CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD

REGIONAL BENCH – COURT NO.I

Excise Restoration of Appeal Application No.70392 of 2019
(On behalf of the Appellant)
In
Excise Appeal No.50043 of 2016

(Arising out of Order-in-Original No.08/Commr/Meerut/2015 dated 26/03/2015 passed by Commissioner, Customs, Central Excise & Service Tax, Meerut)

M/s R.K. Industries **.....Appellant**

(Opposite aupur Road, Village Manota,
Modinagar)

VERSUS

The Commissioner of Central Excise **.....Respondent**

(Commissioner Customs, Central Excise
& Service Tax, Meerut, U.P.)

WITH

Excise Restoration of Appeal Application No.70391 of 2019
(On behalf of the Appellant)
In
Excise Appeal No.53082 of 2015

(Arising out of Order-in-Original No.08/Commr./Meerut/2015 dated 26/03/2015 passed by Commissioner, Customs, Central Excise & Service Tax, Meerut)

Shri Durvesh Kumar **.....Appellant**

(Opp.- Vishal Dharam Kanta, Near Modi Bagh,
Modinagar)

VERSUS

Commissioner of Central Excise **.....Respondent**

(Commissioner Customs, Central Excise
& Service Tax, Meerut, U.P.)

AND

Excise Restoration of Appeal Application No.70390 of 2019
(On behalf of the Appellant)
In
Excise Appeal No.53083 of 2015

(Arising out of Order-in-Original No.08/Commr/Meerut/2015 dated 26/03/2015 passed by Commissioner, Customs, Central Excise & Service Tax, Meerut)

Shri Ashok Arora **.....Appellant**

(Opp.- Vishal Dharam Kanta, Near Modi Bagh,
Modinagar)

VERSUS

Commissioner of Central Excise, **.....Respondent**

(Commissioner Customs, Central Excise
& Service Tax, Meerut, U.P.)

AND

Excise Restoration of Appeal Application No.70389 of 2019
(On behalf of the Appellant)
In
Excise Appeal No.53084 of 2015

(Arising out of Order-in-Original No.08/Commr/Meerut/2015 dated 26/03/2015 passed by Commissioner, Customs, Central Excise & Service Tax, Meerut)

Shri Shekhar Raghuvanshi **.....Appellant**

(Opp.- Vishal Dharam Kanta, Near Modi Bagh,
Modinagar)

VERSUS

Commissioner of Central Excise **.....Respondent**

(Commissioner Customs, Central Excise
& Service Tax, Meerut, U.P.)

AND

Excise Restoration of Appeal Application No.70393 of 2019
(On behalf of the Appellant)
In
Excise Appeal No.53117 of 2015

(Arising out of Order-in-Original No.08/Commr/Meerut/2015 dated 26/03/2015 passed by Commissioner, Customs, Central Excise & Service Tax, Meerut)

Shri Shailender Raghuvanshi Partner **.....Appellant**

(Opp.- Vishal Dharam Kanta, Near Modi Bagh,
Modinagar)

VERSUS

Commissioner of Central Excise **.....Respondent**

(Commissioner Customs, Central Excise
& Service Tax, Meerut, U.P.)

APPEARANCE:

A Letter on Record for Appellant
Shri Anupam Kumar Tiwari, Authorized Representative for Respondent

CORAM :
Hon'ble Mrs. ARCHANA WADHWA, MEMBER (JUDICIAL)
Hon'ble Mr. ANIL G. SHAKKARWAR, MEMBER (TECHNICAL)

MISCELLANEOUS ORDER NO. 70013-70017/2020

FINAL ORDER NO. 70054-70058/2020

DATE OF HEARING: 27 November, 2019
DATE OF DECISION: 27 November, 2019

ARCHANA WADHWA

All the applications are for restoration of appeals dismissed vide Final Order No.72178-72182 of 2018 dated 11 September, 2018 for non-prosecution.

2. The appellants have explained in the application that they did not receive the notice of hearing and as such could not cause appearance on the said date. We note that the appellants are absent today also. Where as they should have been alert to cause appearance today. However, in the interest of justice, we recall the order of dismissal and allow the application and restore the appeals to their original number and proceed to decide the appeal inasmuch as a short issue covered by the precedent decision of the Tribunal in the same assessee's case is involved.

3. The Revenue in the present appeal have sought to club the clearances to M/s R.K. Industries, which was earlier known as Aar Kay Ispat by clubbing its clearances with various other units and subsequently denying the benefit of SSI Exemption. The period involved in the present appeal is December 2011 to August 2012 and demand of duty confirmed is to the tune of 16,493/-. Further, penalties of Rs.2,000/- each stands imposed on the other appellants.

4. We find that the issue of clubbing of clearances between various units including the present appellant which was earlier known as Aar Kay Ispat was considered by the Tribunal and vide Final Order No.72091-72098/2018 dated 24 July, 2018, the clubbing was set aside by observing as under:-

> *5. We find in the present case that the individual manufacturing appellants have independent identities since the revenue could not establish that their books of accounts are common, that their bank accounts are common, that their registration with Income Tax, Sales Tax are common and that there is common funding and that there is mutuality of interest and that there is financial flow back and that the units which were held to be dummy did not have any manufacturing facility. In the absence of any such evidence, we hold that the manufacturer units are independent units and therefore, their clearances could not be clubbed together. We, therefore, hold that denial of benefit of SSI Exemption to the manufacturer appellants is not sustainable and therefore, demands confirmed against them are not sustainable.*

5. Inasmuch as the issue stands covered between the same parties for the earlier period, we set aside the impugned order and allow all the appeals with consequential relief to the appellants.

6. Miscellaneous application also gets disposed of.

(Dictated and Pronounced in open Court)

Sd/-
(Archana Wadhwa)
Member (Judicial)

Sd/-
(Anil G. Shakkarwar)
Member (Technical)

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