

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI
PRINCIPAL BENCH, COURT NO. 3**

EXCISE APPEAL NO. 51692 OF 2025

[Arising out of Order-in-Original No.05/C.Ex./Pr.Commr./M.M.G/D.N/2023-24 dated 12.12.2023 passed by the Principal Commissioner, CGST and CX, Delhi North Commissionerate, New Delhi]

Sharp Mint Limited
(Formerly Known as Sharp Menthol India Ltd.)
C-3 & C-15, SMA Co-operative Industrial Estate,
G T Karnal Road, Delhi-110033

Appellant

Vs.

The Commissioner, CGST & CX,
Delhi North, New Delhi
Delhi North Commissionerate, C.R. Building,
I.P. Estate, New Delhi-110109

Respondent

Appearance:

Present for the Appellant: Shri Mihir Mehta, Advocate

Present for the Respondent: Shri R.K.Mishra, Authorised Representative

CORAM:

HON'BLE MR. ASHOK JINDAL, MEMBER (JUDICIAL)

HON'BLE MR. K. ANPAZHAKAN, MEMBER (TECHNICAL)

Date of Hearing: **05/05/2026**

Date of Decision: **13/05/2026**

Final Order No. 50873/2026

K. ANPAZHAKAN:

The present appeal has been filed against the de novo Order-in-Original no. 05/C.Ex./Pr.Commr./M.M.G/D.N/2023-24 dated 12.12.2023, passed by the Principal Commissioner of CGST and CX, Delhi North Commissionerate, New Delhi.

2. The facts of the case are that M/s. Sharp Mint Limited (hereinafter referred to as the appellant) are engaged in the manufacture of menthol crystals and essential oils. A fire incident occurred in the factory premises of the appellant on 16.06.1998, following which certain goods were claimed to have been destroyed.

2.1. An investigation was initiated against the appellant and during the course of such investigations, searches were conducted on 18.07.2006 at the godown of the appellant. During the course of search, officers found large quantities of goods stored in drums without proper identification or documentation. Samples were drawn in a representative manner in the presence of witnesses and sent for testing. Test reports indicated the presence of Menthol, Peppermint Oil and Terpenoidal Rejects. The appellant failed to produce documents to establish licit manufacture or clearance of the goods. Statements of responsible persons were recorded under Section 14 of the Central Excise Act, 1944.

2.2. Based on investigation, a Show Cause Notice dated 17.07.2007 was issued to the appellant proposing confiscation of goods, demand of duty of Central Excise duty of Rs.61,28,715/-, interest and penalty under Rule 25 of the Central Excise Rules, 2002. The Order-in-Original dated 15.05.2008 confirmed the demand of duty with interest and imposed penalty of Rs. 15,00,000/- and ordered confiscation with option to redeem the goods on payment of redemption fine of Rs. 75,00,000/-.

2.3. In the first round of litigation, the CESTAT vide order dated 29.10.2015, partly allowed the appeal and remanded the matter to the

Adjudicating Authority with the specific direction to examine the insurance documents with regard to the goods represented by sample no. 2H-2S and thereafter to pass an appropriate order in accordance with law following the principle laid down by the Hon'ble High Court of Delhi in the case of ***M/s Flevel International***. Pursuant to remand, de-novo proceedings were conducted and the Principal Commissioner passed the impugned Order-in-Original dated 12.12.2023 confirming the demand of duty of Rs.50,28,715/- with interest and penalty of Rs.16,00,000/- under Rule 25.

2.4. Aggrieved by the said de-novo order, the appellant has filed the present appeal before this Tribunal.

3. The appellant submits that the subject goods seized by the Department were lying in the godown prior to obtaining registration by them under the Central Excise Act. They submit that on 16.06.1998, a fire occurred in the factory premises of the appellant. Due to the severity of the damage to the storage tanks, the appellant had to shift the unaffected stocks, being the subject goods, to the godown. The appellant pointed out that they were granted registration under the Central Excise Act only on 27.05.2005 and thus, the subject goods stored in the said godown, removed from the factory premises in 1998, i.e., much prior to the date on which the appellant came within the ambit of the Central Excise Act are not liable to central excise duty. Thus, the goods represented by sample nos. 2H to 2S which were lying in the godown are not liable to Central Excise duty. Thus, the appellant contends that the Ld. Principal Commissioner has erred in holding that the appellant has

failed to substantiate its claim that the subject goods represented by the sample nos. 2H to 2S were manufactured before obtaining registration; that the Ld. Principal Commissioner has also erred in holding that there is no connection between the fire that occurred in the factory premises of the appellant and the goods found at the godown. It is further submitted that from a perusal of the Joint Final Surveyors' Report along with the Arbitral Award and the judgment of the Hon'ble Delhi High Court, it is evident that there was a substantial quantity of stock unaffected by the fire which was transferred by the appellant to the godown.

3.1. The appellant also makes the submission that the Principal Commissioner has erred in holding that there is a variance between the Joint Final Surveyors' Report and the test report of IIT, Delhi, regarding the contents of the subject drums. It has been submitted that the said report was prepared based on a presumption as regards the content of the said 628 drums; as observed by the Arbitral Tribunal, in its Award dated 21.07.2011, the surveyors had not carried out any chemical tests in respect of the unaffected stocks; further, the Hon'ble Delhi High Court, in its order dated 17.07.2018, observed that the report had estimated the content and value of the unaffected stocks based on the physical dimensions of the storage tanks.

3.2. The appellant contended that the Principal Commissioner has erred in drawing an adverse inference based on the alleged variance between the survey report and the test report. In any event, the appellant argues that the Principal Commissioner has erred in holding that since the total

number of drums containing unaffected stocks is 628 drums as against the 1,579 drums which are the subject matter of re-adjudication, there is no connection between the two. In this regard, the appellant also contended that in godown no. 2, the investigating authorities had found a total of 1,629 drums, the contents of which could not be ascertained at the said time. Due to the ambiguity of the contents, the investigating officers randomly divided the said 1,629 drums into 14 groups and drew 14 representative samples; that the said segregation and drawing of samples was neither based on any expert opinion nor based on any other logical criteria; that it is pertinent to note that this Tribunal, in paragraph 13.1 and 13.2 of its Order dated 29.10.2015, has categorically held that the segregation of drums into different groups is totally illogical. It has also been stated that the Principal Commissioner has erred in ignoring the above findings of this Tribunal with respect to the illogical segregation and sampling by holding that the appellant did not contest the method of sampling when the samples were drawn nor did the appellant make any representation for re-drawing or re-testing. The appellant submitted that, following the findings of this Tribunal that the sampling and segregation was illogical, the entire demand and the findings in the impugned order pertaining to the content of the 1,579 drums is liable to be set aside.

3.3. Additionally, the appellant also stated that the subject goods represented by sample nos. 2H to 2S were removed by them from their factory in the year 1998 due to the occurrence of fire and thus, there is no clandestine removal of the said goods.

3.4. The appellant further draws attention to the fact that while remanding the matter, the Tribunal has categorically directed that the principles laid down by the Hon'ble Delhi High Court in **Flevel International v. Commissioner of Central Excise** should be followed; however, the Ld. Principal Commissioner has not followed ratio laid down in the said decision in the impugned order, despite specific directions of this Tribunal.

3.5. The appellant submits that in the impugned order central excise duty has been demanded on the allegation that goods have been clandestinely removed; however, there is no evidence brought on record to substantiate the allegations of clandestine removal. In this regard, the appellant relied on the decisions in the cases of the Hon'ble Delhi High Court **Flevel International (supra)** and the decision of the Tribunal, Ahmedabad in the case of **Arya Fibers Pvt. Ltd. v. CCE, Ahmedabad-II** and contended that there should be tangible evidence of clandestine manufacture and clearance to demand central excise duty . Central Excise duty cannot be demanded merely on the basis of inferences or unwarranted assumptions. In view of the above, it is submitted that the impugned order has been passed without considering the principle laid down in the case of **Flevel International (supra)** despite specific directions of this Hon'ble Tribunal and thus, the impugned order is liable to be quashed and set aside.

3.6. Thus, the appellant's contention is that the demands of central excise duty confirmed in the impugned order along with interest and

penalty is not sustainable and accordingly, have prayed for setting aside the same.

4. On the other hand, the Ld. Authorized Representative appearing for the Revenue submits that the contention of the appellant that the goods found in godown in 2006 pertain to pre-registration period and were part of stock destroyed in fire of 1998 has not been supported by the documentary evidences available on record; that the adjudicating authority examined the Joint Final Surveyors report dated 18.02.2000 as submitted by the appellant in de novo proceedings. He also submits that it is found and held in the OIO that though some quantity of goods had survived the fire incident but the Appellant failed to explain licit corroboration between the 628 drums saved in 1998 and the 1629 drums seized in 2006; that the appellant while filing the claim with the insurance company had disputed the unaffected goods contained in 628 drums. Even the subsequent High Court order also mentions the unaffected drums to be only 628 in numbers; the Adjudicating authority has found and held that the appellant had claimed and which was consented by the Surveyor also that a total of 628 drums were lying in the factory that had escaped destruction in the fire; however the total number of drums recovered and seized from godown no. 2 in 2006 was 1629 which is much more than 628 claimed during the survey; Out of these 1629 drums 1579 drums were impugned in these proceedings since remaining 50 drums were found to contain raw material, hence duty not demanded on them. The appellant could not prove as to how these numbers increased from 628 to 1629. The adjudicating authority has categorically held that no documentary evidence has been produced

to establish credible evidence in support of their claim of having moved the goods from the place where fire took place to the place where these were seized. Thus, the Ld. Authorized Representative of the Revenue submits that the Adjudicating Authority has rightly confirmed the demands in the impugned order.

5. Heard both sides and perused the appeal documents.

6. We find that the impugned order has been passed by the learned Adjudicating Authority on the basis of the directions given by the Tribunal in the CESTAT order dated 29.10.2015. In the said order, the Tribunal has directed the Adjudicating Authority to examine the insurance documents with regard to the goods represented by sample no. 2H-2S and thereafter pass an appropriate order in accordance with law following the principles laid down by the Hon'ble High Court of Delhi in the case of **M/s Flevel International (supra)**. However, we find that in the de novo proceedings the Ld. Principal Commissioner has passed the order without following the principles laid down by the Hon'ble High Court of Delhi in the said case.

6.1. In the present case, we find that central excise duty has been finally demanded and confirmed on the basis of the allegation that the appellant has removed the goods clandestinely. Clandestine removal is a serious allegation which needs to be corroborated by tangible evidence. Some goods found in a godown could not automatically lead to the conclusion that they were manufactured and cleared clandestinely. In this case, we find that no proof whatsoever has been adduced, either at the stage of investigation or at the stage of re-adjudication, the

evidences required to substantiate the allegation of clandestine manufacture and clearance. There is no evidence available on record proving the existence/usage of any raw materials which may have been used for the purpose of manufacturing the finished goods alleged to have been removed clandestinely. Apart from the bald allegations in the show cause notice about certain intelligence regarding raw material suppliers in Jammu enjoying area-based exemption, no oral or documentary evidence whatsoever is brought on record by the department to prove its case that the goods lying in the godown constitute clandestinely removed goods.

6.2. In the case of **Flevel International (supra)**, we find that the Hon'ble Delhi High Court has relied on the observations made by the Tribunal in the case of **Arya Fibers Pvt Ltd. vs. CCE, Ahmedabad-II** and held that clandestine manufacture and clearance cannot be alleged merely on the basis of assumptions and presumptions. For ready reference, the relevant provisions of the said decision are reproduced below:

55. Mr. Hari Shanker, learned Senior counsel for the appellant, has also drawn the attention of the Court to a decision of the CESTAT in Arya Fibres Pvt. Ltd. v. CCE, Ahmedabad-II - 2014(311)_E.L.T. 529 (Tri.-Ahmd.) where the entire law concerning clandestine removal has been discussed and the legal position has been summarised as under :

"(i) There should be tangible evidence of clandestine manufacture and clearance and not merely inferences or unwarranted assumptions;

(ii) Evidence in support thereof should be of:

(a) raw materials, in excess of that contained as per the statutory records;

- (b) instances of actual removal of unaccounted finished goods (not inferential or assumed) from the factory without payment of duty;*
- (c) discovery of such finished goods outside the factory;*
- (d) instances of sale of such goods to identified parties;*
- (e) receipt of sale proceeds, whether by cheque or by cash, of such goods by the manufacturers or persons authorized by him;*
- (f) use of electricity far in excess of what is necessary for manufacture of goods otherwise manufactured and validly cleared on payment of duty;*
- (g) statements of buyers with some details of illicit manufacture and clearance;*
- (h) proof of actual transportation of goods, cleared without payment of duty;*
- (i) links between the documents recovered during the search and activities being carried on in the factory of production; etc."*

56. In the present case, there is no attempt made by the Department to substantiate the allegation of manufacture of as many as 606 ACs by the appellant. No evidence has been produced to show that the basic raw materials required for manufacturing such a large number of ACs was procured by the appellant.

6.3. We find that contrary to the principle of strict proof laid down in the case of Flevel International (*supra*), the Principal Commissioner has instead presumed the existence of the required raw materials by observing that "the presence of seized goods gives sufficient reasons to believe that unaccounted raw materials were being used for clandestine manufacture of essential oils and clearances thereof. We find that the Department has not brought in other any evidences required as listed above to substantiate the allegation of clandestine clearance. Thus, we

hold that the demand of central excise duty has been confirmed in the impugned order without following the directions of this Tribunal to follow the decision of the Hon'ble Delhi High Court in **Flevel International v. Commissioner of Central Excise.**

7. Thus, we hold that the allegation of clandestine of the goods has not been established. Accordingly, we hold that the demand of Central Excise duty confirmed in the impugned order is legally not sustainable and hence we set aside the same. As the demand itself is not sustainable, the question of demanding interest or imposing penalty does not arise.

8. In view of the above discussion, we set aside the impugned order and allow the appeal filed by the appellant with consequential relief, if any, as per law.

(Order pronounced on **13/05/2026**)

(ASHOK JINDAL)
MEMBER (JUDICIAL)

(K. ANPAZHAKAN)
MEMBER (TECHNICAL)