

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

REGIONAL BENCH- COURT NO. 01

Excise Appeal No. 11128 of 2018

(Arising out of OIA-AHM-EXCUS-001-APP-294-295-2017-18 Dated- 08/02/2018 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-AHMEDABAD)

Maxocrete Equipments

(now Known As M/s. Macons Equipments),
37/c,phase-i, Gidc, Vatva, AHMEDABAD,
GUJARAT

.....Appellant

VERSUS

CGST & Central Excise Ahmedabad South

Office of the Commissioner of CGST and Central
Excise Ahmedabd South, 7th Floor, GST Bhawan, Near
Polytechnic, Ambawadi, Ahmedabad, Gujarat-380015

.....Respondent

WITH

Excise Appeal No. 11129 of 2018

(Arising out of OIA-AHM-EXCUS-001-APP-294-295-2017-18 Dated- 08/02/2018 passed by Principle Commissioner Customs, Excise and Service Tax-AHMEDABAD)

Hiteshbhai R Surelia

Ex Partner M/S. Maxocrete Equipments
(Now Known As M/S. Macons Equipments),
37/C,Phase-I, Gidc, Vatva, Ahmedabad
Gujarat

.....Appellant

VERSUS

C.C.E.-Ahmedabad-i

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

.....Respondent

APPEARANCE:

Shri. Devashish K Trivedi, Advocate for the Appellant
Shri. Rajesh K Agarwal, Superintendent (AR) for the Respondent

CORAM: HON'BLE MR. SOMESH ARORA, MEMBER (JUDICIAL)

Final Order No. 10122-10123 /2025

DATE OF HEARING:05.02.2025
DATE OF DECISION:14.02.2025

The appellant herein M/s Maxocrete Equipments (Now known as M/s Macons Equipments having its address at Plot No. 37/C, Phase-I, GIDC, Vatva, Ahmedabad was engaged in manufacture of Kerb Paver (T1 8430.00), Road Making Machine (TI 8474.10), Concrete Mixture Plant (11 8474.10), Mobile Concrete Mixture (TI 8474.10), Spares of Machine no. 1 (TI 8431.00), Spares of Machine nos. 2 to 4 (TI 8474.90). Same is evident from Central Excise Registration certificate of the appellant. Following a visit by the Central Excise Officer, Show-cause Notice dated 16.10.2007 came to be issued on the appellant. Central Excise duty along with interest was demanded and penalty was proposed to be imposed. It was alleged that Central Excise duty in regard to whatever clearances made by another firm viz. M/s Macons Engineers situated at plot no. 37/C/A, Phase-I, GIDC, Vatva, Ahmedabad was required to be demanded from the appellant ie. M/s Maxocrete Equipments. Plot no. 37/C was registered factory premise of M/s Maxocrete Equipments. Sub-plot No. 37/C/A was given on rent to another firm viz. M/s Macons Engineers. As per the appellants said another firm used to manufacture different goods viz. Stationery Concrete Batching Mixing Plant (TI 8474.10). Mobile Concrete Batching Mixing Plant (TI 8474.10), Spares of Stationery Concrete Batching Mixing Plant (T1 8474.90) and Spares of Mobile Concrete Batching Mixing Plant (11 8474.90). Demand was made with regard to the goods cleared by M/s Macons Engineers under their Central Excise Invoices from the appellant i.e. M/s Maxocrete Equipments. M/s Macons Engineers was not issued any Show-cause Notice nor it was even made a party to the Show-cause Notice issued to M/s Maxocrete Equipments. Appellants further state that M/s Maxocrete Equipments is a partnership firm of Nine (09) different partners.. Whereas M/s Macons Engineers is a proprietorship firm of Mr. Ramnikbhai Surelia. Shri. Ramnikbhai Surelia proprietor of appellant is 4 not a partner in Mis Maxocrete Equipments. Thus, two units are totally separate. Appellant (M/& Maxocrete Equipments) had given a sub-plot no, 37/C A out of plot no. 37/C on lease (rent) to M/s Macons Engineers vide rent agreement dated

21.06.2023. During the period in dispute, M/s Maxocrete Equipments was registered under the Central Excise whereas M/s Macons Engineers was not registered. Subsequently, M/s Macons Engineers was shifted to another premises, where it was separately registered under Central Excise. After investigations, Show-cause Notice was issued demanding duty in regard to the clearances made by M/s Macons Engineers that to from M/s Maxocrete Equipments.

2. M/s Macons Engineers is a proprietorship firm of Mr. Ramniklal Narandas Surelia and was separately registered as a manufacturer. It was registered with the District Industries Centre, Gujarat Sales Tax Department, Central Sales Tax Department, Income Tax Department, etc. Copies of various certificates are part the appeal memorandum Likewise, the factory of the appellant was separately registered with the Central Excise Department. They were two separate units. Demand with regard to the goods manufactured and cleared by one unit cannot as per the appellants be made from another unit, as per the appellant. From the panchnama dated 27.07.2006; it is clear that Central Excise duty demand of Rs.27,97,106/- is calculated on the basis of the clearances effected under invoices of M/s Macons Engineers.

GROUND OF APPEAL

3. The appellants on the basis of facts made the following grounds:-

3.1 The demand is not sustainable because at the outset, it is not alleged that the clearance of M/s Macons Engineers are required to be clubbed with the clearances of M/s Maxocrete Equipments (M/s Macons Equipments). Likewise, it is not alleged that M/s Macons Engineers was a dummy unit. Despite this without showing any rhyme and reasons, demand in respect of clearances of M/s Macons Engineers is proposed to be made against M/s Maxocrete Equipments. Same is not sustainable. Without prejudice to the same, it is submitted that even if it is assumed that the case of the

department is that M/s Macons Engineers is a dummy unit and therefore, the duty with regard to the clearances made by M/s Macons Engineers is required to be made from M/s Maxocrete Equipments, even in that case, it is a settled law that unless Show-cause Notice is issued to the alleged dummy unit, all proceedings initiated against the principal unit would be vitiated. Said submission finds support from following judgements:

- Pap Flon Engineering Co. Pvt. Ltd. versus Commr. of C.Ex., Ahmedabad-1 reported at 2022 (381) E.L.T. 500 (Tri. Ahmd.)
- Poly Resins versus Commissioner of Central Excise, Chennai-1 reported at 2003 (161) E.L.T. 1136 (Tri. Chennai)
- Commissioner versus Sapna Engineering reported at 2018 (360) ELT A303(Bom.)
- Sapna Engineering versus Commissioner of Central Excise, Mumbai reported at 2018 (360) ELT 1019 (Tri. - Mumbai)
- KR Balchandran versus Commissioner of Central Excise. Coimbatore reported at 2003 (151) ELT 68 (Tri. - Chennai)

3.2 From the aforesaid judgements, it would be found that whether it is a case of clubbing of clearances of alleged dummy unit with the clearances of principal unit or demanding duty in regard to the clearances of alleged dummy unit from the principal unit, Show-cause Notice must be issued to the alleged dummy unit. Unless it is done, the proceedings would vitiate. It is also held that even marking a copy of the Show-cause Notice is not sufficient. The dummy unit must be called upon to show cause as to why it must not be declared a dummy unit. In the present case, none of these are done. Therefore, the appeal deserves to be allowed and the impugned order deserves to be quashed and set aside.

3.3 Further, reliance is placed on the statement of the proprietor of the appellant wherein he is said to have stated that only one unit existed in the registered factory premises of appellant. It is submitted that the same is not correct. The aforesaid documentary evidences as well as the panchnama

drawn by the department itself speaks volume about the fact that M/s Macons Engineers were a separate unit and that clearances were made by the said separate unit. The very case of the department itself is that the clearances made by the M/s Macons Engineers were made under separate invoice against separate purchase order issued to M/s Macons Engineers. Copies of various invoices of M/s Macons Engineers along with copies of purchased order issued by various buyers of cleared goods which were also seized during the course of investigation. It is submitted that it is a settled law that documentary evidence prevails over oral evidence. Said submission finds support from the following judgement:

- R.P. Industries versus Collector of Customs, Ahmedabad reported at 1996 (82) ELT 129 (Tribunal)

3.4 Lastly, it is submitted that in the first round. Ld. Commissioner (Appeals) had not decided the appeal of the appellant herein on merits. It had only decided the aspect of Cum-Tax Value. Therefore, Hon'ble Tribunal had remanded the matter. Ld. Commissioner (Appeals) was directed to decide whether it can go into the merits or otherwise. Ld. Commissioner (Appeals) has, dismissed the appeal of the appellant herein on merits vide the impugned order. No appeal is filed by the department against that portion of the impugned order. Therefore, as it stands today, the Hon'ble Can Tribunal can decide the appeal on the merits mentioned as above.

4. The learned AR on the other hand through synopsis and arguments relies upon the findings given by the lower authorities and states that the plot of M/s. Maxocrete Equipments given by Gujarat Industrial Development Authority under statutory rules could not have been let out to M/S. Macons Equipments and that the registration of premises was shown to be that of M/S. Macons Equipments was part and partial of premises of the appellant as per the flow chart submitted by the appellant while taking Central Excise registration. Further, he relies upon the various admissions as contained in

the finding of Commissioner (Appeals) in the impugned order, which are as follows:-

"3.1 The only defence M/s. Maxocrete Equipments has put forth is a ples of giving them cum-duty benefit on the sales effected on the invoices issued in the name and style of M/s. Macons Engineers which is not physically existing. Since the sale invoices have been issued in the name of an admitted non-existent firm which is fictitious the clearances have to be considered as clandestine clearances and the entire effort is to be considered as an effort to deliberately remain within the SSI exemption limit by suppressing the value of clearances. Benefit of the decisions of Maruti Udyog Ltd. [2002(141) ELT 3 (S.C.)] will not assist the notices to get the benefit of cum-duty price and/or penalty. The apex court's decision in the case of M/s. Amrit Agro Industries Ltd. Vis. Commissioner of C.Ex., Ghaziabad reported in 2007 (210) ELT 183 (S.C.) would be applicable in this case on the issue of chargibility of cum-duty price on clandestine clearances. The plea of cum-duty price is accordingly rejected.

3.2 The unit has relied on the decision in the case of M/s. Escorts JCB Ltd. 200 (118) ELT 650 (T) to emphasize their point that discretion should be exercised while imposing penalty under Section 11AC of the CEA, 1944 and that it is not mandatory to impose penalty equivalent to the duty amount. I do not agree with the plea made by the unit. It has been held by the larger bench of the Tribunal in the case of CCE V/s. M/s. ILPEA PARAMOUNT (P) LTD. 2007 (213) ELT 500 (Tri-LB) that the interpretation that only maximum penalty is indicated in Section 11AC & discretion is given to impose any lesser penalty thereunder is incorrect. Accordingly, penalty equivalent to the amount of duty has to be imposed under the provisions of Section 11AC of the Act.

3.3 The partner, Shri Harishbhai Surelia, partner of M/s. Maxocrete Equipments has pleaded reliance on the Tribunal decisions in the case of (1) Shree Tirumala Udyog and others V/s. C.C., Banglore reported in 1998 (77) ECR 169 (1), (2) Harish Dying & Printing V/s. Commissioner, Central Excise, Surat-I reported in 2001 (138) ELT 772 (Tri-Mum) and (3) B.C. Sharma V/s. CCE, Jaipur reported in 2000 (122) ELT 158 (T) to plead that separate penalty under the rules is not merited on the partner and consequently no penalty under Rule 26 of Central Excise Rules, 2002 as proposed on him is called for, more so, when penalty provision are invoked under Section 11AC of the Central Excise Act, 1944 on the partnership firm. No further plea was made on his behalf at the hearing. Following the larger bench decision in the case of M/s. Gopal Industries Ltd. V/s. CCE 2007 (214) ELT 19 (T) Tribunal, no merit

is found in the plea that no penalty can be placed on the partner when partnership firm has been penalized."

5. The point of emphasis of the AR was that it was not actually the case of the clubbing as the appellant was trying to make out but was rather a case based on various evidences as have been brought on record by the department to show that the clearances indicated in the name of Macons were actually the clearances of appellant only and therefore were required to suffer duty as has been upheld along with interest and penalty by the Commissioner (Appeals).

Findings:-

6. This Court finds that the appellants unit was granted Central Excise Registration on 31.02.2001 for Plot No. 37/C, Phase-I DIDC Estate Vatva. It also finds that on 21st June, 2003, the appellant through a documented rent agreement let out a portion of the Plot No. 37/C/A for factory to M/s Macons Engineers under which agreement, apart from shed, certain part of machineries as has been mentioned in Clause 1 were also let out to the lessee unit, under rent and both the shed as well as plant and machineries were separately charged to rent. It was also mentioned that the electricity expenditure will be shared in proportion to their annual turnover. The agreement also indicated how the telephone expenditure shall be shared. Agreement also indicated how various common facilities and services shall be shared between the parties. On the basis of such agreement as an annexure de-marketed areas were also indicated. M/s Macons Engineers started commencement of production on 02.08.2003 and were granted licence registration and licence by District Industry Centre on 06.04.2004 as a tiny unit. On 27.06.2003 registration certificate was also granted to M/s Macons Engineers by Sales Tax Officer of unit 21 of Ahmedabad. Further, Sales Tax Department also on 25.07.2003 certified the plant and machinery or its parts which were available in the certified unit of M/s Macons Engineers. M/s Macons Engineers was also granted a PAN Card Registration

Bearing No. AAMFM 1572F in ITO wARD 6(4) Ahmedabad. This Court find that Vide Order No. A/10176-10177/2017 dated 24.01.2007 CESTAT remitted back the matter to the Commissioner (Appeals) with the following direction:

"Therefore in our opinion, matter needs to be remitted the Learned Commissioner (Appeals) to record the finding whether the appellant could be allowed to raise the said point of clubbing of both units on merit, and if so, consider on merit accordingly. All issues are kept open, the appeals are allowed by way or remand".

In this context pursuant to the above direction of the Hon'ble Tribunal, the Commissioner (Appeals) passed the following order (extracted below):

"However, rather than contesting, the appellant consequent to paying the entire amount demanded in the notice, requested only for cum duty benefit. Since the appellant had never questioned the clubbing of the clearances of M/s Macon with his own clearances, this plea raised before Commissioner(Appeals) assumes the colour of an additional evidence and therefore in terms of Rule 5, I cannot permit raising of additional grounds before the first appellate authority, more so since the conditions stipulated under Rule 5, supra does not stand fulfilled. Hence, in terms of the directions of the Hon'ble Tribunal directing me to record my findings on whether the appellant could be allowed to raise the said point of clubbing of both units on merit. I hold that the appellant cannot be allowed to raise the said point since while raising the said plea/additional ground, he has failed to fulfill the condition enumerated under Rule 5, supra.

"8. However, after having said this, I would still like to consider the contention because of two reasons, [a]as in the said order, the Hon'ble Tribunal has kept all the issues open and [b] to ensure that there is no miscarriage of justice. Considering the first contention, and the plea raised before me that M/s. Macons was a separate entity which had its own DIC certificate, CST registration, separate electricity connection, issued separate invoices; that the investigation with the buyers revealed that they purchased the goods from M/s. Macons; that there were independent bills of purchase of machinery by M/s. Macons; that the Chartered Accountant had certified purchase of raw materials and sale by M/s. Macons. All these arguments fail while examining only one basic fact ie. of registration. The premises shown as M/s. Macons, was part and parcel of the premises of the appellant [M/s. Maxocrete Equipment) as per the floor plan submitted by the appellant while taking Central Excise registration. This was never changed by the appellant while renting out part of the premises to M/s. Macons Engineer. Even otherwise, legally the appellant could not have sub let the premises in terms of GIDA rules. Further, the appellant has further harped that M/s. Macon had its own DIC certificate, CST registration, IEC certificate, separate electricity connection. I am afraid this argument would not help the appellant's case since none of agencies/department giving the aforementioned certificate, conduct verification of the premise, before issuing the certificates, as is done in the case of Central Excise

registration. Had the appellant made changes in his registration certificate by changing the floor plan, then this argument of separate units, would have appeared legitimate. Since that was not the case, I do not find the plea to be true. Even otherwise, the admission of the partner of the appellant that there was no such unit as M/s. Macon in existence; that the only unit that existed in the premises was M/s. Maxocrete Equipments, that M/s. Macons was a proprietary concern of his father Shri Ramnikbhai Surelia and actually there was no physical existence of M/s. Macons; that the entire plot 37/C was utilized by M/s. Maxocrete Equipments only. I find has never been retracted. The contention of the appellant that M/s. Macons was carrying out activities at the relevant point of time at the premises in question and the departmental officers have forced Mr. Hitesh to make statement to the effect that M/s. Macons was not existence as he was threatened with arrest and dire consequences, is not true more so because if it was he could very well have filed his retraction. Further, I find that Shri Hitesh, partner of the appellant, appeared on behalf of his father to give statement, which would not have been the case had the statement recorded earlier was under duress. It is also worth noting that Shri Hitesh Surelia, reiterated the same facts in his statement dated 27.7.2006 and 11.6.2007, clearly showing that the contention now made is nothing but an afterthought. Further, M/s. Macon as is evident from the facts, had not only taken the premises on rent but also the machinery of the appellant on rent thereby nullifying the averment that they had their own machinery. In-fact even the customers of M/s. Macon, stated that they were dealing only with Shri Hitesh even for M/s. Macons, clearly showing that this firm was created basically to stay within the SSI exemption limit and to evade Central Excise duty. Therefore, though legally 1 was not bound to consider the additional ground on clubbing, in the interest of justice, I have considered it and conclude that the averments raised in this regard are legally not tenable, as they belie facts, and appear to be an afterthought".

From the observation made by the learned Commissioner (Appeals) particularly the following:

"Since, the appellant had never questioned the clubbing of the clearances of M/s Macons with his own clearances, this plea raised upon before Commissioner (Appeals) assumes the colour of an the additional evidence and therefore in terms of Rule 5, I cannot permit raising of additional grounds before the first appellate authority, more so since, the conditions stipulated under Rule 5 (supra) does not stands fulfilled".

7. Thus it is clear that what the department had made out was nothing but a case of clubbing only and same position is admitted by the Commissioner (Appeals) though considering which was an additional ground apart from cum-duty-tax proposition, he did not allow the same. It is also clear from para 7 of the show cause notice reproduced below:

"7. From the facts narrated and depositions made above it appears that M/s Maxocrete Equipments, Plot No 37/C, Phase-1, GIDC, Vatva, Ahmedabad have deliberately and knowingly floated another firm in the name and style of M/s Macons Engineers in order to claim SSI exemption and evaded payment of central excise duty. Ground plan submitted during the course of panchnama and physical verification made thereof clearly shows that the entire factory was the registered premises of M/s Maxocrete Equipments. Further, from the recovery of sales invoices issued in the name and style of M/s Macons Engineers, 37/C/A, Phase-1, GIDC, Vatva, Ahmedabad during the course of panchnama it appears that the goods manufactured on the said address in fact, was the production of M/s Maxocrete Equipments and being a registered central excise premise no any other unit could operate from the same premises. Therefore, it appears that M/s Maxocrete Equipments have floated another firm in the name and style of M/s Macons Engineers having no physical existence. For this purpose, they have simply assigned their own plot number, created documents like rent agreement for use of infrastructures facilities available and plant & machineries installed in the factory premises, prepared and issued sales invoices in the name and style of M/s Macons Engineers and maintained all required records etc. As such, it appears that M/s Maxocrete Equipments have suppressed the actual production from the department. Shri Hiteshbhai R. Surelia in his statement dated 27.07.06 has very categorically admitted that there was no such unit in existence in the name and style of M/s Macons Equipments and the entire Plot No. 37/C was the factory premises of M/s Maxocrete Equipments only. Further Shri Hiteshbhai has also confirmed that M/s Manufactured by M/s Maxocrete Equipments without payment of duty".

7.1 That the unit of M/s Macons Engineers was considered as a dummy unit by the Central Excise authorities as is clear from the above para and therefore the documented clearances of M/s. Mecons Engineers cleared from the premises 37-C/A were considered to be that of Ms/ Maxocrete Equipments i.e. the present appellant.

8. The appellants in the instant case has sought to rely on the various case laws as cited above (para 3.1 of this order refers) in their submissions that the show cause notice if not issued to alleged dummy unit, all proceedings initiated against the principal unit would be vitiated. The above said proposition is a question of trite law emanating from above cited rulings which can be raised at any time. Therefore, the Learned Commissioner (Appeals) has clearly erred in denying them the benefit of legal proportion as indicated by appellants which mostly developed later. As things stand today, it is fairly well settled that the show cause notice is required to be issued

both to Principal unit as well as alleged dummy unit. Same having been done by the department, the case against principal unit cannot stand. It is also true that various documentary evidences of the other departments/ agencies indicate that the unit of M/s. Mecons was existing at the relevant time and was duly certified by various government agencies. The violation of GIDC agreement, if at all exists is a matter between GIDC and the appellants. Apart from, the above proposition additionally the overwhelming evidence indicates that M/s Macons Engineers was a unit in existence duly documented by various agencies and statement under Section 14 if any to the contrary cannot be given precedence over such documentary evidence. Therefore, on both the above counts, the demand against the Principal unit cannot sustain, in the light of case law as its stands today.

9. In view of the foregoing, the order of Commissioner (Appeals) is set aside and appeal is allowed with consequential relief.

(Pronounced in the open court on 14.02.2025)

(SOMESH ARORA)
MEMBER (JUDICIAL)

Prachi