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

REGIONAL BENCH-COURT NO. 3

EXCISE Appeal No. 10360 of 2014- DB

(Arising out of OIO-AHM-EXCUS-001-003-13-14 dated 29/10/2013 passed by Commissioner of Central Excise-AHMEDABAD-I)

Precision Equipment Co **........Appellant**
Plot No.l-4107/1,
Gidc, Phase-iv, Vatva
Ahmedabad

VERSUS

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

WITH

EXCISE Appeal No. 10361 of 2014- DB

(Arising out of OIO-AHM-EXCUS-001-003-13-14 dated 29/10/2013 passed by Commissioner of Central Excise-AHMEDABAD-I)

Prem Mansukhani **........Appellant**
Director Of M/s Precision Rotogravure Pvt Ltd
Plot No.4404,phase-iv,gidc,vatva,
Ahmedabad

VERSUS

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

AND

EXCISE Appeal No. 10362 of 2014- DB

(Arising out of OIO-AHM-EXCUS-001-003-13-14 dated 29/10/2013 passed by Commissioner of Central Excise-AHMEDABAD-I)

Bhagubhai Prajapati **........Appellant**
Director Of M/s Precision Rotogravure Pvt Ltd
Plot No.4404,phase-iv,gidc,vatva,
Ahmedabad

VERSUS

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

APPEARANCE:
Shri Devashish K Trivedi, Advocate appeared for the Appellant
Shri Anoop Kumar Mudvel, Superintendent (AR) for the Respondent

CORAM: HON'BLE MEMBER (JUDICIAL), MR. RAMESH NAIR
HON'BLE MEMBER (TECHNICAL), MR. C.L.MAHAR

Final Order No. 10912-10914/2024

DATE OF HEARING: 20.02.2024
DATE OF DECISION: 23.04.2024

RAMESH NAIR

Appellants have filed these appeals against the impugned Order-In-Original No. AHM-EXCUS-001-003-13-14 dated 29.10.2023 for clubbing of clearances of four units namely, M/s. Precision Equipment Co., M/s. Pratik Enterprises, M/s. Precision Industries, and M/s. Precision Rotogravure Pvt. Ltd.

1.1 The facts of the case are that on the basis of intelligence collected from units it appeared to the department that the units are engaged in the manufacture of Flexible Packaging Machinery were availing incorrect exemption under Notification No. 08/2003-CE dated 01.03.2003-as amended and thereby evading payment of Central Excise Duty by splitting their clearance value. The officers of Central Excise, Ahmedabad-I conducted simultaneous searches at the premises of appellants. The investigation carried out in the case and the documentary evidence collected from the records withdrawn under various panchnama as well as produced by the appellants , others and the oral evidences collected in the form of statements and other documents from the suppliers of raw materials, job workers and buyers of finished goods and on scrutiny of all the private records it appears that all the goods so sold under the invoices of M/s Precision Equipment Co., Vatva, M/s. Pratik Enterprises, Vatva, M/s Precision Rotogravure Pvt. Ltd. and M/s Precisions Industries, Sajipur Bogha were actually manufactured by M/s Precision Equipment Co., Vatva, as evident from the statement of the suppliers, job workers and buyers.

Thus, as per the provisions of Notification 8/2003-CE dated 01.03.2003, as amended, the aggregate clearance value of M/s. Precision Equipment Co. Vatva would also include the value of the goods sold under the invoices of M/s. Pratik Enterprises, M/s. Precision Rotogravure Pvt. Ltd. and M/s Precisions Industries, Saijpur Bogha, Ahmedabad. M/s Precision Equipment Co., Vatva had so evaded the Central Excise Duty on the clearances exceeding Rs. 1 Crore /Rs. 1.5 crore. After the detail investigation, Show Cause Notices were served to the appellants, proposing clubbing of clearances of the firms and demanding Central Excise duty with interest and penalty and proposing personal penalty on directors. The appellants objected the allegations of the Show Cause Notices which has been adjudicated by Ld. Commissioner of Central Excise, Ahmedabad-I. The Adjudicating authority vide impugned order has rejected all submissions of appellants and ordered for clubbing the clearances; denying the benefits of SSI exemption; confirmed the duty Rs. 64,36,335/- with interest with equal penalty against unit M/s. Precisions Equipment Co. ; imposed redemption fine of Rs. 1,69,68,930/- and also ordered for imposition of personal penalty on directors of company. Hence, the present appeals.

2. Shri Devashish K. Trivedi, Learned Counsel appearing on behalf of the appellants submits that the demand itself is erroneous. Exemption availed by all the four units is wrongly denied. Illegally and unlawfully turnover of the all the units are clubbed together and without any rhyme or reason demand is made against a particular unit. A perusal of the impugned order would show that the Learned Commissioner has placed reliance on statements of various people who are claimed to be buyers of the machinery manufactured by all the four firms and on the basis of said statements it is sought to conclude that all the four units did not act or

seen to act separately but they were seen to be one. Learned Commissioner has gone forwarded to give an example of Coco Cola Company saying that said soft drink would be manufactured in various bottling plants however, the customer would know the same products only as 'Coco Cola' and that nobody would ask to a retailer to provide Coco Cola bottled in 'X' plant or 'Y' Plant . According to the Learned Commissioner, in such cases, benefit of SSI Exemption cannot be claimed. The said example is not at all relevant in the present case. At the outset, it is not is dispute that the machines manufactured by the said four firms were not having any brand names. It is nobody's case that same sticker or same logo or same brand name was used by the machines manufactured and cleared by all the four units. Further, it is also an undisputed facts that :

(i) M/s Precision Equipment Co. was a proprietorship firm of Shri Rajubhai Jaisnghani

(ii) M/s Pratik Enterprise was a proprietorship firm of Shri Bhagubhai Prajapati

(iii) M/s Precision Industries was a proprietorship firm of Shri Prembhai Manushkhani and

(iv) M/s Precision Rotogravure Pvt. Ltd. had there directors viz. (i) Rajubhai Jaisinghani, (ii) Bhagubhai Prajapati and (iii) Prembhai Mansukhani.

Therefore, it is nobody's case that all the units had common proprietor or that all the partners of one unit were only the partner of another unit. Thus, in a situation like this where there are different proprietors for different units, clubbing of clearance for the purpose of SSI Exemption Notification is not sustainable. Likewise, it is settled law that a company/

private limited company has a different entity and its clearances cannot be clubbed with proprietorship or partnership firms.

2.1 He also submits that the period in dispute is from F.Y. 2006-07 to 2011-12. M/s Precision Rotogravure Pvt. Ltd. was incorporated only in Feb. 2010. A factory was started by the said private limited company for manufacturing goods only thereafter. Manufacture and clearance of the goods from the factory of said private limited company commenced only after 01.04.2010. A perusal of show cause notice would show that a worksheet is attached which shows period wise clearance made by each of the four units. It is clear from the said worksheet that no clearance was made by M/s. Precision Rotogravure Pvt. Ltd. prior to 01.04.2010. Therefore, even on this ground clubbing of clearance claiming that all the units are one and the same is completely illegal.

2.2 He also submits that Ld. Commissioner has miserably failed to understand that when all the firms are separately constituted, firms are working at different locations, they have different manufacturing facilities, have different proprietors, clearance of these firms cannot be clubbed for the purpose of computing threshold limits of SSI Exemption Notification. It is a settled law that when the units have their own separate independent existence, separate locations, separate machineries for manufacturing goods, separate PAN, Sales-Tax, IEC, Professional Tax, registrations, they have to be considered as different units. It is settled law that the units have separate electricity meter, separate bank accounts, there are no financial flow-back of funds, the units are required to be considered as separate units only. It is a settled law that in absence of any evidence to prove mutuality of interest clubbing of clearances is not permissible even if it is found that all firms were situated in interconnected premises had common offices, employees and machinery, closely related partners and affairs of all the firms were looked after by one person only. It is a settled legal position that in the aforesaid circumstances, clearance of the units cannot be clubbed for the purpose of computing value of threshold limit of SSI Exemption Notification. He placed reliance on the following judgments:-

- Pap Flon Engineering Co. Pvt. Ltd. Vs. Commr of C.Ex. Ahmedabad – I, 2022(381)ELT 500 (Tri.-Ahmedabad)
- Coimbatore Engineering Works Vs. Commissioner of C.Ex., Coimbatore – 2009(239)ELT 366 (Tri. Chennai)
- Vivomed Labs (P) Ltd. Vs. CCE -1991(53)ELT 152 (Tri.)
- Electro Mechanical Eng. Corp. Vs. CCE, Jaipur -2003(152)ELT 194 (Tri. Delhi)
- Modi Alkalies & Chemicals Ltd. Vs. CCE., New Delhi – 2002(146)ELT 555(Tri.-Delhi)
- Commissioner of Central Excise, Mysore Vs. Ganesh Enterprises-2010(262)ELT 1007 (Tri. Bang)
- Studioline Interior Systems Pvt. Ltd. Vs. Commr. Of C.Ex. Bangalure -2006(201)ELT 250 (Tri. Bang)
- Girish Electricals Inds. Vs. Commissioner of Central Excise, Mumbai – III 2004(167)ELT 299 (Tri- Mumbai)

2.3 As regard M/s Precision Industries, he submits that although it was not having a separate factory premise, it was purchasing raw material, getting the goods manufactured on job work basis from the other units and was finally selling/ clearing their final product. All the units had separate bank accounts. There was no financial flow back. As the three units were proprietorship firms of three different individuals, they were assessed to income tax separately. They had separate identity. There was no mutuality of interest. They had separate manufacturing facility, separate staff, separate workers, separate electricity connections, and separate machinery. As regard the company M/s Precision Rotogravure Pvt. Ltd. the proprietors of each of three units were directors of the company. However it is a settled law that clearances of a company cannot be clubbed with the clearance of firms for the purpose of computing threshold limits. The company had its own factory premises. The said company had commenced working from April 2010 onwards i.e. at the end of the period in dispute. Said company was having their own setup, machineries, labourers, workers, employees, staff, machinery, etc.

2.4 He also argued that there was no dummy unit at all. The allegation that M/s Precision Industries was a dummy unit is not correct. It is true that M/s Precision Industries was not having a separate factory premises but said unit was purchasing raw material, it was sending the same for manufacturing of final product on job work basis to job worker, after they were manufactured by the job workers, said final products were sold by M/s Precision Industries. Separate invoices were raised and separate bank accounts were maintained and separate assessment under the income tax was also made. Therefore, there is no dummy unit in this case. Not only the unit of M/s Precision Industries used to get the goods manufactured on job work basis from various job workers but also the other three units were getting some process/ part of manufacture of their final product done on job work basis.

2.5 Without prejudice to the aforesaid, he also submits that even otherwise law is settled by Tribunal, and by decisions of Hon'ble High Courts of Calcutta, Gujarat, Madras and Delhi that without issuing show cause notice to alleged dummy unit, clubbing of its clearance with other unit is not permissible. He placed reliance on following judgments:-

- Commr. Vs. Unitech Containers Pvt. Ltd. – 2017(358)ELT 99 (Del)
- Premier Heavy Engineering Corpn Vs. CCE -2016 (337)ELT 332 (Guj)
- CCE Vs. Urban Industries – 2015(325)ELT 726 (Mad.)
- CCE Vs. Diamond Scaffolding Co. – 2011(274)ELT 10 (Cal)
- Sree Nirmal Spinners Vs. CCE -2014(300)ELT 469 (Tri. Chennai)
- CCE Vs. Copier Force India Ltd. -2009(245)ELT 478 (Tri. –Chennai)
- Poly Resin Vs. CCE -2003(161)ELT 1136 (Tri. Chennai)
- Indian Metal Industries Vs. CCE., Bhubaneshwar -1999(108)ELT 593 (T)

2.6 He also argued that neither does show cause notice nor does the impugned order justify the act of concentrating clearances pertaining to all the four units only on M/s Precisions Equipment Co. It is not known why the demand is not focused on the other three units. Even if it is assumed that clearances of all the four units were required to be clubbed, why the special treatment given to M/s Precision Equipment Co.? In absence of any independent evidence that all the goods cleared by a so called dummy unit and other two units are manufactured by M/s Precisions Equipment co., Central Excise Duty liability even otherwise could not have been casted only on M/s Precision Equipment Co. Even on this ground alone, the impugned order deserves to be quashed and set aside.

2.7 He also submits that when units are public/private limited companies, incorporated under the Companies Act, they are to be considered independent entity under the Companies Act, they are to be considered as separate units and their clearance could not be clubbed. He placed reliance on the following judgments:-

- Pimpri Gases Vs. CCE -1990 (49)ELT 474 (T)
- Commissioner of C.Ex., Surat –I Vs. Goyal Fibers (P) Ltd. – 2009(234)ELT 108 (Tri. Ahmedabad)

2.8 As regard the confiscation and redemption fine he submits that it is settled law that confiscation and redemption are not imposable when goods are not available for seizure. In the present case, said goods are not seized, therefore in that view of the matter, the redemption fine is completely illegal. He placed reliance on the following judgments:-

- Commissioner of Customs (Import) , Mumbai Vs. Finesse Creation Inc. -2009(248)ELT 122(Bom)
- Commissioner Vs. Finesse Creation Inc, 2010(255)ELT A120 (SC)
- Shiwalaya Spinning & Weaving Mills (P) Ltd. Vs. CCE, Amritsar - 2011(274)ELT 306 (Tri. Del.)

3. Shri A.K. Mudvel, Learned Superintendent (Authorised Representative) appearing on behalf of the Revenue reiterates the findings of Adjudicating Authority.

4. Heard both the sides at length and perused the available records of the case. We find that the allegation in this case is that M/s. Pratik Enterprise, M/s Precision Industries, M/s Precision Equipment Co., M/s Precision Rotogravure Pvt. Ltd. units though they manufactured and cleared excisable goods jointly from M/s. Precision Equipment Co., they maintained a façade by showing their clearances independent of each other to remain within the prescribed SSI exemption limit by claiming benefit of Notification No. 8/2003-CE dated 01.03.2003. M/s. Precision Industries not having any machinery and infrastructure to manufacture excisable goods, was a dummy unit created for the purpose of claiming benefit of SSI exemption. Though the units were jointly managed by way of common employee, common workers, common marketing set-up etc., the benefit of SSI exemption notification was claimed individually by each of one of them. M/s Precision Equipment Co. was started in the year 1991 as proprietary firm

under the proprietorship of Shri Rajubhai Jaisinghani. Later on, one by one other firms were created. Another allegation of the Revenue is that all the units were so much interdependent on each other that production and marketing were commonly managed by Proprietors and Directors of the firm and there is financial flow back between them.

4.1 We find that all the units have their own separate and independent existence. M/s Precision Equipment Co. was a proprietorship firm of Shri Rajubhai Jaisinghani, M/s Pratik Enterprises was a proprietorship firm of Shri Bhagubhai Prajapati, M/s Precision Industries was a proprietorship firm of Shri Prembhai Manuskhani and M/s Precision Rotogravure pvt. Ltd. had three directors viz. (i) Rajubhai Jaisinghani, Shri Bhagubhai Prajapati and Shri Prembhai Mansukhani. Separate Locations, Central Sale Tax Registration Certificate, Gujarat Commercial Tax Registration Certificate, separate Electricity Meters and separate Bank Accounts. Appellants also produced before us their separate profit & loss accounts, balance sheets, Audit reports, VAT return filed by them, sample bank account statements, purchase accounts and sales accounts. We observed that if M/s. Precision Industries is a dummy unit and all goods cleared under invoices of M/s. Precision Industries are not manufactured by it, then, sale proceeds of clearances should flow to M/s. Precision Equipment Co. However, there is no any financial flow back of funds, department have not even produced single evidence of any such financial flow back of funds from one firm to other firms and also *vice versa.* Further, as regard the allegation of the revenue that M/s Precision Industries not having manufacturing facility, hence dummy unit. We noticed that law permit manufacture of goods on job work basis. In the present matter it is admitted fact by the revenue itself that M/s Precision Industries had bought raw materials and got finished goods manufactured on Job Work Basis. The Job Workers had also accepted that they had done job work of M/s Precision Industries also. The officers had also visited the premises of all units and found that all the units have separate existence and have separate premises and independent electricity connection etc. Some processes were being done outside the premises on job work basis by the said units, which were also confirmed by the job workers.

4.2 We also find that various government departments granted separate registrations to them after ascertaining their correctness that the units are separate. In that circumstance, it cannot be said that the appellants are one unit merely on the basis of certain statements of buyers and raw material supplier that if order is placed by or to Shri Rajubhai Jaisinghani or Shri Bhagubhai Prajapati or Shri Prembhai Mansukhani and the goods were cleared by other unit or *vice versa.* It is not disputed that inputs received by the said units is used for manufacture of the goods and cleared by the said units against payment. Merely on the ground that order is placed in unit 'A' and goods have been supplied by Unit 'B', it cannot be said that both units are same. Further, as all the units are having separate registrations with various departments, in that circumstance, it cannot be held that all the units are one and the same and their clearances can be clubbed. We also find that the tribunal in the case of *Sree Nirmal Spinners* v. *CCE, Coimbatore* reported at 2014 (300) E.L.T. 469 (Tri. - Chennai) has held that clubbing of clearances cannot be done merely on the ground of presence of common partners of the same family and also further held that financial flowback is required for clubbing among the units. Tribunal in the said case has also held that since the units in the said case were having separate registration under Income Tax, Sales Tax, Directorate of

Industries and also separate electricity connections etc. and were maintaining records separately and that there were no financial flowback and therefore, their clearances could not be clubbed.

4.3 We find in the present case the individual manufacturing appellants have independent identities since the Revenue could not establish that their books of accounts are common, that their bank accounts are common, that their registration with Income Tax, Sales Tax are common and that there is common funding and that there is mutuality of interest and that there is financial flowback. In the absence of any such evidence, we hold that the manufacturer units are independent units and therefore, their clearances could not be clubbed together. Therefore, the issue of clubbing the clearances is not sustainable in the absence of concrete and corroborative evidences.

4.4 It may be mentioned that in the case of *CC, Jaipur* v. *Electro Mechanical Engg. Corpn.,* 2008 (229) E.L.T. 321 (S.C.) it was observed that even if certain employees of three firms are common and their premises are adjoining to each other, the benefit of SSI exemption cannot be denied. Further, Tribunal in the case of *Alpha Toyo Ltd.* v. *CCE, New Delhi,* 1994 (71) E.L.T. 689 (Tri.) observed that even though there is a common management control and common Directors and finance of the firm lies with the main unit, SSI exemption cannot be denied. However, instant case of appellants is on better footing, maintenance of books of accounts and returns of all the firms are separate. Units have not only separate infrastructure, but also separate existence in the eye of law. We, are therefore of the view that denial of benefit of SSI Exemption to the manufacturer appellants is not sustainable.

4.5 As regard the issue of confiscation of the goods and imposition of redemption fine, we agree with the argument of appellant that no seizure of goods were made. Therefore, confiscation of the goods which were not available is not legal and correct, therefore consequently redemption fine was not warranted as held in the Larger Bench's judgment in the case of *Shiv Kripa Ispat Pvt. Ltd.* - 2009 (235) E.L.T. 623 (T-LB) which was affirmed by the Hon'ble Bombay High Court in 2015 (318) E.L.T. A259 (Bom.) A similar view was taken in the case of *CCE* v. *Finesse Creations Inc.* - 2009 (248) E.L.T. 122.

5. In view of our above discussions, we set aside the impugned order and allow all the appeals with consequential relief, if any, in accordance with law.

(Pronounced in the open court on 23.04.2024)

RAMESH NAIR
MEMBER (JUDICIAL)

C.L.MAHAR
MEMBER (TECHNICAL)

Raksha