

**IN THE COURT OF THE ADMINISTRATOR, U.T. OF DAMAN & DIU
AT DAMAN**

Appeal No.1,2,3,4 & 5/2012

1. Joint Commissioner of Excise of
Daman & Diu, Excise Department,
Daman.

2. Deputy Secretary (Finance)

3. Deputy Secretary (Taxation)

..... Appellants

V/s.

1. Khemani Distillery Pvt. Ltd.,
Kachigam, Daman.

2. Krimpi Distillery Pvt. Ltd.
Kadaiya, Daman.

3. Commissioner of Excise,
Excise Department, Daman.

..... Respondents

PRESENT : FOR THE APPELLANTS

1) Shri Arshad Hidayatullah

2) Shri Girish S. Kulkarni

3) Shri Shristailya S. Deshmukh

OFFICERS FROM EXCISE DEPARTMENT, DAMAN

Mrs. Madhu Garg, Addl. Commissioner of Excise, Daman

Mrs. Kamlesh Hatta, Asstt. Commissioner, Excise, Daman

FOR THE RESPONDENTS NO.1 IN APPEAL NO.1,3, & 4 OF 2012
RESPONDENT NO.1 IN APPEAL NO.2 & 5. OF 2012

1) Shri Darius Shroff

2) Shri C. Hari Shankar

3) Shri Aqeel Sheerazi



4) Shri Darshan Bora

5) Shri Satish Modassia

Shri Ashok Khemani, Proprietor of M/s Khemani
Distilleries, Pvt. Ltd.

Shri Kanjibhai Tandel, Proprietor of Krimpi Distillery

ORDER

This order shall dispose of five appeals filed by Joint Commissioner of Excise; Deputy Secretary, Taxation and Deputy Secretary Finance of Union Territory of Daman & Diu. The Appeals have been filed against two orders of Commissioner of Excise dated 26th December 2011. The Orders were issued disposing of the proceedings which arose out of issuance of Show Cause Notices dated 16/2/2010, 22/2/2010 and subsequently Corrigendum to these Show Cause Notice dated 7th June, 2010 by the Excise Department, Daman and Diu to M/s. Khemani Distilleries Pvt. Ltd. and M/s. Krimpi Distillery (hereinafter referred to as Assesseees)

2. Details and facts of these cases are available in the impugned orders and documents maintained with regard to those proceedings. A brief summary, however, would be appropriate and is given hereunder:

i). A Show Cause Cum Demand Notice dated 15/2/2011 was issued by Joint Secretary (Excise) to the Managing Director, Khemani Distilleries directing to show cause why the demand of **Rs.31,05,17,540/-** shall not be raised. A further similar Notice was issued on 22/2/2010 directing to Show Cause why a demand of **Rs.141,62,98,562/-** shall not be raised. Similarly a Show Cause Cum Demand Notice dated 22/2/2010



was issued by the Joint Commissioner (Excise) to M/s. Krimpi Distillery directing to show cause why a demand of **Rs.70,70,86,534/-** shall not be raised.

ii) These Show Cause Cum Demand Notices were issued to the Assesseees on the basis of certain allegations which inter alia included that from the period 2005 to 2010 the Assesseees had not maintained the proper records of sale of country liquor (henceforth to be referred as CL) and that most of the sale of the CL was shown through counter sale without transit permit and that such a huge quantity of sale of CL gave rise to an implication that though the Assesseees have shown the production and sale of CL but in actual the India Made Foreign Liquor (henceforth to be referred as IMFL) might have been produced and sold thereby the Assesseees evaded the differential amount of excise duty between the two products.

iii). The Assesseees (Respondents No.1 in these Appeals) challenged these Show Cause Cum Demand Notices in the Hon'ble High Court of Judicature at Bombay in Writ petition No.2393/2010 and 3091/2010. The Hon'ble High Court consequently, after hearing the parties issued certain directions vide its order dated 19/4/2010 to the Excise Department, Daman to issue a Corrigendum to the SCN on the following aspects:

"to issue Corrigendum to the Show Cause Notice dated 22nd February, 2010 so as to give specific information and details regarding the record adverted to in opening part of Paragraph 1 thereof which has been taken into account by the authority and would suggest that no proper record of sale of country liquor has been maintained by the petitioners for the relevant period. The Corrigendum should disclose the particulars about which sale has



been taken into account from the entire record which has been shown through retail outlet through counter sale without any transport permit. On the above said two facts, the Corrigendum should provide for necessary information and make reference to the contemporaneous record which has been taken into account by the Authority to form the said prima facie opinion. It is only on furnishing these details, the petitioners would be able to make effective representation”

iv). Subsequently the Excise Department issued a Corrigendum dated 7th June 2010 to the Assesseees. The Hon'ble High Court vide its order dated 14/6/2010 directed the petitioners to the aforesaid Writ petitions to file their comprehensive reply to the SCN and Corrigendum before the Joint Commissioner, Excise. Proceedings, thereafter commenced for personal hearing before the Commissioner Excise. After hearing the Assesseees on several occasions spanning from July 2010 to May 2011 the Commissioner, Excise completed the proceedings by issuing the impugned orders whereby he has set aside the SCNs dated 16/2/2010, 22/2/2010, 23/2/2010 and the subsequent Corrigendum dated 12 June 2010 for want of any legal, tangible and concrete evidence. Consequently the demand for duty as referred to in para (i) above were also dropped out.

3. Aggrieved by these orders mentioned hereinabove, these appeals have been filed under section 40 of the Goa, Daman and Diu Excise Duty Act, 1964 (hereinafter referred to as the Excise Act) which reads as under :-

"Appeals – Any person deeming himself aggrieved by any decision or order passed under this Act or the rules made there-under by any Excise



Officer other than the Commissioner may, within ninety days from the date of such decision or order, appeal against such decision or order, to the Commissioner; and where the decision or order is passed by the Commissioner including the order passed in revision under section 41 the appeal shall lie to the Chief Secretary. In disposing of the appeal the Commissioner or the Chief Secretary as the case may be, may, after giving reasonable opportunity of being heard :-

- a) confirm the decision or order appealed against; or
- b) reduce, enhance or annul any amount involved in the decision or order appealed against; or
- c) pass such other orders as he may think fit."

4. The Appellants have in their appeal while praying for setting aside the impugned orders passed by the Excise Commissioner, the Respondent No.2 in these appeals have also prayed for staying the operation of the impugned order by way of ex-parte ad-interim relief. The Appeals were accordingly taken up on 8th February, 2012 and an order was passed granting the prayer of the Appellants for ad interim injunction till a decision was taken on these appeals.

5. Directions were issued to issue notice to both the parties to present themselves in person or through their Counsels on 29 February, 2012. The Respondent No.2 vide his letter No.3/375/EXC-ADM/K/2009-10/1157 dated 22/3/2012 has requested to be exempted from appearing on the ground that the Order was passed by him in the capacity of quasi judicial authority under the Excise Duty Act, 1964 and it is the normal judicial practice that the Presiding Officer/Adjudicator cannot be made a party in the appeal where his Order is under challenge. The request has been granted. Subsequently the matter was taken up on 19/4/2012



6. The cases were further taken up on 10/5/2012 when the Counsel for the Assessee informed that they had complied with the earlier orders dated 19/4/2012 by filing their Counter alongwith various documents on 30/4/2012. Documents furnished by the Assessee included a detailed Counter furnished by Id. Counsel for M/s. Khemani Distilleries Pvt. Ltd. in Appeal No.1/2012, Appeal No.3/2012 and Appeal No. 4/2012 and by the Id. Counsel for M/s. Krimpi Distillery in Appeal No.2/2012 and Appeal No.5/2012. Prior to this the Id. Counsel for Assessee have filed two detail documents one containing 373 pages and another containing 133 pages which are named as Vol.I and Vol.II. These Volumes contain copies of various documents relied upon by the Assessee. On 10th May, the Id. Counsel for the Appellants sought time till 28th June, 2012 to study these voluminous documents. However, considering the seriousness and sensitivity of the case and also considering that the Departments of Excise/Taxation and Revenue had filed the appeals in the interest of safeguarding the revenues of the State, they ought to have put more efforts in ensuring that their appeals were put through the legal motion in an effective manner. Time was, therefore, granted upto 24 May, 2012 only.

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that he could make arguments on behalf of the Assesseees. However, the Id. Counsel for the Appellants objected to this saying that it was decided on 10th May that arguments would be made by both the parties without seeking any further adjournments and after completion of the arguments the case would straight away be reserved for orders. Accordingly it was decided to hear final arguments on 28th and 29th June, 2012 continuously. In the interest of justice and fair play it was also decided that the entire proceedings would be Video recorded. The case was taken up for arguments on 28th June in the morning when all the parties and their Counsels were present. A list of which is appended to this order. The arguments went on till 6.00 pm in the evening and again started on 29th June morning and lasted till 6.00 pm in the evening. Videography of the entire proceedings were done and copies of the CDs have been furnished to the Counsel for both the parties for their record.

8. The case of the Appellants in brief is that :-

I. The Respondent No.2 i.e. The Excise Commissioner while adjudicating had not given opportunity to the Appellants to prove the contentions raised in the Show Cause Notice.

II. That the Respondent No.2 has passed the impugned order by accepting the contentions made by the Assesseees as the Gospel truth.

III. The Respondent No.2 failed to consider the difference between the registers/records prepared as per provisions of the statues and the malpractices committed under the guise of such record produced by the Assesseees and jumped to conclusion that the said record and registers are legal and valid without giving any



IV. That Respondent No.2 ought not to have accepted the theory advanced by the Assessee that the statement of the Inspector General of Police, Surat Range was of general nature and did not set out any specific basis which could support the differential duty demand.

VI. That the Respondent No.2 failed to consider the fact that the onus to discharge the burden of allegation of clandestine removal was on the Assessee No.1 in all these appeals and not on the Appellants.



VIII. That the Respondent No.2 had erred in law by not considering the fact that FIR had been lodged against Assesseees in these appeals by Valsad Police on 1st February, 2010 and that also an FIR was lodged by the Central Bureau of Investigation (CBI) against the Assesseees in these appeals basing on the same facts which is subject matter of the SCN. The case of the Appellants is that in both these FIRs, after investigation the investigating officer will submit all papers and statements before the concerned Judicial Court. Hence without considering this fact, the Respondent No.2 by passing the impugned order has hurriedly jumped to the conclusion by accepting facts advanced by the Assesseees.

IX. That Respondent No. 2 failed to appreciate that the statement recorded by the Police Officer of the person who is made an accused cannot be considered as an accused in the proceedings conducted for Show Cause Notice and that such person should have been summoned as witness in these cases.

X. That the Respondent No.2 has failed to appreciate the fact that the apprehension of duty evasion was well founded basing on records and also other materials collected by Valsad Police and the CBI. The case of the Appellants is that the Respondent No.2 could not have considered and relied on the judgments of the Hon'ble High Court and Hon'ble Supreme Court cited by the Assesseees in these appeals since those judgments cannot be made applicable to the present case.

XI. That the Respondent No.2 also failed to consider the ratio laid down in decision of Hon Calcutta High Court which was produced



by the Assessee before him. **The case cited is of Bilba Paper Private Limited V/s. P. Barkan [2000 (125) E.L.T.360 (Cal)] in which it was held that :**

"The occasion for issue of such notice is the factum of short levy, through in inadvertence, error, collusion, misconception or mis-statement. Only when short levy of duty is factually established in any of the above grounds, then only the occasion arises for issue of a notice under the section."

XII. The case of the Appellants is that the Assessee used to give mis-statements and committed error by not providing true facts in collusion with concerned officials of Excise Department and thereby doing illegal business and evading the tax.

XIII. That the Respondent No.2 ought not to have considered the fact as mentioned on page 41 and 42 of the impugned order that once it is concluded that the registers/records are in order, there is no option but to withdraw both the SCNs. and the Corrigendum. The case of the Appellants is that apart from sales and purchases mentioned in record/register the Assessee had carried out business illegally thereby evading the duty. These facts have been prima facie established by procuring the documents from other liquor sellers in Daman by independent agencies which is part of inquiry /record of case to be looked in proper Court of law.

9. The Appellants have based on above grounds craved for setting aside the impugned orders passed by Respondent No.2 and to direct Assessee to pay the amount mentioned in the Show Cause Notices and Corrigendum to the Excise Department by declaring the notice and Corrigendum as legally tenable.



10. The first Assessee (Respondent No.1 in Appeal No.1,3, and 4) has vide para 4 of their counter reiterated and adopted all the submissions made earlier during the proceedings before the Excise Commissioner, Respondent No.2. Similarly the second Assessee (Respondent No. 1 in appeal No .2 and 5) has reiterated and adopted all the submissions made during the proceedings before the Excise Commissioner. Their primary objections to these appeals relate to the maintainability of these appeals which can be summarised as under:-

11. The appeals filed by the Joint Commissioner of Excise is illegal, unjustified and beyond jurisdiction since the Hon'ble Supreme Court in **Union of India v/s. Kamlakshi Finance Corporation Ltd. [1991 (55) E.L.T. 433(S.C.)]**, has held that in quasi-judicial proceedings an order passed by a higher authority is binding on a lower authority and the Excise Commissioner who had passed the impugned order is a higher authority than the Joint Commissioner Excise. Reliance in this regard has been placed on the decisions in following cases:-

Rubber Products Ltd. Vs. Union of India [2006(2006) E.L.T. 1153 (Bom.)]

Commissioner of Income Tax Vidrarbha & Marathwada Nagpur Vs. Smt Godavaridevi Saraf, Tumsar [1978(2) E.L.T. (J 624)(Bom.)]

Commissioner of Central Excise, Meerut-I Vs. Santoshi Steels Ltd. [2004 (165) E.L.T. 95 (Tri.-Del.)] which was maintained by the Hon'ble Supreme Court in **[2004 (172) E.L.T. A135 (S.C.)]**

Padmini Technologies Ltd. Vs. Commissioner of Customs, New Delhi [2007(212) E.L.T. 123 (Tri.-Del.)]



It has been stated that unless a higher authority has authorised the Joint Commissioner Excise to file the appeal, the appeal would be contrary to the decision of the Supreme Court in Kamlakshi Finance Corporation Limited (supra).

12. The first Assessee (Respondent No.1 in appeal No.1, 3 and 4) has further stated in the Counter that Deputy Secretary (Finance) and Deputy Secretary (Taxation) have no locus standi to file an appeal against the impugned order. Similarly the second Assessee (Respondent No.1 in appeal No.2 & 5) has stated that Deputy Secretary (Taxation) has no locus standi to file an appeal against the impugned order. These submissions are based on the ground that an appeal is a creature of a statute and that unless the statute provides for an appeal and specifies the order against which an appeal can be filed no appeal can be filed. Reliance in this regard has been placed on law declared by the Hon'ble Supreme Court in **State of Maharashtra Vs. Mahboob S. Allibhoy [1996(85)E.L.T. 22(S.C.)]**. It is further submitted that in terms of section 40 of the Excise Act, only a person deeming himself aggrieved by any decision or order passed under that act or rules, made there under, is entitled to file an appeal. In this regard it has further been submitted that the scope of the term "aggrieved person" has to be construed in the context of law as laid down by Hon'ble Supreme Court in various cases of laws reproduced below:-

Adi Pherozshah Gandhi vs. H.M. Seervai [AIR-1971-SC-385]

"any person who feel disappointed with the result of the case is not a 'person aggrieved'..... The order must cause him a legal grievance by wrongfully depriving him of something That the order is wrong or



that it acquits someone who he thinks ought to be convicted does not by itself give rise to a legal grievance.”

**Northern Plastics Ltd. Vs. Hindustan Photo Films Mfg. Co. Ltd
[1997(91) E.L.T. 502 (S.C.)]**

“in the entire context of the statutory scheme especially sub-section (3) of Section 129A it has to be held that only the parties to the proceedings before the adjudicating authority Collector of Customs could prefer such an appeal to the CEGAT and the adjudicating authority under Section 122 can prefer such an appeal only when directed by the Board under Section 129D(1) and not otherwise.... In order to earn a locus standi as ‘person aggrieved’ other than the arraigned party before the Collector of Customs as an adjudicating authority it must be shown that such a person aggrieved being third party has a direct legal interest in the goods involved in the adjudication process. It cannot be a general public interest or interest of a business rival as is being projected by the contesting Assessee before us.”

Bar Council of Maharashtra vs. M.V. Dabholkar and Ors. [AIR – 1975-S.C.-2092]

“a person will be held to be aggrieved by a decision if that decision is materially adverse to him. Normally one is required to establish that one has been denied or deprived of something to which one is legally entitled in order to make one “ a person aggrieved.”



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P. Lal vs. Union of India [AIR-2003 –SC-1499]

“normally ‘a person aggrieved’ must be a man who has suffered a legal grievance, a man against whom a decision has been pronounced which has wrongfully deprived him of something or wrongfully refused him something or wrongfully affected his title to something...”

13. The Id. Counsel for the Assesseees has submitted that Deputy Secretary (Finance) and Deputy Secretary (Taxation) cannot be deemed as aggrieved persons as they were not a party in the first instance and have no locus standi to file the present appeals because the impugned order is neither prejudicial nor adverse to them. The impugned order according to him, does not wrongfully deprive them or effect their title to anything whatsoever. He has further stated that the Appellants have not suffered any legal grievance. Due to these reasons the Id. Counsel has concluded that appeals filed by the Deputy Secretary (Finance) and Deputy Secretary (Taxation) are not maintainable.

14. Another preliminary objection to the maintainability of the appeal is that new grounds have been taken at the appeal stage vide para 7 that "all the concerned officers of the Excise Department who were physically monitoring the activity of Distillery and records maintained by Assesseees have been suspended ...that these facts clearly established collusion between Assesseees and said officers for carrying out such illegal activities as alleged in the SCN"

15. The case of the Assesseees is that allegations or grounds which are not specifically mentioned in the SCN or Corrigendum, cannot be taken at a later stage. In this regard reliance has been placed on the decision of the Hon'ble Supreme Court in **Raj Bahadur Narain Singh Sugar**



Mills Ltd. Vs. Union of India [1996(88)E.L.T. 24(S.C.)] wherein it has been inter alia held that

“The Show Cause Notice in question specifically speaks of an erroneously granted rebate only. There is no mention in it of any collusion, wilful mis-statement or suppression of fact by the Appellants for the purposes of availing of the larger period of five years for the issuance of a notice under Rule 10. The party to whom a Show Cause Notice under Rule 10 is issued must be made aware that the allegation against him is of collusion or wilful mis-statement or suppression of fact. This is a requirement of natural justice. Unless the assessee is put to notice, the assessee would have no opportunity to meet the case of the authorities The appeal is allowed.”

Reliance has further been placed on following decisions:-

Godrej Industries Limited vs. Commissioner of C. Ex., Mumbai [2008(229) E.L.T. 484 (S.C.)]

“We ourselves have gone through the Show Cause Notice and we are satisfied that the finding recorded by the Tribunal insofar as it relates to a ‘related person’ is beyond the scope of show cause notice and, therefore, the same cannot be sustained and is accordingly set aside. “

Commissioner vs. Goodluck Industries [2000 (120) E.L.T. A66(S.C.)]

Kantilal Parekh vs. Union of India [2003 (158) E.L.T. 678 (Bom.)]

“So far as merits of this matter is concerned, the contents of the Show Cause Notice would unequivocally go to show that no allegations of the alleged conspiracy alleged to have been hatched by the Petitioner with Mr. Kanti Lal Parekh, M/s. J.M. Kawadkar & Co., Virendra Kumar Handa



and Tejinder Singh are to be found in the Show Cause Notice served on the Petitioner although adverse finding in this behalf has been recorded against Petitioner in the impugned order. Thus the impugned order and adverse finding recorded in this behalf are beyond the scope of Show Cause Notice. The finding is thus clearly in breach of principles of natural justice.”

McNally Bharat Engineering Co. Ltd. Vs. Commr. Of C. Ex., Ranchi [2011 (267) E.L.T. 610 (Jhar.)]

“Nowhere it was mentioned in the Show Cause Notice given by the Deputy Commissioner, Central Excise Division, Dhanbad dated 5th February, 2003 (Annexure 8) that whether the purchaser of the Appellants has availed any MODVAT/CENVAT credit. Despite this fact, the Tribunal had travelled beyond the Show Cause Notice and has given a reasoning in paragraph 5 of the order passed by the Tribunal that the Appellants has not established whether incidence of excess paid duty was not passed to the customer in the form of availment of MODVAT/CENVAT credit. Had this reason been given in the Show Cause Notice, the Appellants could have given detailed answer....”

16. It has further been submitted that allegation of collusion cannot be implied from the contents in the SCN or the Corrigendum but have to be stated clearly and unambiguously. In this regard reliance has been placed on the following decisions:

Orient General Industries Ltd. Vs. Collector of Central Excise [1993 (65) E.L.T. 238 (Tribunal)] which was maintained by the Hon'ble Supreme Court in **[1996(85) E.L.T. A124(S.C.)]**



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“Under these circumstances we do not find any force at all in the contention of the learned SDR that the absence of any explicit allegation regarding wilful suppression in the Show Cause Notice does not prejudice the Revenue’s case since withholding of the correct assessable value of the goods by the assessee could be inferred from the contents of the Show Cause Notice”

United Brothers vs. Collector of C. Ex.[1990 (45) E.L.T. 455 (Tribunal)]

“on perusal of the Show Cause notice, find no allegation of suppression or mis-statement therein. **Such allegations cannot merely be implied; they must be made clearly and unambiguously.**”

17. The Id. Counsel for the Assesseees has further stated that during the previous hearing held on 19/4/2012 it was suggested that in para 2 of the Corrigendum there was an allegation of connivance. It is submitted by him that this allegation of (connivance) by the Gujarat Police Officer is with reference to the alleged (but unsubstantiated) connivance between the Assesseees and that too with reference to the alleged large scale smuggling of liquor into Gujarat. According to him there is no allegation of collusion between Assesseees i.e. Respondents No.1 in these Appeals and any Excise officer either in the Show Cause Notice or in the Corrigendum.

18. The Id. Counsel for the Appellants Shri Arshad Hidayatullah has contested the arguments made by the Id. Counsel for the Assesseees Shri Darius Shroff regarding the maintainability of these appeals on the following grounds:-



19. Orders in the present case have been passed by the Excise Commissioner. Section 40 of the Excise Act allows any person aggrieved by such an order to appeal to the Chief Secretary. There are two parties before the Commissioner, viz. the Revenue and the assessee. The Revenue issues the SCN and the assessee responds thereto. If a decision is taken by the Commissioner in the assessee's favour, and the Revenue is aggrieved thereby, the only remedy available to it, as a "person aggrieved" by the order of the Commissioner, is under Section 40 of the Excise Act. The Revenue is aggrieved by the Commissioner's decision that there is no excise duty due and payable to it, for whatever reason. The Revenue authorizes some officer to file the appeal. In other Acts, there are designated authorities who are empowered to file such appeals. Here in the Excise Act, the position is different. Any other construction of the provision would mean that the Revenue has no statutory right of appeal under Section 40 of the Excise Act. It would mean that, if the Revenue is aggrieved by the order of the Commissioner, it has no remedy available to it. Shutting out the Revenue in this manner would render Section 40 of the Excise Act inoperative, so far as the Revenue is concerned.

20. Shri Hidayatullah has further stated that the words any person aggrieved" would include any one who perceives himself affected by the decision. He has placed his reliance on Judgement passed by the Hon'ble High Court Delhi in **Hindustan Photo Films Mfg. Co. Ltd. and UOI vs. CEGAT [1990(50)E.L.T. 234(Del.)]** In this judgement it was held that "Union Government and its instrumentalities are aggrieved persons", public interest being suffered directly if goods are imported illegally or have secured duty free concessions to which they are not entitled" . He has further submitted that the Delhi High Court has given



in this case a much wider construction to the word "person aggrieved". It cannot therefore, be said that the revenue cannot be a "person aggrieved" within the meaning of section 40 of the Excise Act. He has further stated that since there is no further appeal against the order of the Appellate Authority, the case of the revenue would stand completely shut out if the preliminary objection of the Assessee were accepted.

21. Having carefully examined the submissions made by the parties regarding the maintainability of these appeals in terms of section 40 of the Excise Act, I am inclined to accept the submission made by the Id. Counsel for the Appellants that the construction of the word "aggrieved person" has to be seen in the context of the Judgment in the Hindustan Photo Films Mfg. Co. Ltd. and UOI vs. CEGAT. If any other construction of the aggrieved person is considered, the case of the revenue would actually be shut out rendering the very legal provision made in section 40 of the Excise Act infructuous and inoperative.

22. So far as the objection regarding the new ground raised .i.e. of collusion, is concerned the Id. Counsel for the Appellants during oral submissions has stated that the issue actually is of whether the Excise Inspector present in the premises of the Distilleries were actually discharging their duties faithfully and were actually present all the time as has been claimed by the Assessee during their pleadings before the Excise Commissioner. The whole case of the Assessee before the Excise Commissioner was built up on the grand idea of impeccable and contemporaneously prepared and maintained registers and that there was complete physical control of the Excise department in the form of presence of Excise Inspector on the premises, day in and day out and as such there could not have been any clandestine manufacture or removal of IMFL in the guise of CL.



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23. Shri Hidayatullah has further argued that the entire case of the Assessee is that its Registers are meticulously maintained, which fact has been relied upon by the Commissioner at various places to hold that, therefore, there has been no clandestine manufacture or removal. However, the Commissioner overlooked one fundamental fact, that, in the Corrigendum to the SCN, there was sufficient prima facie material to show, to the Commissioner as Investigating authority that something was amiss in those distilleries. This can be discerned even from the conduct of the Assessee itself. On the issuance of the SCN, the Assessee promptly rushed to the Hon'ble Bombay High Court for getting the SCN quashed on the ground that they were based on assumption and presumption.

24. He has further submitted that the Assessee had thought that the SCNs contained no material and that these could be got quashed in writ proceedings. The High Court, however, gave liberty to the Department to issue a Corrigendum, to give the material particulars of the details of evasion as alleged in the initial SCN. The Corrigendum contained materials pointing at connivance between Excise Officers and the Assessee, as a result of which certain quantities of IMFL, of identified batch numbers, had been issued out, details of which were found in a pen-drive and in a laptop. IMFL have been issued in the name of the distilleries of Khemani and Krimpi and had been found with their batch numbers at a particular place. The Assessee never challenged the order of High Court by way of any SLP before the Supreme Court. They accepted the order of the High Court, and filed their reply to the corrigendum. They, thereby, took a chance of proper adjudication and a decision in their favour.



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25. The Id. Counsel for the Appellants has focused his attention on the role of the Excise Commissioner as an Investigator and as an Adjudicator. It is a fundamental principle of natural justice that a person cannot be a judge in his own cause. There is, however, an exception which arises in this Act, called the "doctrine of necessity". Where this doctrine applies, though one man is entrusted with two functions, he is permitted to perform both the duties and be the judge on his own cause. The principles of natural justice are not violated on the ground that the prosecutor is the adjudicator. In this case, the prosecutor and adjudicator are both the Commissioner. In a case such as the present, the statute has entrusted the functions of determining whether there is evasion of duty, by any assessee, on the Commissioner. The Commissioner has to first go and investigate whether there has been any breach of any statutory provisions, any Rules or any of the provisions of the Act. Thereafter, when he comes to a *prima facie* conclusion to the effect that there has been evasion, he issues a SCN calling on the noticee who has evaded the duty, to file his reply thereto. Once the reply is so filed, the Commissioner adjudicates the case, now in his capacity as an Adjudicator. There is nothing unusual about it, one man wearing two caps, one of an investigator and the other of an adjudicator.

26. According to the Id. Counsel for the Appellants the Excise Commissioner while functioning as an Adjudicator has erred in exercising his power to determine whether there has been any evasion of duty or not. While adjudicating on the SCN and Corrigendum he was sitting independently in his capacity as investigator. He ought to have seen what replies the Assesseees had given in response to the facts brought out during investigation. The Assesseees were defended by a

battery of senior lawyers who were expert in Excise laws. Submissions made by them made the Excise Commissioner into believing that in a case of physical control, where the records of issue of manufacture, storage and removal was signed and countersigned by officers of Excise Department who were present on the premises, day in and day out, there could not have been any question of clandestine manufacture or removal.

27. He has further submitted that clandestine manufacture would be manufacture of IMFL in the guise of country liquor and "clandestine removal" would be removal of IMFL in the guise of country liquor. The issue in this case, would be reflected in the molasses register, manufacture would be reflected in manufacturing register, storage would be reflected in the warehousing register and removal would be reflecting in the removal register. This included the requirement of preparation of certain documents including delivery challans. All the records are countersigned by the Excise Inspector and every activity is required to be carried out under his supervision. He is permanently stationed in the premises of the distillery. However, the issue was whether the Excise Inspector were present physically in the premises always and whether they were actually discharging their duties faithfully.

28. He has further stated that the Excise Commissioner had, before him, in the Corrigendum, prima facie material to show that something was amiss in the distilleries as, in the regime of 100% physical control it was questionable as to how consignment bearing certain batch numbers turned up in the premises of third party. At this stage the Excise Commissioner ought to have noted that, though, the Assessee were stating that they had meticulously maintained records, duly countersigned, this matter required to be examined, as he also had



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before him prima facie evidence, to show that clearance of stock took place in a manner which was not under Excise supervision. Only 6 pages were filed by the Assessee before the Commissioner to show that they had meticulously maintained the records. The Excise Commissioner should have called for the 4 registers in original which were being relied upon by the Assessee as constituting the records which were shown to have been meticulously maintained and should have examined them himself. He ought to have called for all the registers of all the products and examined them himself over the entire period of 5 years from 2005 to 2010 but he did not do so. This submission has been countered by the Id Counsel for the Assessee by stating that certified Xerox copies of the Registers which had been made available to them were actually produced before the Excise Commissioner.

29. The Id. Counsel for the Appellants has emphasised that the Excise Commissioner ought to have called for the original registers which were lying in the custody of the CBI. It was admitted that the Revenue had now requisitioned some of these registers for the purpose of these Appeal from the custody of the CBI. Had these original registers were seen by the Commissioner, the following features would have become apparent:-

(i). Several entries in different register for different years contained the signature of Shri Dhodi Excise Inspector in the same manner, and also in the same ink for different years. Not only this, these signatures also appear when Shri Dhodi was on leave.

(ii) The perusal of the physical register as, distinguished from the xerox copies which were produced before Commissioner, showed



that every entry over a period of a four months was made using the same ink and same pen, in all the registers of both the distilleries of both Assesseees as if it had been prepared over a period of 3 days. . He further referred to the 7 pages of the Alcohol production register which had been filed by the Assesseees before the Commissioner. These pages contained the signature of Shri Dhodi at the right hand column in a remarkably consistent manner. I have gone through these page at page 101 to 103 of Vol 2 of the documents submitted by the Assessee

30. Shri Hidayatullah has further stated that this was the record for the month of January 2010 only whereas the demand contained in the SCN and Corrigendum was of 5 years i.e. 2005 to 2010. The Commissioner, therefore, ought not to have allowed himself to be convinced by reference to merely 5 pages when there were more than 30 registers involving various aspects of manufacture. Shri Hidayatullah has further stated that the impugned orders do not state at any point that he had called for the originals of the registers or that he had inspected them to satisfy himself or that Shri Dhodi had remained physically present on all the said dates, and that this was not a case of collusion, in view of the prima facie evidence of some hanky panky activity apparent from the Corrigendum. This has been contested by Shri Shroff Id. Counsel for Assesseees by drawing attention to the top three lines on page 48 of Volume-I from the impugned order which are reproduced below:-

“on perusal of the written submission of the Noticee and available records and documents maintained by Excise Department, Daman following observations are made.”



32. Shri Hidayatullah has produced before me the original Register No.29 relating to DSP Black Whisky. All these entries are duly countersigned by the Excise Inspector Shri Dhodi. All pages looked identical and were filled with same ink. It was pointed out by the Id. Counsel that Shri Dhodi had signed this register even on those days when he was on leave. He has submitted a chart giving some details of Excise Inspector having signed particular register during the period when he was on leave. These details are reproduced below:-

Sr.No.	Register No.	Register Name/ period	Name of the officer	Comments
1	2 (Green Colour)	Production of Alcohol from Molasses	Mr. Suresh Dhodi	P.31 1 st July, 2004 the Excise Inspector has signed the Register during his leave period (1.7.2004 to 9.7.2004)
2			Mr. Suresh Dhodi	P.18 27 th December 2003 the Excise Inspector has signed the Register during his leave period (27.12.2003 to 3.1.2004)
3	19(Maroon Colour)	Register for Bottled IMFL (Blue Riband Tango) (2003-2010)	Mr. Suresh Dhodi	P.2/3 on 29th December, 2003 and 30th December, 2003 the Excise Inspector has signed the Register during his leave period (27.12.2003 to 3.1.2004)
4	29 (Green Colour)	DSP Black Whisky	Mr. Suresh Dhodi	P.6/7 on 27.12.03, 30/12/03, 1.1.04 the Excise Inspector has

				signed the Register during his leave period (27.12.2003 to 3.1.2004)
5			Mr. Suresh Dhodi	P.96 to 107 from 25/5/2009 to Nov'2009 same pen and same ink is used to sign by the Excise Inspector
6	2 (Green Colour)	Manufacture of Alcohol from Molasses	Mr. Suresh Dhodi	P.31 on 1/7/2004 the Excise Inspector has signed the Register during his leave period (27.12.2003 to 3.1.2004)
7			Mr. Suresh Dhodi	P.51 similarity in signatures throughout.
8	32	Warehousing Register (Darby Special Whisky) (2004-2010)	Mr. Suresh Dhodi	P.12 on 14.7.05 the Excise Inspector has signed the Register during his leave period (14.7.05 to 23.7.05)
9			Mr. Suresh Dhodi	P.1 on 1.7.04 the Excise Inspector has signed the Register during his leave period (1.7.04 to 09.7.04)
10	1	Molasses Register (2004-2005)	Mr. Suresh Dhodi	P.89 to 195 1.12.04 to 21.4.05 same pen and same ink used during this period.
11	28 (Green Colour)	Green Label Whisky (2003-	Mr. Suresh Dhodi	P.31 on 1.7.04 the Excise Inspector



		2010)		has signed the Register during his leave period (1.7.04 to 9.7.04)
12	36	Plain Country Liquor (2004-2010)	Mr. Suresh Dhodi	P.39 on 14.7.05 the Excise Inspector has signed the Register during his leave period (14.7.05 to 23.7.05)
13			Mr. Suresh Dhodi	From P.39 onwards same ink is used.
14		Bagpiper Whisky (2003-2010)	Mr. Suresh Dhodi	P.14 on 1.7.04 the Excise Inspector has signed the Register during his leave period (1.7.04. 09.7.04)
15	14	Honey-B Brandy Register for Manufacture of Bottled IMFL (2007-2010)		Resister looks fresh even after 5 years
Krimpi Distilleries				
1		Wholesale Register	Mr. V. B. Halpati	P.7 on 13.10.05 the Excise Inspector has signed the Register during his leave period. Register appears very fresh and new even after expiry of more than 7 years.
2	20 (Pink Colour)	Blended Country Liquor		Same ink used from 3.5.2005 to 2006
				Register appears fresh and new after



				expiry of more than 7 years.
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33. Shri Hidayatullah has further submitted that it cannot be believed that these records are contemporaneously maintained since all are maintained very neatly, without any abrasion or correction. He concluded that these registers were, therefore, got up documents and the Commissioner ought not have relied upon the 5 xerox copies which did not reflect the correct picture. He further stated that these discrepancies could have been noticed and brought on record had the Revenue being represented by a Counsel/Advocate before the Excise Commissioner.

34. My attention has been invited to page No.. 289 and 290 of Vol- I . which is a part of written submissions dated 4th May made before the Excise Commissioner. In para 55 of these submissions (page 289 of Vol.I) it is stated that ***"basis of the differential duty demand of the Excise department is erroneous and contrary to and in the teeth of the following statutory record, sample copies of which were shown to your honour during the course of personal hearing"***. The Commissioner has been mislead by showing 5 pages of the registers into believing that the entire record for the 5 years had been meticulously maintained by the Assessee and cross checked and verified by the Excise Inspector. It was the duty of the Excise Commissioner to call for the original records and was not done which was the fault in the adjudication.

35. Shri Hidayatullah has stated that even in a case of perfect physical control where there was collusion, clandestine activity of manufacturing and removal would stood proved. The fact that the record was got up



and was signed by the Excise Inspector on dates when he was on leave clearly indicated that these records were not believable. Nobody had investigated why this had happened. The entire Corrigendum was based on connivance between the Excise Officer and the Assessee. To this Assessee's only answer has been that every register was meticulously maintained.

36. Ld. Counsel for the Appellants has invited my attention to section 28 and 29 of the Excise Act which are reproduced below:-

28. "Duty of officers of certain departments to report offences and to assist excise officer. – Every officer of the Police, Customs and Land Revenue Departments shall be bound to give immediate information to an officer of the Excise Department of any breach of any of the provisions of this Act which may come to his knowledge, and to aid any officer of the Excise Department in carrying out the provisions of this Act upon request made by such officer.

29. "Duty of officer in charge of police station to take charge of articles seized. – Every officer in charge of a police station shall take charge of and keep in safe custody, pending the orders of a Magistrate or the Commissioner or an Excise Officer duly empowered in that behalf, all articles seized under this Act which may be delivered to him; and shall allow any officer of the Excise Department who may accompany such articles to the police station or may be deputed for the purpose by his superior officer to affix his seals to such articles, and to take samples of or from them. All samples so taken shall also be sealed with the seal of the officer in charge of the police station. "



37. In view of these legal provisions it could not be said that the FIR registered by the Gujarat Police or the evidence in the laptop, Pen Drive were irrelevant as evidence. The reports relating to clandestine activity, as claimed by the police were brought to the notice of the Excise Commissioner under section 28 of the Excise Act and were duly incorporated in the Corrigendum. Once this material is provided by the Gujarat police, formed part of the Corrigendum, it was incumbent on the Id. Commissioner to call the entire records and registers. He even did not bother to call Shri Dhodi as the person in charge of the distillery to explain as to how liquor had found its way into Gujarat. The Commissioner therefore had failed to exercise his function as an adjudicator. He had further stated the Excise Commissioner had been misled because of the case laws cited by the Assessee. This case law was entirely misconceived as it did not apply in a case of clandestine removal by collusion. He has further stated that the Excise Commissioner had donned two roles (1) of the investigator and (2) that of the Adjudicator. There was nothing illegal or unlawful in this since the "doctrine of necessity" allowed a person to be both as an investigator as well as an adjudicator. However, the order of the Commissioner was not, sustainable in law as he had failed to discharge his statutory duties to adjudicate the case on merits. This required him to call for the entire material on record relied upon by the Assessee to examine those records himself in original and thereafter determine the correctness and authenticity thereof to see if the plea of physical control and hence no clandestine manufacture and removal was sustainable or not.

38. The Id. Counsel for the Assesseees in these five appeals Shri Darius Shroff has countered the submissions and arguments put forth by Shri Hidayatullah stating that the entire superstructure is built up by



the Appellants regarding the registers, the handwriting therein. The fact that Shri Dodi was on leave, the Revenue should be called upon to produce the registers and the orders granting him leave and his applications thereof. It was not possible to state, else, whether Shri Dodi was or was not on leave on those dates, and whether the chart produced by Shri Hidayatullah in this regard was correct on facts or not. On being asked whether the Assessee did not have any opportunity to meet the said registers during hearing before the Excise Commissioner, Shri Shroff stated that he had to meet the case set out in the SCN, and that there was no whisper, either in the SCN or in the Corrigendum, that these registers were completely got up for the last 5 years and had been created *post facto*, with reference to the handwriting, etc., being the same for 5 years, as was sought to be contended by Shri Hidayatullah. No such case was made out even in the appeals of the Appellants before the learned Hon'ble Administrator. The allegation put before the Assessee in the SCN was that, in 2010, on one day, 9000 cases had been sold to Royal Distillery, which was not possible, and that, therefore, CL shown to have been manufactured was nothing but IMFL and that, for 5 years, no CL whatsoever had been manufactured. In response, the Assessee had produced its registers, in a running manner, starting from the molasses register, for January 2010, to show how much CL it had manufactured.

39. The Id. Counsel for the Assessee has further stated that Shri Hidayatullah's submission was that, as an adjudicator, the Commissioner ought to have further investigated the matter. This was contrary to normal legal procedure. Years ago, the Supreme Court had upheld the power of the Commissioner [in Central Excise] to adjudicate the SCN issued by him himself, holding that no principles of natural justice stood



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violated thereby. The principles of natural justice required two legs to stand. One was that all the evidence relied upon should be presented to the other side so that it could rebut the same, and the second was that no man would be a judge in his own cause. Though the second leg was not affected by the authority issuing the SCN adjudicating it, the first leg could not be given up completely. All evidence against the Assessee had, therefore, to be placed before it at the very outset.

40. On 6.2.2010, the State Excise authorities had visited the Assessee's factory and drew a Panchanama. Copy of this Panchanama is placed at page 42 to 79 in Volume-2. Shri Shroff has read out portions of the Panchanama. He thereafter referred to the stock inventory taken by the Excise Officer. For each item and brand, the Register Page No. was given in the Panchanama. All the tanks had been measured and stocks taken. The registers were complete up to date as on the date of visit. Shri Shroff questioned how then, could these registers have been written *post facto* or after some days?

41. He has further referred to items 31-33 at page 53 of Volume-2. These indicate that the assessee had stock of BCL and the same found mention in the Register as well. This clearly negated the Appellant's contention in the SCN and Corrigendum that no BCL was manufactured during 2005 to 2010 and that every drop of alcohol manufactured was IMFL. The duty calculations of the Revenue had converted all bottles of CL into IMFL and multiplied by the differential rate of duty on each bottle to raise the demand. He next referred to page 76 and to Serial Nos. 26 to 29 at page 77. These, too, showed that as per the Deptt's own record, they had found CL.



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42 He next referred to the 1st SCN in Volume-1 at page 65. He stated that the whole plant at Royal Distillery at Nani Daman had been taken on lease by Khemani in March-2005 on the basis of a specific permission given by the Excise department a copy of which is available in [Volume-2 at page 80], and that the said plant had to be distinguished from the Royal Distillery Sale Depot, which was run by Royal Distillery, which was a totally independent entity. It was nobody's case that Royal Distillery and Khemani Distillery were one and the same. Khemani Distillery never manufactured anything at Royal Distillery.

43. Referring to para 2 of the SCN, he has submitted that, as the allegation therein was w.r.t. January 2010, the Assessee had produced copies of the Register for that month before the Commissioner. Proceeding to the next para of the SCN, it was submitted that the allegations regarding the absence of any stock of any liquor, or of any records in this regard, being found at Royal Distillery, was irrelevant, as Royal Distillery was an independent third party, with which Khemani Distillery had no connection. The allegation is that, though Khemani Distillery's records showed sales of 9000 bottles, Royal Sales Depot records failed to establish any such sales. How did the Department know that 9000 bottles were cleared? Khemani Distillery had stated on record, and it was not disputed, that all records were maintained by Royal Sales Depot on the computer, all records were seized by the Excise department. He has further stated that neither Batch Nos, nor TPs were required for CL. In support whereof Assessee had produced the Circular issued by the Commissioner's office which is available in Volume-2 at page 104. This was withdrawn on 8.2.10 a copy of which is available in Volume-2 at page 105 and thus introduced the requirement



of Batch No and Transit Permit (TP) for CL. The period of dispute is prior thereto.

44. Shri Shroff has admitted that no Batch No was maintained for CL. The SCN alleged that not putting the Batch No or entering in the warehouse register was illegal. Entry in the warehouse register would not arise if the goods were sold directly to the Sales Depot without first taking to the warehouse. Assessee manufactured CL in its premises but sold through Royal Distillery Sales Depot, which was a licensed sales depot in Daman. It was further alleged that no records or accounts were maintained at Royal Distillery Sales Depot. He has stated that Khemani Distillery never maintained records or accounts at Royal Sales Depot which were maintained by Royal Sales Depot itself. Conclusion drawn from these factors that Khemani Distillery were hiding some facts regarding production and sale of BCL and IMFL *might have been* produced in its stead was without any cogent evidence whatsoever.

45. Shri Shroff has next referred to the 2nd SCN (for 4 years) issued 4 days later a copy which is available at page 67 in Volume-1. It states that it was issued after perusing the record, which meant that the Excise Deptt had perused the records before issuing the SCN. This SCN does not allege that Assessee did not maintain proper record, not of production/maintenance of raw material/intermediate products, but of sale. The 2nd SCN further alleges that the fact that Assessee showed sale of 9000 cases in 1 day of CL implied that IMFL *might have been* produced. It was, therefore, just an allegation without any evidence whatsoever, based on 1 day's sale, without considering the pattern of sale for the last 5 years, which was in the range of 5000 – 7000 cases per day, and had peaked to 9000 cases only for 1 day. The SCN,



therefore, implies that IMFL, in such a huge quantity in 1 day, could be sold, but not CL!

46. Shri Shroff has further argued that there had to be some cogent evidence for the presumption that in the guise of CL what actually was produced and sold was IMFL. It was not logical to allege that merely because some TPs were not executed or Batch Nos not mentioned, the entire quantity of CL was presumed to be IMFL and duty was demanded thereon. Assessee, therefore, filed an additional affidavit in the WP in the HC a copy of which is available in Volume-1 at page 370. As the contents thereof disclose, till this date, the records and registers were with the Deptt, and the CBI had not come into the picture. Shri Shroff thereafter read out para 4 and 5 at page 372A. It was pointed out in the affidavit that the registers, which had been provided to Assessee showed that the complete, and correct account of production and sale of BCL was available thereon. The Revenue, therefore, had the opportunity, in the Corrigendum which was yet to follow, to disprove these contentions, and to allege that the registers were all got up and entered on dates when Shri Dhodi was on leave, and were all fabricated.

47. Shri Shroff has in his submission stated that the Parliamentary Standing Committee had been enquiring into the affairs of the UT and certain communications were made by the Administration which are reflected in the Rajya Sabha Report. He has stated that the Assessee has obtained under the RTI Act on 8th July 2010 the copy of letter dated 12/2/2012. He has submitted that the reply submitted to the Rajya Sabha has indicated that SCNs had been issued only on an apprehension, regarding the probable evasion without any concrete evidence whatsoever. He has further stated that the Rajya Sabha was also informed on 12th April 2010 by the Administration that investigation



was still in progress even though SCNs had already been issued. Shri Shroff has further read out para 5.17.7 of the Rajya Sabha Report which indicated that the Parliamentary Committee had come to the prima facie opinion that the SCNs could not have been issued on 12/4/2010 merely on the basis of apprehensions. Copies of the report of the Department Related Parliamentary Standing Committee on Home Affairs published by the Rajya Sabha Secretariat is placed in Vol.I from page 159 to 162. Shri Shroff has stated that had these facts been pointed out to the High Court, the order dated 16th April, 2010 directing the Excise Commissioner to issue a Corrigendum might not have been passed by the High Court and that the SCNs would have been dismissed straight away. Shri Hidayatullah has countered this line of argument stating that if the Assessee was so aggrieved, it could have gone back to the High Court and contented there that the SCNs had no basis.

48. Shri Shroff has further argued that with respect to the bunch of papers including leave applications of Shri Dhodi, submitted by Shri Hidayatullah during the course of hearing, it would be seen that there were only 3 inspectors, Shri Mayavanshi, Shri Halpati and Shri Dhodi. In the case of Shri Mayavanshi, when he was on leave, Shri Halpati was asked to look after his units. Similarly, arrangement was made when Shri Halpati was on leave. However, the list showed that no alternate name was given for the occasions when Shri Dhodi was on leave. How could the Department have not made any such arrangement? Reference was also made to the various orders of posting of the various officers and the system of alternate arrangements made whenever any officer was out or was transferred. It was improbable that when Dodi, who was looking after 9 units, was on leave, no one was nominated by the Excise Department. What happened to these units then? Did they come to a



halt, or shut down? It was also pointed out that, accompanying the leave application of, e.g., Halpati, there was an order setting out the substitute officer. However, on seeing the last 3 pages of the bunch of papers handed over by Shri Hidayatullah during hearing (pages 43 to 45 thereof), which were the orders of leave to Shri Dhodi, no substitute officer's name was mentioned therein, no separate order designating any such substitute existed either. Neither was there any application for leave. The documents were, therefore, incomplete. The leave applications were not there; neither was the order designating the substitute officer available. It was unbelievable that leave could have been granted to Shri Dhodi without nominating a substitute officer. It had to be remembered that there were only 3 Inspectors looking after all these units. He has further stated that first four entries in the chart showing the details of absence of Shri Dhodi pertains to the period which is prior to the SCNs..

49. Shri Shroff has further submitted that insofar as the 5th entry was concerned, it was alleged that for the months of May to November 2009, the same pen and ink was used showing that for all four months' entries were written together at the same time, *post facto*. However, returns were being filed by the Assessee, every month, with the Excise Department, on the basis of the registers. Shri Shroff has handed over copies of these monthly statements pertaining to Khemani Distilleries for the period May, 2009 to November, 2009 (Exhibit-I containing 122 pages). The return for May 2009 was dated 5.6.09. For August 2009, the return was ready on 5.9.09 and received on 7.9.09 in the Department. The return for September was received on 5.10.09, the return for October on 12.11.09 and the return for November on 9.12.09. The said returns could not have been filed if Assessee's records were



not up to date. All the figures in the returns were matching with the register. He has further argued that Shri Dhodi was on leave only for 10 days in the entire period of 5 years. Those 10 days were all in one month, i.e July 2005, his period of leave being 14th July to 23rd July 2005. It was not, therefore, that Shri Dhodi was on leave on all those days when his signatures figured on the returns.

50. Shri Shroff has stated that the submissions of the Appellant regarding post facto preparation of the registers is absurd. There were 19 such registers, pertaining to 19 products manufactured by Khemani Distillery alone. It was impossible, therefore, for Khemani Distillery to have given a cumulative figure of production and clearance in the returns if 19 registers for 19 products for 4 months were written at one time. The only basis for this far fetched allegation was that the ink was the same and the handwriting was the same. Moreover, the argument regarding Shri Dodi being on leave was also applicable only to 10 days in 2005, and there was neither allegation nor evidence of any such leave in 2009.

51. Shri Shroff has further stated that separate registers were also maintained for the raw material and intermediate products of Khemani Distillery. The molasses register was separate, and every entry therein could be proved by the fact that invoices were there, payments had been made and there was strict control even at the end of the molasses manufacturer, who was located elsewhere. It was impossible that all these registers, relating to molasses, intermediate products, final products, storage, etc., were all fraudulent merely because they were meticulous, even though, on the basis thereof, the returns were prepared and filed in time.



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52. He has stated that in the case of molasses, there was complete control from the stage of the molasses manufacturer, from where it comes under invoice, after quality control and the Superintendent at the end of Khemani Distillery has to inform the authorities at the end of the molasses manufacturer regarding arrival of the molasses. Reference was made to para 8 on page 166 in Volume-1 which were the written submissions filed before the Commissioner. Before purchasing molasses, permission from the authorities in Daman as well as Maharashtra had to be obtained. The molasses was dispatched by the selling factory under Excise seal. Certificate of unloading at the distillery, consignment wise, had to be issued, which had to be furnished in original to the excise in charge of the selling sugar factory. Molasses was the main raw material to manufacture CL or IMFL. Whether Assessee manufactured CL or IMFL, the Department was not disputing the quantity. The quantity of molasses received could also not, therefore, be disputed. The allegation that the molasses register was all got up, therefore, stood disproved even on this score. It also stood disproved because of the strict control whereunder molasses reached Assessee from the supplier. The writing in the register represented the correct facts, indicating the invoice nos, the quantity of molasses received and issued.

53. The allegation that the 38 Registers maintained by the Assessee were all got up, was not there in the SCN or in the Corrigendum even in the appeal memorandum filed before the learned Administrator. Neither was any rejoinder filed to the reply of Khemani Distillery, and all submissions were being made by the Counsel for Appellants across the bar today.



54. Shri Shroff handed over a bunch of documents containing 70 pages (Exhibit-J). These pertain to the period when Shri Dhodi was on leave from 14/7/2005 to 23/07/2005. The first document was the invoice issued by Khemani Distilleries on 14.7.05. The second document was the TP which was signed by Shri Mahyavanshi. Page No. 5 was the invoice for export out of Daman to Vapi. The invoice contained dispatch document No, lorry No and import permit No relating to the import permit for which Khemani Distillery had to apply. Page 6 was the permit for export under bond. On the reverse of that page, Shri Shroff has referred to dispatch of 7200 liters of Extra Neutral Alcohol and referred to the tempo No and the fact that it was also signed by Shri Mahyavanshi. Page 7 was the import permit for 7200 liters of ENA. The number at the said page viz. No 4/2004-05 also figured in the invoice at page No 5 of the Exhibit-J. On the reverse of permit No 4/2005-06, there was an endorsement of Shri Mayavanshi. On the next day, there was an invoice of Krishna Wines Nani Daman, and the TP signed by Shri Mahyavanshi for the same no. of cases mentioned in the invoice. (At this stage Shri Hidayatullah intervened to point out that, even on these days when the documents had been signed by Shri Mayavanshi, the Registers contained the signatures of Shri Dhodi. This point, Shri Shroff submitted, was not disputed.) Shri Shroff has continued to take me through the pages 8, 9, 10 (which were signed by Shri Mahyavanshi), upto page 17. Similar documents on 16.7.05 continued from page 18 onwards.

55. On being asked, Shri Shroff has agreed that during the period from 14th July, 2005 to 23rd July, 2005 the documents had been signed by Shri Mahyavanshi. He has further stated that this was the normal practice in all the distilleries that when the Excise Inspectors posted at a particular distillery was on leave, documents were signed in his absence



by his substitute. He has contended that in a period of 5 years, Shri Dhodi's signature figured in the registers on 9 days when he was on leave did not result in Assessee becoming an Excise evader or in all the 38 registers being got up and fabricated.

56. Shri Shroff has referred to the modalities of manufacture and removal and how the records ran. Reference was made in this regard to page 99 of the Volume-2. The very first item on 18th January, showed the date, gate pass number, tanker number with quantity received as well as the person from whom it was received and closing balance. Reference was also made to other figures on the same page, which were many. From the stage of molasses, one proceeded to alcohol production register at page 100. The Register also showed how much alcohol was manufactured, including the proof liters, strength, kind, details of issue of country spirit in bulk liters etc. Pages 100 and 101 were 2 sides of the alcohol production register. On the alcohol production side (page 101), there is a mention of the quantity of country spirit, the amount that was issued. The highlighted entries corresponded to the next page which is CL register and contained the same figure which were also highlighted. The quantum of water which was added is mentioned, as also the total quantity of CL manufactured both in bulk liters and proof liters. Details of the duty paid are also mentioned as well as quantity, in bulk liters, and in bottles, which were signed by the Excise Inspector. The next register related to the sale of the CL, and figure relating to the bottle at page 102, was converted into cases of 180 ml on the next page. It showed that Khemani Distillery had sold 7950 cases of 180 ml bottles against the said TP. These Registers represented a complete flow in maintenance of records, with each record tallying with and corroborating the next. Therefore, even in respect of the 9 days on which he was on leave, Shri



Dhodi, upon his return, verified the figures backwards and signed the Register thereby, post facto. The Excise Inspector in-charge would come and verify the figures and sign the Registers. The entire superstructure of the Appellant was, therefore, without substance, contrary to the practice of the Excise department itself and contrary to their knowledge.

57. Shri Shroff has further submitted that there had been a raid in 2006 as well. Though the Panchnama in respect of this raid had not been produced earlier, it was being produced now because it existed, The 2006 Panchnama also showed that CL had been manufactured at page 7 thereof. The Panchnama is contained among the additional documents which had been filed by Assessee with its Counter to the Appeals of the Appellants, as **Exhibit E** thereto. At 2 pages, thereafter, there was a list of challan files which referred to CL duty challans. All Income Tax returns of the Khemani Distillery were filed on this basis and had never been questioned.

58. Shri Shroff has made a reference to the Corrigendum dated 7 June 2010 referring to the disclosure made by Shri A.K Singh, IGP Gujarat range. It is stated in this Corrigendum that "Shri Singh further mentioned that the entire process of liquor smuggling cannot take place without the active connivance of Distillery owners and that he has substantive evidence to prove this". The information provided by Shri A. K. Singh, to which reference was made in the said para, was totally general and bald in nature, without any specific reference to Khemani Distillery. The statement of Shri A. K. Singh showed that the reference to connivance therein was of the distillery owners and was in the context of liquor smuggling into Gujarat, and there was no reference, nor was it of any relevance, to the submission that there was collusion between



Shri Dhodi and Khemani Distillery. That allegation, Shri Shroff argued was very specific, and ought to have been made in the Corrigendum because the High Court, in its order, had said that, unless all these details were given, Khemani Distillery would not be able to make any effective representation. This was the first principle of natural justice. There was no other evidence or statement anywhere in the SCN or Corrigendum even closely resembling the allegation of connivance or collusion.

59. Shri Shroff has stated that in the FIR filed by Shri A K Singh, at page 153 (of Volume-1), it was alleged that Derby Special Whisky, which was produced by Khemani Distillery had been seized. According to Shri A K Singh, the Excise department had informed that out of this batch only 563 bottles had been manufactured, whereas Police had caught 876 bottles, implying that the additional quantity was illegally manufactured. Shri Shroff clarified that the Excise department did not write that 563 bottles were manufactured. Rather, the Excise department's letter (at Exhibit 'B' to the Assessee's (Counter) mentions 563 cases of 12 bottles in each case. This works out to more than 876 bottles. Shri A K Singh had, therefore, confused the bottles with cases. Throughout, therefore, Shri A K Singh had misinterpreted the information received from the department by confusing the cases with bottles. The conclusion drawn by Shri A K Singh (at page 153A in Volume-1) to the effect that these facts made it clear that the Excise Department had been cheated was, therefore, unfounded.

60. Shri Shroff has referred to a compilation of judgments which has been given to me. These have been taken on record and collectively marked as Exhibit-K. These judgments according to him focus on the

onus of proof in the case of clandestine removal. According to him the ratio of these judgements is that the onus lies on the Revenue and not on the Assessee. He has further stated that even if it were to be assumed that collusion existed in a case of alleged clandestine removal, other corroborative evidence in the form of seizure of transport records, statements of employees, statement of allegedly colluding inspectors etc was necessarily required. Neither was there any such statement nor were any private records resumed which would indicate that any clandestine removal had taken place.

61. Shri Shroff has further argued that if the Registers were alleged to be a result of collusion, how was the Revenue raising the demand on the basis of the production as contained in the same records? If the production figures were acceptable, then the entire chain leading upto the production, had to be accepted. The Revenue's case appeared to be that the production, as recorded in the Registers was correct, but was wrongly shown as being of CL, whereas it was of IMFL. If the production recorded in the Register was accepted, the entire chain leading upto such production had necessarily to be also accepted.

62. Shri Shroff has referred to the pen drive seized from Shri Prajapati, an employee of the liquor trade licensee Shri Pramod Tandel and also to the FIR. He has stated that even charges had not been framed on the basis of the FIR or data in the pen drive. An inquiry had been carried out by the Excise Department and thereafter the licensee Shri Pramod Tandel has been exonerated.

63. So far as the issue of non-representation of Excise Department by any Govt. Counsel before the Excise Commissioner is concerned, Shri Shroff has argued that it was rarely in adjudication proceedings that the



Counsel represented the department before the adjudicator. He has further submitted that even if a Counsel had been briefed he could not have travelled beyond the scope of the SCNs and the Corrigendum or beyond the records which were before the Commissioner. Shri Shroff has submitted that Id. Counsel for the Appellants has not argued on any of the grounds which have been made out in the Appeals filed before me. Shri Hidayatullah has countered this by stating that it is not necessary to argue and deal with all the grounds which have already been specifically made out in the Appeals. He has further stated that even one ground is sufficient to demolish the impugned order and also the propositions made by the Id. Counsel for the Assesseees in these appeals.

64. Shri Hidayatullah has summed up the proceedings with the following propositions :-

- i). The Assesseees have relied on their records even before the Hon'ble High Court to emphasis their point that in the presence of physical control of the Excise department on the premises of the distilleries, there was no possibility of clandestine manufacture or removal of IMFL in the guise of Country liquor.
- ii) After the Writ Petitions filed by the Assesseees were disposed of by the Hon'ble High Court with specific orders and directions on 14 June, 2010, the Assesseees accepted the judgement and directions by filing their detailed replies before the Excise Commissioner. They could have filed an appeal under Article 36 of the Constitution before the Hon'ble Supreme Court if they were really aggrieved with the Corrigendum issued by the Department and subsequent directions of the Hon'ble High Court. The Assesseees rather accepted the SCN and the Corrigendum as they



have filed detailed replies to both and these replies are " not without prejudice".

iii) In their replies and various written submissions the only defence of the Assessee is that their manufacturing units were under physical control of the Excise Department and that they had maintained statutory records which were duly countersigned by the Excise Inspectors who were physically present at their manufacturing unit.

iv) Now when the Revenue has shown that the records which were relied upon by the Assessee and shown to the Commissioner to be perfect and contemporaneously maintained, were actually signed by the Excise Inspectors even on those days when they were on leave, the Assessee cannot insist that their version only has to be accepted.

v) The Assessee has relied on the registers as their evidence, now they cannot claim that no reasonable opportunity was given to them when the Revenue has put its arguments questioning the veracity of relied upon evidence. These registers are not the new evidence adduced by the Revenue but are the same which have been relied upon by the Assessee before the excise commissioner.

vi) The Evidentiary value of the registers in support of the case of the Assessee is an issue in these appeals. A statutory record can be called in evidence by any or both the parties since it is not a new evidence.

vii) The argument that the Department itself had accepted in their reply to the Parliamentary Committee that the SCNs were issued



on presumptions, cannot be accepted because the same 144th Report of the Rajya Shaba also contains the submission of the department that the matter is still under investigation. It was, therefore, not final or binding on a quasi judicial authority. In any case, this report was subsequent to the SCNs and the Corrigendum and could not have been material to the proceedings before the Excise Commissioner. So far as the contention that these communications were suppressed from the High Court is concerned, it is for the High Court to decide on the matter if approached by the Assesseees and not by a statutory authority.

viii) Although specific allegations were revealed in the Corrigendum, the Excise Commissioner had not called for statement/ cross examinations of Excise Inspectors present at the manufacturing units, the third parties whose evidence and statement were relied upon in the Corrigendum, the officers from the department and those who have submitted reports to the Parliamentary Committee.

ix) It was the duty of the Excise Commissioner as an Adjudicator to have issued summons to the persons referred to in the FIR, to the Excise Inspectors, officers of the Assesseees who were in-charge of the manufacturing units, officers of the Administration to record their statements and give opportunity to either parties for their cross examinations.

x) It is on recorded in the Corrigendum, 4th line from top on page 70 of Vol.I, "Shri Singh also mentioned that he is in possession of evidence to prove this. He further assured that the Gujarat Police would share such evidence with the UT Administration." It



was a well know fact that Central Bureau of Investigation had also registered a case in this regard and carried out detailed investigations. The Excise Commissioner as an adjudicator ought to have given an opportunity to both the Gujarat police and the CBI to put forth whatever material and evidences had been gathered by them in support of the demand for differential duty raised in the SCNs.

65. I have carefully examined the records which inter alia include the impugned orders, the appeals, counters filed by Respondent No.1 to the appeals along with other documents and documents furnished by both the parties during the course of hearing. I have heard both the parties in great detail and have already reproduced their submissions in paragraphs hereinabove. My job is now primarily restricted to the following two issues:-

- i. Whether or not the appeals are maintainable and
- ii. if maintainable, what is to be the decision in terms of section 40 of the Excise Act.

66. So far as the first issue regarding maintainability, in the context of section 40 of the Excise Act is concerned , I have already stated in para 21 hereinabove that the Joint Commissioner (Excise), Deputy Secretary (Taxation) and Deputy Secretary (Finance) have to be construed as the aggrieved party in terms of the ratio of judgment in the Hindustan Photo Films Mfg. Co. Ltd. and UOI vs. CEGAT. If any other construction of the aggrieved person is considered, the case of the Revenue actually would be shut out rendering the very legal provision made in the form of



section 40 of the Excise Act, infructuous and inoperative, particularly considering the fact that there is no further appeal against the order of the Appellate Authority.

67. The second aspect about the issue of maintainability is the contention of the Assesseees that a new ground of '**collusion**' has been introduced by the Appellants which makes these appeals non-maintainable. This issue has been argued by both the parties at a great length. The primary contention of the Assesseees in this regard is that the word 'connivance' which has been used in the Corrigendum to the SCNs was used particularly in the context of connivance of the Assesseees to push up their sales through smuggling and not collusion between the Assesseees and Excise Officers. However, this has strongly been countered by the Id. Counsel for the Appellants during the oral submissions that the issue in the context of connivance is actually the issue whether the Excise Inspectors who were supposed to have been present on the premises of the Assesseees' distilleries were actually present all the times and whether they were discharging their duties faithfully as claimed by the Assesseees. He has further demolished the defence of the Assesseees about the contemporaneously prepared and maintained impeccable registers and about the complete physical control of the Excise Department by showing registers where signatures of the Excise Inspector appeared when he was actually on leave. Although, the Id. Counsel for the Assesseees has put forth various documents in Exhibit-J which gives complete documentary backward trail of entries appearing in the register which were signed by Shri Dhodi when he was on leave yet the very fact that this type of practice has been prevalent



gives the credence to the argument of collusion. Moreover all the registers from 2005 to 2010 have not been examined from this angle whereas most of the Excise Inspectors have been placed under suspension by the Administration.

68. The contention of the Assesseees that the word connivance does not indicate collusion between the Assesseees and Excise Officers is not thus tenable. If interpretation of the Assesseees with regard to word connivance of Distillery owners is accepted, it would imply connivance in between the Distillery owners which is not the intention of the authority issuing the Corrigendum. The connivance of Distillery owners has to be construed in the context of various allegations which have been stated in the Corrigendum. The ground of collusion, therefore, in my considered opinion is not a new ground and rather existed in the Corrigendum itself.
69. I, therefore, in view of above observations set aside the preliminary objections of the Assesseees with regard to maintainability of these appeals. Now the question is whether the demand for differential duty raised in the SCNs. and Corrigendum is due or not due. The case of the Assessee in this regard is that :-
- i. The SCNs were issued merely on the presumption that no Country Liquor was actually produced from 2005 to 2010 and that actually it was IMFL whereas they have shown that CL was actually produced.
 - ii. Their records have been maintained impeccably and contemporaneously.



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iii. the Excise Department had always exercised the complete physical control since the Excise Inspectors were always present on the premises of Distillery owners.

70. The Id. Counsel for the Assesseees has further stated, during the course of the hearing, that at the time of the inspection of the Distilleries on 6th February 2010 a Panchnama was drawn and a copy of which is available from page 42 to 79 in Vol.I. This Panchanama pertains to M/s. Khemani Distilleries Limited and shows at item No.32 and 33 at page 53 that the stock of blended country liquor actually existed. He has further stated that in the year 2006 also an inspection of the Distillery was carried out and a Panchanama was drawn, a copy of which is available as Exhibit-E to the Counter. This Inspection was carried out on 16th October, 2006 i.e within the period of the Show Cause Notice and at page 7 of this Panchanama the stock of closing balance of blended country liquor is mentioned. These documents were prepared by the officers of the Excise Department during their physical inspection and were duly signed by them. The Id. Counsel for the Assesseees has, therefore, questioned the very assumption made by the Department while issuing the SCNs that they did not produce any country liquor. Obviously the officers of the Department have erred somewhere while preparing the SCNs by not taking into consideration this vital fact.

71. During the course of the hearing the Id. Counsel for the Assesseees has further drawn my attention to some Reports in the newspaper regarding IMFL bottles seized by the Gujarat Police purportedly manufactured by someone in Gujarat but using fake labels of the Assesseees.



72. While conceding the arguments put forth by Shri Shroff regarding the availability of the stock of country liquor at the time inspection in October, 2006 and February, 2010 as also the fact of manufacturing of IMFL in Gujarat as appeared in the newspaper report, the fact remains that there had been some sort of collusion between the Excise Officers and the Distillery owners which simply cannot be brushed aside. The Id. Excise Commissioner has completely relied upon the submissions made by the Assesseees before him that they have maintained contemporaneously, impeccable record and that there was perfect physical control of the Excise Department. My attention was drawn by the Id. Counsel for the Assesseees that it was wrong to say that the Id. Commissioner of Excise did not examine the records. He has particularly referred to the top three lines of the page 28 of the impugned order which is available at page 48 in Vol.I and are reproduced below:-

"on perusal of the written submissions of the Noticee and available records and documents maintained by the Excise department, Daman following observations are made"

Shri Shroff has argued that all the registers were available with the Excise Department before these were seized by the CBI and it was wrong on the part of the Id. Counsel for the Appellant that the Id. Excise Commissioner did not examine the records. This was countered by the Id. Counsel for the Appellant by drawing my attention to para 55 of the written submission dated 4th May, 2011 which was submitted to the Id. Excise Commissioner by the Assesseees. In para 55 it is clearly stated by the Assesseees themselves that the basis of the differential duty demand of the



Excise Department that all manufacture of sale of Country Liquor by the Noticee is presumed to be the manufacture and sale of IMFL, is entirely erroneous and is contrary to and in the teeth of the following statutory records/documents, sample copies of which were shown to (emphasis added) you during the course of personal hearing"

73. Having carefully examined the documents, written submissions as well as arguments made by both the parties during the hearing, I have to make following observations in this regard:-

i. The Id. Excise Commissioner as was argued by Shri Hidayatullah was performing his duties in two roles as an Investigator and as an Adjudicator. However, one vital fact has been missed out i.e. Shri Manoj Kumar Sahoo who has passed the impugned order as an Adjudicator came into the picture on 22 June, 2010 i.e when the entire investigation must have been completed by his predecessor Shri Vikas Anand. In my view it would have been absolutely alright for Shri Manoj Kumar Sahoo to call Shri Vikas Anand, the then Excise Commissioner and Shri Pankaj Kumar the then Joint Commissioner (Excise) as Witnesses to elicit the background and details about all those allegations which have been spelt out in the SCNs and the Corrigendum.

ii. A reference has been made during the hearing to the 144th Report of the Parliamentary Standing Committee of Rajya Sabha. The Communications to the Parliamentary Committee by the department must have been approved by



the then Secretary (Excise) and the then Administrator. They have specifically mentioned that the further investigations were going on. In my view it was incumbent upon the Id. Excise Commissioner to call the then Secretary (Excise) and the then Administrator to elicit further details on the points made by them in their communications to the Parliamentary Standing Committee rather than to simply rely on the word 'presumption' used in those communications.

iii. It is rightly pointed by the Id. Counsel for the Appellants that although the specific allegations were revealed in the Corrigendum the Id. Excise Commissioner had not called for statement/cross examinations of the Excise Inspectors who were posted at the manufacturing units, the third parties whose evidence and statements were relied upon in the Corrigendum. Similarly he should have summoned all those persons who were referred to in the FIRs. and also the Managers/Supervisors of the Distilleries.

iv. A reference has been made in the Corrigendum about the pen drive which was recovered from a third party. On being asked specifically during the course of the hearing, the officers from the Excise Department present have stated that the Department did not take possession of the pen drive nor of the details stored in the pen drive. Since the Excise Commissioner as an Adjudicator was a different person from the one who was the Investigator, the Id. Excise Commissioner ought to have directed the department to produce the pen drive with all the details stored there in



and examine the same in the context of allegations revealed in the Corrigendum.

v. It is on record that Shri A.K. Singh the IGP Surat Range had offered to share further information if called to do so. It seems the Id. Excise Commissioner did not use this opportunity.

vi. It is also on record that the CBI had registered a FIR in the same case and had further carried out investigations. It was incumbent upon the Id. Excise Commissioner to call the Investigating Officers from the CBI to share the material which might have been collected by them during the course of the investigation in support of the demand of differential duty.

74. It is clear from the above analysis that the Assesseees in fact have been manufacturing the country liquor as revealed from the Panchanama of October, 2006 and February, 2010. However, the department raised the differential duty demand on the entire production of the country liquor which has been shown by the Assesseees in their records . Obviously the amount would be differing had the original records been examined in detail, the witnesses were called, officers were asked to give their statements and the Gujarat Police and CBI were given an opportunity to be heard. The defence of the Assesseees about the impeccability of their records and about perfect physical control of the Excise department has been demolished by Id. Counsel for the Appellants. At the same time the Id. Counsel for the Assesseees



has proved the correctness of the entries made in the Registers for those 10 days in the year 2005 which were signed by Shri Dhodi when he was on leave, by establishing the backward trail for each entry with the supporting documents. The same exercise should have been carried out for all the registers by the Id. Excise Commissioner. Shri Shroff himself had conceded that even if it were to be assumed that collusion existed in a case of alleged clandestine removal, other corroborative evidence in the form of existence of transport record, statement of employees, statement of allegedly colluding Inspectors, etc. was necessarily required. This I have already recorded in para 60 hereinabove. It is, therefore, necessary that all the records are gone through again and examined thoroughly including those materials which are available with Gujarat Police and the CBI.

75. I, therefore, remand the cases to the Id. Excise Commissioner with the following directions:-

- i. The entire records which are in the custody of the CBI shall be requisitioned and all the entries in these registers shall be verified with reference to the backward trail of supporting documents which must be available with the Assesseees who have shown them for a particular period during the course of the hearing. Assesseees shall assist the Id. Excise Commissioner in this task.
- ii. An opportunity should be given to the Gujarat Police to present whatever material they have gathered during their own investigation which is relevant to the present cases.



iii. The Investigating Officer of the CBI shall be requested to furnish material/ details which they might have gathered during the course of investigation and is relevant to the present cases.

iv. The then Secretary (Excise) and the then Administrator shall be asked to give their statements with regard to what they have stated in their communications to the Parliamentary Committee which is recorded in the 144th Report presented to the Rajya Sabha. The Assesseees have to be given an opportunity to cross examine them if they so desire.

v. The Id. Excise Commissioner shall ask the then Excise Commissioner Shri Vikas Anand and the then Joint Commissioner Shri Pankaj Kumar during whose period the investigations were completed to give their say on various points relevant to the case of the Revenue. The Assesseees have to given an opportunity to cross examine them if they so desire.

vi. the Id. Excise Commissioner shall summon all the Excise Inspectors who have remained posted during the relevant period of time on the premises of the Assessee Distilleries, the third parties whose evidence and statements were relied upon in the Corrigendum, the persons referred to in the FIR and the Managers and Supervisors of the Assessee Distilleries, to record their statements and afford an opportunity to both the parties for their cross examination.

The case is accordingly disposed off, with a further direction that the above exercise shall be completed within a period of three months. The Secretary (Excise) and Secretary (Taxation) and (Revenue) shall



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ensure that necessary legal assistance through Govt. Counsel is made available to the Id. Excise Commissioner.

Parties be informed accordingly.

Given under my hand and seal on this 13th day of August, 2012.



[Handwritten Signature]
13/08/12
(NARENDRA KUMAR)
ADMINISTRATOR

