

**Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench at Ahmedabad**

REGIONAL BENCH-COURT NO. 3

EXCISE Appeal No. 10237 of 2015- DB

[(Arising out of OIO-SUR-EXCUS-001-COM-054-14-15 dated 28/10/2014 passed by Commissioner of Central Excise, Customs and Service Tax-SURAT-I)]

Varun B Corporation

Plot No. 24, Sai Leela Industrial Estate,
Behind Old Petrol Pump, Udhna,
Surat, Gujarat

.....Appellant

VERSUS

C.C.E. & S.T.-Surat-i

New Building...Opp. Gandhi Baug,
Chowk Bazar,
Surat, Gujarat- 395001

.....Respondent

WITH

- (i) **EXCISE Appeal No. 10243 of 2015- DB (Varun Aggarwal)**
- (ii) **EXCISE Appeal No. 10244 of 2015- DB (Prashant Aggarwal)**
- (iii) **EXCISE Appeal No. 10245 of 2015- DB (Rakesh Aggarwal)**

APPEARANCE:

Shri Anish Goyal, Chartered Accountant for the Appellant
Shri Rajesh Nathan, Assistant Commissioner (AR) for the Respondent

**CORAM: HON'BLE MEMBER (JUDICIAL), MR. RAMESH NAIR
HON'BLE MEMBER (TECHNICAL), MR. RAJU**

Final Order No. 10128-10131/2024

DATE OF HEARING: 09.11.2023

DATE OF DECISION: 10.01.2024

RAMESH NAIR

The present appeals have been filed by M/s Varun B. Corporation (Varun), Shri Varun Aggarwal, Proprietor M/s Varun Corporation, Shri Prashant Aggarwal, Proprietor of M/s Nishoo Arts, Shri Rakesh Aggarwal, Proprietor of M/s Global Integrated Technology against Order in Original No. SUR-EXCUS-001-COM-054-14-15 Dt. 28.10.2014 passed by Commissioner of Central Excise - Surat-I. M/s Varun is engaged in manufacturing of printed duplex boxes classifiable under chapter 48 of the CETA, 1985. The brief facts of the case are that pursuant to investigation against M/s Varun on the ground that they have created dummy units in order to keep the total value of clearances below the SSI exemption and not paying duty on their clearances, the officers visited and carried out search operations at the following premises:

- i. Factory premises of M/s Varun situated at Plot No. 24, Sai Leela Industrial Estate, Udhna, Surat
- ii. Factory premises of M/s Nishoo Arts
- iii. Factory premises of M/s Global Integrated Technology

1.1 During search at factory premises, it was revealed that records/documents pertaining to aforesaid all the three firms were found lying in a common room in the premises of M/s Varun B Corporation. There was no marker or any other distinct identification for demarcating the premises of M/s. Nishoo Arts & M/s Global Integrated Technology and all the three entities had common entry & exit gate & common boundary. Thus, Warrant issued against M/s. Varun B Corporation only executed & two other Warrants in name of M/s. Nishoo Arts & M/s Global Integrated Technology could not be executed as explained above. Shri Varun Rakesh Aggarwal Proprietor of M/s. Varun B Corporation informed that the premises consist of two plots i.e. Plot No. 23 & 24, and the manufacturing process of three firms namely M/s. Varun B Corporation, M/s. Nishoo Arts and M/s. Global Integrated Technology was going on. Shri Varun Rakesh Aggarwal further informed the details of machines installed at all the three manufacturing units. The officers seized records/documents related to M/s. Varun B. Corporation, Surat; M/s. Nishoo Arts, Surat; M/s. Global Integrated Technology & M/s. Bela Textiles from the said premises as detailed in the panchnama, under the Central Excise Act, 1944.

1.2 Thereafter, Show Cause Notice No. V(Ch.48)15-03/OA/2014-15 dated 1.5.2014 came to be issued. In this show cause notice it is stated that from the collective analysis of audit reports of M/s. Varun B Corporation, M/s. Nishoo Arts, M/s. Global Integrated Technology, and M/s. Bela Textile for FY 2009-10 & 2010-11 it appears that:

- a. M/s. Varun B Corporation, M/s. Nishoo Arts, and M/s. Global Integrated Technology have a single income source from manufacturing Duplex Boxes on contract, job work, and printing & lamination. M/s. Bela Textile is a trading firm without manufacturing facilities. All are proprietorship firms with no distinct separation.

- b. The owner of factory premises situated at 136/2, Plot No-24, Sai Leela industrial estate, old petrol pump, udhna, Surat is Shri Varun Aggarwal and Shri Prashant Aggarwal.
- c. Manufacturing facilities overlap; premises utilization reveals mutual interest between M/s. Global Integrated Technology and M/s. Nishoo Arts, with evidence suggesting physical location mismatch. No rent paid, indicating a mutual arrangement.
- d. M/s. Varun B Corporation lacks declared punching machines in records but has three semi-automated ones. Shared machinery among firms is evident, with machines not matching records.
- e. M/s. Bela Textiles trades Duplex Boxes without manufacturing facilities, sourcing products from related firms M/s. Varun B Corporation, M/s. Nishoo Arts, & M/s. Global Integrated Technology.
- f. Payments for job charges were made by M/s. Varun B Corporation, M/s. Nishoo Arts, and M/s. Global Integrated to unidentified job workers, lacking details. Records were allegedly destroyed, indicating potential fabrication of job charges in the audit report.
- g. M/s. Varun B Corporation, M/s. Nishoo Arts, and M/s. Global Integrated lacked independent manufacturing capability, sharing machinery without payment. Interdependence was evident, and no payment was made for shared facilities.
- h. All four firms were proprietorships, related as per Income Tax Act. Owners were family members, indicating close ties.
- i. M/s. Varun B Corporation made no payment to related firms during 2009-10 and 2010-11, based on Section 40A(2)(b) declarations in the audit report.
- j. M/s. Nishoo Arts also made no payment to related firms during 2009-10 & 2010-11, as per Section 40A(2)(b) declarations.
- k. M/s. Global Integrated Technology made payments for rent and electricity to M/s. Varun B Corporation but none to M/s. Nishoo Arts and M/s. Bela Textiles, indicating selective transactions.

- l. M/s. Global Integrated Technology did not compensate M/s. Nishoo Arts for premises and electricity, suggesting indirect enrichment.
- m. M/s. Bela Textiles made payments to M/s. Nishoo Arts and M/s. Varun B Corporation for job charges, but none to M/s. Global Integrated Technology, indicating biased transactions. Expenses manipulation was observed in salary & wages, misleading the conversion expenses.
- n. Scrutiny of the records/documents produced by the HDFC Bank was done by the proper officer.
- o. Scrutiny of M/s. Varun B Corporation's VAT return for 2010-11 revealed discrepancies. Although Rs. 10,019/- VAT payment was shown, it wasn't debited from M/s. Varun B Corporation's account. The payment was traced to M/s. Nishoo Arts account, indicating financial interdependence.
- p. M/s. Bela Textiles, engaged in trading, sourced Duplex Boxes on job work basis from M/s. Varun B Corporation and M/s. Nishoo Arts. Central Excise duty on manufactured Duplex Boxes wasn't paid. Raw material and job charges need to be considered for assessable value.
- q. Job charges received from M/s. Bela Textile were taken from the Audit Report. In 2009-10, job charges paid amounted to Rs. 13,46,361/-. Based on the ratio of payment, raw material values for M/s. Nishoo Arts and M/s. Varun B Corporation were Rs. 50,85,625/- and Rs. 27,16,535/-, respectively.
- r. M/s. Nishoo Arts & M/s. Varun B Corporation received job charges of Rs. 10,00,727/- and Rs. 17,65,082/- in 2010-11, totaling Rs. 27,65,809/-, for converting Duplex Paper Board into Duplex Boxes. No job charge was paid to M/s. Global Integrated Technology.
- s. M/s. Varun B Corporation, M/s. Nishoo Arts & M/s. Global Integrated Technology sold Duplex Boxes without paying Central Excise duty. The value of finished goods is based on the Audit Report.
- t. In addition, M/s. Varun B Corporation and M/s. Nishoo Arts manufactured and cleared Duplex Boxes for M/s. Bela Textile on job work basis without paying Central Excise duty. The value of these finished goods should also be considered.

1.3 During the investigation, statements from customers (as listed in Para 24.2 of the SCN) were recorded under Section 14 of the Central Excise Act, 1944. Customers of M/s. Varun B. Corporation, M/s. Nishoo Arts, M/s. Global Integrated Technology, and M/s. Bela Textiles affirmed purchasing Printed Duplex Boxes (Top, Bottom & Tray) from these entities. Buyers stated that they were approached by Shri Varun Aggarwal, Shri Prashant Aggarwal, or Shri Rakesh Aggarwal for selling printed Duplex boxes. Orders were placed telephonically, and payments were made through payee cheques as instructed by the respective individuals. No orders specified manufacturing locations.

1.4 In the show cause notice it is evident that three factories, including M/s. Varun B Corporation, showed the manufacturing of Duplex Boxes, but they utilized each other's facilities. Considering M/s. Varun B Corporation as the manufacturer, the clearance value of the other two factories needs to be added for calculating the total aggregate clearance value. None of the factories fulfilled the conditions to avail SSI benefit under Notification No. 8/2003-CE, requiring them to pay Central Excise duty from the first clearance during 2009-10 and 2010-11. The aggregate value of clearance by M/s. Varun B Corporation during 2009-10 exceeded Rs. 400 Lakhs, crossing the threshold limit for exemption during 2010-11. SSI benefit won't be available separately to each factory, and none fulfilled the conditions for exemption, necessitating the payment of Central Excise duty. M/s. Varun B Corporation manufactured excisable goods during 2009-10 and 2010-11 but failed to obtain Central Excise registration, maintain production records, prepare Central Excise invoices, and pay Central Excise duty, totaling Rs. 1,00,06,208/- on Duplex Box clearances valued at Rs. 10,59,02,636/-.

1.5 The adjudicating authority vide impugned Order dt. 28.10.2014 confirmed the demand of Rs. 1,00,06,208/- against M/s Varun along with interest and equivalent amount of penalty. A penalty of Rs. 10,00,000/- each was also imposed upon the co-appellants under Rule 26 of Central Excise Rules, 2002. Hence, the present appeals by the above-named Appellants.

2. Shri Anish Goyal, learned Chartered Accountant appearing for the Appellants submits that all the units are different having separate plots number. In fact, the date of incorporation of M/s Nishoo Arts and M/s Global Integrated Technology are prior to date of incorporation of M/s Varun. In support of their contention, the appellant submitted documents of all four firms, namely, CST Certificate, VAT Certificate, MSME Memorandum, IEC Code certificate, Professional Tax Certificate, PAN Card, TAN, Tax Audit Reports, Copy of License to Work at factory of M/s Nishoo Arts, Copy of Gumastadhara, Vera Bills, Net Worth Certificate. Also, he submitted factory layout plans, Light bill, Insurance policy, Standard Fire and Special Perils Policy, Salary register of working employees for all firms, Sample purchase and sale invoice. He further submitted the following:-

a. That all the 3 units have their own shelves to keep records. It is not correct to say that records were found at Pot No. 24. In fact, it was brought by them from other 2 units for verification. Even otherwise, Common records or accountant or common storage of raw materials cannot be made ground for clubbing of clearance. In this regard he relied upon the judgements of:-

- CCE Ahmedabad Vs S.C Patel -2011 (264) E.L.T 414 (Tri. Ahmd.)
- Comm. Of C.Ex. Ludinana V.s Jagatjit Agro Ind. 2014 (309) E.L.T 301 (Tri. Del.)

b. That M/s Nishoo Arts & M/s Global Integrated Technology units have separate entry, solid brick wall, solid wood partition, separate demarcation. Sr. No. 136/2 of Sai Leela Industrial Estate, there are in all 40 plots, 22 plots are on other side of the road. The Common boundary wall for all 40 plots and submitted the copy of layout plan.

c. That as per Panchnama dt.13.4.2011, M/s Varun Corporation had three punching machines installed, M/s Nishu Arts had Six punching machine installed and M/s Global Integrated Technology

had one punching machine installed. All the units were independent for manufacturing duplex boxes.

d. That it is the well settled law that non-payment of Interest on borrowing fund cannot be made basis for Clubbing. Further, Loan taken or given through Account payee cheque only. In this regard he relied upon the judgements of:-

- CCE Ahmedabad Vs S.C Patel -2011 (264) E.L.T 414 (Tri. Ahmd.)
- M/s COIMBATORE ENGINEERING WORKS Versus COMMISSIONER OF C. EX., COIMBATORE – 2009 (239) ELT 366 (Tri. Chennai)

e. That four Colour printing Machine can do the work of two-colour printing machine also. Thus, the Allegation is baseless

f. That Global Integrated Technology has got printing done from M/s Varun B Corporation and M/s Nishoo Arts on job-work basis. Punching Machine installed at Global Integrated Technology premises is paper cutting machine.

g. That M/s Varun had not installed any of its machines in Nishoo Arts or Global Integrated Technology premises

h. That M/s Global Integrated technology had taken on rent premises. The copy of the rent agreement is submitted. Earlier 1st Floor of Plot No. 24 was rented to M/s Global Integrated Technology with proper demarcation. Rent paid Rs. 30,000/- in F.Y 2009-10 & for Rs. 45,000/- in F.Y 2010-11. In this regard the copy of Audit Reports of M/s Global Integrated Technology are submitted for the F.Y 2009-10 & F.Y 2010-11.

i. That M/s Bela Textiles has got job-work done from M/s Nishoo Arts & M/s Varun B Corporation. Bela Textiles have paid Rs. 11,17,211/- to M/s Varun B Corporation and Rs. 9,58,384/- to M/s

Nishoo Arts, Rs. 4,67,797/- to M/s Naman Graphics and Rs. 57,834/- to M/s Atul Packaging. Total Rs. 26,01,227/- In this regard the copy of Audit Reports of M/s Bela Textiles are submitted enclosed along with copies of ledgers of M/s Varun B Corporation, M/s Nishoo Arts, M/s Naman Graphics and M/s Atul Packaging

- j. That in an era of Mobile the allegation of having common landline carries no weight.
- k. That as stated by 22 buyers, Prashant Agarwal and Rakesh Agarwal was also actively engaged in business activity. There is no reason for Varun Agarwal to sign all the invoices.
- l. That for 22 buyers were summoned in a single summon mentioning all the four units. All of them have given the same statement that they have made orders to Varun, Prashant or Rakesh. Thus, all the buyers have given separate orders firm-wise. Also, Stereo type statements suitable to them were prepared and signature obtained. There is no difference in any of the word. This is misuse of power entrusted to the Id. Investigating Officer. Such type of statements invalidates the authenticity & cannot be relied upon.
- m. All the soft copies of books of accounts were available on the service computer seized during search on 13.04.2011. No print out of computer data for 3 years. It was opened only when SCN was prepared on 11.4.2014.
- n. That the mandate in each account has been kept by other proprietors for emergencies like, if prop. is not well, out of station or inquired or is unable to attend office. It is otherwise without mandate funds can be transferred online.
- o. That the Electricity Connection is in the name of Varun Agarwal & Prashant Agarwal respectively for Varun Corporation & Nishoo Arts. As stated in Panchnama dt. 13.04.2011 that, "*there were two*

power meters of GEB in plot no. 23 & 24 and a sub-meter for margin plot from the power meter of plot no. 23.” (i.e.23A)

p. That filing of declaration for SSI exemption is a procedural requirement. SSI exemption cannot be denied whether or not such declaration is given. In this regard he relied upon the following judgements:-

- Lokhandwala Construction Ind. V/s CCE- 1997(92) ELT 703 (CEGAT)
- K.S Mills V/s CCE – 1998 (98) ELT 619 (CEGAT)

q. That Three Search warrants were issued but only one Panchnama was done. Thus, from day one, the intention of the investigating officers was very clear to club the clearance of all the three units. It is not understood, if it was so to make out case of clubbing then why there should be a marathon of 3 years.

r. That nowhere it can be established that there was mutual flow back of funds amongst the units, control of both financial & management aspect by the same set of persons. There is no point to conclusion that these firms interlinked in their operation and management. In fact, all the three factories are totally independent with no interdependence, no financial flow back, no mutuality of interest between firm, nor any flow back of profit. There is no supporting evidence for common finance and common management and there is no finding that the Varun corporation has floated, financed and incorporated the SSI units. There is no evidence that Varun Corporation is investing money in SSI units. In this regard he relied upon the following judgements:-

- Balsara Hygiene Products Ltd. V/s Commissioner of C. Ex., Vapi - 2012 (10) TMI 454 - CESTAT, Ahmedabad
- Commissioner of C. Ex., Jaipur V/s Electro mechanical engg. Corpn - 2008 (229) E.L.T. 321 (S.C.)

- Commissioner of Central Excise, New Delhi V/s Superior Products - 2008 (230) E.L.T. 3 (S.C.)
- Commissioner v. Statfield Equipment Pvt. Ltd - 2007 (216) E.L.T. A160 (S.C.)
- Commissioner V/s Balsara Hygiene Products Ltd - 2015 (10) TMI 608 - SC ORDER
- M/s Kores India Ltd - 2016 (1) TMI 150 - CESTAT NEW DELHI
- CCE, Chandigarh-I V/s National Conduit Pipes - 2016 (10) TMI 477 - CESTAT CHANDIGARH
- Techno Device V/s Commissioner of Central Excise, Chennai - 2009 (243) E.L.T. 79 (Tri. - Chennai)
- V. Devaraj V/s Collector of Central excise, Coimbatore - 2003 (162) E.L.T. 894 (Tri. - Chennai)

s. Also, he stated that the demand so confirmed is on the basis of allegations that are baseless and devoid of merits as the Adjudicating Authority has failed to quote any authority under Central Excise Act, 1994 for clubbing of the clearance.

t. Lastly, he stated that the extended period of limitation is not invocable as the Appellants have bonafidely and correctly undertaken the manufacturing or trading activity during the relevant period.

3. Shri, Rajesh Nathan Learned Assistant Commissioner(AR) appearing for the revenue reiterates the findings of the impugned order.

4. Heard both sides and perused the case records. We find that the demand has been made against M/s Varun on the ground that they have created dummy units for keeping the value of clearances below the SSI exemption. The Order in Original has confirmed that M/s Varun, M/s Nishoo Arts and M/s Global Technology were situated at common premises and not having separate manufacturing facilities for manufacture of finished goods

i.e. Duplex Box. These firms collectively manufactured finished goods i.e. Duplex Box by utilizing plant and machineries pertaining to and installed in respective firms without any consideration for utilizing such facilities of each other for manufacturing of finished goods and they were interdependent for production of finished goods i.e. Duplex Box [Top, Bottom & Tray]. We find on perusal of the documents submitted and plan layout of the factories, the firms are situated at adjacent plots and not in one common premises. On the basis of layout, it is noted that units have separate entry and separate demarcation. In fact, in Sr. No. 136/2 of Sai Leela Industrial Estate, there are in all 40 plots, 22 plots are on other side of the road. Further, On perusal of Panchnama dated 13.04.2011 we find that M/s Varun had three punching machines installed, M/s Nishu Arts had Six punching machine installed and M/s Global Integrated Technology had one punching machine installed. We find that merely because rent was not given, it is not sufficient to disprove that the units were not independent. It is not the fact that the punching machines installed at the premises of M/s Varun B Corporation was also used by M/s Gobal Intergated Technology. Therefore, there was no interdependence between firms.

4.1 It has been alleged that M/s Global Integrated Technology, M/s Nishoo Arts, M/s Varun B Corporation & M/s Bela Textiles have provided fund on daily basis to each other for making payment of raw material suppliers and indirectly made payment for raw materials purchased by them were made by some other related firm. This is evident from the Bank Statements available. This clearly shows that there is mutuality of interest, financial flow back and interdependence between M/s Bella Textiles, M/s Global Integrated Technology, M/s Nishoo Arts & M/s Varun B Corporation. On perusal of the Tax Audit Reports produced for the relevant periods we find that funds are taken and given are duly recorded in the books of accounts and it is a financial loan. There is no restriction of providing loans to other sister concerns. Further, it is well settled law that non-payment of Interest on borrowing fund cannot be made basis for Clubbing. We rely on the following decisions:

- CCE Ahmedabad Vs S.C Patel -2011 (264) E.L.T 414 (Tri. Ahmd.)
- M/s COIMBATORE ENGINEERING WORKS Versus COMMISSIONER OF C. EX., COIMBATORE – 2009 (239) ELT 366 (Tri. Chennai)

4.2 Further, it is alleged that M/s Nishoo Arts was not having printing machine other than four colour printing facility during 2009-10 & 2010-11. Thus, M/s Nishoo Arts only can manufacture Duplex Box having print of four colours and cannot manufacture Duplex Box of other than four colours print as M/s Nishoo Arts was not having facility for print Duplex Board of other than four colours. We find that it is submitted by the Appellant that four Colour printing Machine can do the work of two-colour printing machine also when colours in two heads are filled. Thus, the Revenue has not proved the point with supporting evidences and it is not sufficient to disprove that the units were not independent.

4.3 Also, it is alleged that a printing machine owned by M/s Varun B Corporation was found at M/s Nishoo Arts. M/s Global Integrated Technology lacked printing and paper cutting machines. It appeared that M/s Global Integrated Technology obtained printed Duplex sheets from M/s Varun B Corporation or M/s Nishoo Arts. Despite records indicating M/s Global Integrated Technology owned two punching machines, only one was found during the search, and the other was at M/s Varun B Corporation. On perusal of the Audited Financial Statements of M/s Global Integrated Technology, we find that job-work expenses have been booked by them in the F.Y 2009-10 & F.Y 2010-11. This means that Global Integrated Technology has got printing done on job-work basis. M/s Global Integrated Technology that have submitted that they have got the job-work done from M/s Varun and M/s Nishoo Arts. We further find on perusal of the Balance Sheet of M/s Global Integrated Technology that they have installed paper-cutting machine which undertakes the work of punching machine. Further, we find that there is no evidence to the fact that M/s Varun has installed any of its machines in Nishoo Arts or Global Integrated Technology premises.

4.4 In the Order in Original it is stated that on paper, the factory premises of M/s Global Integrated Technology was situated at Survey No 136/2, Plot No-24, Sai Leela Industrial Estate, Old Petrol Pump, Udhna, Surat and was physically situated at additional margin of Plot No 23, Sai Leela Industrial Estate, B/h Old Petrol Pump, Udhna, Surat which is owned by Shri Prashant Aggrawal Prop. of M/s Nishoo Arts and identified as Plot

No 23/A. However, no rent has been paid by M/s Global Integrated Technology to M/s Nishoo Arts for utilizing premises owned by M/s Nishoo Arts. On perusal of Rent agreement we find that Global Integrated technology had taken on rent premises from M/s Nishoo Arts w.e.f 01.04.2011. For the period prior of 01.04.2011, i.e for the period F.Y 2009-10 & F.Y 2010-11, M/s Global Integrated technology was situated at 1st Floor of Plot No. 24 for which as per Audit Report of Global Integrated Technology rent of Rs. 30,000/- and Rs. 45000/- was paid respectively.

4.5 As regards the trading unit, M/s Bela Textiles it is stated that they did not submit any records during the investigation, Balance Sheets for the period 2008-09, 2009-10 and 2010-11 had been called for from the Income Tax Department and on perusal of the same, it was found that Rs. 26,01,227/- have been shown as "Salary & Wages". On perusal of Audit Reports and parties ledger of M/s Bela Textiles, we find that M/s Bela Textiles has got job-work done from M/s Nishoo Arts, M/s Varun B Corporation, M/s Naman Graphics and M/s Atul Packaging. They have debited an amount of Rs. 26,01,227/- as job-work expenses and not as salary & wages.

4.6 We further find that such trifle allegations are there was common landline or mandate was given in bank for all firms does not prove the allegations that the other firms are dummy. We have also gone through the statements of 22 buyers wherein they have stated that Prashant Agarwal and Rakesh Agarwal were also receiving orders along with Varun Agarwal. We find that even though all the softcopy of books of accounts was available on the service computer seized during search on 13.04.2011 and no print out of computer data for 3 years which itself shows that the investigation was one-sided.

4.7 We find that non-filing of declaration for SSI exemption is a procedural requirement and irrespective of the fact that declaration has been filed or not, SSI exemption can be given. We rely upon the following judgements:

- Lokhandwala Construction Ind. V/s CCE- 1997(92) ELT 703 (CEGAT)

- K.S Mills V/s CCE – 1998 (98) ELT 619 (CEGAT)

4.8 We find that initially at the time of search on 13.04.2011 only one Panchnama was drawn for all the premises on the point that all the units were under one premises only. Later on, search was conducted only at premises of M/s Global Integrated Technology on 20.03.2014. This itself is self-contradictory.

4.9 We find that nowhere it can be established that there was mutual flow back of funds amongst the units, control of both financial & management aspect by the same set of persons. We find that all the units are totally independent with no interdependence, no financial flow back, no mutuality of interest between firm, flow back of profit. There is no supporting evidence for common finance and common management and there is no finding that M/s Varun has floated, financed and incorporated the SSI units. Also, there is no evidence that Varun Corporation is investing money in SSI unit. We place reliance on the following judgements:

- i. In the case of Balsara Hygiene Products Ltd. V/s Commissioner of C. Ex., Vapi - 2012 (10) TMI 454 - CESTAT, Ahmedabad, wherein it is held that:-

"11. We find that the adjudicating authority has held against the assessee that there is a management control or there being grant of interest free loan of the three units are to be considered as one unit and duty demand can be raised against them. These findings of the adjudicating authority are incorrect as in the following case laws, the Tribunal has categorically held that mere fact of management, control or grant of interest free loan is not sufficient to hold the units as a dummy unit in the absence of any money flow back and/or profit sharing and total control on another unit.

(1) Alpha Toyo Ltd. - 1994 (71) E.L.T. 689

(2) Techno Device - 2009 (243) E.L.T. 79

(3) Kemtrode Pvt. Ltd. - 1999 (108) E.L.T. 616 (Kar.)"

- ii. In case of Commissioner of C. Ex., Jaipur V/s Electro mechanical engg. Corpn - 2008 (229) E.L.T. 321 (S.C.), The Hon' Supreme Court has held that :-

"10 The case of the Department is that these firms have been clubbed together as certain employees of the three firms were common or that their premises were adjoining each other. The Tribunal, while setting aside the order of the Commissioner, has held that there is no evidence on record to prove that there was mutuality of business interest or there was flow back of funds from one unit to another. The finding recorded by the Tribunal, being a finding of fact, does not call for any interference."

4.10 Further, we also find that the following judgements relied upon by the Appellants are applicable in the instant case:

- Commissioner of Central Excise, New Delhi V/s Superior Products - 2008 (230) E.L.T. 3 (S.C.)
- Commissioner v. Statfield Equipment Pvt. Ltd - 2007 (216) E.L.T. A160 (S.C.)
- Commissioner V/s Balsara Hygiene Products Ltd - 2015 (10) TMI 608 - SC ORDER
- M/s Kores India ltd - 2016 (1) TMI 150 - CESTAT NEW DELHI
- CCE, Chandigarh-I V/s National Conduit Pipes - 2016 (10) TMI 477 - CESTAT CHANDIGARH
- Techno Device V/s Commissioner of Central Excise, Chennai - 2009 (243) E.L.T. 79 (Tri. - Chennai)
- V. Devaraj V/s Collector of Central excise, Coimbatore - 2003 (162) E.L.T. 894 (Tri. - Chennai)

5. On careful consideration of the above facts, submission and our findings we are of the view that the charges against M/s Varun of creating dummy units for keeping the value of clearances below the SSI exemption are not sustainable. Hence, we set aside the demand and penalty imposed

against M/s Varun. For the same reason we also set aside the penalty imposed upon co-appellants. Thus, impugned order is set aside and appeals are allowed with consequential reliefs, if any, in accordance with law.

(Pronounced in the open court on 10.01.2024)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)

Raksha