IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

REGIONAL BENCH : ALLAHABAD
COURT No. I
CROSS Application Nos. E/CROSS/2230, 2229, 2231 & 2232/2012
APPEAL Nos. E/1165-1168/2012-EX[DB]

(Arising out of Order-in-Appeal No.19, 20, 21 & 22-CE/GZB/2012 dated 31/01/2012 passed by Commissioner (Appeals), Customs, Central Excise & Service Tax, Ghaziabad)

Commissioner of Central Excise, Ghaziabad **Appellants**

Vs.

M/s Prakash Ispat Udyog Pvt. Ltd.,

(In Appeal No. E/1165/2012)

M/s Saraswati Steels,

(In Appeal No. E/1166/2012)

Shri Praveen Bansal &

(In Appeal No. E/1167/2012)

Shri R. P. Bansal

(In Appeal No. E/1168/2012) **Respondents**

Appearance:

Shri Gyanendra Kumar Tripathi (Asstt. Commr.) AR for Appellant
Absent for Respondent

CORAM:

Hon'ble Mrs. Archana Wadhwa, Member (Judicial)
Hon'ble Mr. Anil G. Shakkarwar, Member (Technical)

Date of Hearing : 27/06/2018
Date of Decision : 27/06/2018

FINAL ORDER NOs. – 71256-71259/2018

Per: Archana Wadhwa

All the four appeals filed by the Revenue against the order of Commissioner (Appeals) are being disposed of by a common order as they are out of the same impugned order passed by the Appellate Authority. As nobody appeared for the respondent, we have heard learned A.R. and have gone through the impugned order.

2. The issue involved is as to whether two units Prakash Ispat Udyog Pvt. Ltd. which is a private limited company and M/s Sarawati Steels a partnership firm are dummy of each other and their value of clearances are required to be clubbed for the purposes of small scale exemption Notification No.08/03-CE dated 01/03/2003. The Original Adjudicating Authority had confirmed the demand of Rs.24,26,337/- along with imposition of penalties on various respondents. However on appeals, Commissioner (Appeals) passed detailed order and based upon the evidences available on record as also declaration of law by the various authorities, held that inasmuch as two units were completely independent units with self-sufficient machinery to manufacture their final product, the clubbing of clearances of the same is not justified. He referred to various precedent decisions. He further observed that inasmuch as one of the unit is a partnership firm and the other private limited company, their clearances cannot be clubbed.

3. Revenue in their appeal has only submitted that inasmuch as there was statement of Shri Praveen Bansal and his partner Shri Sunil Bansal that their father Shri R. P. Bansal was looking after the work of both the units and inasmuch as a partner and the directors come from the same family, their clearances are required to be clubbed. Revenue has further contended that two units were being looked after and controlled by Shri Praveen Bansal only. As such the clearances are to be clubbed.

4. We find no merits in the contention of Revenue. The Appellate Authority has clearly observed that both the units were independent units and were duly registered with the various departments like Sales Tax, Income Tax and other Government departments. We also note that there is no allegation much less any evidence on record to show that the clearance of one unit was being done under the guise of the name of the other unit. Admittedly family members can float separate units for the manufacture of their various products and as long as they are independent and self-sufficient units, their clearances cannot be clubbed, inasmuch as small scale exemption Notification is independently available to each and every unit. Only in case where either of the two units

are not fully equipped to manufacture the final product independently or there is financially intertwining between the two units, it has to be held that the two units are actually one and the same and the clearances are being bifurcated in the name of the two units. As such no evidence being presented in the present case, we find no justifiable reason to interfere in the impugned order of Commissioner (Appeals). Accordingly all the appeals filed by Revenue are rejected. Cross Objections also get disposed of.

(Dictated & Pronounced in Court)

Sd/-	**Sd/-**
(Anil G. Shakkarwar)	**(Archana Wadhwa)**
Member (Technical)	**Member (Judicial)**

Lks