr. R.K. Tripathi. The second SCN further proposed to raise a demand of excise duty amounting to Rs. 2,75,15,400 leviable on the past clearances made during the period from 14th July 2003 to 2nd September 2003. It was noted that under TR-6 challans dated 5th July 2003, 17th September 2003 and 29th September 2003 VCPL had voluntarily deposited a sum of Rs. 1 core and the said amount was proposed to be appropriated/adjusted against their duty liabilities. It also proposed levy of penalty and interest.

Orders in Original of the CCE

14. Two orders were passed by the CCE, one on 9th June 2005 dealing with SCN dated 24th December 2003 and the second on 21st November 2005

dealing with the second SCN dated 1st March 2004.

15. As regards the first SCN dated 24th December 2003, the CCE by the order dated 9th June 2005 confirmed the demand of central excise duty amounting to Rs. 12,85,58,100 from VCPL and the penalty of the same amount apart from confiscation of several quantities of seized materials was ordered. The CCE also seized the transport vehicles and gave an option to their respective owners, i.e., Mr. Mohammed Kayum Khan and Mr. Paramjit Singh Kakkar to redeem their vehicles on payment of redemption fine of Rs. 15,000 each and further imposed a penalty of Rs. 20,000 each under Rule 26 of the CE Rules. A penalty of Rs. 2 crore on Mr. H. Sunder of VCPL, Rs. 15 lakhs each on M/s G.G. Carrier, M/s. Singhal Transport Company, M/s Gopi Roadlines, M/s. Delhi Indore Transport Company and M/s. Harsh Transport Pvt. Ltd were imposed under Rule 26 of the CE Rules. Further, a penalty of Rs. 20 lakhs was imposed on M/s. Santosh Tobacco for receiving, storing and selling clandestinely removed 2267 bags of *Vimal* brand *gutka*.

16. However, the CCE dropped the proceedings related to the seizure of 9356 kgs of *supari*, 466 kgs of Tobacco, 1200 kgs of *gutka* mixture, printed packing laminates weighing 6355 kgs, 404000 pieces of poly pouches, 5450 cotton (canvas bags) and other materials from the factory of VCPL. The proceeding against Ashoka Tobacco relating to seizure of 27382 kgs of unbranded loose chewing tobacco and other materials was also dropped. The proceedings against M/s. Lalwani Convertors relating to seizure of 4135 kgs of flexible laminated film were also dropped.

17. As regards the second SCN dated 1st March 2004, the CCE by order

dated 21st November 2005 confirmed the duty demand of Rs.2,75,15,400 and imposed a penalty of an equal amount apart from interest against VCPL; imposed a penalty of Rs. 1 crore against Mr. H. Sunder; Rs. 5 lakhs each on Mr. R.K. Tripathi and M/s Gopi Roadlines; a penalty of Rs. 10 lakhs on Paramjeet Singh Kakkar, proprietor of Singhal Transport Co.; a penalty of Rs. 15 lakhs on M/s Laxmi Freight Carrier Pvt. Ltd.; and Rs. 1 lakh on Gopal Krishan Parashar, Director of Laxmi Freight Carrier Pvt. Ltd.

Impugned order of the CESTAT

18. Aggrieved by the aforementioned Orders-in-Original, the Respondent noticees herein filed two sets of appeals before the CESTAT arising out of the first and second SCNs. The Department too filed appeals arising from the first SCN to the extent that the proceedings, against VCPL to the extent of seizure of 9356 kgs of *supari* etc., against Ashoka Tobacco relating to seizure of 27382 kgs of unbranded loose chewing tobacco and against M/s. Lalwani Convertors relating to seizure of 4135 kgs of flexible laminated film, were dropped.

19. By the impugned common order dated 21st October 2003, the CESTAT disposed of the appeals as under:

In respect of the appeals arising from the first SCN:

(i) In the appeals filed by VCPL and its Director, Mr. H. Sunder, only duty demand of Rs.6,93,285/- along with interest under Section 11AB and penalty of equal amount under Section 11AC was upheld. The remaining duty demand against VCPL including the duty demand on 9 bags of *gutka*

seized from office of M/s. Harsh Transport Co. at Bhopal and 30518 pouches of Vimal *gutka* seized from Mr. Lakshmi Prakash Gupta, Seoni, and interest thereon and penalty under Section 11AC was set aside. The penalty under Rule 26 of the CE Rules on Mr. H. Sunder was reduced to Rs. 5 lakhs.

(ii) The penalty under Rule 26 of the CE Rules on M/s.GG Carriers, M/s. Delhi Indore Transport Company, M/s. Singhal Transport Company, Mr. Paramjit Singh Kakkar, Proprietor, M/s. Singhal Transport Company, M/s. Harsh Transport Co. and M/s. Gopi Road Lines was set aside and the appeals filed by them and Mr. Paramjit Singh Kakkar were allowed.

(iii) The confiscation of truck No.HR 38D 4117 of M/s. Singhal Transport Co. was set aside.

(iv) The confiscation of the Tata 407 tempo DL-1LA 6232 of Mr. Kayum Khan and the penalty on him was set aside. His appeal was allowed.

(v) The confiscation of 210 bags of Vimal *gutka* seized from the premises of M/s. Singhal Transport Company and 950 pouches of Vimal *gutka* seized from M/s. Gobind Stores, Jaipur and redemption fine in respect of them was upheld.

(vi) The confiscation of 9 bags of Vimal *gutka* seized from the Bhopal office of M/s. Harsh Transport Company and redemption fine in respect of them was set aside.

(vii) The confiscation of 30518 Vimal *gutka* pouches seized from Mr. Lakshmi Prakash Gupta of Seoni, redemption fine in respect of them and penalty on Mr. Gupta was set aside. The appeal filed by Mr. Lakshmi Prakash Gupta was allowed.

(viii) The confiscation of printed plastic laminates seized from M/s. Pragati International, Delhi, redemption fine in respect of the goods and penalty on M/s. Pragati International was upheld. The appeal filed by M/s. Pragati International was dismissed.

(ix) The imposition of penalty on M/s. Santosh Tobacco was set aside and the appeal filed by them was allowed.

(x) The appeals filed by the Department were dismissed.

In respect of the appeals arising from the second SCN, the CESTAT:

(xi) set aside the duty demand of Rs.2,75,15,400/- against VCPL, interest thereon under Section 11AB and penalty on them under Section 11AC. The penalty under Rule 26 of the CE Rules on Mr. H. Sunder was also set aside.

(xii) The penalty under Rule 26 of the CE Rules on M/s. Laxmi Freight Carriers (P) Ltd., Mr. Gopal Krishan Parashar, Mr. Paramjit Singh Kakkar, Proprietor, M/s. Singhal Transport Company and Mr. R.K. Tripathi of VCPL were set aside and as such, the appeals filed by them were allowed.

(xiii) The penalty under Rule 26 of the CE Rules on M/s. Gopi Road Lines was set aside and their appeal was allowed.

(xiv) The confiscation of 25 bags of sweet *supari* from the premises of M/s. Gopi Road Lines and redemption fine in respect of them was upheld.

20. The main findings of the CESTAT were as under:

(i) The entire evidence of the Department was primarily ambiguous records maintained by transporters and the oral statement of the employees of the transporters. Such records maintained by transport companies nowhere showed that the goods being transported under the cover of GRs had been booked by VCPL and were in respect of the *gutka* of their brand name Vimal.

(ii) Most of the deponents had retracted from their original stand at the time of cross-examination during the course of adjudication. Even otherwise, it was not possible for the employees of the transport companies to find out the brand name of *gutka* contained in the gunny bags inasmuch as no such brand name was admittedly written on the outer surface of the said gunny bags.

(iii) The charges of clandestine removal cannot be proved on the basis of third party documents without there being any positive evidence on record to link the third party documents with VCPL. Though the factory of VCPL was searched by the officers of the Department, nothing incriminating was recovered except the allegations of the shortages of menthol and gunny bags.

(iv) There was no justification in relying upon the report of SIIR since only a small quantity of 1.8 grams gutka was tested which possibly could not give correct results particularly in case of a volatile substance like menthol, which evaporates over a period of time. The content of *supari*, lime, tobacco, *kattha* and menthol, in terms of the report of SIIR, was 68%, 2%, 5%, 15.5% and 0.013% respectively. This totalled to about 90%. These five ingredients were the main ingredients and the percentages of other ingredients were supposed to less than 1%. Therefore, the remaining 9% of ingredients were not accounted for. *Gutka* is a heterogeneous mixture, prepared manually. Therefore, it was unsafe to rely upon a small quantity of gutka 1.8 grams for testing.

(v) To confirm such a huge demand of duty on the allegation of clandestine manufacture, the Department was expected to prove the procurement of a huge quantity of raw materials along with the packing materials and the capacity of the assessee to manufacture such a huge quantity. There was no evidence on record as regards procurement of such huge raw materials. The Department also failed to record the statements of the workers of VCPL who were engaged in the actual manufacture and packing of the *gutka*/pan masala. In most of the cases; no buyers were identified and where the buyers were identified either no inquiry was conducted with them (the cases of M/s. Santosh Tobacco and M/s. Gupta Chemical Works) or if inquiry was conducted, they denied having received the consignments of *gutka* through the transporters mentioned above. The confirmation of demand of duty based upon half written ambiguous records of third parties was not in accordance with law.

The present appeals

21. In the present appeals by the Department the questions sought to be urged are as under:

(i) Whether statements recorded under provisions of Section 14 of CE Act by the officers of the Department can be taken as proof of the statutory violations by the Respondents?

(ii) Whether demand of duty based on the third-party documents supported by corroborative statements was not justified?

(iii) Was the CESTAT justified in setting aside or reducing, as the case may be, the demand, redemption fine and confiscation of goods by ignoring material facts?

(iv) Was the CESTAT justified in ignoring the entire evidence on record and statements of the witnesses and concerned persons?

22. In the course of the hearing of these appeals, Ms. Sonia Sharma, learned Senior standing counsel for the Department, urged that the central issue projected by the Department in these appeals in the form of the above questions was to show that the impugned order of the CESTAT was perverse inasmuch as the material documents and evidence which forms part of the record was overlooked by the CESTAT. On 18th August 2015, she undertook to file a chart to show how the CESTAT had erred in coming to its conclusions with reference to the evidence on record. The case was adjourned to 28th October 2015 for that purpose. On 28th October 2015, the Court passed the following order:

"1. While, the Appellant has not placed before the Court the chart of the precise findings of the CESTAT, such a chart has been placed before the Court by the learned counsel for the Assessee.

2. The main plank of the Appellant's case is that the order of the CESTAT is perverse. However, in order to make good that ground, the Appellant has to demonstrate, with reference to the evidence on record, that the CESTAT either overlooked some clinching piece of evidence or that it arrived at a conclusion on the evidence, which no reasonable person could have.

3. Learned counsel for the Appellant states she will place before the Court by the next date, a chart showing in two columns the findings of the CESTAT and the relevant evidence in relation to such finding which would show that the finding is perverse.

4. List on 2nd December, 2015."

23. Pursuant to the above order, apart from filing more than 4000 pages of documents forming part of the record of the case, a chart has been filed by the Department to indicate the findings, in two columns, of the CCE as well as CESTAT and what, according to the Department, is the evidence overlooked by the CESTAT in the impugned order. Apart from the above, Ms. Sharma has also taken the Court through many of the documents placed on record.

24. Appearing for the Respondents, Dr. Seema Jain, learned counsel, has also placed on record a chart in a tabular form indicating the findings of the CESTAT with reference to the evidence on record. Dr. Jain also handed over the Court tables and charts which were prepared and submitted by the Respondents before the CESTAT when the appeals were argued there.

Scope of judicial review in the present proceedings

25. Since the main plank of the Department's appeals against the order of the CESTAT is that of perversity, it is necessary to recapitulate the legal position in this regard. The appeal to the High Court under Section 35G of the CE Act, arising from the order of the CCE, is a second appeal, the first being to the CESTAT. Unless there are substantial questions of law that arise, an appeal would ordinarily not be entertained.

26. On findings of fact, ordinarily it is the CESTAT which would have the final say in the matter. A question of law would arise in that context only where it is possible to demonstrate (a) some vital piece of evidence which is material to the determination of the issues involved has been overlooked by the CESTAT or (b) where it is has made a patent error in appreciation of the evidence or misread the evidence on record. In ***Sree Meenakshi Mills Limited v. CIT (1957) 31 ITR 28*** it was observed that a finding of fact is open to attack when it is shown that "there is no evidence to support it or if it is perverse." The threshold for demonstrating perversity has always been high.

27. In ***Ratanchand Darbarilal v. Commissioner of Income-tax 1985 (22) ELT 653 (SC)*** it was held that if an order was passed by the Tribunal without taking into account the relevant factors or if the Tribunal had mis-directed itself by over-looking the salient features and reached an erroneous conclusion, that would make for a question of law. Merely because another view is possible to be taken on the same facts will not give rise to a question of law warranting interference by the High Court in exercise of its appellate

jurisdiction.

28. As far as the present appeals are concerned, the Court is undertaking the exercise of referring to some of the broad aspects of the evidence only for the purpose of examining if the impugned order of the CESTAT warrants interference on the ground of perversity in the background of the above legal position.

29. Broadly the evidence gathered by the Department in respect of both the SCNs can be categorized into primary evidence in the form of original documents collected from the entity i.e. VCPL, the transporters and other associate entities and secondary evidence in the form of report of SIIR, the retracted statements of some of the persons examined in the course of investigation and other material stated to be of a corroborative nature.

Report of the SIIR

30. It was submitted on behalf of the Department that the report of SIIR was a clinching piece of evidence. It was proved by the oral evidence of Mr. S. K. Chib, who had prepared the report. Mr. Chib was cross-examined at length but was unable to be discredited by the Respondents. As regards 9% ingredients not accounted for in the report, Mr. Chib in his cross-examination explained that this would include "moisture, cardamom flavouring material etc. which was not analysed." A reference was also made to the explanation of Mr. Chib with reference to 1.90 gms, was in fact average weight of the 10 pouches and which constituted the set of the represented sample. The *panchnama* drawn at the time of drawing of the

sample on 22nd July 2003 substantiated this fact. Mr. Chib had explained that menthol was used only in traces and did not undergo any process during manufacturing where it is exposed to severe heat conditions. Once the mixture was ready, it was packed in pouches made of plastic film which were heat sealed to avoid any leakage or the contents absorbing moisture. A reference is made to the analysis undertaken by the CCE in the order-in-original which tried to show that the explanation for the gap between 450 gm of menthol claimed by the Assessee to be present in the representative sample and 13 grams which was actually found in the report of the SIIR could not be attributed only to evaporation since it would then be 97.2% which was in the "realm of impossible." It is urged that all of the above evidence was overlooked by the CESTAT.

31. The Court finds that the CESTAT has considered the report of the SIIR and has examined carefully the evidence of Mr. Chib. It noted that the percentage of the contents of the mixture as declared by VCPL was 86% *supari*, 2.2% lime, 6% tobacco, 5% *kattha* and 0.47% menthol, which added up to 99.67%. The other ingredients were perfumes and substances which were less than 1%. The total of the percentage of these five ingredients in the report of SIIR, instead of being more than 99%, was only about 90%. This by itself, therefore, created a doubt as to its correctness.

32. Indeed the Court finds that the explanation offered by Mr. Chib for the balance 9% is not very convincing. Considering that the test conducted was on a small quantity of 1.8 gm of *gutka*, the failure to account for 9% of the ingredients would be significant. The 9% could well have contained some

percentage of the five main ingredients. That might then alter the inference to be drawn regarding the actual consumption of menthol. The missing contents that constituted the 9% cannot be a matter of surmises and conjectures.

33. The Court is, in the above circumstances, called upon to determine whether the CESTAT committed any gross error in appreciating the above evidence or whether its conclusion regarding the unreliability of the SIIR report was perverse. In the considered view of the Court, the answer to both questions must be in the negative. The CESTAT has not only discussed the report of SIIR but has given cogent reasons why it was unable to accept it as a reliable piece of evidence.

34. It was then urged that if the noticees wanted to challenge the credibility of the report of SIIR, they ought to have produced another expert report. The Court is unable to accept this submission. The primary onus is on the Department to make good the case set out in the SCNs. It is open to an Assessee to seek to contest the report by bringing out its inherent weaknesses during the cross-examination of the person who has prepared it. Alternatively, the Assessee might choose to produce another expert report which contradicts report of the expert of the Department. In the present case the Assessee has chosen the former course and has been able to persuade the CESTAT to hold the SIIR report to be unreliable. The Court is unable to find any error having been committed by the CESTAT in coming to the above conclusion.

Statements of persons recorded during investigation

35. In stressing that CESTAT ought not to have rejected the statements recorded of various persons in the course of investigations by the officers of the Department, notwithstanding that many of them may not have been produced in the cross-examination, Ms. Sharma placed reliance upon the decisions of ***Collector of Customs, Madras v. D. Bhoormull AIR 1974 SC 859, Sujeet Singh Chhabra v. Union of India AIR 1997 SC 2560, K.I. Pavunny v. Assistant Collector (HQ)1997 (90) ELT 241 (SC)***. She further submitted that the Department was not required to prove beyond doubt each and every piece of evidence gathered. It was sufficient for the Department to adduce "only so much evidence, circumstantial or direct, as is sufficient to raise a presumption in its favour with regard to the existence of the facts sought to be proved."

36. It must be observed that the decision in ***Collector of Customs, Madras v. D. Bhoormull*** (*supra*) was specific to the provisions of Sea Customs Act, 1878 pertaining to smuggling. Although it is observed by the Court that this initial onus of proof on the Department can be sufficiently discharged by circumstantial evidence this was in the context of the fact that provision itself shifted the burden on the person in whose possession the contraband is found. As far as the CE Act is concerned, there is no such provision that raises a presumption and shifts the burden on to the person who is charged with clandestine removal of excisable goods. Section 14 of the CE Act provides for a detailed enquiry involving the gathering of evidence through documents and recording of statements. It does not dispense with the principles of natural justice or the general principles of fairness that govern

all departmental inquiries. In the decision of the Bombay High Court in ***Patel Engineering Ltd. v. Union of India 2014 (307) ELT 862 (Bom.)*** an expert panel was formed by the Department in response to the challenge by the noticees to the certificates produced by the Chartered Engineer. It was in that context that it was held that the denial of an opportunity to cross-examine the persons who were part of the expert panel would not result in the entire proceeding being vitiated. In fact in the present case the Assessee was given an opportunity to cross-examine Mr. Chib who prepared the report of the SIIR and the Assessee was able to demonstrate the unreliability of the said report.

37. In the present case the noticees had sought the cross-examination of 20 persons whose statements had been recorded by the Department in the course of investigation. Some of these persons had retracted their initial statements through affidavits tendered subsequently or resiled from the statements when cross-examined. In urging that even the retracted statements could be relied upon, Ms. Sharma referred to the decision in ***K.I. Pavunny v. Assistant Collector (HQ)*** (*supra*). That decision was rendered in the context of Customs Act, 1962. The question was whether the confessional statement of the Appellant given to the custom officers under Section 108 of the Customs Act 1962, though retracted at a later stage, was admissible in evidence and could form basis for conviction or whether the retracted confessional statement required corroboration on material particulars in the form of other independent evidence. It was held that the burden of showing that the confession statement was given under coercion or threat was on the person making such allegation. It was observed that if

the confession was voluntary, there was no legal bar on the Court relying on it to order a conviction. However, where it was retracted, and even if the person retracting was unable to show that it was obtained under duress, "however, rule of prudence and practice does require that the Court seek corroboration of the retracted confession from other evidence." It was further observed that "each case would, therefore, require to be examined in the light of the facts and circumstances in which the confession came to be made and whether or not it was voluntary and true."

38. In the present case it needs to be first observed that there was no 'confession' as such by any of the noticees as to their involvement in the activities alleged against them in both the SCNs. The Department relied on the statements made by third parties including transporters, agents, and their employees. Where such statements are subsequently retracted or resiled from, it becomes necessary for the Department to produce other evidence which is of an independent nature which corroborates the retracted statements.

39. The CCE has in the Orders-in-Original proceeded to rely on the retracted statements or on statements of persons not offered for cross-examination by either disbelieving that they were obtained under coercion or by holding the persons who have retracted or resiled from the earlier statements as having done so under the influence of the noticees themselves. The CCE noted that the noticees had submitted a list of 20 such witnesses whom they wanted to cross-examine. The CCE observed: "Though it is a very large number and not very convincing grounds were given for their cross-examination, yet all

the 20 witnesses were allowed and all of them were given two opportunities each (but) only 6 of them appeared." The CCE further observed that "instead of appearing for cross-examination they chose to provide sworn affidavits to the noticee alleging high handed methods of the investigating officers. If the noticees were really interest in cross-examining them they themselves could have made them available, particularly when they were so cooperative that they provided sworn affidavits."

40. In fact Ms. Sharma too insisted upon reading from such retracted statements in order to persuade the Court to hold that the impugned order of the CESTAT is perverse. According to her the retraction made more than 20 months after the making of the initial statements "would have no effect in the eye of law". She too submitted that the responsibility of ensuring the presence of such persons for cross-examination was of the noticees themselves.

41. What the above submission overlooks is the 'reliability' of such statements. Once it is shown that the maker of such statement has in fact resiled from it, even if it is after a period of time, then it is no longer safe to rely upon it as a substantive piece of evidence. The question is not so much as to admissibility of such statement as much as it is about its 'reliability'. It is the latter requirement that warrants a judicial authority to seek, as a rule of prudence, some corroboration of such retracted statement by some other reliable independent material. This is the approach adopted by the CESTAT and the Court finds it to be in consonance with the settled legal position in this regard.

42. The contention that it is the responsibility of the noticees to produce the witnesses for cross-examination is a strange one considering that they are witnesses of the Department and that their statements are being relied upon by the Department in support of the SCNs. Since it is relying on such statements, it is the responsibility of the Department to ensure their presence for cross-examination. As already mentioned, whenever such witnesses (i.e. six of them) were produced for cross-examination they resiled from their earlier statements.

43. It is not a matter of mere coincidence that none of the witnesses who were cross-examined stood by their earlier statements. It is one thing to overlook this feature on the premise that all of them were under the pressure and control of the noticees. The other approach is to view this with some caution and ask what might be the case if the remaining witnesses were also produced for cross-examination? Importantly, what would be the prejudice caused to the noticees, in such circumstances, by their non-production for cross-examination? Thus a doubt is created in favour of the noticees when such witnesses do not turn up for cross-examination. It is the latter approach that has weighed with the CESTAT. That, in the view of this Court, was a possible approach and does not render its order perverse on that score.

Canvas bags

44. Turning to some of the specific instances, as regards the allegation of excess consumption of unaccounted receipt of canvas bags, reliance was placed on the documents seized from M/s. Ram Lal Ram Chandra (India)

Ltd. (RLRC), the case of the Department is that during the period from April 2002 to 4th July 2003, VCPL had received only 105000 canvass bags from RLRC. The allegation of excess receipt to the tune of about 510650 canvass bags was based on the entries in the gate register. However, as noted by the CESTAT, the delivery challans did not indicate that canvas bags, covered by the delivery challans had in fact been delivered to VCPL. The delivery challans mentioned the registration numbers of trucks and yet no enquiry was made with the drivers or owners of the trucks. Moreover, Mr. Rajiv Gupta, Managing Director (MD) of RLRC was not available for cross-examination. He submitted an affidavit to the effect that certain quantities of canvas bags bearing Vimal brand had been sold at factory gate also in cash. Regarding the jute bags, the *panchnama* and seized bags from M/s. Shyam Jute Industries did not *per se* reveal any shortage of jute bags. These documents by themselves were insufficient to conclude that there was shortage of jute bags and menthol, thereby permitting an inference that they were used in the unaccounted manufacture of *gutka* cleared clandestinely.

Cash sales at the gate

45. The defence of VCPL, which was unable to be effectively countered by the Department, was that there were cash sales of *gutka* at the factory gate and the buyers at the gate engaged the transporters for despatch of the purchased *gutka* to various destinations. It was urged before the CESTAT that during the period in question VCPL had effected cash sales of *gutka* of almost Rs.9 crores at their factory gate on which they had paid duty. It was pointed out that Mr. Dubey, whose name figured in the statements given to the Department by many of the employees of the transporters, was a person

whose help was sought by the purchasers of Vimal brand *gutka* to get bookings with the transport companies. Mr. Dubey was stated to be earning some commission in the process. Therefore, the mere fact that Mr. Dubey accompanied the goods to the transporters' offices did not mean that it was VCPL which was removing the goods for despatch. The Department was unable to produce any tangible evidence to link VCPL with the despatches made through the transporters.

46. The attempt at linking VCPL with the despatches through the letter 'V' appearing on some of the gunny bags also failed when it was shown to the satisfaction of the CESTAT that since Vimal was a popular brand, other spurious manufacturers were passing off their products as that of Vimal. The CESTAT took note of the fact that VCPL had lodged an FIR much prior to the date of search. Pursuant thereto, the police recovered 480 bags of *gutka* manufactured spuriously. The CESTAT also noted that the Department had not contested the filing of the FIR. Therefore, in the absence of other positive evidence the mere fact that the goods seized from the transporters originated at the factory gate of VCPL or from the same source was not sufficient to establish that it was VCPL which was clandestinely clearing such consignments. The Court is not persuaded to hold that the CESTAT erred in the appreciation of evidence or failed to consider any material evidence in coming to the above conclusion.

Goods seized from Singhal Transport

47. Relevant to the seizures effected from Singhal Transport Co., were the statements of Mr. Yogesh Sharma, Godown Incharge, Mr. Sita Ram and Mr.

Mohd. Ilyas, drivers of trucks allegedly used in transporting the goods to its office. Mr. Yogesh Sharma and Mr. Sita Ram were not made available for cross-examination. An affidavit of Mr. Mohd. Iliyas was tendered in which he stated that he used to be approached by Mr. Dubey who was engaged by purchasers of *gutka* on cash basis. He stated in the affidavit that seizure of 40 bags from his tempo without bill was a sporadic event.

48. The other statement in this regard on which reliance was placed was of Mr. H. Sunder. The case of the noticees was that the statement made by him on 5th July 2003 was dictated by the officers of the Department and he was forced to sign certain documents. It is stated that he was forced to deposit Rs. 66 lakhs although only 210 bags of *gutka* were recovered from M/s. Singhal Transport Co. One witness who was offered for cross-examination was Mr. Paramjeet Singh Kakkar, Proprietor of M/s. Singhal Transport Co. He initially gave a statement that they transported only Vimal brand *gutka* and the names of the consignors in the GRs were shown as per the advice of Mr. Sunder. However, in his cross-examination, Mr. Kakkar stated that the bags were plain gunny bags without any marking; that they never opened the bags; that they were never paid by VCPL; that VCPL had never booked any *gutka* for despatch through them; that the person who came to book the goods used to give the name of consignor. Some of the GRs show that bags of *gutka* were transported by M/s. Gupta Chemical Works to 'self' at Hubli on 3rd July 2003 and 4th July 2003. Mr. Rajiv Gupta, partner of Gupta Chemical Works was not questioned about the said GRs. One general observation in this regard is that the Department does not appear to have carried the investigations to their logical end. The CESTAT examined 17

truck guidance notes and the Court has also been shown a sample of one of them which shows that the consignment was to be sent to Gujarat. It does not show who the consignor is and whether it had anything to do with VCPL.

49. It requires to be noted at this stage that as far as seizure of 210 bags from Singhal Transport is concerned, VCPL has not disputed it and has also not disputed its duty liability. This was also confirmed by the CESTAT.

Seizures form GG Carriers

50. As regards seizure from the transporter, M/s. GG Carriers, is concerned, the documents seized including (i) one book seized which contained entries in relation to pan masala and not gutka; (ii) private marks like 'GRK', 'UMS', '013', '017', 'GOB', 'Kaku', , and 'KK'. Even the loose sheets only mentioned 'pan masala'. The loading register also showed only some private marks and numbers without any mention of the description of the goods. The Court has also been shown some of the copies of the loading challans/registers. They only describe the goods as *pan masala*. The persons who wrote the loading registers and the day book were not identified and their statements were not recorded. One employee of GG Carriers, Mr. Harjinder Singh, was examined. He mentioned the name of the booking clerks as Naresh Kumar and Vishnu but neither of them was examined. In his cross-examination, Mr. Harjinder Singh denied transporting *gutka* of VCPL. It was for the Department to explain why the entries in the documents were not further investigated by them and why someone in a

responsible position in GG Carriers was not examined. It was for the Department to establish the link between such evidence and VCPL. If CESTAT was not prepared to rely on the above evidence, then certainly its approach could not be faulted.

The production capacity

51. On the question of production capacity, what has come on record is that at the time of inspection 65 machines were found installed and 20 were found working beyond 5 pm. Although there were 120 machines in all, 65 were found to be operational. At the relevant time, what was declared to the Department by VCPL was 65 machines. As rightly pointed out by learned counsel for the noticees, and as accepted by the CESTAT, at the relevant time there was no bar against an Assessee having more machines than what was declared as long as the machines that were operational tallied with the number declared. This aspect of the matter was overlooked by the CCE and the fact that there were 120 machines was taken to mean that they ought to have been used in manufacturing excess quantities of *gutka* which were clandestinely removed without payment of excise duty.

Other seizures

52. In connection with the seizures from two dealers in Jaipur, three persons were examined. One was Leela Ram Makhija, Proprietor of M/s. Leela Ram Gobind Ram, Kota who gave a statement that they purchased directly from VCPL and that the goods always came from Jaipur Golden Transport. Mr. Leela Ram stated that the abbreviation 'GR' did not belong to him. There was a proprietor of M/s Prem Supari Bhandar, Gobind Ram, brother of

Leela Ram Makhija. He was, however, not asked whether the initials 'GRK' belonged to him. As regards the initials 'GOB', Mr. Narayan Lal, proprietor of M/s. Gobind Store, Jaipur who is a distributor of Vimal *gutka* confirmed that the seized goods were in fact received under Invoice dated 27th June 2003.

53. Turning to the seizure of 8406 bags of Vimal *gutka* from M/s. Delhi Indore Transport Company, the Court has been shown a sample of the relevant document seized. Mr. Vijay Singh the booking clerk of Star Transport, was the person who was supposed to have explained that the Day Book Register entries like 'V/40/OK' pertained to Vimal *gutka* and that 'V' means Vimal and 40 means 40 bags. However, he was not made available for cross-examination. He tendered an affidavit that the '*bilities*' were made in the name of the parties who had purchased the goods from VCPL. He now explained that 'V/40' did not represent cargo pertaining to *gutka* and that V could stand for Victory, Vinod, Vishal and could contain any other goods. This is to be seen in the context of the fact that the day book register/loading register did not contain a description of the goods. A telephone diary with the names of Vimal Gopal, Rajesh and Dubey was recovered. The statement of Mr. Ravinder Kumar, Night Booking Clerk was recorded but he was not made available for cross-examination. Later he too tendered an affidavit clarifying the entries and that 'V/40' does not represent cargo of *gutka*.

54. Next the Court proposes to examine the evidence pertaining to the seizure of 5971 bags of Vimal brand *gutka* supposed to have been cleared

clandestinely by VCPL through M/s Gopi Road Lines. As rightly pointed out by CESTAT, the statement of Mr. Sushil Kumar, one of its commission agents, was recorded but he retracted the said statement. He was not produced for cross-examination. Other than this statement, there was no evidence to link the challans seized with VCPL. CESTAT has rightly held that the duty demand of Rs. 1,97,04,300 based on the records of Gopi Road Lines cannot be sustained.

55. Turning to the allegation that 2267 bags of Vimal brand *gutka* were removed by VCPL through M/s Harsh Transport Co. Pvt. Ltd., the statements of Mr. Ravi Bhandari and Mr. Santosh Kumar Mishra were sought to be relied upon by the Department. Mr. Ravi Bhandari in his cross-examination stated that he was not aware of the brand name of the *gutka* booked under the GRs in question. Mr. Santosh Kumar Mishra gave an affidavit retracting his statement implicating Mr. Dubey.

56. Even as regards the seizure at Laxmi Freight Carriers, as pointed out by the CESTAT, inferences were sought to be drawn on the basis of a few telephone calls between Mr. R.K. Tripathi and Laxmi Freight Carriers. No documents showing booking of any consignment of *gutka* through Laxmi Freight Carriers by VCPL were able to be produced.

57. As regards the Department's appeals, cogent reasons have been given by the CESTAT for affirming the order of the CCE arising from the first SCN to the extent that the proceedings against VCPL regarding seizure of 9356 kgs of *supari* etc., against Ashoka Tobacco relating to seizure of 27382 kgs

of unbranded loose chewing tobacco and against M/s. Lalwani Convertors relating to seizure of 4135 kgs of flexible laminated film.

Conclusion

58. For all the foresaid reasons, the Court holds that the Department has been unable to show that the impugned order of the CESTAT suffers from illegality or is perverse so as to warrant interference in the present appeals. The view taken by the CESTAT is based on a thorough analysis of the evidence on record and is a plausible one. It does not give rise to any substantial question of law.

59. The appeals are accordingly dismissed but with no order as to costs.

S.MURALIDHAR, J

VIBHU BAKHRU, J

DECEMBER 2, 2015
Rk