

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

REGIONAL BENCH- COURT NO. 3

Excise Appeal No. 883 of 2009

(Arising out of OIO-03/COMMISSIONER/RKS/AHD-II/2009 Dated-19/02/2009 passed by Commissioner of Central Excise-AHMEDABAD-II)

Xsis Power Systems Pvt Ltd

Survey No. 42-a, Plot No. 5-b, Behind Sangam Cinema,
Juhapura, Sarkhej Road, AHMEDABAD, GUJARAT

.....Appellant

VERSUS

C.C.E.-Ahmedabad-ii

Custom House... First Floor,
Old High Court Road, Navrangpura,
Ahmedabad, Gujarat-380009

.....Respondent

WITH

- **Excise Appeal No. 884 of 2009 (Zahir I Laliwala);**
- **Excise Appeal No. 885 of 2009 (Jayesh Ramanlal Shah);**
- **Excise Appeal No. 888 of 2009 (Shakeeb M Kagdi);**
- **Excise Appeal No. 1436 of 2009 (Xsis Power Systems Pvt Ltd);**
- **Excise Appeal No. 1437 of 2009 (Zahir I Laliwala);**

(Arising out of OIO-03/COMMISSIONER/RKS/AHD-II/2009 Dated-19/02/2009 passed by Commissioner of Central Excise-AHMEDABAD-II)

(Arising out of OIO-03/COMMISSIONER/RKS/AHD-II/2009 Dated-19/02/2009 passed by Commissioner of Central Excise-AHMEDABAD-II)

(Arising out of OIO-03/COMMISSIONER/RKS/AHD-II/2009 Dated-19/02/2009 passed by Commissioner of Central Excise-AHMEDABAD-II)

(Arising out of OIA-228-229/2009-AHD-II-CE/CMC/COMMR-A-/AHD/S/9-10-A-II-/09 Dated-05/08/2009 passed by Commissioner of Central Excise-AHMEDABAD-II)

(Arising out of OIA-228-229/2009-AHD-II-CE/CMC/COMMR-A-/AHD/S/9-10-A-II-/09 Dated-05/08/2009 passed by Commissioner of Central Excise-AHMEDABAD-II)

APPEARANCE:

Shri Aditya Tripathi, Advocate for the Appellant

Shri Vinod Lukose, Authorised Representative for the Respondent

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

FINAL ORDER NO. A/10911-10916 /2022

DATE OF HEARING:11.03.2022
DATE OF DECISION:03.08.2022

RAMESH NAIR

These appeals are directed against Order-In-Original No.03/COMMISSIONER/RKS/AHD-II/2009 dated 19.02.2009 passed by the Commissioner of Central Excise, Ahmedabad-II and Order-in-Appeal No.228 to 229/2009(AHD-II)/CE/CMC/COMMR(A)/AHD/S/9 to 10(A-II)/2009 dated 05.08.2009 passed by the Commissioner (Appeals-I) Central Excise Ahmedabad. The details of all the appeals are given in the below chart:-

Appeal Nos.	Impugned Order No.	Date	Name of Appellant	Name of Respondent
E/883/2009	OIO-03/COMMISSIONER/RKS/AHD-II/2009	19/02/2009	Xsis Power Systems Pvt Ltd	C.C.E.- Ahmedabad-ii
E/884/2009	OIO-03/COMMISSIONER/RKS/AHD-II/2009	19/02/2009	Zahir I Laliwala	C.C.E.- Ahmedabad-ii
E/885/2009	OIO-03/COMMISSIONER/RKS/AHD-II/2009	19/02/2009	Jayesh Ramanlal Shah	C.C.E.- Ahmedabad-ii
E/888/2009	OIO-03/COMMISSIONER/RKS/AHD-II/2009	19/02/2009	Shakeeb M Kagdi	C.C.E.- Ahmedabad-ii
E/1436/2009	OIA-228-229/2009-AHD-II-CE/CMC/COMMR-A-/AHD/S/9-10-A-II-/09	05/08/2009	Xsis Power Systems Pvt Ltd	C.C.E.- Ahmedabad-ii
E/1437/2009	OIA-228-229/2009-AHD-II-CE/CMC/COMMR-A-/AHD/S/9-10-A-II-/09	05/08/2009	Zahir I Laliwala	C.C.E.- Ahmedabad-ii

As regard appeal No. E/883-885,888/2009, the brief facts of the case are that the appellant M/s.Xsis Power System Pvt Ltd. (XPSPL) were having their factory at Ramju Ice Factory compound, Opposite Vishala Hotel, behind Bacha Motors, Narol-Sarkhej Road, Ahmedabad and with effect from 22.07.2005 shifted their factory to Survey No.42A, Plot No.5-B behind Sangam Cinema, Juhapura, Sarkhej Road, Ahmedabad. They are having their registered office situated at 220, 2nd Floor, Ellisbridge Shopping center, Ashram Road, Ahmedabad. They were engaged in the manufacturing of various power backup and conditioning systems such as Uninterrupted Power Supply (UPS)/Inverter/Constant Voltage Transformer falling under chapter 85 of the First Schedule to the Central Excise Tariff Act, 1985. Shri

Zahir I Laliwala is one of the Directors controlling the said company with regard to the business activities of M/s. XPSPL. Shri Yasin I Laliwala, being related to Shri Zahir I Laliwala as uncle were shown as proprietor of M/s. Impex Transformers which was primarily engaged into manufacturing of transformers. Mrs. Nasim I Laliwala, being related to Shri Zahir I Laliwala as mother was shown as proprietor of M/s. Index Marketing which was primarily engaged in the manufacture of PCBs (Populated Circuit Board/Printed Circuit Board). Shri Jayesh Shah was working with M/s. XPSPL as accounting in-charge and was shown as Director of M/s. Jay Power Protection Pvt. Ltd. which was primarily engaged in sourcing and supplying parts/components such as DC capacitors, AC capacitors, Heat Sinks, Cabinets, Fans, Switches, etc, all of which were some parts required for manufacture of UPS/Inverter/Constant Voltage Transformer. Shri Shakeeb, working with M/s. XPSPL as production manager and related to Shri Zahir I Laliwala as cousin brother was a proprietor of M/s. Pruthvi Controls. Shri Vinod Ratilal Patel earlier had his factory situated at 22, Ramdev Estate, Opposite Baroda Express Highway, CTM, Ahmedabad was engaged in the manufacture of UPS/CVT/Stabilizers at M/s. Parth Electronics.

1.1 On the basis of an intelligence, the factory premises, the office premises of M/s. XPSPL and other related premises were searched by the officers of Directorate General of Central Excise Intelligence (hereinafter referred to as 'DGCEI') on 16.05.2005 under panchnama. During the course of search conducted on 16.05.2005 at the factory premises of M/s. XPSPL, it was noticed that said unit was engaged in the manufacture of Uninterrupted Power Supply/Inverter/Constant Voltage Transformer and in the same premises there were three more firms namely (i) M/s. Index Marketing engaged in the manufacture of PCBs (ii) M/s. Impact Transformers engaged in the manufacture of transformers and (iii) M/s. Jay Power Protection Pvt. Ltd. engaged in the manufacture activities of parts of Uninterrupted Power Supply. It was noticed that other two so called manufacturing units M/s. Index Marketing and M/s. Impact Transformers were found operating from the same manufacturing premises. Further more, it was found that M/s. XPSPL were not found registered with the jurisdictional central excise authorities therefore, they hold all such manufacturing of finished goods which were found lying in a dispatch condition were placed under detention and further placed under seizure on 9.11.2005 for which a separate show cause notice vide F.No.INV/DGCEI/BRU/15/2005 dated 14.11.2005 was issued to M/s. XPSPL through Shri Zahir I Laliwala by the Deputy Director

General of DGCEI. This is the subject notice for appeal nos. E/1436/2009 & E/1437/2009. Further on detail investigation, a show cause notice F.No. DGCEI/AZU/36-45/2006 dated 21.12.2006 was issued by the Additional Director General of DGCEI, Zonal Ahmedabad to M/s. XPSPL. In the show cause notice it was contended that the three units M/s. INDEX MARKETING, M/s. IMPEX TRANSFORMERS and M/s. Jay Power Protection Pvt. Ltd. are dummies of M/s. XPSPL as all the three units are situated in the common premises of M/s. XPSPL and common amenities were utilized and in respect of M/s. Pruthvi Controls it was alleged that the same is also controlled by Shri Zahir I Laliwala and not actually manufacturing any goods therefore, it was proposed that the clearance value of all the three units should be clubbed with the main company i.e. M/s. XPSPL. In the show cause notice there is another issue was raised that the appellant have purchased battery and the same is supplied along with UPS therefore, it was proposed that the value of UPS needs to be included in the assessable value of UPS. Consequent to the aforesaid charge after taking into account the value of all the three units and inclusion of value of battery in the assessable value of UPS, the appellant M/s. XPSPL has crossed the aggregate value and is not eligible for SEZ exemption notification No.8/2002-CE & 8/2003-CE accordingly, the demand of excise duty, penalty, interest and personal penalty on the co-noticees were proposed.

1.2 The adjudicating authority vide Order-In-Original No.11/COMMR./2008 dated 31.3.2008 passed an adjudication order, the same was set aside by the Tribunal in appeal filed by the appellant vide Order No. A/2096-2101/WZB/AHD/2008, S/1045-1050/WZB/AHD/08 and remanded the matter to the adjudicating authority on the ground of non-compliance of principles of natural justice. Against the remand order, the adjudicating authority has passed a denovo adjudication order which is impugned in the present appeals. The Adjudicating Authority confirmed the demand on the following points:

Clubbing of four units with M/s. Xsis Power Systems Pvt. Ltd.

- (1) There is no violation of principal of natural justice as regard allowing the cross-examination of the witnesses.
- (2) All the units namely Index Marketing, Impact Transformers and Jay Power Protection Pvt. Ltd. are situated within the same campus where M/s. XPSPL was situated.

- (3) All the Proprietors and Directors of the Company/Units namely Yasin I. Laliwala, Mrs.Nasim I. Laliwala, Mr. Naushir Y Laliwala are related to Shri Zahir I. Laliwala who is the Director of M/s XPSPL and all the units were controlled by Shri Zahir I. Laliwala.
- (4) Shri Shakeeb M. Kagdi proprietor of M/s Pruthvi Controls was working as a production manager of M/s XPSPL but in fact, he was looking after production related matters of all the Firms namely Index Marketing, Impact Transformers, M/s Pruthvi Controls, Jay Power Production Pvt. Ltd. and M/s. XPSPL and was reporting to Shri Zahir I. Laliwala.
- (5) The entire premises where all the units are situated have been taken on rental basis under two separate agreements one by M/s. XPSPL and other by M/s. Jay Power Protection Pvt. Ltd., and the entire rent was born by M/s XPSPL and M/s Jay Power Production Pvt. Ltd and the same is not paid on the account of any other firm.
- (6) The product shown to be manufactured by all SSI units were in fact manufactured by M/s. XPSPL only and the same were shown as having been manufactured by SSI units and sold to M/s XPSPL.

(7)(i)As regard the financial flow back the learned Commissioner contended that Shri Shakeeb M. Kagdi Production Manager of M/s XPSPL and also proprietor of M/s Pruthvi Controls being a common person controls all the Firms/Companies. It is evident that there was a common control of Shri Shakeeb M.Kagadi on all the Firms/Companies. All the units were using common office of M/s XPSPL and there is no evidence for the Company/Firms had paid rent to M/s XPSPL for utilizing office premises of M/s XPSPL.

(ii)The cases relied upon by the noticee are not applicable in the facts of the present case. The signed cheque books of Yasin I. Laliwala and Shri Jayesh R. Shah were lying with Shri Zahir I. Laliwala Director of M/s XPSPL, which makes it clear that there was full control on M/s XPSPL or the other Companies situated in the factory premises of M/s XPSPL. The above fact clearly reveals that with this arrangement there was financial flow back between M/s XPSPL and other 4 units.

Inclusion of value of Battery in the assessable value of UPS.

1.3 As regard the issue whether the cost of batteries should be included in the value of UPS/Inverter/Constant Voltage Transformer there are two aspects, first, whether the batteries were cleared from the factory of M/s.

XPSPL or from the premises outside premises of M/s. XPSPL and the second whether it is cleared from the place outside the premises of M/s.XPSPL and whether the value of such battery should be included in the value of UPS/Inverter/Constant Voltage Transformer cleared from the factory of M/s. XPSPL or from outside the M/s. XPSPL. As regard the fact that whether the batteries were cleared from the factory of M/s.XPSPL along with UPS there are claim and counter claim between the appellant and the revenue. The adjudicating authority relied upon statements of various persons, blank packing list recovered under panchnama and the investigation conducted at the premises where the appellant claimed that the batteries were stored outside the factory and on that basis it was concluded that the batteries cleared were stored in the factory of M/s. XPSPL and cleared from the factory along with UPS/Inverter/Constant Voltage Transformer.

1.4 On the second aspect whether the value of batteries can be added in the UPS/Inverter/Constant Voltage Transformer for the determining the transaction value of UPS/Inverter/Constant Voltage Transformer under Section 4 of Central Excise Act, 1944, the Adjudicating authority relied upon following decisions:-

- i) Kerala State Electronics Development Corporation- 1994 (71) ELT 508 (Cegat)
- ii) CCE, Chennai Vs. Mumeric Electronics Pvt. Ltd.- 2001 (138) ELT 1202 (Tri.-Chennai)

Accordingly, it was held that the value of batteries is includable in the value of UPS/Inverter/Constant Voltage Transformer. With this conclusion, the adjudicating authority has clubbed the entire value of clearances of all four units and the value of batteries in the clearance value of M/s. XPSPL and consequently, the value has exceeded not only the exemption limit of Rs.1 Crore but also the eligibility threshold limit of Rs.3 Crores as provided under Notification No.8/2002-CE dated 1.3.2002 and 8/2003-CE dated 1.3.2003. The adjudicating authority on the basis of the above finding denied the said exemption, confirmed the excise duty demand and also imposed personal penalty on Shri Zahir I Laliwala, Shri Yasin I Laliwala, Mrs. Nashim I Laliwala, Shri Jayesh Shah ,Shri Shakeeb M Kagdi. Being aggrieved by the impugned orders dated 20.2.2009 and 05.08.2009, the appellants filed the present appeals.

02. Shri Aditya Tripathi, learned counsel appearing on behalf of the appellants reiterates the grounds of appeals made in the appeal memo. He

further submits that all the four units, the value of those have been clubbed in the value of M/s. XPSPL were separate entities. He submits that the products in question i.e. Uninterrupted Power Supply (UPS)/ Inverter/ Constant Voltage Transformer (CVT) are eligible under small scale industrial unit were entitled for the SSI exemption on the basis of their clearances. He submits that all the five manufacturing units had come into existence at different point of time, that all the five entities were having separate manufacturing premises till the communal riots in Gujarat that took place in February, 2002 and it was only thereafter that all the manufacturer shifted their factories to the present premises from their different location. Though all the five factories located in one compound but had separately demarcated room/galas with required equipments and machineries installed in each of the manufacturing unit. Even the photographs taken by investigating authorities also indicated that there were five separate units and they were having inputs, raw materials, etc. in their respective units. At the time of investigation also all the five manufacturers had separate books of accounts and registers for purchase and sale. There is no evidence that there is a financial flowback among all the five units. All the five units had always purchased the material on their own and the payments were also made through banks by the respective units and sales were also made by the five manufacturers under genuine commercial bills. Shri Zahir I Laliwala, was not the person who created these five entities nor he was looking after the conduct and business affairs and day to day basis of all the five manufacturers as alleged in the show cause notice. He submits that the learned Commissioner has heavily relied upon the facts that M/s. Xsis was allowing use of electricity by all the manufacturer without charging any amount for the same however, the electricity connection actually belongs to one M/s. Lahoti Udyog. Who has given electricity to all the manufacturing units from whom electricity charges were recovered by M/s. Lahoti Udyog by issuing bills. The learned Commissioner has passed the order on the basis that all units belongs to M/s. Xsis whereas, owner of all the premises was Shri Ramjubhai who has entered into agreement with the said manufacturers and payment thereof was also made by the said manufacturers to the landlord which was accounted for in the books of accounts.

2.1 He submits that the Commissioner's findings about clubbing of clearances are based on the statements of various persons like Mohsin D. Laliwala, Shri Pawan M Buch, Shri Vinod Ratilal Patel, Shri Yasin I Laliwala, Shri Jayesh Shah, Shri Shakeeb Kagdi and Shri Zahir I Laliwala. He submits

that Commissioner's finding is based on selective parts of the various statements of these persons were used in the impugned order but these statements are also not an evidence showing that the four firms namely M/s. Impact Transformer, M/s. Index Marketing, M/s. Jaypee Power and M/s. Pruthvi Controls did not exist as independent manufacturer. His contention is also not correct that these four firms did not have independent transactions of their own. He submits that the Commissioner has ignored the clarification about the independent units given by the appellant during the adjudication. With regard to the issue of clubbing of clearances, the appellants relied upon the following decisions:-

- Prabhat Dyes and Chemicals Vs. Collector of Central Excise- 1992 (62) ELT 469 (Tribunal)
- Swastik Egg. Works Vs. Collector of Central Excise- 1992 (62) ELT 313 (Tribunal)
- Shri A. Rathinam, Prop. Of Micheal Match Works Vs. Collector of Central Excise- 1992 (60) ELT 451
- Diamond Engineering & Trading Corpn. Vs. Collector of C.Ex- 1989 (44) ELT 92
- Bhagwandas Kanodia & Ors. Bombay Vs. Collector of C.Ex., Bombay- 1987 (32) ELT 204 (Tribunal)
- Aroma Apparels, Bombay Vs. Collector of C.Ex. Bombay- 1986 (25) ELT 90 (Tribunal)
- Pimpri Gases, Pune & sanghi Gases, Pune Vs. Collr.- 1990 (16) ETR 157 CEGAT, New Delhi
- Prime Control (P) Ltd. Vs. Collector of C.Ex. Pune- 1994 (72) ELT 62 (Tribunal)
- Alpha Toys Ltd. Vs. Collector of C.EX., New Delhi- 1994 (71) ELT 689 (Tribunal)
- Jagjivandas & Co. Thane Vs. CCE, Bombay-II- 1985 (19) ELT 441 (Tribunal) Against the aforesaid order, the department's appeal was dismissed by the Hon'ble Supreme Court- 1989 (44) ELT 24A
- Nikhildeep Cables Pvt. Ltd. Vs. Collector of C.Ex., 1994 (70) ELT 273 (Tribunal)
- Shree Packaging Corporation, Hyderabad Vs. CCE, Hyd.- 1987 (32) ELT 94 (Tribunal)

- Shakti Engineering Works Vs. Collector of C.Ex.- 1989 (40) ELT 95 (Tribunal)
- M/s. Kinjal Electricals Pvt. Ltd. Vs. Collector of C.Ex.,- 1989 (43) ELT 327 (Tribunal)
- International Dyestuff Mfg. Co. Vs. CCE-1991 (53) ELT 85 (Tribunal)
- Lakshmi Industries Vs. CCE- 1994 (72) ELT 893 (Tribunal)
- LMP Precision Egg. Co. Ltd. Vs. CCE, Baroda- 1994 (70) ELT 580 (Tribunal)
- Pipri Gases Vs. Collector of Central Excise- 1990 (49) ELT 474 (Tribunal)
- V.Devraj & Ors. Vs. Collector of C.Ex.- 1992 (42) E.C.R. 562 (Tribunal)
- Shri Ranga Industries Vs. CCE,- 1993 (67) ELT 172 (Tribunal)
- Sahuwals Cylinders Ltd. Vs. Collector of C.Ex., 1991 (54) ELT 135 (Tribunal)
- Renu Tandon- 1993 (66) ELT 375 (Raj.)
- Rang Udyog Vs. Collector of Central Excise, Ahmedabad- 1996 (83) ELT 648
- Indian Metal Industries Vs. Commissioner, Bhubaneshwar-1999 (108) ELT 593
- Motor Industries Company Ltd.- 1999 (111) ELT 163
- Process Plant (India) Ltd. Vs. CCE, Bombay- 1999 (32) RLT 651

2.2 As regard the common management and administration of five manufacturers, the appellant have established with evidence that the Director of M/s. Xsis Power System Pvt. Ltd. namely Shri Zahir I Laliwala, had permanently shifted to Bangalore with his family after riots of February, 2002 hence he was not looking after day to day business affairs of M/s. Xsis Power System Pvt. Ltd. and consequently, there was no question of Shri Zahir I Laliwala of managing and controlling and conducting the business affairs of other four manufacturers. He submits that most important aspect in case of involving clubbing of clearance is financial flow back, in the present case, this test has not been passed. As regard the common administration, he submits that there was no common staff in so far as workers and employees were concerned and only common premises shared by the five manufacturers was also office the located at Ellisbridge Shopping Centre but this office also belongs to Shri Zahir I Laliwala, and not to the company and in any case only because Shri Zahir I Lalilwala of M/s. Xsis Power System Pvt. Ltd. has allowed his family members to use as their

office, test of financial flow back will not be said to have been satisfied. He submits that in view of the above facts and the explanation of the appellant, the Commissioner had no jurisdiction to have clubbed clearances of the manufacturers viz. M/s. IMPACT TRANSFORMERS, M/s. INDEX MARKETING, M/s. JAY POWER PRODUCTION, M/s. PRUTHVI CONTROLS with the clearance value of M/s. Xsis for denying not only the benefit of SSI Exemption Scheme but also independent existence of these manufacturer therefore, the impugned order on this issue is liable to be set aside.

2.3 As regard the inclusion of value of battery in the assessable value of UPS/Inverter/Constant Voltage Transformer, he submits that the entire demand was confirmed on the batteries on the ground that UPS cannot function as a source of Uninterrupted Power without the battery and hence battery is an integral part of UPS. He submits that uninterrupted power was only one of the function of UPS whereas, there was other more functions for which UPS was originally used and all such functions could be very well functioned without any battery at all. As aforesaid, the UPS is used for performance like (i) Voltage Stabilisation of 230 +/- 2% for input variation of 170/270V (ii) Frequency Stabilisation (iii) Isolation of output from input which will in turn attract the connected equipment from electrical spikes/service and other irregularities, (iv) Output short circuit protection and (v) Generator compatibility. Therefore, batteries could not have been considered to be an integral part of UPS for adding value thereof for arriving at the assessable value of UPS manufactured by M/s. Xsis.

2.4 He submits that the appellant have adduced various evidences by which it establishes that the batteries were never brought and stored in the factory where UPS was produced. During investigation it has come on record that except a few batteries for test of UPS, other batteries which were sold to the customers who desired the same were not brought nor stored in the factory and that batteries were delivered to the customers directly from the outside godown whereas, UPS was delivered from factory. The adjudicating authority has held that there were 3768 batteries lying at the factory on 16.5.2005 and thus, batteries were available in stock in the factory from where they were being supplied by the appellant company. It is established on record that batteries were supplied separately not attached to UPS hence, the batteries were never cleared from the factory of manufacturer. He submits that as per the data in 3743 batteries were operational as various customers bought only UPS from M/s. Xsis whereas, various customers

purchased only batteries. This establishes that UPS and batteries were not required to be sold together and the batteries was operational for the customer whether to buy battery along with UPS or otherwise.

2.5 He submits that the literature submitted by the appellant also shows that batteries were not required for function of UPS. It is his submission that the Commissioner has misdirected himself as regard the difference between online UPS and Offline UPS (having inbuilt battery) that this difference was explained by the appellant in the adjudication proceeding with reference to the batteries found in the factory premises of M/s. XSIS at the time of panchnama made on 16.5.05. He submits that batteries are not integral part of the uninterrupted power supply (UPS), the UPS can function even without battery. However, this is also an error on the part of the Commissioner in as much as Annexure B to the panchnama dated 16.5.05 made at the factory of M/s. Xsis shows that 3743 batteries were for offline UPS and size of battery itself establishes that batteries of 7AH (i.e. 7 Ampere per hour) and 9AH power were meant for installing in offline for which there was no dispute whereas, other 25 batteries of higher ampere were kept for testing only because it is on record and is accepted by the appellants that few batteries were kept in the factory for testing online UPS manufactured therein therefore, the appellant's submission that batteries for online UPS was not brought in the factory was correct.

2.6 He submits that the adjudicating authority has committed an error in misappreciating the fact from the statements of Shri Shakeeb Kagdi, Shri Pawan Buch regarding the storage of battery in the factory of M/s. XPSPL. He submits that it was only in respect of offline UPS. The statements given regarding bringing the battery to the factory and storage there of was only in respect of batteries for offline UPS and not for Online UPS. It was clarified by the Storekeeper in-charge of production of the appellant's factory also that batteries only for Offline UPS were supplied from the factory and not for Online UPS. He submits that batteries were sold separately as bought out item and therefore, the value of battery cannot be included in the assessable value. In this regard, he placed reliance on the following decisions :-

- CCE, BANGALORE V/s. ELECTRONICS & CONTROLS POWER SYSTEMS P. LTD.- 2011 (263) ELT 126 (Tri.-Bang.)
- CCE, PUNE-II V/s. D.B. TECHNOLOGIES PVT. LTD.- 2009 (238) ELT 100 (Tri.-Mumbai)

- SIEMENS LIMITED V/s. CCE, AURANGABAD- 2002 (150) ELT 422 (Tri.-Mumbai)
- COMMISSIONER V/s. SIEMENS LTD.- 2003 (158) ELT A74 (S.C.)
- CCE, & CUS. PUNE-I V/s. A.Z. ELECTRONICS- 2001 (134) ELT 689 (Tri.-Mumbai)
- CCE, PUNE V/s.D.B. ELECTRONICS P.LTD.- 2000 (126) ELT 1017 (Tribunal)
- CCE, KOLHAPUR V/s. D.B. TECHNOLOGIES P. LTD.- 2013 (294) ELT 280 (Tri.-Mumbai)

03. On the other hand, Shri Vinod Lukose, Learned Superintendent (AR) appearing on behalf of the revenue reiterates the findings of the impugned order. He submits that as per the numerous statements of various persons involved in all five units, it is established that the four units are dummy units of M/s. XPSPL . He further submits that all the units were located in common premises and there was no physical demarcation in respect of which unit was where. The lease agreement for the premises were entered into only by M/s. XPSPL and M/s. Jay Power Protection Pvt. Ltd., like that there are numerous evidence which establishes that all the four units are under the control of M/s. XPSPL and they were not independent therefore, the adjudicating authority has rightly clubbed the value of all the four units in the clearance value of M/s. XPSPL.

3.1 As regard the issue of inclusion of value of batteries in the value of UPS, he submits that the adjudicating authority has given detailed finding in Para 42 to 47 to conclude that the value is to be calculated of total clearance for the respective years. In this regard he placed reliance on the following decisions:-

- ALPHA CONVERTING MACHINES P LTD.- 2018 (364) ELT 141 (Tri.-Abad)
- GANJAN FABRICS DISTRIBUTORS- 1997 (92) ELT 451 (SC)
- KERALA STATE ELECTRONICS DEVELOPMENT CORPORATION LTD.- 1994 (71) ELT 508
- MUMERIC ELECTRONIC P LTD- 2001 (138) ELT 1202 (Tri-Chennai)
- INDUSTRIAL SUPPLIES & SERVICE- 2001 (128) ELT 175 (Tri-Delhi)
- ELECTRONICS & CONTROL POWER SYSTEMS P LTD- 2010 (257) ELT 578 (Tri-Bang)

- SRI SAI ENTERPRISES- 2010 (258) ELT 448 (Tri-Del)
- SYSTEMS & COMPONENTS P LTD- 2004 (165) ELT 136 (SC)
- GOPAL TEXTILE MILLS- 2007 (215) ELT 558 (Tri-Ahmd)
- TEJWAL DYESTUFF INDUSTRIES- 2007 (216) ELT 310 (Tri-Ahmd)
- TULSI POLYMERS P LTD.- 2005 (183) ELT 59 (Tri-Mum)

04. We have carefully considered the submissions made by both the sides and perused the records. The issue for our consideration are as under:-

- (i) Whether the value of clearance of M/s. Impex Transformers, M/s. Index Marketing, M/s. Jay Power Protection Pvt. Ltd., M/s. Pruthivi Controls and M/s. Parth Electronics are includable with the value clearance of M/s. XPSPL for calculating the exemption limit under Notification No.8/2002-CE dated 1.3.2002 (erstwhile) and notification no.8/2003 dated 1.3.2003 for the period from 1.4.2002 to 16.5.2005.
- (ii) Whether the batteries were stored in the factory premises of M/s. Xsis Power System Pvt. Ltd. and were cleared from the said factory along with UPS/Inverter/Constant Voltage Transformer.
- (iii) Whether the value of batteries can be added in the value of UPS/Inverter/Constant Voltage Transformer for determining the transaction value of the UPS/Inverter/Constant Voltage Transformer under Section 4 of the Central Excise Act, 1944.

As regard the first issue that whether the value of all the four units can be clubbed with the value of M/s. XPSPL, the learned Commissioner has relied upon various statements of various persons involved in the overall operation of all the five units. The learned Commissioner has contended that in the statements they have admitted that there is no independent activities going on in the individual unit. All the manufacturing activities are carried out in M/s. XPSPL, the entire operation of all the units is looked after by one Shri Zahir I Lalilwala, who is the Director of M/s.XPSPL. By heavily relying on these statements, the learned Commissioner held that all the four units are non-functional. All the manufacturing activities since are carried out by M/s. XPSPL therefore, the value of all the four units should be clubbed with the value of M/s. XPSPL. We find that though the statements were given by various persons and those statements were used by the adjudicating authority to pass on the demand on M/s. XPSPL however, M/s. XPSPL in their reply and during personal hearing given detail submission to the

adjudicating authority to discard the contention of the adjudicating authority of four units are non-functional and only M/s. XPSPL is manufacturing all the goods. In such cases, heavy burden was put on the adjudicating authority on the basis of various evidences the adjudicating authority was duty bound to cross-examine all the witnesses to admit their statements as evidences which is mandated under Section 9D of the Central Excise Act, 1944 which is reproduced below:-

Section 9D. Relevancy of statements under certain circumstances. -

(1) A statement made and signed by a person before any Central Excise Officer of a Gazette rank during the course of any inquiry or proceeding under this Act shall be relevant, for the purpose of proving, in any prosecution for an offence under this Act, the truth of the facts which it contains, -

(a) when the person who made the statement is dead or cannot be found, or is incapable of giving evidence, or is kept out of the way by the adverse party, or whose presence cannot be obtained without an amount of delay or expense which, under the circumstances of the case, the Court considers unreasonable; or

(b) when the person who made the statement is examined as a witness in the case before the Court and the Court is of opinion that, having regard to the circumstances of the case, the statement should be admitted in evidence in the interests of justice.

2) The provisions of sub-section (1) shall, so far as may be, apply in relation to any proceeding under this Act, other than a proceeding before a Court, as they apply in relation to a proceeding before a Court

From the above, it is clear that whether the assessee demand the cross examination or otherwise, to admit an statement as evidence particularly, in the present case the appellant have produced ample of evidence to discard the contention of the learned Commissioner that all the four units are independent, the burden is more on the Commissioner to cross-examine each and every witness and in failure to do so, all those statements cannot have evidentiary value. This has been considered by the Hon'ble Supreme Court, high courts and Tribunal. Some of the judgments are cited below:-

- Hon'ble P & H High Court in case of M/s. G-Tech Industries Ltd. v. Union of India [[2016 \(339\) E.L.T. 209](#) P&H]
- Hon'ble High Court in the matter of Jindal Drugs Pvt. Ltd. Vs. Union of India 2016 (340) E.L.T. 67 (P & H) held as under:

"19. Clearly, therefore, the stage of relevance, in adjudication proceedings, of the statement, recorded before a Gazetted Central Excise

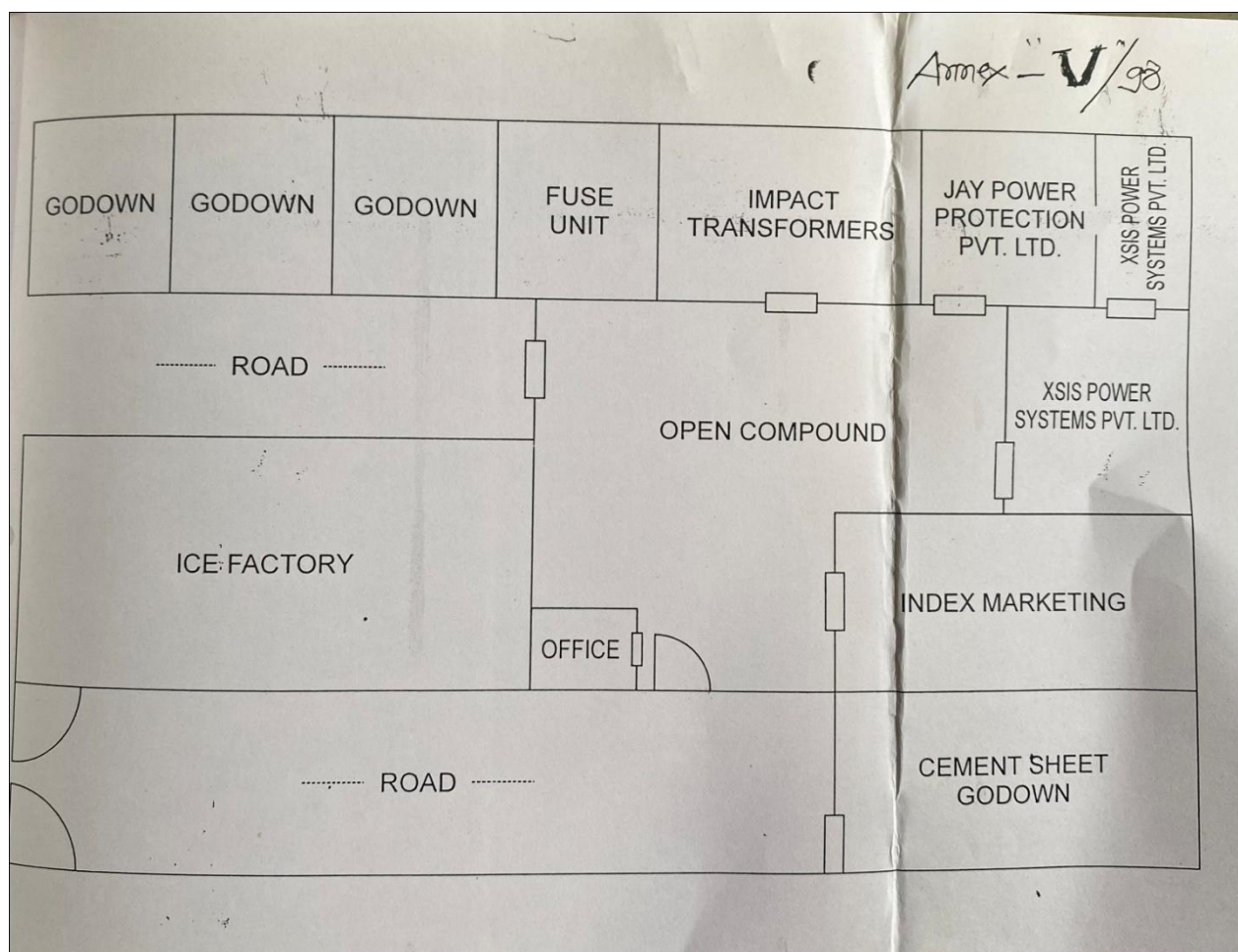
Officer during inquiry or investigation, would arise only after the statement is admitted in evidence in accordance with the procedure prescribed in clause (b) of Section 9D(1). The rigour of this procedure is exempted only in a case in which one or more of the handicaps referred to in clause (a) of Section 9D(1) of the Act would apply. In view of this express stipulation in the Act, it is not open to any adjudicating authority to straightaway rely on the statement recorded during investigation/inquiry before the Gazetted Central Excise Officer, unless and until he can legitimately invoke clause (a) of Section 9D(1). In all other cases, if he wants to rely on the said statement as relevant, for proving the truth of the contents thereof, he has to first admit the statement in evidence in accordance with clause (b) of Section 9D(1). For this, he has to summon the person who had made the statement, examine him as witness before him in the adjudication proceeding, and arrive at an opinion that, having regard to the circumstances of the case, the statement should be admitted in the interests of justice."

4.1 In view of the above settled law that to admit a statement as evidence, procedure prescribed under Section 9D has to be complied with mandatorily. In the present case, since the Commissioner has not examined the witnesses, the statements cannot be used as evidence against the assessee. Moreover, in the present case some of the witnesses were cross-examined on the request of the appellant wherein, they have categorically clarified that all the units have a separate rooms/galas. It was also clarified that all these units were conceptualized much before and they were located at different and distant location and the same were relocated only due to the communal riots of February, 2002. This clarification given by the witnesses creates more reason for Commissioner to examine all other witnesses for admission of statements as the evidences. It is observed that the Commissioner has failed to follow the mandatory provision of Section 9D of Central Excise Act, 1944. In view of this, the statements cannot be given a treatment of gospel truth and the same alone cannot be made the basis for deciding the entire case.

4.2 We further find that the appellants have submitted a chart showing the incorporation/setting up of all the units which is reproduced below:-

SR. NO.	COMPANY NAME	DIRECTOR & PROPRIETOR	NAME	DATE OF INCORPORATION	ADDRESS	ACTIVITIES
1	XSIS POWER SYSTEM PVT LTD	DIRECTOR	ZAHIR I LALIWALA MEENAZ I LALIWALA SURIYA I LALIWALA	08/01/1991	220, 2 ND FLOOR, ELLISBRIDGE SHOPPING CENTRE, ELLISBRIDGE	Manufacturing and Trading of On-line UPS, Off-line UPS, CVT, Line Conditioner Sealed Maintenance free Batteries, Lead Acid Batteries.
2	IMPACT TRANSFORMER	PROPRIETOR	YASIN I LALIWALA	22/9/1992	20, GRADUTE PICKER, WORKS COMPOUND, OPP NARODA RLY STATION, NARODA, AHMEDABAD	Manufacturing and Trading of CVT, Servo Stabilizer, UPS.
3	JAY POWER PRODUCTION PVT LTD	DIRECTOR	NAUSHIR Y LALIWALA JAYESH R. SHAH	18/03/2004	Shed No.7, RAMJU ICE FACTORY, OPP.ASPI MOTOR, SARKHEJ NAROL ROAD, SARKHEJ, AHMEDABAD	Manufacturing of UPS & Line Conditioners. Manufacturing of Transformers.
4	INDEX MARKETING	PROPRIETOR	NASIM I LALIWALA	13/07/1988	"AMAN" OPP. PARASBAUG SOCIETY, B/H.TAGOR HALL, KOCHRAB, AHMEDABAD	Manufacturing of PCB, Off Line UPS, Inverters.
5	PRUTHVI CONTROLS	PROPRIETOR	SHAKEEB M KAGDI	19/01/1999	33, SUNRISE PARK, NR.KURSHID PARK, SARKHEJ, AHMEDABAD	Manufacturing and Trading of UPS

From the above given chart, it can be seen that all the units were incorporated/setup on different dates and much before the period involved in the present case. It can also be seen that every unit had separate address, the promoters and Directors are also different in each company/firm. With this undisputed factual position, it is absolutely clear that all the companies/firms were set up much prior to the period involved in the present case and accordingly, every company/firm had independent legal status and entity in itself. With the above detail, it cannot be said that these companies/firms were created as a sham only to avail exemption notification no.8/2002 and 8/2003 wrongly. The appellant also submitted a map/drawing showing entire area at Ramju Ice Factory compound earmarking the details of each unit of each of the firm, the same is reproduced below:-



From the impugned order, we find that the adjudicating authority has heavily relied on the statements of various persons to arrive at the conclusion that all the units were located in a common premises. As we already stated above prior to February, 2002 all the units were located at different and distant places. Only after February, 2002 due to difficulties due to communal riots took place in February, 2002 those units were shifted to the above premises.

From the above map, it can be seen that out of four units and the main unit M/s. XPSPL were situated in the Ramju Ice Factory Compound but each and every company/firm had a separate and independent premises with entry door. Merely because all the four units were located in one campus, this cannot be the reason for holding that all are working in one premises accordingly, all the five manufacturers had separate factories and manufacturing units. The goods manufactured by the five manufacturers were also separate, the transactions of purchase and sale among these five manufacturers were purely on a principal to principal and commercial basis. All the five manufacturers had purchased required raw material, inputs, etc. on their own. These five manufacturers had their own equipments and infrastructures as well as separate workers and employees also. It is also a fact that all the five manufacturers were not consisting all the member of the

same family. Even some are family members but since undertaken separate independent business which is permissible under the Constitution of India. The clarifications made by Shri Zahir L Lalilwala, Director of M/s. XPSPL during investigation was not considered by the Commissioner. We find that it is fact on record that Shri Zahir I Laliwala had shifted to Bangalore and was not looking after day to day affairs even of his own company i.e. M/s. XPSPL. The allegation of the department that Shri Zahir I Laliwala was looking after the affairs of all the units is contrary to the fact that Shri Zahir I Laliwala was not looking after any activity during the relevant period.

4.3 We further find that all the five manufacturers are registered with various Government Departments separately. They have their own bank accounts, every units sold goods under separate commercial bills. The payment against the said bills were received from customers and the same was accounted for in the books of individual company/firm.

4.4 The investigating officers during panchnama withdrawn various documents which include books of accounts/ledgers/bank account/sale purchase files of all the five units individually. There is no observation of the adjudicating authority on this admitted fact. The learned Commissioner has also passed the impugned order on the basis that M/s. Xsis Power System Pvt. Ltd. was allowing use of electricity by all the manufacturers without charging any amount for the same. But as submitted, it was found that the electricity connection actually belongs to M/s. Lahoti Udyog, who was giving electricity to all the manufacturing units from whom electricity charges were recovered by M/s. Lahoti Udyog by issuing bills and M/s. Xsis Power System Pvt. Ltd. had not paid for electricity used by all the manufacturers. According to this fact, the contention of the adjudicating authority that the electricity connection is in the name of M/s. XPSPL and under that connection all other units were using the electricity is incorrect and not maintainable.

4.5 As regard the unit namely M/s. Parth Electronics, the learned Commissioner given the finding on the basis that Shri Vinod R Patel, Proprietor of M/s. Parth Electronics was also a part of M/s. Xsis Power System Pvt. Ltd. whereas, Shri Vinod R Patel had been a totally independent person not having any connection or relationship with M/s. Xsis Power System Pvt. Ltd. or any other manufacturer involved in this case. We find that Shri Vinod R Patel also had other business interest and therefore, it was totally incorrect fact that the Commissioner has considered in the adjudication that Shri Vinod R Patel did not have financial strength and that

he was manufacturing goods in the factory of M/s. Xsis Power System Pvt. Ltd.

4.6 As regard M/s. Jay Power Protection Pvt. Ltd., the learned Commissioner has held that the company was discontinued its operation from 31.03.2005 but the fact remains that the documents clearly shows that this manufacturer continued manufacturing and other related activities in the year 2005-06 also and the details of manufacturer's sale, purchase, etc of M/s. Jay Power Production Pvt. Ltd. were detailed in the balance sheet and books of accounts also.

4.7 The adjudicating authority also contended that the Constant Voltage Transformer, Inverter were manufactured by M/s. Xsis Power System Pvt. Ltd., we find that there are evidences which shows that the Constant Voltage Transformer had been manufactured by M/s. Impact Transformers whereas, the products like Inverter and Line Inverter were manufactured by M/s. Parth Electronics. The learned Commissioner also relied upon that a common office premises belongs to Shri Zahir I Laliwala was allowed to be used by other four company/firm by putting their tables and books of accounts. This averment was made by the learned Commissioner on the basis of the statements of various persons. As we already held that the statements are not beyond doubt therefore, the sole reliance on the statements is not legal and correct. It is admitted fact that all the five manufacturers did have their different rooms/galas in the premises of Ramju Ice Factory Compound and therefore, finding that the manufacturing activities were at the factory of M/s. Xsis Power System Pvt. Ltd. only is even beyond the case of the revenue made out in the show cause notice. Without prejudice, we are also of the view that merely if the common office is used by different persons, this cannot be reason for clubbing as held by various judgments.

4.8 The learned Commissioner has heavily relied upon his contention that there was common management and administration of all the five manufacturers which tantamounts to financial flow back. In this regard the appellants have established with evidence that the Director of M/s. Xsis namely Shri Zahir I Laliwala had permanently shifted to Bangalore with his family after communal riots of February, 2002 and hence, he was not even looking after the day to day affairs of M/s. Xsis Power System Pvt. Ltd. and consequently, there was no question of Shri Zahir I Laliwala of managing and controlling the conduct and business affairs of other four manufacturers. The evidence of Shri Zahir I Laliwala having permanently shifted to

Bangalore was also brought on record before the Commissioner and this fact therefore, not even disputed in the adjudication. With this fact the allegation of the department that Shri Zahir I Laliwala was looking after overall affairs of all the five manufacturers is absolutely incorrect and without any basis.

4.9 We find that the most important test involving clubbing of clearance is the financial flow back and this test has to be satisfied to hold that all the company/firm are clubbable. We find that all the five manufacturers are totally different and none of them had any financial dependence of any nature or whatsoever on the other (or with M/s.Xsis). The learned Commissioner could not adduce evidence either by showing any financial records or in the books of account that there is any financial flow back among these five companies/firms. Only because the proprietors/directors of five manufacturing firms belongs to one family or that they were related to one another, the test of mutuality of interest has not been satisfied. The learned Commissioner has held in the impugned order that there was no common control of Shri Shakib M Kagdi on all the firms/companies. Firstly this was not proved beyond doubt secondly this finding does not show financial flow back or any financial transaction inter se. The learned Commissioner also contended that all the five manufacturers were utilising plant and machineries of M/s. Xsis Power System Pvt. Ltd. but this finding is also incorrect in as much as it is found by the investigating officers during investigation that all the five manufacturers had differently demarcated each rooms/galas in one premises located at Ramju Ice Factory Compound and all these rooms/galas had installed therein various machineries, equipments and apparatus in accordance with the requirement of the respective manufacturer. There was no common staff in so far as workers and employees are concerned and only common premises was shared by five manufacturers was the office located at Ellisbridge Shopping Centre but that also belongs to Shri Zahir I Laliwala and not to the company. Only because Shri Zahir I Laliwala of M/s. Xsis allowed his family members to use his premises as their office, the test of financial flow back cannot be satisfied.

4.10 As regard the rent of the premises of all the four manufacturers, they have paid the rent directly to the land lord and it is incorrect to hold that M/s. Xsis Power System Pvt Ltd. had paid rent of all other manufacturers. In view of the above undisputed fact, we find that the department could not establish that all the four units are belonging to M/s. XPSPL and consequently, the value of all these four companies/firms cannot be clubbed

with the clearance value of M/s. XPSPL. The issue of clubbing has come up time and again before various forums wherein, the following view was taken:

- Prabhat Dyes and Chemicals Vs. Collector of Central Excise – 1992 (62) ELT 469 (Tribunal)

Where it was held by the Hon'ble Tribunal that apart from being registered as separate Small Scale Units; they were also being treated as separate entities by Income Tax and Sales Tax authorities and there was no evidence of any flow back of profits between the firms. Even though the loan advanced by one of the units to the other did not involve payment of any interest: which was reflected in the books of accounts of both the firms. Thus, there is no evidence that the two units were in reality owned and controlled by the same person or two units were only a façade to avail of the exemption.

- Swastik Engg. Works Vs. Collector of Central Excise - 1992 (62) ELT 313 (Tribunal)

It is held that SSI Exemption - clubbing of clearances of various units not permissible for reason of commonality or close relationship of partners and sharing of some common facilities unless ownership of one unit by the other or financial or production control or flow back of profit proved.

In view of the above, I find that it was settled that mere commonality of partners is not sufficient for clubbing of clearances. It has to be shown by evidence that there was a flow back of finance between the main units and its subsidiaries. No such evidence has been referred to or discussed apart from merely pointing out that the three units were partnerships in which all the partners were close relatives. In case of Jagjivandas & Co. Vs. Collector of C. Ex., Bombay I reported in 1985 (19) ELT 441 (Tribunal), the Tribunal has considered a similar situation. The Tribunal held that circumstances such as commonness of partners, use of common premises, occasional use of machinery of one firm by the other will not be sufficient to justify the clubbing of clearances or to say that it was case of manufacture for or on behalf of another. It is also noted that the decision of the Tribunal in Jagjivandas & Co., Thane, has since been upheld by the Supreme Court which had dismissed on 2.8.1989 the Civil Appeal No. 4173 of 1986 filed by the Collector of Central Excise, Bombay.

- In the case of Shri A. Rathinam, Prop. of Micheal Match Works Vs. Collector of Central Excise - 1992 (60) ELT 451 it has been held that :-

for SI exemption the clubbing of clearances of eight match factories situated in the same compound and having a common trading agent - on the date of visit by Central Excise Officers, manufacturing activity going on only in one factory and normal equipment in the other seven factories not showing signs of having been used - But all eight factories having separate L-4 Licences:maintaining separate production and clearance record and G 23 registers verified by the departmental officers from time to time. Charge of being related on in affect being only one unit not sustainable.

- In the case of Diamond Engineering & Trading Corpn. Vs. Collector of C. Ex. - 1989 (44) ELT 92, the Tribunal has held as under :

It is held that value of clearances - clubbing of clearances partners of the two firms closely related but one is proprietor concern and the other is partnership concern - Firms having separate C. Ex. licence, thus are legally distinct entities - clearances of both the firms not to be clubbed together.

- The Tribunal in the case of Bhagwandas Kanodia & Ors., Bombay Vs. Collector of C. Ex., Bombay - 1987 (32) ELT 204 (Tribunal) has held as follows:

Manufacture by or on behalf - exemption - clubbing of value of clearances of separate firms unjustified - firms which are separate legal entities not to be treated as single manufacturer and denied exemption unless separate entities only a façade.

- 1986 (25) ELT 90 (Tribunal) in the case of Aroma Apparels, Bombay Vs. Collector of C. Ex. Bombay -

held that manufacture on behalf of - firm not treatable as dummy for another on mere suspicion and surmise and when clear cut evidence lacking - firms established at different points of times owners not related and having separate bank accounts, Sales tax assessments and Income Tax assessment - premises also in separate names - one firm cannot be dummy for another.

- 1990 (16) ET 157 CEGAT, New Delhi - In the case of Pimpri Gases, Pune & Sanghi Gases, Pune Vs. Collr. - held that -

if a Partnership firm which has two partners and they are wife and son of a person who is the proprietor of the another firm and only because they are very close relatives; there is no commonality of financial interest between the two firms. Even the common use of staff and telephone and other facts would not prove that both the production units are one in law. Circumstances, such as sale- purchase of each others' products of Calcium by one unit for the other unit cannot be termed as financial assistance. Hence, the assessments are entitled to the benefit of Notification No. 80/80-CE as amended, wherein it was clarified that as far as common use of staff and telephone is concerned would not go to prove that both the units are one in the eye of law. This issue is already decided in the following cases also :

- *Jawant Sugar Mills Ltd. Meerut Vs. UOI & Ors.*
- *Jagjivandas & Co. (supra) Tribunal.*
- *Shree Packaging Corporation (supra) Tribunal.*

- 1994 (72) ELT 62 (Tribunal) in the case of Prima Control (P) Ltd. Vs. Collector of C. Ex. Pune - held that

SSI exemption - value of clearances - clubbing of holding of shares by common Directors not to make one company a subsidiary of another; especially when both companies are geographically apart without any financial flow back - sufficient evidence not produced by department to show that one company is a dummy unit of another - value of clearances of two companies not to be clubbed – exemption under Notification No. 175/86-CE dtd. 1.3.1986 available.

- 1994 (71) ELT 689 (Tribunal) in case of Alpha Toys Ltd. Vs. Collector of C. Ex., New Delhi - held that

SSI Exemption - clubbing of clearances - "Dummy Unit" – meaning Section 5 of C. Ex. & Salt Act, 1944 - Notifn. No. 175/86 dtd. 1.3.86. SSI Exemption - Clubbing of clearances - Common Managerial control, a few common directors and advancing of interest free loans by main unit to another units not sufficient to make other units as dummies when they are having independent existence and transactions of without profit sharing, management control or money flow back to the main unit - clearances not clubbable Notifn. No. 175/86.

- 1985 (19) ELT 441 (Tribunal) - Jaglivandas & Co. Thane Vs. CCE, Bombay I held that –

Manufacture of goods for or on behalf of innocuous circumstances such as use of common premises; telephone, telegraphic address and commonness of partners etc. do not conclusively establish manufacture for or on behalf of one another - Section 2(f) of the Central Excises and Salt Act, 1944. Against the above referred order, appeal was filed by the Department and the appeal has been dismissed by the Hon'ble Supreme Court reported in 1989 (44) ELT 24A.

- 1994 (70) ELT 273 (Tribunal) in the case of Nikhildeep Cables Pvt. Ltd. Vs. Collector of C. Ex. –

It is mentioned that the special ruling of the Tribunal in the case of M/s Vivomad Labs (P) Ltd. Vs. CCE reported in 1991 (53) ET 152 was upheld by the Hon'ble Supreme Court in Civil Appeal No. 2709-14/92 dtd. 21.9.1992 and the Supreme Court has observed as under :

"The Appellate Tribunal further held that the Units are registered separately under the Income Tax Act and Sales Tax having separate

Central Excise licences and also financed through separate application for loan from financial institutions; the clubbing of clearances of these units is not maintainable in law in the absence of conclusive evidence of financial flow back along them."

- 1987 (32) ELT 94 (Tribunal) in the case of Shree Packaging Corporation, Hyderabad Vs. CCE, Hyd. held that –

Manufacturing on behalf of - Firms whether independent - effect of common storage of raw materials - receipt and utilization of raw materials separately accounted for with reference to each firm common storage not indicative of fact that one firm is dummy of another.

- 1989 (40) ELT 95 (Tribunal) in the case of Shakti Engineering Works Vs. Collector of C. Ex. - held that –

Value of clearances – Two partnership firms manufacturing Tariff item 68 goods, having common partners - clearance not clubbable for determining eligibility for exemption when certificate of registration; partnership deeds; balance sheets and income tax assessment etc. indicative of the firms being two distinct legal entities - Notifn. No. 89/79 dtd. 1.3.79.

- 1989 (43) ELT 327 (Tribunal) in the case of M/s Kinjal Electricals Pvt.Ltd. Vs. Collector C. C. E. - held that

Value of clearances- exemption - Firms having separate legal entities and having no financial flow back between the two - clearances of the two firms not to be clubbed together although proprietor of one is clearly related to the Director of the other - Notifn. No. 83/83.

- 1991 (53) ELT 85 (Tribunal) in the case of International Dyestuff Mig. Co. Vs. C.C.E - held that

value of clearances - SI exemption - eligibility of exemption under Notification No. 71/78 – close relationship between partners of one firm and proprietor of other concern; and use of staff not sufficient to hold that units are one and the same justifying of clubbing of value of clearances.

- 1994 (72) ELT 893 (Tribunal) in the case of Lakshmi Industries Vs. C.C.E - held that

value of clearances - clubbing of – Third partnership created when the value of clearances of other two units only Rs.9 lakhs each - Partnership concern granted C. Ex. Licences - having all manufacturing

equipments and cleared goods under proper gate passes - classification filed by them and approved by department - Monthly RT 12 assessment also periodically assessed by department - financial connection between partnership concern and other two units of appellants not evident - Partnership concern not to be clubbed with clearances of appellant's two units - Notifn. No. 175/86 dtd. 1.3.86 as it then existed.

- 1994 (70) ELT 580 (Tribunal) in the case of LMP Precision Engg. Co.Ltd. Vs. CCE, Baroda - held that –

Stray instances of advances given by one company or firm to another normal transaction when properly reflected in accounts. Director of companies although the same as partners of the two partnership firms but one company not controlling other three units. Clearances of the four manufacturers not to be clubbed - Notifn. No. 175/86 dtd. 1.3.86.

- 1990 (49) ELT 474 (Tribunal) in the case of Pipri Gases Vs. Collector of Central Excise

"Exemption of SI units - value of clearances - close relation between partners of one firm and proprietor of another company, use of staff and telephone not conclusive circumstances to show that both units are one - Business transactions of making payment of one unit through another by third party not be construed as financial assistance - value of clearances of two units not to be clubbed together."

"There are blood relations between proprietor of one firm and the partners of another firm, the use of such common facilities is quite natural. Both these units are registered as small scale units separately having independent L4 licence; independent business account, transactions, sales, purchase etc. This is usual business practice - It cannot be considered as one unit and their value of clearances cannot be clubbed together."

- 1992 (42) E.C.R. 562 (Tribunal) V. Devraj & ors. Vs. Collector of C. Ex.

SI exemption - clubbing - Units receiving separate electricity supply: having separate geographical existence and filing papers etc. separately. Cannot be clubbed - eligible to separate exemption - Notifn. No. 80/80-C. Ex. and 83/83-CE."

- 1993 (67) ELT 172 (Tribunal) Shri Ranga Industries Vs. CCE.

SI exemption - clubbing of clearances - proprietor of a proprietary unit also a partner along with his wife in another unit - clearances of the two units not clubbable despite common use of some staff - two units registered separately with sales tax and income tax authorities - value of clearances not clubbable. CE"

- 1991 (54) ELT 135 (Tribunal) Sahuwals Cylinders Ltd. Vs. Collector of C. Ex.

" SI exemption - Units registered as SI - when the authority issuing the certificate has declared that the unit has obtained SI status - there is no reason why the appellant should be denied the entitlement to the benefit extended to SI units and similar view was taken by Tribunal in the case of Collector of C. Ex.. Madurai Vs. Maharaja Paper Board (P) Ltd., reported in 1986 (23) ELT 484 . clause 4 of Notification No. 175/86-CE makes it a condition that a factory should be registered with the Director of Industries as a ssi and once such a certificate is issued with an emphasis that unit has obtained status of S.S., it should be taken as sufficient fulfillment of the condition to avail the benefit "

- In a judgement rendered by the Hon'ble Rajasthan High Court in case of Renu Tandon reported in 1993 (66) ELT 375 (Raj.), the Hon 'ble High Court has held that

clearances of two units could not be clubbed even if the units were situated at the same premises, they were manufacturing similar products and were having common management, office, labor and common electricity connection in absence of evidenced of common funding and financial flow back between the units. In this case, one unit was owned by the father-in-law and the other by the daughter-in-law and the father-in-law was looking after both the units and still however, the Hon'ble High Court has held that two units could not be treated as one their clearances could not be clubbed.

- In a case between Rang Udyog Vs Collector of Central Excise, Ahmedabad reported in 1996 (83) ELT 648, the Appellate Tribunal has held that

two partnership firms having separate Income Tax and Sales Tax registration and also registered with SI units were two separate manufacturers even though the partners of the firm were related and some of them were common also and there were common workers,

machineries and stock of raw materials whereas only one person was controlling both units. The Appellate Tribunal has held that these factors are not relevant for deciding whether units were separate or not and exemption to both units under small scale exemption scheme was allowed by the Appellate Tribunal.

- In case of Indian Metal Industries Vs. Commissioner, Bhubandeshwar reported in 1999 (108) ELT 593,

the Appellate Tribunal has held that for clubbing of clearances of two units, the real test was, one was a dummy of the other and there was common source of funding as well as financial flow back from one unit to the other. The Appellate Tribunal has also held that even when funding was common, the financial flow back was essential for reaching to a conclusion that one was a dummy of the other Common plants and machineries were held as irrelevant for holding one unit as a dummy of the other in this case.

- In another case of Motor Industries Company Lid. reported in 1999 (111) ELT 163, the Appellate Tribunal has held that

a dummy unit was only a higher labour only receiving wages. It is further held that when units were having their own finances and functioning independently with their own constitution and incorporation, they could not be considered to be a dummy of another because even the managerial control should involve flow back of profit to the principal manufacturer.

- In a case of Process Plant (India) Ltd. Vs. CCE, Bombay reported in 1999 (32) RLT 651, the Appellate Tribunal has once again held that

commonality of interest by way of common management, common directors, supply of entire production by three units to only one unit, purchaser paying advances to three units, etc. were not sufficient factors to treat three units as dummies of the fourth one.

In view of the above catena of judgments and the observation made therein, we find that even in worst scenario than the charges made in the present case by the revenue, the various forums have held that clearances of different units cannot be clubbed and consequently, the exemption to SSI Unit cannot be denied. Following the decisions and the ratio made therein in the above judgement, we are of the view that the value of all four units namely M/s. Impact Transformers, M/s. Index Marketing, M/s. Jay Power Protection Pvt. Ltd. and M/s. Pruthvi Controls cannot be clubbed with the value of M/s. XPSPL and consequently, each company/ firm having its clearance value within the exemption limit provided under notification are eligible for SSI exemption Notification No.8/2002-CE and 8/2003-CE.

4.11 As regard the second question that batteries were stored and removed along with UPS from the factory of M/s. XPSPL and consequential effect of inclusion of value thereof in the assessable value of UPS, we find that the adjudicating authority has heavily relied upon the statements of various persons to arrive at the conclusion that the batteries were stored in the factory of M/s.XPSPL and cleared the same along with UPS. As we already observed above that the witnesses who have given statements have not been examined in terms of Section 9D of the Central Excise Act, 1944 before admitting it as evidence. Merely on the basis of statements it cannot be concluded that the batteries were received, stored and removed along with UPS from the factory of M/s. XPSPL. In some of the cases, witnesses were cross-examined and as an outcome of cross examination it has come on record that except a few batteries that too only for testing UPS, other batteries which were to be sold to the customers who desired the same were not brought nor stored in the factory and such batteries were delivered to the customers directly from the godown whereas, UPS was delivered from the factory of M/s. XPSPL. It is further established on record that the batteries were supplied separately without bringing to the factory and the same was not attached to UPS and hence the batteries were never cleared when UPS was removed from the factory of manufacturer. We find force in the submission of the appellant that the batteries which were stored in the factory at the time of panchnama was batteries for Offline UPS which is inbuilt in the UPS, batteries supplied separately is only in respect of online UPS which were received and stored at the godown located at a few kilometres away from the factory at Bagh-E-Firdosh Shopping Centre. This is

evident from the invoices of supplier of batteries which were addressed to the godown outside the factory of M/s. XPSPL.

4.12 The adjudicating authority has heavily relied upon the seizure of 3768 batteries which were lying in the factory on 16.5.2005 to construe that the appellants were received the batteries in the factory and clearing the same along with UPS. In this regard, it is the submission of the appellant that out of 3768 batteries, 3743 number of batteries were meant for offline UPS as the size of the batteries itself establishes that batteries of 7AH and 9AH power were meant for installing an offline UPS for which there was no dispute whereas, other 25 batteries of higher ampere were kept for testing only because it is on record and accepted by the appellant also that few batteries were kept in the factory for testing of online UPS manufactured therein. The said submission of the appellant has strong force therefore, the learned Commissioner's contention that these 3768 batteries since lying at the factory was made the basis to hold that the appellant were receiving batteries in factory is absolutely incorrect. We find that even during cross examination of the appellant's production manager, he has confirmed the above position. With this fact, we find that the reason for holding that the batteries for online UPS were stored and cleared alongwith UPS by the learned Commissioner is absolutely contrary to the above fact hence, the contention is not acceptable.

4.13 We further observed that Shri Shakeeb M Kagdi in his statement recorded on 9.11.05 has also as regards the batteries lying in the factory on 16.5.2005 i.e. batteries meant for being used in the manufacture of offline UPS. Shri Kagdi has never admitted before the investigating officers or even thereafter that batteries of online UPS were provided from or stored in the factory of M/s. XPSPL. Similarly, the deposition of Shri Pawan Buch was only as regards commercial matters of the appellant company whereas, the fact about manufacturing of UPS in the factory were clarified by the production manager Shri K.Ravichandran, who deposed and also clarified before the Commissioner during his cross examination that there was no storage for batteries in the factory and the appellant company was not supplying batteries from the factory with UPS or Inverters. On the Commissioner's specific query Shri K.Ravichandran also clarified that batteries were supplied along with offline UPS and Inverters and thus it was clarified by the store keeper in charge of production in the appellant's factory also that batteries only for offline UPS were supplied from the factory and not for online UPS.

As regard the batteries supplied with offline UPS there is no dispute as the appellants were including the value of such batteries in the offline UPS. On the appreciation of the above fact supported with various evidences, we find that the batteries were directly supplied from the godown by the appellant company M/s. XPSPL. For this reason the value of batteries was not includible in the assessable value of UPS system.

4.14 We find that in catena of decisions rendered by this Tribunal, it has been conclusively held that when batteries are sold directly from some other premises and the UPS are sold separately without assembling the battery in the system then in such case the value of battery cannot be included in the assessable value of UPS. We also observed the fact available on record in the form of the statements of invoices issued for batteries which clearly shows that the appellant have supplied the batteries separately under separate invoices. This also show that the battery were not cleared from the factory along with UPS. Some of those case laws and relevant paras are reproduced below:-

- Electronics & Controls Power Systems P. Ltd- 2011 (263) ELT 126 (Tri.-Bang.)

"In this appeal filed by the Revenue, the short question to be considered is whether the cost of battery bought out from the local market and cleared as part of UPSS (Uninterrupted Power Supply System) from the Branch Offices/Sales Offices of the respondent-company during the period of dispute (April 2000 to August 2001) was liable to be included in the assessable value of the UPSS. The original authority held that the cost of battery was includible in the assessable value, but the first appellate authority set aside that decision and held to the contra. The Revenue is aggrieved by this decision of the learned Commissioner (Appeals). Upon examination of records, we note that UPSSs without battery were cleared from the factory to "branch offices/sales offices" (so called in the assessee's parlance) on payment of duty on the assessable value of the goods in the form they were cleared from the factory. We further note that, at the branch office/sales office, batteries bought out from the market were clubbed with the above goods and UPSSs with battery were cleared from the premises to the ultimate customers. It is the case of the Revenue that the testing/charging/synchronizing of the battery with the equipment manufactured and cleared from the factory was done at the branch office and expenses thereof were added to the manufacturing expenses in their books of accounts and, therefore, complete UPSSs with battery should be held to have been manufactured and cleared by the respondent. In this view, the respondent should have paid duty on the complete system with battery included. It appears that the appellant has considered the branch office to be an extension of the factory. Learned JCDR has advanced an argument to this effect. He has also claimed support from certain earlier decisions of the Tribunal in the assessee's own cases.

(1) Kerala State Electronics Development Corporation Ltd. v. Collector of Central Excise, Cochin [[1994 \(71\) E.L.T. 508](#) (T)]

(2) Final Order No 879/2010 dated 9.6.2010 in Appeal No E/782/2002 (Electronics and Controls Power Systems Pvt. Ltd. v. CCE, Bangalore) [[2010 \(257\) E.L.T. 578](#) (T)]

(3) CCE, Chennai v Mumeric Electronics Pvt. Ltd. [[2001 \(138\) E.L.T. 1202](#) (Tri-Che)]

In all the cases cited by the JCDR, complete UPS system including battery bought out from the market was cleared from the factory and the cost of battery was held to be includible in the assessable value of the UPSS.

2. Learned JCDR has also shown us copies of a few invoices/bills issued by the respondent from their branch office to various customers. These invoices describe UPSS with battery as one complete commodity and also indicate that trade tax was paid @ 5% on the said commodity. The endeavour of the learned JCDR is to show that the assessee themselves treated battery as an integral and indispensable part of UPSS.

3. Learned counsel for the respondent, at the outset, submits that a decision rendered by this Tribunal in their own case in favour of the Revenue was appealed against. In this connection, he refers to Commissioner of Central Excise, Bangalore v. Electronics & Controls [1998 (27) RLT 816 (CEGAT)]. It is submitted that the civil appeal filed by the assessee against the said decision of the Tribunal has been admitted by the apex court. Learned Counsel has also claimed support from the following decisions.

(1) Siemens Ltd. v CCE [2002 (53) RLT 1096 (T-Mum) = [2002 \(150\) E.L.T. 422](#) (Tribunal)] [Department's appeal against this decision was dismissed by the SC vide [2003 \(158\) E.L.T. A74](#) (S.C.)]

(2) CCE v A.Z. Electronics [[2001 \(134\) E.L.T. 689](#) (T-Mum)]

(3) Supercold Refrigeration Systems Pvt. Ltd. v CCE [2005 (119) ECR 58 (T-Bang) = [2005 \(191\) E.L.T. 379](#) (Tribunal)] [Department's appeal against this decision was dismissed vide [2006 \(193\) E.L.T. A23](#) (S.C.)]

(4) CCE v. Jeetex Engg. Co. [[2001 \(130\) E.L.T. 801](#) (Tri. - Che)]

(5) Goetze (India) Ltd. v. CCE [[2004 \(169\) E.L.T. 274](#) (T-Del)]

Reliance has been placed on the above decisions in support of the counsel's plea that the cost of bought-out components cannot be included in the assessable value of the goods manufactured and cleared from the factory. It is submitted that the case developed by the Revenue in the present appeal is beyond the scope of the show-cause notice wherein it had not been alleged that UPSS was cleared as a complete set with battery from the branch office seemingly reckoned as an extension of factory. It was also not alleged in the show-cause notice that manufacturing activities were undertaken in the branch offices.

4. We note that, in the impugned order, the learned Commissioner (Appeals) found that the bought-out item (battery) never came to the factory and the same was sold from 'depot'. Thus the Commissioner (Appeals) preferred to assess UPSS in the form it was cleared from the factory. The above finding of fact recorded by the learned Commissioner (Appeals) has not been specifically challenged in this appeal.

5. Moreover, the case sought to be made out by the Revenue in this appeal is not forthcoming in the show-cause notice. The show-cause notice nowhere alleged that the branch offices of the respondent were extensions of the factory and that any part of the process of manufacture was undertaken in such premises so that complete UPSS could be held to have been cleared from the factory on payment of lesser amount of duty. The show-cause notice alleged that testing/charging/synchronizing of battery was done in the branch offices and expenses thereof were added to the manufacturing expenses of the company as borne on the books of accounts. Books of accounts are not found among the documents relied upon in the show-

cause notice. No books of accounts have been shown to us by the appellant to support the above allegation. In any case, in the show-cause notice, it is not the case of the Revenue that complete UPSS were cleared in CKD or SKD condition from the factory on the pretext of clearing parts of UPSS. The show-cause notice contains no reference to the commercial invoices issued by the branch offices of the company. On the whole, the case of the Revenue as embodied in the show-cause notice is like a half-baked cake. If the Revenue's case as sought to be developed in the present appeal had been made out in the show-cause notice itself, the appellant would have, perhaps, stood to gain. At present, the respondent's case that they were only trading in battery at their branch offices and hence its value was not to be included in the equipment cleared from the factory, as accepted by the lower appellate authority, seems to be cogent. The crucial finding (vide supra) of the lower appellate authority has not been challenged. Therefore, we are of the view that the earlier decisions cited by the learned JCDR, wherein complete UPSS with battery included was found to have been cleared from the factory, cannot be made applicable to the facts of the present case. Admittedly, in this case, the item cleared from the factory was UPSS without battery. The place of clearance was the factory. There is no allegation to the contra in the show-cause notice. The goods should be assessed in the form it was cleared from the factory. The Tribunal's decisions in other cases of the same assessee, wherein battery was an integral part of the UPSS in the form it was cleared from the factory, cannot be applied to this case. In this connection, the decisions cited by the learned counsel seem to be supportive of our view. The documents (invoices) produced by the learned JCDR are not of any aid to the case of the Revenue as made out in the show-cause notice. In the result, this appeal of the Revenue gets dismissed".

- DB Technologies Pvt. Ltd.-2009 (238) ELT 100 (Tri.-Mumbai)

"4. We find that the Tribunal in its order reported in [2000 \(126\) E.L.T. 1017](#) (final order No. 184/2000-A dated 16-3-2000 in appeal No. E/1395/95-A) has clearly held that the value of batteries is to be added to the assessable value only in cases where the UPS systems were cleared from DBE along with battery. The Commissioner has conducted verification through the Superintendent of Central Excise who has reported categorically as under :-

"The documents have been verified. Nothing has been identified evidencing clearance of batteries along with UPS. However, certain invoices have been identified indicating direct dispatch of batteries from the premises of the suppliers of batteries to the customers to whom M/s. DBE sold UPS.

No Modvat credit was raised by M/s. DBE with reference to batteries so dispatched directly without receiving the goods in the factory of M/s. DBE. Declaration for availing Modvat credit in relation to battery in question was made first time by the assessee only during 2000.

The reference of invoices made in the show cause notices have been found to be exclusive of battery only. The delivery of UPS system has been observed to be made under separate duty paying invoice. The delivery of the batteries was made by the assessee at the option of their customers. The said activities related to transaction of batteries have been stated to be the trading activity of the assessee.

Relevantly, annexure to the show cause notice has specifically made a mention of the fact of direct delivery of batteries from the suppliers to the premises of the customers of the UPS.

In the light of above observations, it appears that no liability for central excise duty is attracted in relation to batteries under the given set of facts."

5. In this view of the matter, when the Revenue does not challenge, and cannot challenge, the verification carried out by its own Superintendent, applying the ratio of the remand order of the Tribunal, we hold that the value of battery cannot be included in the assessable value of UPS system for the reason that it has been verified and found that no UPS systems together with batteries were cleared from DBE. We, therefore, uphold the order dated 27-9-2005 of the Commissioner and reject appeal No. E/3422/06. As regards the second appeal, since no such verification was carried out in the factory of M/s. D.B. Technologies Pvt. Ltd., we set aside the impugned order and remand the case to the adjudicating authority to carry out factual verification as to whether any batteries were cleared from D.B. Technologies Pvt. Ltd. along with UPS systems. If the verification report shows that batteries were cleared along with UPS systems by D.B. Technologies Pvt. Ltd., then it goes without saying that the value of battery will be included in the value of UPS system. Fresh orders shall be passed by the adjudicating authority after extending a reasonable opportunity to the assessee of being heard in their defence. Appeal No. E/2058/03 is thus allowed by way of remand".

- Siemens Limited- 2002 (150) ELT 422 (Tri.-Mumbai)

"3. We have examined the judgments. In the latter cited judgment, the Tribunal had departed from their earlier judgment in the case of *Tata Libert Limited* [[2000 \(121\) E.L.T. 474](#) (T) = 2000 (39) RLT 1006] and had adopted the ratio of the judgment in the case of *C.C.E. v. Jeetex Engineering Limited* [[2000 \(130\) E.L.T. 801](#)]. In the judgment, the Tribunal noticed that the manufacturer had manufactured incomplete UPS and had arranged to supply the batteries as trading activity. The ratio of this judgment squarely applies to the facts of the present case. Shri Umashankar relies upon the Tribunal judgment in the case of *Supra Hi-Tech Electro Equipment (P) Ltd.* [[1997 \(93\) E.L.T. 604](#)] where the value of batteries was held as includible in the value of the UPS. Shri Prakash Shah distinguished this decision on the observation that in that case, the batteries were supplied from the manufacturer's factory along with the UPS system. The learned Departmental Representative also cites judgment reproduced in [1994 \(71\) E.L.T. 508](#) in support of his argument. We find that this was considered by the Tribunal in the cited judgment of *A.Z. Electronics* and was not adopted.

4. In the *Jeetex Engineering Ltd.*'s case the Tribunal had mentioned that the price would not be included where the batteries were not supplied from the manufacturer's factory and were directly installed at the Customers premises. Shri Umashankar stated that such distinction was made only on the ground of commercial expediency and that the result was the same where batteries were supplied from the manufacturer's premises or were supplied to the buyers premises from the other source. We find this argument not acceptable since the Tribunal in the earlier cited judgment had made the decision on this ground.

5. Adopting the Logic of Order No. 1060 of 11-6-2002 referred to above, this appeal is allowed with consequential relief, as per law".

The above decision of the tribunal has been upheld by the Hon'ble Supreme Court as the revenue's civil appeal was dismissed which is reported at Commissioner V/s. Siemens Ltd. reported in 2003 (158) ELT A74 (SC)

- A.Z. Electronics-2001 (134) ELT 689 (Tri.-Mumbai)

"4. We do not find it possible to see how the fact that battery is an essential part of the UPS (Counsel for the respondent does not deny) determined the includability of these batteries in the value of these systems. Excise duty is on manufacture. If a person manufactures incomplete machine apparatus or equipment the value at which these incomplete materials are liable to duty cannot be determined by adding to it prices of parts or components they would be required to make a machine complete. In the decision of the Tribunal relied upon in the appeal, we do not find recorded any dispute that the batteries under consideration were supplied with the UPS. The Bench did not accept the contention of the manufacturer that the cost of these batteries was not includable when they were so supplied. These considerations would not apply when the battery does not even reach the hands of the manufacturer of the UPS, as is contended before us. The correct position in that case would be that the respondent manufactured incomplete UPS and cleared it and arranged to supply, as a trading activity the battery. The decision of the Tribunal is overwhelming in the respondent's favour. The decision of the Tribunal in CCE, Coimbatore v. Jeetex Engineering Ltd., [2001 \(130\) E.L.T. 801](#) cites eight decisions holding in favour. The decision of the Tribunal in CCE v. D.B Electronics Pvt. Ltd., [2000 \(126\) E.L.T. 1017](#) (T) = 2000 (39) RLT 913 is specifically on the issue before us - inclusion of the value of batteries in the value of UPS. The decision of the Tribunal in Tata Libert Ltd. v. CCE, [2000 \(121\) E.L.T. 474](#) (T) = 2000 (39) RLT 1006 is also proceeded on the footing that the batteries were essential part of UPS".

- D.B. Electronics P. Ltd.-2000 (126) ELT 1017 (Tribunal)

"2. We have perused the records and considered the submissions. The allegation that M/s. Vistar Electronics Pvt. Ltd. was related to M/s. D.B. Electronics is obviously not sustainable in view of the share holding pattern itself. Further, it was being managed by Mr. H.V. Joshi and the 2 partners of D.B. Electronics were also removed from its Board of Directors in March, 1991. Therefore, the allegation of relationship between two companies is not sustainable and the demand of duty has to be determined with reference to manufacture and removal from M/s. D.B. Electronics. We, therefore, hold that the value of batteries is to be added to the assessable value only in cases where the UPS was cleared from D.B. Electronics along with battery. The rest of the duty demand which with regard to value of clearances by M/s. Vistar Electronics Pvt. Ltd. is required to be set aside. However, the figures of duty demand in respect of clearance of the battery and UPS System from M/s. D.B. Electronics and sale of UPS System after addition of battery from Vistar Electronics Pvt. Ltd. are not separately available in the records. The case is, therefore, required to be remanded for correct computation of duty demand. It is accordingly, ordered that Jurisdictional Commissioner shall compute

the duty demand in respect of clearances of UPS System along with battery from M/s. D.B. Electronics after including the value of batteries also in the value of UPS System. The demand so computed shall be intimated to M/s. D.B. Electronics and they shall make payment of the same within six weeks of the receipt of such revised duty demand. Appeal is disposed of in these terms. It is also directed that before passing the order of computation of duty the respondent shall be allowed opportunity to submit their case as to the correct amount of duty payable”.

From the consistent view in the above judgments taken by this tribunal and in one of the case the same was upheld by the Hon’ble Supreme Court it became settled law that when the batteries were supplied separately without supplying from the factory along with UPS, value of the same cannot be included in the value of UPS for charging Central Excise Duty.

4.15 There is another issue in this case that if at all it is assumed that the batteries were supplied along with UPS whether the same can be considered as part and parcel of manufacture of UPS and the value in such case should be included or otherwise. In this regard, we find that since as per our above finding, we have concluded that the batteries were cleared from outside without bringing the same in the factory, the value of the batteries is not includible in the assessable value of UPS/Inverter therefore, we do not incline to deal with the legal issue in this regard and the same is left open.

4.16 As regard the judgments relied upon by the revenue, we find that on the issue of clubbing each case needs to be decided on the peculiar facts of that particular case therefore, the case of clubbing cannot be generalized hence, each judgments having independent fact, those judgments cannot be applied in general in every case therefore, in those cases being the facts different from the facts of this case are not applicable. As regard the judgments relied upon by the revenue in case of inclusion of value of batteries in the value of UPS all these judgments are on the fact that the batteries have been cleared along with UPS from the factory of manufacturer whereas, we held above in the present case the batteries were cleared from outside the factory directly and not along with UPS therefore, the judgements relied upon are of no help to revenue.

4.17 As regard appeal nos. E/1436/2009 & E/1437/2009, these appeals are against orders of Commissioner (Appeals) who upheld the confiscation of seized goods and consequential penalties. This confiscation is the result of denial of SSI exemption Notification No.08/2002-CE and 08/2003-CE. Since

we hold that all the five companies/firms are independently entitled for exemption and no duty liability arises, the confiscation and consequently fine and penalties will also not sustain.

4.18 As per our above discussion and findings on both the issues i.e. clubbing of value of four units with M/s. XPSPL and inclusion of value of batteries in the value of UPS, we are of the view that the entire demand is not sustainable. The learned Commissioner has imposed personal penalty on various persons under Rule 26 which are consequential to the confirmation of demand against M/s. XPSPL. Since the entire demand is not sustained, the consequential penalties on the persons shall also not sustain.

05. Accordingly, the impugned orders are set aside. All the appeals are allowed with consequential relief, if any, in accordance with law.

(Pronounced in the open court on 03.08.2022)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)