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

REGIONAL BENCH- COURT NO.3

Excise Appeal No.954 of 2011

(Arising out of OIO-05/COMMISSIONER/RAJU/AHD-I/2011 dated 13/05/2011passed by Commissioner of Central Excise-AHMEDABAD-I)

Pap Flon Engineering Co Pvt Ltd........Appellant
Plot No. 4721-4722, Phase-Iv, Gidc, Vatva,
AHMEDABAD, GUJARAT

VERSUS

C.C.E.-Ahmedabad-i ....Respondent
C. Ex Bhavan,
Nr Panjrapole & Polytechnic, Ambavadi,
Ahmedabad, Gujarat-380015

With

Excise Appeal No.955 of 2011

(Arising out of OIO-05/COMMISSIONER/RAJU/AHD-I/2011 dated 13/05/2011passed by Commissioner of Central Excise-AHMEDABAD-I)

Manish R Parmar........Appellant
Proprietor, Pap Flon Enterprise, Plot No. 4720, Phase-Iv, Gidc, Vatva,
AHMEDABAD, GUJARAT

VERSUS

C.C.E.-Ahmedabad-i ....Respondent
C. Ex Bhavan,
Nr Panjrapole & Polytechnic, Ambavadi,
Ahmedabad, Gujarat-380015

And

Excise Appeal No.956 of 2011

(Arising out of OIO-05/COMMISSIONER/RAJU/AHD-I/2011 dated 13/05/2011passed by Commissioner of Central Excise-AHMEDABAD-I)

Mukesh M Mistry........Appellant
Director, Pap Flon Enterprise, Plot No. 4721-4722, Phase-Iv, Gidc, Vatva,
AHMEDABAD, GUJARAT

VERSUS

C.C.E.-Ahmedabad-i ....Respondent
C. Ex Bhavan,
Nr Panjrapole & Polytechnic, Ambavadi,
Ahmedabad, Gujarat-380015

APPEARANCE:
Shri P.P.Jadeja, (Consultant)for the Appellant
Shri R P Parekh, Superintendent (AR) for the Respondent

CORAM: HON'BLE MEMBER (JUDICIAL), MR. RAMESH NAIR
HON'BLE MEMBER (TECHNICAL), MR. P.ANJANI KUMAR

Final Order No._A/10061-10063 / 2022

DATE OF HEARING : 16.11.2021
DATE OF DECISION : 31.01.2022

RAMESH NAIR

M/s Pap-Flon Engineering Co. Pvt. Ltd, Shri Mukesh Mistry and Shri Manish Parmar have filed these Appeals against Order-in-OriginalNO.5/COMMR/RAJU/Ahd-I/2011 dated 13-05-2011. The Adjudicating Authority has confirmed Central Excise duty demand of Rs. 66,33,503/- with interest and equal penalty against M/s Pap-Flon Engineering Co. Pvt. Ltd. The Adjudicating authority also appropriated amount of Rs. 66,33,503/- towards Excise duty, out of amount of Rs. 68,81,566/- deposited during investigation and imposed penalty of Rs. 10,00,000/- each separately on Shri Mukesh Mistry and Shri Manish Parmar after clubbing clearances of M/s Pap-Flon Engineering Co. Pvt. Ltd and M/s Pap-Flon Enterprise. The appellant M/s Pap Flon Engineering Co Pvt Ltd has deposited amount of Rs. 20,93,623/- towards interest and reduced penalty Rs. 16,58,380/- @ 25 % of duty amounting, within 30 days from Order-in-Original dated 13-05-2011. Hence, these 3 Appellants are before us in appeals against confirmation of duty demands and penalties imposed on them.

1.1 These three Appeals can be disposed of considering the following questions: -

(i) Whether M/s Pap-Flon Enterprise is an existing manufacturer eligible for excise duty exemption claimed under SSI Notification No. 8/2003-CE or otherwise.

(ii) Whether Show Cause Notice to M/s Pap-Flon Enterprise proposing for denial of SSI exemption claimed and proposing clubbing of their clearances with M/s Pap-Flon Engineering Co.Pvt. Ltd was required to be issued or otherwise

(iii) Whether demands in Show Cause Notice dt. 18-10-2010 was issued within permitted time limitation for period from 1-4-2005 to 30-09-2010 or otherwise

02. Brief facts of the case are that M/s Pap-Flon Engineering Co Pvt Ltd is a Company engaged in manufacture of Teflon Lined Equipmentand Components since year 1985; that late Shri Prabhudas Chhaganlal Parmar was the founder of M/s Pap-Flon Engineering Co. Pvt Ltd. Shri Manish Parmar was working in the said unit and assisting his uncle Shri Prabhudas Chhaganlal Parmar in marketing, finance, accounts, etc. M/s Pap-Flon Enterprises was established as a proprietary firm of Shri Manish Parmar in year 1993-94. Shri Manish Parmar used to look after commercial activities, while Prabhudas Parmar continued with overall supervision till his demise in year 2006. Shri Mukeshbhai Mistry, brother-in-law of Prabhudas Parmar was Technical Director of M/s Pap-Flon Engineering Co Pvt Ltd, looking after production activities of both the said units.

2.1 Acting on intelligence, factory of M/s Pap-Flon Engineering Co.Pvt. Ltd and M/s Pap-Flon Enterprises were searched on 10-08-2010 by the officers of DGCEI, Ahmedabad and there was no seizure of any finished goods or inputs during the search and investigation carried out by DGCEI officers. However, some documents and pen drive containing accounting data was seized for inquiry. M/s Pap Flon Engineering Co Pvt Ltd had deposited total amount of Rs. 68,81,566/- by 3 post-dated cheque as orally insisted by DGCEI Officers towards estimated duty liability in the said case. After the investigation, Show Cause Notice No. DGCEI/AZU/36-33/2010-11 dated 18-10-2010 was served, clubbing clearances of the firm M/s Pap-Flon Enterprise with clearances of the Company M/s Pap-Flon Engineering Co Pvt Ltd and demanding Central Excise duty Rs. 66,33,503/- with interest and Penalty against M/s Pap-Flon Engineering Co. Pvt. Ltd and proposing penalty on Shri Manish Parmar, proprietor of M/s Pap Flon Enterprise and Shri Mukesh Mistry, Director M/s Pap-Flon Engineering Co Pvt Ltd. The appellants objected the Show Cause Notice No.DGCEI/AZU/36-33/2010-11 dated 18-10-2010 which has been adjudicated by Commissioner of Central Excise, Ahmedabad-I. The Adjudicating authority has rejected all submissions of appellants and ordered confirmation of duty Rs. 66,33,503/- with interest with equal penalty against unit M/s Pap Flon Engineering Co Pvt Ltd.

03. Shri P.P. Jadeja, Learned Counsel appearing on behalf of all three Appellants, while reiterating all submissions made in appeals and in reply to SCN, submitted that their submissions have not been correctly appreciated

in impugned Order-in-Original. They have also filed synopsis with relevant documents and the written submissions. He submitted that duty demand after clubbing clearance of M/s Pap-Flon Enterprise with M/s Pap-Flon Engineering Co Pvt Ltd are not justified/sustainable in the facts of this case**.** The Submissions made on behalf of Appellants in this case are summarized as under:-

- M/s Pap-Flon Engineering Co Pvt Ltd and other unit M/s Pap-Flon Enterprise are existing as manufacturers and clubbing clearances of these two units is not permitted in the settled law.
- M/s Pap Flon Enterprise was not issued Show Cause Notice for denial of SSI exemption claimed and proposing clubbing of their clearances with M/s Pap-Flon Engineering Co Pvt Ltd.
- Duty Demand is not sustainable on time limitation.
- Benefit of "Cum-duty-price" not allowed while computing duty demand.
- Benefit of Cenvat Credit of duty paid on inputs by M/s Pap-Flon Enterprise not allowed.
- Unjustified, unwarranted penalties imposed on all the Appellants.

4. Shri Rajesh P. Parekh, Learned Superintendent (Authorised Representative) appearing on behalf of the revenue reiterates the findings of Adjudicating Authority and submitted that without "Ram Extruder Machines" M/s Pap Flon Enterprise could not have manufactured the goods cleared under its Invoices. The reliefs claimed by these Appellants are not acceptable. He has also relied upon the decision in reported case of M/s Alpha Converting Machines Pvt. Ltd v/s CCE - 2018 (364) E.L.T. 141 (Tri. - Ahmd). Accordingly, he has also submitted that all the threeappeals may be rejected.

05. Heard both the sides at length and perused the available records of the case. We find that adjudicating authority has confirmed the duty demand with interest and equal penalty after clubbing all the clearances of M/s Pap-Flon Enterprise shown against its Invoices with the clearances of goods by M/s Pap-Flon Engineering Co Pvt Ltd. Theadjudicating authority has also taken a view that since "Ram Extruder Machines" were found installed only in the factory of M/s Pap Flon Engineering Co Pvt Ltd and no such "Ram Extruder Machines" were found installed in the factory of M/s Pap Flon Enterprise, the said unit M/s Pap Flon Enterprise could not have manufactured goods, shown cleared by it against its Invoices. While coming

to his such a view, the Adjudicating authority has also taken support from statements of Shri Manish Parmar and Shri Mukesh Mistry and from less electricity consumption by unit M/s Pap Flon Enterprise. The Adjudicating authority has held that entire clearances made by M/s Pap Flon Enterprise were manufactured by appellant M/s Pap-Flon Engineering Co Pvt Ltdand not manufactured by M/s Pap Flon Enterprise, which is treated as dummy unit to avail ineligible SSI exemption in this case.

5.1 On first question whether M/s Pap-Flon Enterprise is existing manufacturer eligible for duty exemption benefits claimed under SSI Notification No. 8/2003-CE or not, we find that the entire case revolves on facts of actual manufacture of all goods with the help of "Ram Extruder Machines". The appellants in their reply to Show Cause Notice and the appeals have given submissions on "Ram Extruder Machines" and have also produced Certificate from the independent Chartered Engineer regarding utility of said Machines. Copy of the Certificate by Chartered Engineer is on page No. 132 of the synopsis filed. Perusal of Certificate by Chartered Engineer and on submissions made by the Appellants, we are of the view that the said "Ram Extruder Machines" may be used for improving quality and speed of manufacture for certain goods like long Tubes Dia 15MM to 75 MM with minimum thickness of 3 MM and also for processing Rods with Dia 6 MM to 60 MM, various sizes of PTFE Pipes, Dip Pipes and Elbows etc and that the goods produced on the said "Ram Extruders Machines" can also be further processed with the other machines like Hydraulic press Machines, Electric Ovens, and lathe Machines to produce other goods. The appellants have also submitted that these machines are also not mandatorily required for manufacture of all the goods cleared by M/s Pap Flon Enterprise and the goods cleared by M/s Pap-Flon Engineering Co Pvt Ltd. However, we also find that all the goods cleared by M/s Pap Flon Enterprise were not all goods as shown in Certificate by Chartered Engineer. Use of "Ram Extruders Machines" found installed in M/s Pap-Flon Engineering Co Pvt Ltd, does not conclusively prove fact that all the goods cleared by said M/s Pap-Flon Enterprise were actually manufactured in factory of M/s Pap-Flon Engineering Co Pvt Ltd. The machineries found in M/s Pap-Flon Engineering Co. Pvt. Ltd are reflected in Para 3.2 of SCN and the Machineries found installed in the factory of M/s Pap-Flon Enterprise are reflected in Para 4.1 of Show Cause Notice dt. 18-10-2010. Except "Ram Extruders Machines", M/s Pap Flon Enterprise also has other machineries required to manufacture its goods. Regarding emphasis placed on the statements of Shri

Manish Parmar and Mukesh Mistry, appellants have also contended that Revenue has relied upon only that part of statement which is favourable to Revenue and ignored that portion of such statements which favours Appellants and that statements are not taken on record in the Adjudication Proceedings in terms of Section 9D of Central Excise Act 1944. The statements of Shri Manish Parmar and Shri Mukesh Mistry have also shown that machineries of M/s Pap Flon Enginneering Pvt Ltd can also be used for manufacturing process in M/s Pap Flon Enterprise and vice–versa, establishes that M/s Pap Flon Enterprise also is manufacturer with manufacturing facilities. TheAdjudicating Authority has held that as electricity consumption is found less in the unit of M/s Pap Flon Enterprise, there was no manufacture in M/s Pap Flon Enterprise. However, on behalf of appellants, it is submitted that there was job work of "machining, drilling Grinding etc" and job work in connection with use of "Ram Extruder Machines", which are the process in manufacture of M/s Pap Flon Enterprise, done in other units on job work. Though, it is a fact on record that there is no "Ram Extruder Machines", in factory of M/s Pap-Flon Enterprise, we find force in submissions of the Appellants that they can take help of other units to complete part of their process on job-work and for conducting such processes, job-worker would consume its own electricity. Less consumption of electricity, per se, cannot lead to a definite conclusion that there was no manufacture under taken by the unit M/s Pap Flon Enterprise. Appellants have submitted that when the said unit Pap Flon Enterprise has purchased their inputs, paid the Charges for Job Work and labour Charges as shown in synopsis filed, there may be some procedural lapses in carrying out such job work done, but it is a settled position in law that substantial benefit of duty exemption available otherwise cannot be denied and duty could not be confirmed for such procedural lapses, if any. The goods cleared by M/s Pap-Flon Enterprise can also be manufactured with the help of "Ram Extruder Machines" installed in some other factory and other processes could also be completed on job work basis as well. Therefore, less consumption of electricity cannot become the reason for confirmation of duty demand on clubbing clearances of goods made by two such units. Consumption of less electricity by M/s Pap Flon Enterprise is explained by Appellants by showing independent purchase of inputs by Pap Flon Enterprise and getting job work done by others including from M/s Pap Flon Engineering Co. Factories of both, Appellant M/s Pap-Flon Engineering Co Pvt Ltd and M/s Pap Flon Enterprise were also searched on 10-08-2010 by two separate & independent Panchanama drawn, but, there was no seizure of any finished goods or inputs in any of said two factory premises. This fact establishes that there was no variation in the stock of finished goods or inputs at the time of such search and investigation. M/s Pap-Flon Engineering Co Pvt Ltdwas established in 1985as manufacturer of Teflon Lined Equipment &Components, availed SSI Exemption, obtained Central Excise Registration in year 2003 and filed statutory Returns. M/s Pap-Flon Enterprise was set up in year 1993-94 for manufacturing similar goods of Teflon Lined Equipment &Componentsas per List-I as reflected on page No. 35 to 51 of synopsis,M/s Pap-Flon Enterprise is not division of M/s Pap-Flon Engineering Co Pvt Ltd. There is no restriction for manufacture of similar such goods byM/s Pap-Flon Enterprise who has availed SSI exemption since 1993-94 following all conditions of SSI exemption and filed the statutory declarations from 1993 onward under SSI exemption claiming exemption from obtaining Registration under Rule 9 of Central Excise Rules 2002 in terms of Notification No. 11/88-C.E. (NT) dt. 15-4-1988 and the Circular No. 12/89 dated 28-2-1989. Manufacturers claiming exemption of registration, availing the SSI exemption, file declaration in specified format. Declarations filed contained grounds of exemption and details of Notification vide which exemption from duty on goods manufactured is claimed. M/s Pap Flon Enterprise has filed such SSI declarations from 1993-94 onwards from time to time declaring goods manufactured and cleared availing SSI Exemption. Process of manufacture declared by M/s Pap Flon Enterprise is that "Duty paid Dry powder & crystal of "input" Teflon is fed into Jigs & Fixtures with pressure and is baked into the oven. Dry powder and crystal of Teflon is converted into the resultant product which are then cleared as Teflon products". Adjudicating authority has not correctly appreciated process of manufacture, which can also be carried out without "Ram Extruder machines". Copies of declarations were placed before adjudicating authority and available in appeal and are placed at pages from 113 to 130 in synopsis. We find that both units have their own separate and independent existence, Separate Locations, Machineries, PAN, Sales Tax, IEC, Professional Tax, ESIC Numbers, separate Electricity Meters and separate Bank Accounts. If M/s Pap Flon Enterprise is a dummy unit and all goods cleared under Invoices of M/s Pap Flon Enterprise are not manufactured by it, then, sale proceeds of clearances should flow to M/s Pap Flon Engineering Co. Pvt Ltd. However, Appellants have contended that not to have any financial flow back of funds, they have not even charged any amount as job-work from each other and there is no evidence produced by revenue of any such financial flow back of funds from M/s Pap-Flon Enterprise to the said M/s Pap-Flon Engineering Pvt Ltd and also vice versa.M/s Pap-Flon Enterprise is existing as on today and has obtained Central Excise Registration on 07-04-2012 after search and registered under GST w.e.f. 01-07-2017 and continued as the "Manufacturer". Copies of Excise and GST Registration are on record as List-II on page Nos 58 to 61 in synopsis filed.Charges paid by M/s Pap Flon Enterprise for Job Work and labour for Machining, Drilling Grinding etc are reflected in List-III atpage Nos 62 to 75 in synopsis. Details of Inputs purchased by M/s Pap Flon Enterprise is in List-IV atpage Nos. 76 to 83 in synopsis.Fixed assets and machineries installed in M/s Pap-Flon enterprise has substantial value in Balance Sheets in List-VI at page Nos 91 to 105 in synopsis. Revenue was also required to prove that all goods by M/s Pap-Flon Enterprise, were in fact manufactured in factory of M/s Pap Flon Engineering Co Pvt Ltd. However, allegation is only on assumption and presumption, which is not proved conclusively by the Revenue in the facts of this case. Separate and Independent identity of M/s Pap-Flon Enterprises is proved and independent existence is proved as manufacturer. Adjudicating authority's findings are not sustainable in absence of independent evidence that all the goods cleared by M/s Pap Flon Enterprise are manufactured in M/s Pap Flon Engineering Co Ltd. Appellants submitted that adjudicating authority has unduly tried to shift Revenue's responsibility on appellants to prove manufacture of all goods by M/s Pap-Flon Enterprises, whereas, it is obligation of revenue to prove allegations in SCN with evidences. Order-in-Original dt. 13-05-2011 cannot be sustained, in absence of any such proof and positive clinching evidences adduced on record in this case. Appellant have submitted that State Government and Central Government Certificates & registrations to M/s Pap Flon Enterprise as a "manufacturer" and its payment of Sales Tax and taxes by M/s Pap-Flon Enterprise who has shown activity of manufacture and clearance of goods to various authorities and filed their Tax Returns, which are assessed and finalized, without any objection. Order-in-Original has erred in considering M/s Pap Flon Enterprise as a dummy unit and such conclusions are not sustainable or acceptable in the facts of this case. Clubbing of clearance of two separate and independent units is not sustainable in terms of directives by CBEC under Section 37-B vide Circular Nos. 6/92 dated 29-5-1992 and No. 52/52/94-CX dated 01-09-1994. M/s Pap Flon Enterprise is existing and cannot be treated "dummy Unit". Conclusive evidences are not adduced to prove that entire production by M/s Pap Flon Enterprise, was manufactured by unit M/s Pap-Flon Engineering Co Pvt Ltd. Both units have manufactured goods and cleared the same. Both of them have filed Statutory Returns of such Sales and Income to Sales Tax and Income Tax Department, which are assessed finally without objection. Allegation in SCN and findings in impugned Order are on assumptions and presumptions not permitted by the established law.We find that Revenue has relied upon decision in case of Alpha Converting Machines Pvt. Ltd v/s CCE - 2018 (364) E.L.T. 141 (Tri. - Ahmd) with prayer to dismiss Appeals. We find that in the facts of Alpha Converting Machines Pvt. Ltd, this Tribunal had rightly found that three entities were operating from the same premises, all 3 units were using common premises and the common machinery, electricity power connection was one and it was common for all three entities and that dummy entities were created on paper without manufacturing facility to avail SSI Exemption under Notification No. 8/2003-C.E. In the case of Alpha Converting Machines Pvt Ltd (supra), Revenue has relied upon decision of Hon'ble Apex Court in *GAJANAN FABRICS DISTRIBUTORS – 1997(92) ELT-451(SC)*to assert that demand can only be confirmed against assessee who is liable and it cannot be confirmed against dummy units.Hence, in the said case of ALPHA CONVERTING MACHINES PVT. LTD (supra), all clearances were rightly clubbed to arrive at aggregate value of SSI exemption available under Notification. In the facts of this case, we find that M/s Pap Flon Enterprise is an existing manufacturer eligible to avail SSI Exemption of Notification No. 8/2003-CE, having separate factory, machinery, PAN, Sales Tax, IEC, Professional Tax, ESIC Numbers, separate Electricity Meters and separate Bank Accounts. Therefore, this Tribunal's decision in the case of Alpha Converting Machines Pvt. Ltd (supra) is on different facts of only dummy units and hence it is not applicable in the facts of this case. The ratio of decisions is that dummy units created to avail ineligible SSI benefits may not get ineligible benefits of SSI Notification, but benefits to existing units can not be denied the SSI Exemption, if available otherwise. Therefore, clubbing of clearances of M/s Pap Flon Enterprise, who is existing manufacturer and eligible for SSI Exemption, with clearances of M/s Pap Flon Engineering is not justified. Thus, the first question is answered in favour of Appellants and we hold that M/s Pap-Flon Enterprise is an existing manufacturer who is also eligible for the duty exemption benefit claimed under SSI Notification No. 8/2003-CE as amended from time to time.

5.2 On the second question, Appellants have submitted that since SSI Exemption is availed by M/s Pap Flon Enterprise, show Cause Notice was required to be issued to M/s Pap Flon Enterprise proposing denial of SSI exemption and proposing to club its clearances with M/s Pap-Flon Engineering Co Pvt Ltd; that Law settled by Tribunals and by decisions of the Hon'ble High Court of Calcutta, Gujarat, Madras and Delhi is that without issuing show cause notice to alleged dummy units, clubbing of their clearances with other such unit is not permissible. It is submitted that non-issuance of show cause notice to M/s Pap-Flon Enterprise vitiates the entire proceedings; that though, no duty is confirmed against M/s Pap-Flon Enterprise, treating it as dummy unit, but, its status is changed from an "independent unit" to a "dummy unit", which cannot be done without giving a notice to alleged M/s Pap-Flon Enterprise, as dummy and without including them in proceedings. Following case laws are relied upon by Appellants in support of the above contention:-

- Commr vs UNITECH CONTAINERS PVT. LTD - 2017 (358) E.L.T. 99 (Del.)
- PREMIER HEAVY ENGINEERING COPRN v/s CCE - 2016 (337) E.L.T. 332 (Guj.)
- CCE vs URBANE INDUSTRIES - 2015 (325) E.L.T. 726 (Mad.)
- CCE vs DIAMOND SCAFFOLDING CO - 2011 (274) E.L.T. 10 (Cal.)
- SREE NIRMAL SPINNERS vs CCE - 2014 (300) E.L.T. 469 (Tri. - Chennai)
- CCE vs COPIER FORCE INDIA LTD - 2009 (245) E.L.T. 478 (Tri. - Chennai)
- POLY RESINS v/s CCE -2003 (161) E.L.T. 1136 (Tri. - Chennai)

In this connection, whenwe have given detailed finding in above para and have held that M/s Pap-Flon Enterprise is an existing manufacturer who is eligible for duty exemption claimed under SSI Notification No. 8/2003-CE and considering the relied upon decisions, we agree with submissions of Appellants that Show Cause Notice should have been issued to M/s Pap Flon Enterprise proposing for denial of SSI exemption claimed and proposing for clubbing of their clearances, was required to be issued. Consequently, this question is answered in favour of the Appellants.

5.3 On the third question Whether Demand Show Cause Notice dated 18-10-2010 was issued within permitted time limitation covering period from 1-4-2005 to 30-9-2010 or otherwise, appellants have submitted that Show Cause Notice is also not sustainable on time limitation as pre-requisite conditions and the ingredients like fraud, collusion,wilfulmis-statement or suppression of facts, with intent to evade payment of duty, for invoking extended period are not existing in the facts of this case, extended period for demand of duty is not available in terms of section 11A of Central Excise Act 1944. It is submitted that M/s Pap Flon Enterprise has filed annual statutory declarations and intimated department of its manufacturing activity and clearance of goods since 1993-94. Declaration contained grounds of SSI exemption of Notification No. 8/2003-CE claimed. M/s Pap Flon Enterprise has filed such SSI declarations from 1993-94 onwards from time to time declaring goods manufactured and cleared availing the SSI Exemption. We have perused such declarations filed on 25-07-2005, 29-11-2006 and 25-01-2008, which are acknowledged by the Revenue. We find that adjudicating authority has observed that since such declarations have not been verified by Central Excise Officers, credence may not be given to declarations filed from time to time. We find that after filling declarations, appellants have no role. Appellants are not be responsible, if declaration is not verified by Central Excise officers. Thus, M/s Pap Flon Enterprise have not suppressed facts of continuing manufacturing activity of manufacture of goods availing SSI exemption since 1993-94. Relevant Copies of declarations filed by M/s Pap Flon Enterprise are on record in these Appeals and synopsis filed. In this context, we find that the question of invoking extended period of time limitation is a mixed question of facts and the law. We find that in the facts and circumstances of this case and law settled, invocation of extended period of time limitation in this case, is not justified and impugned Order-in-Original dated 13-05-2011 cannot be sustained on time limitation also.

5.4 When all the 3 questions are answered in favour of the Appellants, Appeals filed by Appellants can be finally disposed off without going into other issues raised by Appellants about allowing benefit of "Cum-duty-Price" for assessment of duty and allowing Cenvat Credit of the excise duty paid inputs purchased by M/s Pap Flon Enterprise. However, these contentions are even otherwise irrelevant as M/s Pap Flon Enterprise has claimed SSI exemption under Notification No. 8/2003-CE during the period in question, which would be available without availing Cenvat Credit and clearances of goods were without payment of duty, hence, benefit of Cenvat Credit and cum-duty-price will not be available to M/s Pap Flon Enterprise. We note that the SSI Exemption under Notification No. 8/2003-CE were available for financial year wise, subject to the conditions prescribed and M/s Pap Flon Enterprise seems to have followed all the conditions of SSI Notification. It is not a case that M/s Pap Flon Engineering Co Pvt Ltd and M/s Pap Flon Enterprise have factories of a single manufacturer and of the same entity who have claimed SSI exemption under Notification No. 8/2003-CE. M/s Pap Flon Engineering Co Pvt Ltd has not claimed SSI exemption since 2005 and has paid duty in respect of all their clearances of goods. Duty demand is calculated against Appellant M/s Pap Flon Engineering Co Pvt Ltd, after clubbing clearances of M/s Pap Flon Enterprise and excluding such alleged clearances of M/s Pap Flon Enterprise, appropriate duty is paid by M/s Pap Flon Engineering Co Pvt Ltd. There is no justification for denial of SSI exemption under Notification No. 8/2003-CE to M/s Pap Flon Enterprise in this case.

06. Thus, in view of above observations and findings on the facts, we hold that (1) M/s Pap-Flon Enterprise is an existing manufacturer who is eligible for excise duty exemption claimed under SSI Notification No. 8/2003-CE and clubbing of clearances of M/s Pap Flon Enterprise with clearances of M/s Pap Flon Engineering Co Pvt Ltd in this case are not sustained. (2) Show Cause Notice to M/s Pap-Flon Enterprise for denial of SSI exemption and for clubbing of clearances with M/s Pap-Flon Engineering Co Pvt Ltd was required to be issued and having not done so, proceedings deserves to be set aside (3) Show Cause Notice dated 18-10-2010 covering period from 01-04-2005 to 30-09-2010 invoking extended period in this case also deserves to be set aside on time limitation. Consequently, demands of duty confirmed with interest and equal penalty against M/s Pap-Flon Engineering Co Pvt Ltd is not sustainable and accordingly the impugned Order-in-Original dated 13-05-2011 demanding duty with interest and equal penalty imposed deserves to be set aside.

6.1 However, while deciding case on merits, we have observed that the appellants have also made certain procedural lapses in maintaining records for the movement of goods from M/s Pap-Flon Enterprise to M/s Pap-Flon Engineering Co Pvt Ltd and vice-versa, as required for which they are liable for penalty of Rs. 5000/- each under Rule 27 of Central Excise Rules, 2002 on M/s Pap-Flon Engineering Co Pvt Ltd and M/s Pap-Flon Enterprise. All such clearances in open market were with proper Invoices issued under the Central Excise Rules, 2002. However, we find that since demand of duty with interest & equal penalty is set aside, separate penalty imposed under Rule 26 of Central Excise Rules, 2002 on Shri Mukesh Mistry and Manish Parmar, is not warranted and deserves to be set aside, in the facts of this case.

7. As per above discussions and findings of the facts, we pass the following orders :-

(i) Excise duty confirmed with interest and equal penalty vide Order-in-Original dated 13-05-2011 against Appellant M/s Pap-Flon Engineering Co Pvt Ltd is set aside. However, Penalty of Rs. 5000/- each under Rule 27 of Central Excise Rules 2002 is imposed on M/s Pap-Flon Enterprise and M/s Pap-Flon Engineering Co Pvt Ltd, which may be appropriated from the amount deposited during the investigation. Order-in-Original dated 13-05-2011 has been modified to this extent.

(ii) Penalty imposed on Shri Mukesh Mistry and Manish Parmar under Rule 26 of Central Excise Rules 2002 are set aside and Appeals filed by them are allowed.

(iii) Appeal Nos. E/954 to 956/2011-DB are allowed in the above terms, with the consequential reliefs, if any, in accordance with law.

(Pronounced in the open court on 31.01.2022)

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(RAMESH NAIR)
MEMBER (JUDICIAL)

(P. ANJANI KUMAR)
MEMBER (TECHNICAL)

Mehul