

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD**

REGIONAL BENCH - COURT NO.I

Excise Appeal No.71153 of 2016

(Arising out of Order-in-Original No.34/Comm/GZB/2015-16 dated 29/02/2016 passed by Commissioner of Customs, Central Excise & Service Tax, Ghaziabad)

M/s Anand Machienry,
(67/3,20 Foota Road, Hindon Vihar,
Meerut Road, Ghaziabad)

.....Appellant-I

VERSUS

Commissioner of Central Excise, GhaziabadRespondent

(CGO Complex-II, Kamla Nehru Nagar, Ghaziabad)

WITH

- I. Excise Appeal No.71157 of 2016 (M/s M.G. Construction Equipments)-Appellant-II;**
- II. Excise Appeal No.71155 of 2016 (M/s Anand Machinery Centre)-Appellant-III;**
- III. Excise Appeal No.71154 of 2016 (M/s M.G. Constructions Machinery)-Appellant-IV;**
- IV. Excise Appeal No.71156 of 2016 (Shri Ganga Ram Sahu, Proprietor)-Appellant-V;**
- V. Excise Appeal No.71158 of 2016 (M/s Sanjay Bajaj, Proprietor)-Appellant-VI;**

APPEARANCE:

Shri Rajesh Chhibber, Advocate for the Appellants
Smt Chitra Srivastava Authorised Representative for the Respondent

**CORAM: HON'BLE MR. P.K. CHOUDHARY, MEMBER (JUDICIAL)
HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)**

FINAL ORDER NOs.70041-70046/2025

DATE OF HEARING : 14 August, 2024
DATE OF PRONOUNCEMENT : 31 January, 2025

SANJIV SRIVASTAVA:

This appeal is directed against Order-in-Original No.34/Comm/GZB/2015-16 dated 29/02/2016 passed by Commissioner of Customs, Central Excise & Service Tax, Ghaziabad. By the impugned order following has been held:-

"Order

- i. *I deny the exemption claimed by M/s.Anand Machinery located at 67/3, 20 Foota Road, Hindon Vihar, Delhi Meerut Road, Ghaziabad 201001, M/s.Anand Machinery Centre located at 653, 20 Foota Road, Hindon Vihar, Delhi- Meerut Road, Ghaziabad 201001 M/s.MG Constructions Machinery Equipments Pvt. Ltd. located at 66, 20 Foota Road, Hindon Vihar, Delhi Meerut Road, Ghaziabad 201001 and M/s.MG Construction Equipments, 20 Foota Road, Hindon Vihar, Delhi-Meerut Road, Ghaziabad 201001 under Notification No.8/2003-CE dated 1.3.2003 as amended;*
- ii. *I confirm the invocation of the extended period envisaged under sub-section (4) of the Section 11(A) of the Act (erstwhile proviso to Section 11A (1) of the Act).*
- iii. *I confirm the demand and recovery of Central Excise Duty amounting to Rs. 53,96,971/- (Rs.Fifty Three Lacs Ninty Six Thousand Nine Hundred Seventy One only) [CENVAT- Rs.52,39,778/- + Ed. Cess- Rs.1,04,796/- + SHE Cess- Rs. 52,398/-] against M/s.Anand Machinery located at 67/3, 20 Foota Road, Hindon Vihar, Delhi-Meerut Road, Ghaziabad 201001 in terms of Section 11A(4) of the Central Excise Act, 1944.*
- iv. *I confirm the demand and recovery of Central Excise Duty amounting to Rs.65,72,292/- (Rs.Sixty Five Lacs Seventy Two Thousand Two Hundred Ninety Two only) [CENVAT- Rs.63,80,866/- + Ed.Cess- Rs.1,27,617/- + SHE Cess- Rs.63,809/-] not paid by M/s.Anand Machinery Centre located at 653, 20 Foota Road, Hindon Vihar, Delhi- Meerut Road, Ghaziabad 201001 in terms of Section 11A(4) of the Central Excise Act, 1944.*
- v. *I confirm the demand and recovery of Central Excise Duty amounting to Rs.61,29,416/- (Rs.Sixty One Lacs Twenty Nine Thousand Four Hundred Sixteen only) [CENVAT- Rs.59,50,890/- + Ed.Cess- Rs.1,19,018/ SHE*

Cess- Rs.59,509/-] not paid by M/s.MG Constructions Machinery Equipments Pvt. Ltd. located at 66, 20 Foota Road, Hindon Vihar, Delhi- Meerut Road, Ghaziabad 201001 in terms of Section 11A(4) of the Central Excise Act, 1944.

- vi. I confirm the demand and recovery of Central Excise Duty amounting to Rs.65,09,347/- (Rs.Sixty Five Lacs Nine Thousand Three Hundred Forty Seven only) [CENVAT- Rs.63,19,754/- + Ed.Cess- Rs.1,26,395/- + SHE Ćess- Rs.63,198/-] not paid by M/s.MG Construction Equipments, 20 Foota Road, Hindon Vihar, Delhi Meerut Road, Ghaziabad 201001 in terms of Section 11A(4) of the Central Excise Act, 1944.*
- vii. a. I also impose Penalty of Rs. 53,96,971/- upon M/s.Anand Machinery located at 67/3, 20 Foota Road, Hindon Vihar, Delhi- Meerut Road, Ghaziabad under the provisions of Section 11AC of the Act read with Rule 25 of the Rules.*
 - b. I also impose Penalty of Rs. 65,72,292/- upon M/s. Anand Machinery Centre located at 653, 20 Foota Road, Hindon Vihar, Delhi Meerut Road, Ghaziabad under the provisions of Section 11AC of the Act read with Rule 25 of the Rules.*
 - c. I also impose Penalty of Rs. 61,29,416/- upon M/s. MG Constructions Machinery Equipments Pvt. Ltd. located at 66, 20 Foota Road, Hindon Vihar, Delhi- Meerut Road, Ghaziabad under the provisions of Section 11AC of the Act read with Rule 25 of the Rules.*
 - d. I also impose Penalty of Rs. 65,09,347/- upon M/s.MG Construction Equipments, 20 Foota Road, Hindon Vihar, Delhi- Meerut Road, Ghaziabad under the provisions of Section 11AC of the Act read with Rule 25 of the Rules.*
- viii. I also impose Penalty of Rs. 10,00,000/- upon Shri Ganga Ram Sahu Director of M/s.MGEPL, Proprietor of*

M/s.AMC and a Partner of M/s.AM under the provisions of Rule 26 of the Rules.

- ix. I also impose Penalty of Rs. 50,000/- upon Shri Naveen Ahuja, Partner of M/s.Kuber Steels under the provisions of Rule 26 of the Rules.*
- x. I also impose Penalty of Rs. 50,000/- upon Shri Sanjay Bajaj, Proprietor of M/s Abhi Gases, under the provisions of Rule 26 of the Rules.*
- xi. The adjudged dues shall be paid henceforth."*

2.1 Investigations were culminated into issuance of show cause notice to M/s Anand Group (hereinafter referred to as M/s.AG) having its office premises at 457, Hindon Vihar, Ghaziabad with four of its factories namely M/s.Anand Machinery located at 67/3, 20 Foota Road, Hindon Vihar, Delhi- Meerut Road, Ghaziabad 201001 (hereinafter referred to as Appellant-I), M/s.Anand Machinery Centre located at 653, 20 Foota Road, Hindon Vihar, Delhi- Meerut Road, Ghaziabad 201001 (hereinafter referred to as Appellant-III), M/s MG Constructions Machinery Equipments Pvt. Ltd. located at 66, 20 Foota Road, Hindon Vihar, Delhi- Meerut Road, Ghaziabad 201001 (hereinafter referred to as Appellant-II) and M/s.MG Construction Equipments, 20 Foota Road, Hindon Vihar, Delhi- Meerut Road, Ghaziabad 201001, who are engaged in the manufacture of Construction Machinery & Earth Moving Equipment such as Fully Automatic Batching & Mixing Plant, Concrete Mixer, Concrete Hoist, Pan Mixer, Bar Cutting & Bar Bending, concrete bucket, Sand Screening Vibrating, Earth Compactor, Cube Testing Machine etc., falling under Chapter 84 of the First Schedule to the Central Excise Tariff Act, 1985.

2.2 Appellants were manufacturing identical goods and clearing the same without payment of Central Excise duty. During the period from 2009-10 (w.e.f.01.01.2010) to 2014-15 (upto 31.12.2014) by contravening the provisions of Notification No.8/2003-CE dated 01 March, 2003 as the aggregate value of clearances of the goods manufactured from all the units for home consumption limited on 1.5 crore.

2.3 Appellants claimed that they were not paying duty for the reason that individual sale from each unit was much bellow the exemption limit.

2.4 Acting on intelligence, investigations were undertaken and searches conducted at the office premises of M/s Anand Group including all the four factory premises. During the examination of records following has been held:-

"During examination of records resumed from the premises of M/s.AG under Annexure-A to Panchnama dated 2.5.2013, a brochure was resumed at S.No.74 of said Annexure-A, which evidently publicized "ANAND GROUP" as the manufacturer of "Construction Machinery & Earthmoving Equipments" at the front. At the back of the brochure, ANAND GROUP with names of all four firms of the group was printed, clearly publicizing the said four firms belonging to the said AG."

2.5 Detailed combined sale of the appellants are reproduced bellow:-

(Amt. in Rs.)

DETAILS OF COMBINED SALES OF ALL FOUR FIRMS OF ANAND GROUP AS PER BALANCE SHEET

YEAR	MGEPI	MGE	AMC	AM	Total
2009-10	12526699	9714294	14082846	0	36323839
2010-11	14965239	14350027	16208980	4112156	49636402
2011-12	14808934	14551176	14509141	16,982,375	60851626
2012-13	15210375	15813644	16014005	15487315	62525339
2013-14	11962453	9052039	12139036	10168318	43321846
2014-15 (upto Dee, 14) as per sale ledgers	5003901	8223655	7108180	3956735	24292471

2.6 It was also observed that on tabulation of value of goods sold by the appellants from the sale invoices for the year 2009-10 and 2012-13 resumed from their premises under the panchnama dated 02.05.2013 and as submitted by Shri Gangaram Sahu under his statement dated 28.01.2015. Certain mis-matches were occurred from the balance sheet.

2.7 After reconciliation of all the documents following has been tabulated as combine sale of all four firm of M/s Anand Group:-

(Amt. in Rs.)

DETAILS OF COMBINED SALES OF ALL FOUR FIRMS OF ANAND GROUP							
Year	Rate of Duty	Name of the unit				Total	Exemption Value
		MGEPL	MGE	AMC	AM		

2009-10 (up to 28.2.2010)	8%	11601709	8351707	11967258	0	31920674	15000000
2009-10 (1.3.2010 - 31.3.2010)	10%	924990	1387587	1352893	0	3665470	0
Total 2009-10		12526699	9739294	13320151	0	35586144	15000000
Total 2010-11	10%	15010639	14350029	16430980	4112156	49903804	15000000
2011-12 (upto 16.3.2012)	10%	14460934	13671060	13770465	17298415	59200874	0
2011-12 (17.3.2012-31.3.2012)	12%	454700	905616	941676	121860	2423852	0
Total 2011-12		14915634	14576676	14712141	17420275	61624726	0
Total 2012-13	12%	15360375	15859925	16410258	16639505	64270063	0
Total 2013-14	12%	11962453	9052039	12139036	10168318	43321846	0
Total 2014-15 (upto 31.12.2014)	12%	5003901	8223655	7108180	3956735	24292471	0

2.8 From the above it is evident that appellant had not paid/sort paid the central excise duty in respect of excisable goods cleared collectively valued at Rs.21,67,14,125/- during the period of dispute there by contravening the various provisions of Central Excise Act by willful suppression of the facts with alterative motive to evade payment of central excise duty.

2.9 A show cause notice dated 09.02.2015 was issued to the appellants asking them to show cause as to why:-

- i. *The extended period envisaged under sub-section (4) of the Section 11(A) of the Act (erstwhile proviso to Section 11A (1) of the Act) should not be invoked to demand the Central Excise Duty evaded by them for the reasons discussed above;*
- ii. *The exemption claimed by them under Notification No.8/2003-CE dated 1.3.2003 as amended should not be denied on the grounds discussed above;*
- iii. *Central Excise Duty amounting to Rs.53,96,971/- (Rs. Fifty Three Lacs Ninty Six Thousand Nine Hundred Seventy One only) (CENVAT- Rs.52,39,778/ Ed.Cess- Rs.1,04,796/- + SHE Cess Rs. 52,398/-] not paid by M/s.Anand Machinery located at 67/3, 20 Foota Road, Hindon Vihar, Delhi-*

Meerut Road, Ghaziabad 201001 (Unit-1) as per Annexure-37. to the SCN under adjudication.

- iv. *Central Excise Duty amounting to Rs.65,72,292/- (Rs.Sixty Five Lacs Seventy Two Thousand Two Hundred Ninety Two only) (CENVAT- Rs.63,80,866/- + Ed.Cess- Rs.1,27,617/- + SHE Cess- Rs.63,809/-] not paid by M/s.Anand Machinery Centre located at 653, 20 Foota Road, Hindon Vihar, Delhi- Meerut Road, Ghaziabad 201001 (Unit-II) as per Annexure-38 to the SCN under adjudication.*
- v. *Central Excise Duty amounting to Rs.61,29,416/ (Rs.Sixty One Lacs Twenty Nine Thousand Four Hundred Sixteen only) [CENVAT- Rs.59,50,890/- Ed.Cess Rs 1,19,018/ SHE Cess- Rs.59,509/-] not paid by M/s.MG Constructions Machinery Equipments Pvt. Ltd. located at 66, 20 Foota Road, Hindon Vihar, Delhi- Meerut Road, Ghaziabad 201001 (Unit-III) as per Annexure-39 to the SCN under adjudication.*
- vi. *Central Excise Duty amounting to Rs.65,09,347/- (Rs.Sixty Five Lacs Nine Thousand Three Hundred Forty Seven only) [CENVAT- Rs.63,19,754/- + Ed.Cess- Rs.1,26,395/- + SHE Cess- Rs.63,198/-) not paid by M/s.MG Construction Equipments, 20 Foota Road, Hindon Vihar, Delhi- Meerut Road, Ghaziabad 201001 (Unit-IV) as per Annexure-40 to the SCN under adjudication.*
- vii. *Penalty should not be imposed, as a consequence, on them under the provisions of Section 11AC of the Act read with Rule 25 of the Rules."*

2.10 Further, show cause notice proposed that goods manufactured and cleared by all the four appellants are liable for confiscation under Rule 25 of Central Excise Rules for contravention of provisions of Rule 4, 6, 8, 9, 10, 11 and 12 of the Rules.

2.11 Shri Gangaram Sahu was key mastermind behind the entire act of evasion of duty, was liable for penal action under Rule 26 of the Rules. In case of all the appellants Smt. Anita

Sahu who was proprietor of M/s MGE was concern with the all functioning of M/s.MGE and liable for penal action.

2.12 Similarly Shri Naveen Ahuja, Partner of M/s Kuber Steels and Shri Sanjay Bajaj, Proprietor of M/s Abhi Gases was also liable for penalty under Rule 26 of the Act.

2.13 The said show cause notice was adjudicated as per the impugned Order-in-Original referred in para 1 above.

2.14 Aggrieved appellant have filed this appeal.

3.1 We have heard Shri Rajesh Chhibber learned Counsel appearing for the appellants and Smt Chitra Srivastava learned Authorised Representative appearing for the revenue.

3.2 Arguing for the appellants learned Counsel submits that-

- All parties were having separate TIN Number, purchasing raw material and manufacturing final products separately and separate bank accounts, statement of employees/workers were recorded who also supported the case of department. During investigation, separate central excise registrations applied by and were granted to each party.
- There had been no legal entity in the name of Anand Group. Merely because four units claimed them to be part of AG, could not give existence to AG and consequently the department had no case at all. The appellant relies upon decision of Hon'ble Supreme Court in the case of Gajanan Fabrics and of CESTAT in the case of Highland Dye Works, upheld by the apex court wherein it has been held that the duty could be demanded from one person only when it is alleged that others were dummy. Reliance is also placed on CCE vs. Shiva Exim Enterprises Therefore, entire case of department is not sustainable.
- Apart from Undertaking manufacture and clearance of the goods, appellant was also undertaking trading activities that trading turnover needs to be deducted from the total value taken for determination of the total value of clearance for payment of duty.

- The case of the revenue is that since all units were being correlated by one person, turnover of all was to be clubbed for the purpose of admissibility SSI examination cannot be correct. In view of the decision of Hon'ble supreme Court in the case of M/s Gajanan Fabrics and other case laws.
- In the impugned order while imposing penalty on Shri Gangaram Sahu it has been categorically held that all the four units involved in the case were four dummy units there is no entity of firm and company in the name of Anand Group, demand has been confirmed against each of the four appellants.
- In any case as appellants have not collected any duty from their customers, the value should be taken as cum duty value. Appellant M/s MGEPL have deposited Rs.3 lakhs during the investigation which was proposed for proportion in show case notice, the same maybe refunded as consequential relief along with refund of mandatory pre-deposit.

3.3 Learned Authorised Representative appearing for the revenue submits that-

- Sh Ganga Ram Sahu is Director of M/s M. G. Constructions Machinery equipments Pvt. Ltd. Proprietor of M/s Anand Machinery Centre and a partner of Anand Machinery. M/s M. G. Constructions Machinery equipments Pvt. Ltd obtained registration and paid 3 lacs Central Excise Duty as their liability.
- All firms work under common control, manufactured excisable goods through process facilitated by one another.
- Money was transferred from bank account of one firm to another Page 104, 107 and 109 of the Order-in-Original.
- All the four units have mutual interest and not independent of each other Page 109-110
- All four firms handled by one person Sh Ganga Ram Sahu.

- Though units have different incorporations, but all are part one group (M/s Anand Group) with inter connected business interest and common objective.
- Interchange of funds amongst all units, statement of workers (page 137) Para 49. Use of Brand Anand (page 145) Inter unit financial transactions were found (page 144) para 84,85
- All 4 units were dummy working for M/s Anand Group, clearance belong to Anand Group as a whole.
- Common brochure was printed in order to attract buyers which was resumed during the search of the premises of Anand Group which evidently publicized ANAND GROUP as the manufacture of construction machinery and Earth moving equipments at the front. Name of Sh G.R.Sahu as Director and Sh Uttam Singh Negi a Chief executive Officer of the Group was also highlighted All the units were formed by G.R.Sahu with the alleged sole intention of evading payment of Central Excise duty by segregating the value of clearances of similar goods manufactured by them. All the purchases and production were controlled by Sh G.R.sahu.
- It is apparent from the statement of Smt Anita Sahu that all the employees in the office of ANAND GROUP were looking after all the four firms were common and that the offices expenses were shared by all the firms.
- No names of the premises/firms were found mentioned on the electricity bills except M/s Anand Machinery and the electricity connections of the other three premises were found installed in the name of Sh Ganga Ram Sahu.
- Reliance is placed on the case of M/s British Scaffolding India Pvt. Ltd & Others vs. CCE, Delhi. 2013 (4) ECS (31) (Tri - Del) CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL NEW DELHI, PRINCIPAL BENCH, NEW DELHI-110066.

4.1 We have considered the impugned orders along with the submissions made in appeal and during the course of argument.

4.2 The impugned order records the following findings:-

"42. I find that it is a case of clubbing of the clearances of four units being headed by one person namely Shri Ganga Ram Sahu (G.R.Sahu), Director of M/s.MGEPL, Proprietor of M/s.AMC and a Partner of M/s AM and husband of Smt. Anita Sahu is the proprietor of M/s. M.G. Construction Equipments, 653, Hindon Vihar, Ghaziabad. All the firms are also engaged in the manufacture of aforesaid machinery.

43. It is well settled law that for clubbing the clearances of units, the department has onus to prove that the units have mutual interest in each other business, being governed by the one person and other units are dummy units being created to defraud the government exchequer.

44. I find that during search conducted on 02.05.2013, a voluntary statement of Shri Ganga Ram Sahu (G.R.Sahu), Director of M/s.MGEPL, Proprietor of M/s.AMC and a Partner of M/s.AM was recorded under Section 14 of the Central Excise Act, 1944, on being asked, he inter-alia stated that:-

- *They are engaged in the manufacture of construction machinery such as Mixer Machine, Batching Plant, Sand Screening Machine, Two Panel Machine Weight Batchers, Monkey Hoist, Bar Cutting, Builders Hoist, Hydraulic Mixer Machine, Hand Mixer Machine etc. that, besides, they are also engaged in the trading of Vibrator and parts of the aforesaid machines;*
- *In his statement, Shri G.R.sahu has deposed that the details of his firms are as under:-*
- *M/s.Anand Machinery Centre, 66, Hindon Vihar, Meerut Road, Ghaziabad, which has been working since 1993; that the firm was engaged in trading of goods till 2006; thereafter the firm has been engaged in manufacturing of machinery as aforesaid; that he is the sole proprietor of the firm.*

- *M/s.MG Constructions Machinery Equipments Pvt.Ltd., 20 Foota Road, Hindon Vihar, Delhi-Meerut Road, Ghaziabad in which he and his wife Smt.Anita Sahu are the two directors; that the firm has been working since 2006; that the firm is engaged in the manufacture of machinery as well as trading of machines parts.*
- *M/s Anand Machinery located at Khasra No. 66/3, 20 Foota Road, Hindon Vihar, Delhi- Meerut Road, Ghaziabad, a partnership firm in which he and his wife Smt.Anita Sahu are the two partners; that the firm was established in February, 2011 that the firm is engaged in the manufacture of machinery as well as trading of machines parts.*
- *M/s.M.G. Construction Equipments, 653, Hindon Vihar, Ghaziabad; that his wife Smt.Anita Sahu is the proprietor of the firm; that the firm is also engaged in the manufacture of aforesaid machinery.*
- *He further deposed that he himself has been looking after all work of the four firms with the help of other employees; that Shri Uttam Singh Negi looks after marketing of all four firms, Shri Hari Om Sharma and Shri Rama Kant Shukla prepare bills and look after other accounts work.*
- *All the said employees look after work related to all four firms; that they work as per directions given by him and that they all report to him only.*
- *Since as per his knowledge each firm is eligible for an exemption up to a value of Rs.1.50 Crores and since turnover of none of his firms in any year exceeded Rs.1.50 Crores, they have not got the said firms registered under Central Excise.*
- *They purchase raw materials of all the firms on their respective accounts at the address of their office (Anand Group, 457, Hindon Vihar, Delhi-Meerut Road, Ghaziabad);*

- *Normally, machines are manufactured by the firm in whose name the orders are received; that sometimes due to workload some work is done by other firms as well,*
- *None of his firms maintains records of raw materials and finished goods; that details of purchases are submitted to the Sales Tax Department according to purchase bills only.*

45. From the above statement, it is well established that sri G.R.sahu has been looking after ll work of the four firms with the help of other employees; that Shri Uttam Singh Negi Doks after marketing of all four firms, Shri Hari Om Sharma and Shri Rama Kant Shukla prepare bills and look after other accounts work. Thus all the said firms are being handled by common persons. It is an big evidence having demonstrating the fact of mutual interest in each other business.

46. The show-cause notice had made allegations to the effect that there was use of common funds among the units, that the transfers of materials among the units were not as between unrelated units and the staff of a unit can be utilized for another units Materials were purchased centrally. The units were owned by members of the same family as proprietorship or partnership concerns or private limited. Shri G.R.Sahu, the head of the family had controlled the functioning of all the units. The machinery manufactured by all the units was labelled and sold with the brand 'Anand". All the goods were marketed as produce of Anand Group. Obviously all the units are a single entity, Anand Group. I find it appropriate that the clearances of all the units as of a single manufacturer and clubbed for computing their eligibility to SSI exemption.

47. As already stated, the allegations in the show-cause notice supported by documentary evidence have not been clearly and specifically rebutted by the party. They have

only stated that the units are legally registered and are independent. As elder member of the family, Shri Ganga Ram sahu is managing the affairs of some of these units and that alone should not be the cause for clubbing. The evidences brought out in the show-cause notice were elaborate and overwhelming. As conceded by the party, that being elder member of the family managing decades old family business, the management and transactions of all the group units are controlled by Shri Ganga Ram sahu either directly or as per his directions. The nature and functioning of these partnerships/proprietary concerns/private limited clearly indicate that these units though may have separate name and style and registration, were all part of one group with interconnected business interest and common objective. The records adequately reveal that the working capital required for functioning of the group units as a whole was tightly and solely controlled by Shri Ganga Ram Sahu and there is constant interchanging of funds among the units. It is further seen that Shri Ganga Ram Sahu had exercised absolute control over his employees in such a way that they were assigned specific job taking into consideration the whole group's interest and not the single unit. This leads to unambiguous conclusion that Shri Ganga Ram Sahu has fragmented the unit manufacturing machinery into four sets of units. Hence, I hold that the allegation made in the show-cause notice is found sustainable for the purpose of arriving at the excisable exemption limit as per prevailing notification for SSI industries during the impugned time.

48. I also observe that during the course of investigation and search at different factory premises of M/s. Anand Group on 02.05.2013, statements of some of the production workers/in- charges of the factories concerned were also recorded under Section 14 of "the Act".

- a. *One such worker Shri Gaya Prasad, Foreman, who happened to be engaged in the manufacture/ fabrication of machinery in the factory premises of AG at Gali No.2, 20 Foota Road, Hindon Vihar, Delhi-Meerut Road, Ghaziabad during search by the officers, in his voluntary statement dated 2.5.2013, recorded under Section 14 of the Act, inter alia stated that he had been working in the said factory, belonging to Shri Ganga Ram, for the last one year; that he did not know the name of the factory; that office of the factory was situated nearby on the Delhi-Meerut Road; that he received his salary from the office; that besides him, two more workers used to work in the factory where 'four channel machines' were manufactured; that all the raw materials were purchased by Shri Ganga Ram Sahu at the office address, that he was not aware as to where the raw materials were purchased from; that he and other workers received salary from office in cash; that in the factory premises, work such as bending etc. of other factories of AG was done; that no documents relating to production were maintained in the factory and that all documents were maintained in the office only; that the Foreman, Shri Jamir Ahmad used to instruct him as to what goods were to be manufactured by him; that inspection of finished goods was also done by Shri Jamir Ahmad.*
- b. *A voluntary statement dated 2.5.2013 of Shri Raja Bhaiya, a production worker employed in factory at 66, Hindon Vihar, Delhi-Meerut Road, Ghaziabad of AG was also recorded under Section 14 of the Act, wherein, he inter alia stated that he had been working in the factory for last three and a half years; that the factory belonged to AG and Shri Ganga Ram Sahu was the owner, that "small mixer machine" and "hopper machine" were manufactured in the factory;*

that raw materials such as angle, channel, sheet etc were used; that the materials were sent to the factory by Shri Ganga Ram Sahu, who instructed as to when and what goods were to be manufactured; that total 6 workers were engaged in manufacturing in the factory including him; that in the factory no accounts of the goods manufactured and sent outside the factory were maintained; that all accounts were maintained in the office of the group at 457, Hindon Vihar, Ghaziabad; that he did not know the name of the factory, that he was only aware that the factory belonged to AG; that work such as painting etc. of other group factories was also done in the said factory; that sometimes workers of the factory did work of other factories of the group and vice-versa and that he received his salary from the office at 457, Hindon Vihar, Ghaziabad in cash.

- c. *In his voluntary statement dated 20.5.2013, recorded under Section 14 of the Act, Shri Jamir Ahmad, Foreman of the factory of AG at 653, Hindon Vihar, Ghaziabad, interalia stated that he had been working in the factory as foreman since the year 2006-2007; that he did not know the name of the factory; that he knew the factory as Anand Group: that the factory belonged to Shri Ganga Ram; that the office of the factory was at 457, Hindon Vihar, Ghaziabad; that Mobile Mixer machines, Hydraulic Hopper machines, Pinion Shaft etc. were manufactured in the factory; that bending work related to Mobile Mixer machines, Hydraulic Hopper machines manufactured in the factory was not done in the factory; that bending was done in another factory of Shri Ganga Ram which was at the start of the lane; that painting work of finished goods was done in yet another factory of Shri Ganga Ram which*

was situated opposite; that Shri Ganga Ram had three other factories besides the factory he worked in; that 10 workers were employed in the factory; that whenever need be, the workers of one factory were engaged in other factories of the group; that all the workers received salary from office in cash.

49. From the statement of workers, the facts are well established that all the units belong to Shri Ganga Ram and the manufacturing activity as a whole can not be done in a single factory in as much as bending was done in another factory of Shri Ganga Ram which was at the start of the lane; that painting work of finished goods was done in yet another factory of Shri Ganga Ram which was situated opposite; that Shri Ganga Ram had three other factories besides the factory he worked in. The office of the factory is at 457, Hindon Vihar, Ghaziabad. All the workers know the factory as Anand Group. In either factory, no accounts of the goods manufactured and sent outside the factory were being maintained and all accounts were maintained in the office of the group at 457, Hindon Vihar, Ghaziabad. They did not know the name of the factory and only aware that the factory belonged to AG and Shri Ganga Ram Sahu is the owner.

50. I observe that the party in their defence has strongly agitated that Anand group Is'a fictitious name and has been created by the revenue to support their contention. But I find that in the light of the statement of the workers, it is well established that Anand group exists comprising four factory, rather to say, branches of a units engaged in the different kind of activity which on being done together are capable of manufacturing 11 machinery sold by the so called firms. As in one factory bending work is being done. In another factory, painting work is being done irrespective of the facts from where the clearances are being shown. Records of

manufacturing is also being kept in the head office as per their convenience Records resumed from the premises of M/s.AG under Annexure-A to Panchnama dated 2.5.2013, a brochure was resumed at S.No.74 of said Annexure-A, which evidently publicized "ANAND GROUP" as the manufacturer of спани group is a "Construction Machinery & Earthmoving Equipments" at the front. At the back of the brochure, ANAND GROUP with names of all four firms of the group was printed, clearly publicizing the said four firms belonging to the aid AG."

51. From the Panchnama dated 02.05.2013 drawn at the office premises of AG and all the four factory premises, statements dated 2.5.2013 of Shri GR'Sahu, Shri Gaya Prasad, Shri Raja Bhaiya and Shri Zamir Ahmad, that all the four firms belonged to M/s.AG and had been working in tandem towards a common business interest. All the four firms manufactured excisable goods through processes facilitated by one ne another, though the firms were so constructed as to be having different forms of ownership, ie, (a) proprietorship (b) partnership firm and (c) private limited company, they all functioned under common control of the same family, more specifically, Shri G, R.Sahu, the head of the family. The brochure resumed gives an impression that all the four firms were projected as belonging to one Group, Le., AG. Names of Shri G.R.Sahu as Director and Shri Uttam Singh Negi as Chief Executive Officer of the Group were also highlighted along with four Sales & Service Executives of the Group and for all the four firms of the Group which were evidence of the fact that the same persons were either managing or jooking after important functions of all the four firms. During recording of his statement on 1872013, he was confronted with the fact that all the four firms manufactured the same type of

machines and that he alone looked after day to day work of all the firms; that the brochure advertised one ANAND GROUP with four of its firms and he was projected as the Director.

52. As the party in their defence is silent on these aspects which gives an impression that they have nothing in their hand to rebut the allegation contained in the SCN and allegations are true.

53. In the light of above, I hold that Anand group is not a fictitious person, it exists which comprises of four factories who together are capable of manufacturing the goods, said to be cleared by individuals factories. None of the factory can manufacture the goods cleared from their factory on their own and mutual interest in all the factories are well established, Shri G.R.sahu being key person in all the factories.

54. I find that during the course of investigation, Shri G.R.Sahu vide letter dated 26.6.2013 addressed to the Superintendent, Anti-Evasion, Central Excise, Ghaziabad, submitted details of sales including trading sale for the years, from 2008-09 to 2012-13 (up to 31.3.2013) purportedly made by all four firms of AG. The letter was sent under the letterhead of "M/s.M.G. Construction Machinery & Equipment Pvt.Ltd." and signed by Shri G.R.Sahu as Director, which clearly shows that the affairs of all the firms were actually managed by him irrespective of their legal ownership on paper, which was only an attempt to hoodwink the Department in order to segregate the value of clearances of all four firms to wrongly and fraudulently avail exemption as prescribed under Notification No.8/2003-CE, which otherwise would not have been available to them.

55. Here again I want to discuss that the party in their defence reply again and again stressed that they have no records to segregate the figure of manufacturing and

trading activity whereas on the other hand vide letter dated 26.06.2013, Shri G.R.Sahu supplied the details of manufactured and trading sale.

56. I also observe that Shri G.R.Sahu had stated that there were separate brochures for all the four concerns and would produce the copies of brochures in two days from the date of their statement. But neither within two days nor upto the time of personal hearing, the same could be produced.

57. I find that Smt. Anita Sahu, in her statement dated 12.8.2013 has stated that she had studied upto class 5, that she was the proprietor of M/s.MGE; that she was a partner in M/SAM and that she was a director in M/s. MGEPL; that she looked after, household work and therefore had given responsibility of all the three firms to her husband, Shri Ganga Ram Sahu; that she had 50% stakes in M/s MGEPL, that expenses towards employees were distributed among all the four firms

58. I observe that from the statement of Smt. Anita Sahu, it is crystal clear that all the employees in the office of AG were looking after all the four firms were common and that the office expenses were shared by all the firms. As evident from perusal of ledger accounts of all the firms, the expenses were paid randomly from the accounts of all or any of the firms.

59. I also find that there is an allegation in the SCN that one of the raw material supplier, namely Kuber Steels have also abated with the party to defraud the government exchequer. I find that Shri Naveen Ahuja, Partner of M/s Kuber Steels in his statement dated 31.7.2013 stated that his firm engaged in trading of iron & steel had supplied materials to all the four firms of M/S.AG for which they received orders telephonically from Shri Ganga Ram Sahu, Shri Rama Kant Shukla and Shri U.S.Negi; that the said persons used to tell regarding the quantity and the name of the firm to

whom the materials were to be supplied. On examination of ledger, accounts and bank statements of all the four firms for the year 2012-13, resumed under Annexure-A to the Panchnama dated 2.5.2013 drawn at the premises of M/s.AG, it was found that the one or the other firm of the Group made payments to M/s. Kuber Steels against the purchases made by the other firms of the group. It is also observed that Shri Naveen Ahuja did not furnish ledger accounts for the year 2012-13, intentionally, though the statement was recorded on 31.7.2013, Le well past closure of the financial year 2012-13. The details of such payments made by one nem on behalf of other firms of the group are as under:

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(Amt. in Rs.)

Date	Entry In the ledger of	Entry made In favour of	Particular	Voucher Type	Vc hr No .	Debit	Credit	Remarks
30.11.2012	AMC	MGE (same entry is also available their in ledger)	By Kuber Steels , Gzb (being the amount transferred from MGE)	Journal	69	108490		Amount has been paid from the accounts of M/s.MGE against the purchase liability of M/AMC from M/s Kuber Steels.
31.12.2012	MGEPL	MGE (same entry is also available in their ledger)	By Kuber Steels, Gzb (being the amount transferred from MGE)	Journal	44		300000	Payment made by M/s MGE vide RTGS on 10.12.2012 as appearing in the bank statement of their A/c.No.016013100000043. Payment is made against purchases of M/s.MGEPL from M/s.Kuber Steels as is evident from the ledger A/c of MGE, MGEPL & Kuber Steels
31.3.2013	MGE	AM (same entry is also available their in ledger)	To Kuber Steels, Ghaziabad Transfer	Journal	58	1000		The amount has been paid by M/s.MGE vide Cheque No.290439 dated 30.1.2013 as appearing in the ledger A/c of M/s.MGE, against the purchase liability M/SAM M/s Kuber Steels of towards

60. All the said entries were available in the ledger accounts of respective firm, including the books of account maintained by them in respect of M/s.Kuber Steels. An examination of the ledger of M/s.MGE in respect of M/s.Kuber Steels for the year 2012-13 reveals that during the whole year, M/s.MGE purchased raw materials from M/s.Kuber Steels valued at Rs.4,18,510/- only, vide bill No.2 entered into ledger on 4.4.2012, whereas they made payment of Rs.9,27,000/- to M/s.Kuber Steels through cheques/NEFT on various dates. Finally, all the amount of Rs.9,27,000/- was credited vide different entries through Journal Vouchers to the account of M/s.Kuber Steels by adjusting payments on behalf of M/s.AM and M/s.MGEPL and at the end of the year, they had a NIL debit or credit balance on account of M/s.Kuber Steels.

61. From the above, it is well established that payments against purchase of raw materials were made from the accounts of other firms of the Group. In fact, Shri Ganga Ram Sahu did not make any differentiation between the money belonging to all the firms; since in reality, it belonged to the family and the businesses controlled solely by him. This amply demonstrates that and all the firms had mutual interest in each others business in as much as all belonged to Shri G.R.Sahu.

62. I also find that Shri Sanjay Bajaj, Proprietor of M/s.Abhi Gases, 63, West Model Town, was hied G Ghaziabad who had supplied consumables, i.e., welding gases to all the firms of M/s.AG in his Auber Ste statement dated 5.8.2013 had stated that his firm was engaged in trading of Oxygen, Nitrogen, Nitrous gases for medical and industrial use; that they purchased gases from the manufacturers; that they supplied gases to all four firms, Le., M/S.AMC, M/s.AM, M/s.MGEPL and M/s.MGE in returnable cylinders of 6 to 7 cubic meters;

that the gases were not supplied in bulk quantity; that they received payments through cheques from the same firm to h whom the materials were sold; that he was tendering ledger accounts of M/s.AMC, M/s.MGE and M/s.MGEPL for the period from 1.4.2011 to 31.3.2012 in support of his claim; that small payments were also received in cash. He further stated that the payments were received in part from all the firms separately and that the payments were received from the firm to whom the materials were supplied.

63. The statement dated 5.8.2013 of Shri Sanjay Bajaj is found to be tutored not being in consonance with the facts, in as much as, payments towards purchases of M/s.AMC were found to be made by M/s.AM, as reflected in the respective ledgers and bank statements, whereas, Shri Sanjay Bajaj had stated that the payments were received from the firm to whom the materials were supplied. It was also observed that Shri Sanjay Bajaj did not furnish ledger accounts for the year 2012-13, intentionally, though the statement was recorded on 5.8.2013, Le, well past closure of the financial year 2012-13. The details of such payments made by M/sAM on behalf of M/s AMC are as under: -

64

(Amt in
Rs.)

Date	Entry in the Ledger of	Entry made in favour of	Particulars	Voucher Type	Vchr No.	Debit	credit	Remarks
	AMC	AM	By Abhi Gases, Gzb (being the amount transferred from AM)	Journal	71		8300	8300 Payment has been made by M/SAM vide Ch. No.634055 dated 21.11.2012 (22.11.2012 appearing in the bank statement of AM & 30.11.2012 as appearing in the ledger of AM) against purchase of M/SAMC against bill No.561 (dated

								31.10.2012 In the ledger of AMC) from M/s Abhi Gases
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65. From the above, it appears that the payments were made by one firm towards the purchases of other firm of the Group, which makes it abundantly clear that the money belonging to one firm of the group was being freely used for facilitating the business activities of other firms of the Group, having unequivocal control over all the firms by one and only Shri G.R. Sahu. All these financial transactions bear testimonies to the truth that there is a mutual interest in all the four firms.

66. I also find that the sale invoices resumed from the premises of M/S.AG under Annexure-A to the Panchnama dated 2.5.2013 mention that M/s.MGE had sold their goods under the brand name "ANAND". They had sold one Concrete Batching Plant of "ANAND" make to M/s.A.NS. Constructions Ltd. vide invoice No.201 dated 17.10.2011 for a value of Rs.14,90,000/- involving VAT of Rs.2,01,150/-. The use of said brand on the goods so sold was apparent from perusal of the invoice, wherein "Anand make Concrete Batching Plant" was clearly mentioned. It was also observed from perusal of sale invoices of M/s AMC for the year 2012-13 that they had cleared Batching Plant of Anand Make to M/s.Mahalaxmi Buildtech. Ltd. vide Invoice No.183 dated 8.11.2012 and Invoice No.184 dated 8.11.2012 for value of Rs.10,22,807/- and Rs.6,00,000/- without VAT, respectively. The make of said goods, shown as "Model No.AG-NRD-30" on the invoices clearly appeared in the brochure of M/s.AG against "Fully Automatic Concrete Batching & Mixing Plant-H Series (Drum Inline)". Though, mention of words 'NRD-30' on the invoices, Instead of 'HRD-30' as mentioned in the brochure appeared to be a clerical mistake. It gives an impression that the firms of M/s.AG were clearing their finished goods under the brand name ANAND' I also find

that in order to confirm whether the brand name 'ANAND' was registered in the name of M/s.AG or any of the four firms of the Group, in respect of the goods manufactured by them, a letter C.No. IV-CE(9)AE/GZB/ANAND/35/2013/972 dated 15.9.2014 was sent to the Registrar, Trade Marks Registry, Intellectual Property Office, Ministry of Commerce & Industry. Govt. of India, Delhi in reply to which, the Deputy Registrar of Trade Marks & G.1., New Delhi vide letter Reference No. BCR/115(4)14/T-466 dated 26.11.2014 sent the search report in respect of ownership of brand 'ANAND' for use in the manufacture of machinery and equipment under class 7. As per the said search report, the brand/mark/logo 'ANAND' was not found registered in the name of M/s.AG or any of the four firms of the group. But it makes no difference in as much as the brand name "Anand" either registered or unregistered is being used by all the four firms in their products.

67. On Scrutiny of financial records viz., balance sheets, ledger accounts and bank statements of all the four firms of M/S.AG for all years revealed that a large number of inter-unit transactions were made between the firms of the group and I also observe that money belonging to all the four firms, including MGEPL, being run by the same family headed by Shri G.R. Sahu, was used freely to finance the business of one another. The examination of statements of bank accounts of the firms revealed frequent transfer of money to the accounts of fone another. The said firms had following bank accounts: -

S.No.	Name of the firm	Account No.	Name of the Bank
1	M/s.AM	016011100001617	Andhra Bank Ltd.
2	M/s.AMC	016013046000002	Andhra

			Bank Ltd.
3	M/s.MGEPL	016011011001916	Andhra Bank Ltd.
4	M/s MGE	016011011001802	Andhra Bank Ltd.
		016013100000043	Andhra Bank Ltd.

68. A careful examination of statements of all the aforesaid bank accounts for the year 2012- 13 revealed that not only did the firms transfer money to one another on frequent basis, but the money was also transferred to facilitate the other firm to make up for the day to day requirement of its purchases. It was observed from perusal of the Bank Statements of the respective firms that money received from one firm was used for making payment to suppliers against purchase of goods. The cases were seen where exact amount of money received from a related firm was used for making payment to the suppliers, which meant that money belonging to one firm was used for business transactions of other group firms without any distinction of accounts. For example, some of such transactions as appearing in the bank statements are as under-

69. The statement of Bank A/c No.016011011001916 of M/s.MGEPL of Andhra Bank for the year 2012-13

- i. On 17.4.2012, the company had a balance of Rs.3221.80 in their account. On the same day, an amount of Rs.40,000/- was credited from the bank A/c No.16011011001802 of M/s MGE to their account and the same day an equal amount of Rs.40,000/- was withdrawn/ transferred to the account of M/s.Tanishq Gear & Transmission Pvt. Ltd., Delhi on account of payment against purchases from the said party.

II. On 18.6.2012, there was a balance of Rs.3966.80 in the account. On the same day an amount of Rs.35,000/- was received from A/c No.016013046000002 of M/s.AMC, which was transferred to the account of the supplier of raw materials, M/s.Satya & Co. the same day, i.e., on 18.6.2012.

iii. On 1.12.2012, an amount of Rs.2,00,000/- was received from the A/c No.16011011001802 of M/s.MGE and on the same day, the same amount of Rs.2,00,000/- was paid to M/s.Maruti Steel Syndicate towards purchase of raw materials from them.

iv. On 14.1.2013, there was a balance of Rs.3330.70. On the same day, an amount of Rs.1,03,000/- was received from A/c No.016011100001617 of M/s.AM and amount of Rs.1,02,540/- was transferred to the accounts of suppliers namely M/s.Jai Bhara (Rs.28,875/- +Rs.28,665/-), M/s.N.R.Trading (Rs.20,000/-) and M/s.Microne (Rs.25,000/-)

v. There were various other such transactions in the bank statement of A/c No. 016011011001916 of M/s.MGEPL for the year 2012-13, tabulated as Annexure - 1 to SCN.

70. The statement of bank A/c No.016013100000043 of M/s.MGE of Andhra Bank for the year 2012-13

i. On 21.5.2012, an amount of Rs 28,000/- was deposited in cash and an amount of Rs.72,000/- was received from the account 016011011001916 of M/s.MGEPL. On the same day, an amount of Rs.1,00,000/- was transferred to the account of Shri Jagdamba, suppliers of welding rods.

ii. On 1.11.2012, an amount of Rs. 1,98,000/- was received from A/c No.016011100001617 of M/S.AM and on the same day, an amount of

Rs.1,97,716/- was transferred to the account of a supplier, M/s.Maruti Steel.

- iii. There are various other such transactions in the bank statement of A/c No.016011011001802 and A/c No.016013100000043 of M/s.MGE for the year 2012-13, tabulated as Annexures 2 and 3 of the Show Cause Notice.*

71. The statement of bank A/c No.016011100001617 of M/s.AM of Andhra Bank for the year 2012-13

- i. On 27.7.2012, an amount of Rs.2,88,000/- was received from bank A/c No.016011011001916 of M/s.MGEPL, out of which an amount of Rs.4,000/- was transferred to M/s.Industrial and an amount of Rs.2,83,257/- was transferred to M/s.Priti Steels the same day.*
- ii. On 25.7.2012, an amount of Rs.2,05,000/- was received from A/c No.016010011010668 of Smt.Anita Sahu, and the same amount was transferred through RTGS to M/s.Durga Iran. Traders the same day.*
- iii. On 25.3.2013, an amount 89,667/- was received from the A/c No.016013046000002 of M/s.AMC and on the same day an equal amount of Rs. 89,667/ was transferred to M/s.Priti Steels through NEFT.*
- iv. There are various other such transactions in the bank statement of A/c No.016011100001617 of M/s.AM for the year 2012-13, tabulated as Annexure - 4 to SCN.*

72. The statement of bank A/c No.016013046000002 of M/s.AMC of Andhra Bank for the year 2012-13-

- i. On 3.5.2012, an amount of Rs.50,000/- was received from A/c No. 016011011001916 of M/s.MGEPL and an equal amount was transferred to M/s Bhagirathi Steels the same day.*

- ii. *On 29.8.2012, an amount of Rs.2,65,000/- was received from A/c No.016011100001617 of M/s AM and on the same day, an equal amount, i.e., Rs.2,65,000/- was transferred through RTGS to M/s Neelkanth Trading Co.*
- iii. *On 5.11.2012, an amount of Rs.1,00,000/- was received from the A/S No.16011011001802 of M/s.MGE, which was transferred to M/s.Narula Sons on the same day.*
- iv. *There are various other such transactions in the bank statement of A/ No.016013046000002 of M/s.AMC for the year 2012-13, tabulated as Annexure-5 to SCN.*

73. It was also observed that though inter unit transactions were made to settl accounts of buyers and suppliers, no such transactions were entered into with any of th buyers or suppliers to settle accounts with third parties. Further, not only did the firm transfer funds to one another to facilitate their requirement of purchase of raw material they directly paid the suppliers on behalf of one another as was evident from perusal their respective ledger accounts. For example, M/s.MGE made a payment of Rs.3,00,000 to M/s.Kuber Steels vide RTGS on 10.12.2012 as appearing in the bank statement of the A/c No.016013100000043 against the materials supplied by M/s.Kuber Steels M/s.MGEPL, which was evident from the ledger A/cs of MGE, MGEPL & Kuber Steels. T same has already been discussed herein above in foregoing paras. It was also observ that in some cases, buyers of one firm made payment against purchase of goods to oth firms of the group, which had been discussed in succeeding para related to statement dated 28.1.2015 of Shri G.R.Sahu.

74. I also find that electricity connections of the four firms of AG as per the electricity b tendered by Shri

Sahu under his statement dated 28.1.2015 are as under:-

<i>S. No.</i>	<i>Address</i>	<i>Electricity Meter No.</i>	<i>Name of the person in whose name connection is installed</i>
1.	67/3, 20 Foota Road, Hindon Vihar, Ghaziabad (AM)	M1509140056493 11039916983 Connection No.190603	Anand Machinery
2.	653, Hindon Vihar, Ghaziabad AMC	M1509140064952 71070147983	Shri Ganga Ram
3.	66. Hindon Vihar, Ghaziabad (MGEPL)	10899916 Connection No.159888	Shri Ganga Ram
4.	20 Foota Road, Hindon Vihar, Ghaziabad (MGE)	M1509140060273 01037879983/ Connection No. 162861	Shri Ganga Ram

75. Apparently, no names of the premises/firms were found mentioned on the electricity bills except M/s.AM and the electricity connections of the other three premises were found installed in the name of Shri Ganga Ram, which clearly indicated that the electricity connections were installed in the name of Shri Ganga Ram Sahu and not in the name of respective firms which were functioning at the said premises. However, payments towards electricity expenses were made by any of the firms as shown in their ledger accounts and also as stated by Shri Sahu in his statement dated 28.1.2015, irrespective of the fact that in case of MGE, the proprietorship firm of Smt. Anita Sahu, Shri Ganga Ram Sahu was not otherwise related as tried to be projected by him. Even the electricity connection of office of AG at 457, Hindon Vihar, Ghaziabad was installed in the name of Shri Ganga Ram Sahu as stated by him in in his statement dated 28.1.2015, whereas the said premises was meant for office of all the four firms. Again, the payment towards electricity expenses of the office was borne by the accounts of anyone of the firms as stated by Shri Sahu, but no provision to this effect was made in his name towards such electricity expenses as is evident from the books of accounts of all the firms. It was apparent that business of all the four

firms were run by one family, having common financial interests, headed by Shri Ganga Ram Sahu. Thus, from the aforesaid findings, it can be seen that ownership of different units were carefully camouflaged. The different entities created appears to be just colorable devices for tax evasion. There was a corporate veil which needs to be lifted. There was money flow back among the four units. One person Sh. Ganga Ram Sahu used to control the finance of all the four units, with inter-unit transfer of funds. Persons employed in one unit also worked for the other units. The office expenses were shared by all the four firms and payments to suppliers were made randomly from one or other of the four firms. These evidence clearly demonstrate inter- dependence and mutuality of interest. One person Sh. Ganga Ram Sahu had pervasive financial and managerial control over other units where he himself and his wife were directors, partners. proprietors. Thus, these units were created only to wrongly avail SSI exemption, which is not permissible as per legal provisions.

76. I observe that all the workers had been working in a company at least for-one year and to know the name of the company, it is not necessary to be well educated. In the statements, they all has stated that they work for Anand Group being headed by Shri Ganga Ram, therefore, the plea put forth by the defence counsel about illiteracy appears to be a feeble defence and lacks any concrete evidence and is liable to be rejected.

77. It is defended by the noticee that For the purpose of calculating value of clearances of excisable goods cleared from all the four units under clauses (vi) and (vii) of para 2 of Notification No.8/2003-CE, dated 1.3.2003, alleged 'M/s.Anand Group' had been treated as a r tor manufacturer and the clearances of the four factories had been added in the hands of alleged 'M/s.Anand Group' while for the purpose of recovering

excise duty, the four factories had been treated as independent manufacturers and excise duties had been demanded from each one of them. This contradictory stand of the department render the demands illegal. The notice was not sustainable and liable to be set aside.

78. In this connection, I observe that it is well settled law that in order to club units and their clearances, it is necessary to make all the dummy units to be party of the investigations and demands should have been issued to all of them by denying the SSI exemptions. For this I place reliance on the judgment.

79. I place reliance on the judgment of the Madras High Court in case of CCE, Chennai Vs. Urbane Industries cited in 2015(325) ELT 726 (Mad) wherein the court has held that SCN must be issued to the main unit as well as dummy units. The operative paras read as follows:-

12. In view of such findings and in the light of the decision of the Tribunal in the aforesaid matters, especially in Ogesh Industries and Ramsay Pharmaceuticals, it is clear that the consistent view of the Tribunals is that if there is an element of independent existence of a unit, the Department has to issue show cause notice to such unit to sustain the plea for the purpose of clubbing the clearances. In the instant case, though there is material to that effect, no notice has been issued and the Tribunal remanded the matter for issuance of notices and that has been accepted by the assessee and not by the Department

13. In the light of the various decisions of the Tribunal and also the findings of the adjudicating authority in the present case, it is clear that the department should have issued notice to all the

units. However, learned counsel appearing for the respondent/assessee states that in respect of the other matter for which no appeal has been filed, they are not aggrieved and that the order of the Tribunal need not be set aside only on the ground that it has called upon the department to issue notice to the two units namely CTGC and GCC. According to him, the issue is only regarding the clubbing of clearances which could be agitated on merits before the authority as and when show cause notice is issued in terms of the orders of the Tribunal.

14. Accordingly, the authority concerned is directed to issue show cause notice to all the parties, afford them an opportunity of hearing and pass appropriate orders afresh, on merits and in accordance with law. With the aforesaid observations, the Civil Miscellaneous Appeal stands disposed of and the questions of law raised are answered accordingly. There shall be no order as to the costs.

80. In the case of British Scaffolding India Pvt. Ltd. [2014(313)ELT 87(Tri.Del.)].

It was held as under:

"Common ownership of different units by one person - It is not so obvious and may be carefully examined. For example if there is a manufacturing unit of a proprietorship concern of a person 'X', there is a second manufacturing unit owned by a partnership concern 'A' with 'X' and his wife 'Y' as partners, there is a third manufacturing unit owned by a private limited company 'B' with shareholding by 'X', his son/son's, and the partnership concern 'A' and there is a fourth manufacturing unit owned by another private limited company 'C', with shareholding by 'A', 'B' and another son 'Z' of 'X' and if these four units owned by 'X', 'A', 'B' and 'C', are each availing of SS)

Exemption a question arises as to whether they are to be treated as separate entities or units owned by the same person, for the purpose of SSJ Exemption. Natural/juristic person having comprehensive financial and management control over several entities and is actual beneficiary of their activities In such case, clearances of the factories owned by these entities are to be clubbed. to determine their eligibility for SSI Exemption by treating them as the units of only one manufacturer even if those units are owned by different public limited companies, private limited companies or partnership firms - If on clubbing their clearances during preceding financial year, aggregate value of alue of clearances exceeds threshold limit, then SSI Exemption would have to be denied to each of them and if each of them is a functioning unit and not a non-functional dummy unit, duty can be demanded separately from each unit."

81. The party's plea that under Notification No.8/2003-CE, dated 1.3.2003 clearances of excisable goods made during a financial year can be clubbed only where (1) a manufacturer clears the specified goods from more than one factory; and (1) the specified goods are cleared by more manufacturers than one from a factory. In the present Notice, it was not the case of the department that more manufacturers than one have cleared goods from a single factory. Since the Notice referred to four factories, clubbing of the clearances of all the four factories could be done only if the manufacturer of the excisable goods in all the four factories was one person, natural or juristic. Such one manufacturer in the instant case had been identified by the department as the alleged M/s. Anand Group for the purpose of working out clearances under clauses (vi) and (vii) of para 2 of Notification No.8/2003-CE dated 1.3.2003. Clearances

of all the four factories had been added in the hands of the alleged M/s.Anand Group for working out clearances of the previous years. But for the purpose of demanding duty, all the four factories had been treated as independent manufacturers and duty had been demanded from each of them. The noticee's defence that: adopting two contradictory stands for treating different persons as manufacturers was illegal; that the Notice was not sustainable on this count alone and was liable to be set aside. This plea does not hold good in the light of judgment in case of CCE, Chennai Vs. Urbane Industries cited in 2015(325) Elt. 726 (Mad) also followed in several other judgments.

82. I also place reliance on the judgment of Hon'ble Supreme Court Bench [2015(323)ELT A 124(SC)] comprising Hon'ble Mr. Chief Justice H.L. Dattu, Hon'ble Mr. Justice Arun Mishra and Hon'ble Mr. Justice Amitava Roy on 3-8-2015 after condoning the delay dismissed the Civil Appeal Diary Nos. 21203 of 2015, 21199 of 2015, 21219 of 2015, 21221 of 2015, 21222 of 2015, 21250 of 2015, 21195 of 2015 and 21213 of 2015 filed by Euro Scaff (India) Ltd. against the CESTAT Final Order Nos. A/57780-57797/2013-EX-(DB), dated 1-10-2013 as reported in 2014 (313) ELT. 87 (Tri.-Del.) (British Scaffolding India Pvt. Ltd. Commissioner). While dismissing the appeals, the Supreme Court passed the following order :-

"Delay condoned.

We have heard Shri S.K.. Bagaria, learned senior advocate appearing for the appellant(s) and carefully perused the material available on record. In our considered opinion, we do not see any good ground to interfere with the judgment(s) and order(s) passed by the Customs, Excise and Service Tax Appellate Tribunal. Accordingly, the Civil Appeals are dismissed."

The Appellate Tribunal in its impugned order had held that the C.B.E. & C. Circular No. 6/92, dated 29-5-1992 clarifying that the limited companies whether public limited or private are separate entities and each such limited company is a manufacturer by itself and would be entitled for SSI Exemption separately, had no existence in law as this Circular has not considered the principle of lifting of corporate veil in cases where different corporate entities appear to be just colourable devices for tax evasion.

It was also held that the aggregate value of clearances of all the excisable goods for home consumption by the manufacturer from one or more factories during preceding financial year should not exceed specified threshold limit and if it does, none of the unit would be eligible for SSI Exemption even if value of clearances for home consumption of the excisable goods made by each individual unit during the preceding financial year is within the threshold limit. IN SUCH SITUATION, DUTY CAN BE DEMANDED SEPARATE FROM EACH UNIT AND THE QUESTION OF IDENTIFYING MAIN AND DUMMY UNITS A DEMANDING DUTY ONLY FROM THE MAIN UNIT DOES NOT ARISE. IDENTIFICATION OF THE MAIN AND DUMMY UNIT IS REQUIRED ONLY WHEN INVESTIGATION SHOWED THAT ON ONE UNIT WAS FUNCTIONING AND OTHERS WERE NON-FUNCTIONAL FAKE UN ESTABLISHED JUST TO SHOW THE BOGUS PRODUCTION AND CLEARANCES IN THEIR NAME.

IT WAS FURTHER HELD THAT THE UNITS OWNED BY DIFFERENT PUBLIC LIMITED COMPANIES, PRIVATE LIMITED COMPANIES OR PARTNERSHIP FIRMS ARE TO BE TREATED AS THE UNITS OF ONLY ONE MANUFACTURER WHO IS HAVING COMPREHENSIVE FINANCIAL AND MANAGEMENT CONTROL OVER THEM AND IS ALSO ACTUAL BENEFICIARY OF THE ACTIVITIES."

83. *The Hon'ble Supreme Court dismissed the Civil Appeal Diary No. 21201 of filed by NEC Industrial Project Pvt. Ltd. [2015(325)ELT A 145(SC)] against CESTAT final orders as reported in 2014(313) ELT 87 (Tr.-Del.) and passed the following order:*

"1. Delay condoned.

2. We have heard learned counsel appearing for the appellant(s) and carefully perused the material available on record. In our considered opinion, we do not see any good ground to interfere with the judgment(s) and order(s) passed by the Customs, Excise and Service Tax Appellate Tribunal. Accordingly, the Civil Appeals are dismissed."

The Appellate Tribunal in its impugned order had held that since there are sufficient evidences such as one person controlling finances of all group companies, unit running at losses supplying goods to other units without payment, person employed in one group company drawing salary from other, inter-unit transfer of funds and non-reconciliation of accounts to manipulate financial records, etc. which establishes that one person and his family members had pervasive financial and management control over other units which were created to wrongly avail SSI exemption. Hence clubbing of clearances was upheld.

84. *In the impugned case, it is also submitted that in the show cause notice, duty had been demanded from the four units, namely- AM, AMC, MGEPL and MGE treating them as independent manufacturers. There is no allegation in the Notice that the manufacturing and clearances by the said four units were on behalf of one person. There was no allegation that any of the said four. units were dummy units. Hon'ble Apex Court, in the case Gajanan Fabrics Distributors Vs. ČCE Pune 1997 (92) ELT 451 (SC), held clearly that revenue can demand duty from one person by proving that others were dummy.*

85. *In the light of above findings that the mutual interest in each other business is well established and Shri Ganga Ram Sahu is proved to be the main person instrumental to all this modus operandi to segregate the manufacturing activity in four firms in-spite of the fact that all activities of the manufacturing and clearances were being controlled by one and only Shri Ganga Ram Sahu. Mutual interest is established between all these four units as discussed above. I hold that all the firms are dummy and working for "Anand Group" only and clearances shown by them are not of them, but belongs to "Anand Group" as a whole.*

86. *I observe that the SSI benefit is available to an assessee in terms of Notification No.8/2003-CE dated 1.3.2003 as amended which reads as follows:-*

87. *Notification No.8/2003-CE dated 1.3.2003 as amended exempts clearances, specified in column (2) of the Table (hereinafter referred to as the said Table) for home consumption of excisable goods of the description specified in the Annexure appended to the said notification (hereinafter referred to as the specified goods), from so much of the aggregate of-*

(i) the duty of excise specified thereon in the First Schedule to the Central Excise Tariff Act, 1985 (5 of 19.86) (hereinafter referred to as the First Schedule); and

(ii).....

as is in excess of the amount calculated at the rate specified in the corresponding entry in column (3) of the said Table

88. *The said Table provides 'Nil' rate of duty in respect of first clearance up to an aggregate value not*

exceeding one hundred and fifty lakhs rupees made on or after 1st day of April in any financial year.

89. The said Notification further provides that nothing contained in the notification shall apply to a manufacturer who has availed the exemption under notification No. 39/2001-Central Excise, dated the 31 st July, 2001, published in the Gazette of India vide number G.S.R. 565 (E), dated the 31st July, 2001, in The same financial year.

90. The relevant conditions at para 2, 3 & 3A, for availing exemption from payment of Central Excise Duty are reproduced below:

2 The exemption contained in this notification shall apply subject to the following conditions, namely: -

- (i)*
- (ii)*
- (iii)*
- (iv)*

(v) where a manufacturer clears the specified goods from one or more factories, the exemption in his case shall apply to the aggregate value of clearances mentioned against each of the serial numbers in the said Table and not separately for each factory.

(vi)

(vii) the aggregate value of clearances of all excisable goods for home consumption by a manufacturer from one or more factories, or from a factory by one or more manufacturers, does not exceed rupees four hundred lakhs in the preceding financial year

91. Notification No.36/2001-CE(NT) dated 26.6.2001, requires a manufacturer of excisable goods, when the

value of excisable goods cleared from one or more units exceeds Rs. 90 lakhs in a financial year, to file a declaration with the Asstt. Commissioner having jurisdiction over the factory to declare:

(i) Name(s) and address(es) of the proprietors/all partners/Directors of the company owning the factory.

(ii) Name and address of the factory.

(iii) Name and addresses of other factories/manufacturers (producing such goods) in whom the manufacturer claiming the exemption has proprietary interest.

(iv) Full description of the goods (heading-wise) manufactured by the factory.

(v) Value/quantity of the goods cleared during the preceding financial year.

(vi) Value/quantity of the goods estimated to be cleared in the current financial year.

(vii) Heading No. or sub-heading No. of the First Schedule to the Central Excise Tariff Act, 1985 (5 of 1986) under which the goods are classifiable.

(viii) (a) Reference to the heading/sub-heading of the said Schedule Section 5A of the Central Excise Act, 1944 (1 of 1944), the case may be (under which the goods are exempted from the whole of the duty of excise leviable thereon).

(b) Ground of exemption under the said heading/sub-heading or the said notification

(ix) Process of manufacture.

92. It is apparent from the provisions 'contained in Notification No.13/2003-CE dated 1.3.2003 as amended, that the benefit of 'Nil' rate of duty for excisable goods up to first clearances of Rs.150 Lakhs (Rs.1.50 Crore) in a financial year from a factory is applicable subject to fulfillment of the conditions specified in Para 2 of the said Notification. One of the

conditions specified at Para 2(vii) of the said Notification is that the aggregate value of clearances of all excisable goods for home consumption by a manufacturer from one or more factories, or from a factory by one or more manufacturer's should not exceed rupees four hundred lakhs in the preceding financial year.

93. I find that in order to determine the aggregate value of clearances of all excisable goo for home consumption specified in Para 2(vii) of Notification No.8/2003-CE dated 1.3.2003 amended, the clearances of excisable goods specified in Para 3A of the said Notification shall i be taken into consideration. The clearances of excisable goods manufactured by M/s. AM (Un 1) M/s. AMC (Unit-11), M/s MGEPL (Unit-III) and M/s.MGE (Unit-IV), Unit-II do not fall under a of the categories listed under Para 3A. The combined sales of all the four firms as per sa Annexure-32 to Annexure-35 of the SCN so tabulated is as under: -

(Amt. in Rs.)

DETAILS OF COMBINED SALES OF ALL FOUR FIRMS OF ANAND GROUP							
Year	Rate of Duty	Name of the unit				Total	Exempt Value
		MGEPL	MGE	AMC	AM		
2009-10 (up to 28.2.2010)	8%	11601709	8351707	11967258	0	31920674	150000
2009-10 (1.3.2010 - 31.3.2010)	10%	924990	1387587	1352893	0	3665470	
Total 2009-10 Total		12526699	9739294	13320151	0	35586144	150000
2010-11 2011-12	10%	15010639	14350029	16430980	4112156	49903804	150000
(upto 16.3.2012)	10%	14460934	13671060	13770465	17298415	59200874	
2011-12 (17.3.2012-31.3.2012)	12%	454700	905616	941676	121860	2423852	
Total 2011-12		14915634	14576676	14712141	17420275	61624726	
Total 2012-13 Total	12%	15360375	15859925	16410258	16639505	64270063	
2013-14 Total	12%	11962453	9052039	12139036	10168318	43321846	
2014-15 (upto 31.12.2014)	12%	5003901	8223655	7108180	3956735	24292471	

94. From the above chart, it is observed that though the combined aggregate value of excisable goods manufactured and cleared by all four firms of "Anand Group", M/s.AG was below Rs.4 crore in the year 2009-10 it was consistently more than Rs.4 crore in the year 2010-11 and thereafter. It is, therefore, evident that all the firms of M/s.AG were collectively not eligible for exemption up to a value of Rs.1.50 crores from the year 2011-12 onwards in view of para 2(vii) of Notification No.8/2003-CE dated 1.3.2003, as amended.

95. On the basis of above chart tabulated from the sales invoices and ledger A/cs. collective Central Excise Duty liability of all firms of M/s.AG was calculated by considering basic sales value transaction value to be the cum-duty price of goods sold. It was observed that in the year 2009-10, all firms of M/S.AG were collectively eligible for exemption upto a value Rs.1.50 crore. Further the duty liability was calculated w.e.f.1.1.2010 in the year 2009-10 and was observed that till 31.12.2009, the combined value of clearances of all the four firms was the tune of Rs. 2,26,76,903/- Again, in the year 2010-11, in which they were collectively eligible for an exemption upto a value of clearances of Rs.1.50 crores, owing to the fact that combined value of clearances in the year 2009-10 was Rs.3,55,86,144/- only and did not cross Rs.4 crore as prescribed at para 3A of Notification No.8/2003-CE dated 1.3.2003, as amended, it was observed that the combined value of clearances of Rs.1.50 crores was crossed on 22.7.2010 when the combined value of clearances was Rs.1,51,41,977/-. The said value was in excess Rs.1,41,977/- from the exempted value of Rs.1.50 crore. Therefore, the value for the year 2011, for the purpose of duty in respect of M/s.MGEPL and M/s.AMC were taken w.e.f.23.7.2010: whereas, the value in respect of M/s.MGE was taken from 22.7.2010 itself, after

deducting amount of Rs.1,41,977/- from the value of Rs.3,25,000/- of Invoice No.90 dated 22.7.2010. The value of clearances of M/s.AM were not taken into account for calculating aggregate value clearances of Rs.1.50 crores, since the firm was started only in the month of February, 2011.

96. Finally, the assessable value of the excisable goods cleared without payment of duty at the Central Excise duty leviable thereon was calculated under Annexure-37 to this SCN (in respect of M/s.AM), Annexure-38 to this SCN (in respect of M/s.AMC), Annexure-39 to this St (in respect of M/s.MGEPL) and Annexure-40 to this SCN (in respect of M/s.MGE) for the period 2009-10 (w.e.f.1.1.2010) to 2014-15 (upto 31.12.2014).

97. As discussed hereinabove, the four firms/units of "Anand Group did not file a declaration as required in the Schedule to Notification No.36/2001-CE (NT) dated 26.6.201 with the jurisdictional Central Excise authorities, despite exceeding the specified limit of value clearances of excisable goods mentioned in the Notification. They did not even inform the jurisdictional Central Excise Authorities about the existence of their factories, which was deliberate and willful with an intent to suppress the manufacture and clearance of excisable goods by them.

98. In the light of above discussions and findings, I hold that M/s.AG with their Unit-1, Unit-II, Unit-III & Unit-IV, through their above acts of omission and commission, deliberately, willfully and with an intent to evade payment of Central Excise Duty, contravened the provisions of Notification No.8/2003-CE dated 1.3.2003 and Rules 4, 6, 8, 9, 10, 11 and 12 of the Central Excise Rules, 2002 read with Section 6 of the Central

Excise Act 1944, in as much as they manufactured and cleared excisable goods collectively valued at Rs.21,67,14,125/- during the period 2009-10 (w.e.f.1.1.2010) and 2014-15 (upto 31.12.14).

99. I also hold that M/S.AG with their Unit-I, Unit-II, Unit-III & Unit-IV, resorted to willful suppression of facts with an ulterior motive to evade payment of Central Excise Duty leviable on the goods manufactured and cleared by them. In view of the willful suppression elaborated above, the extended period of limitation under sub-section (4) of Section 11A of the Act for demand and recovery of Central Excise Duty, aggregating Rs.2,46,08,027/- (Rupees Two Crore Forty Six Lakhs Eight Thousand and Twenty Seven only) [CENVAT- Rs.2,38,91,288/- + Ed.Cess- Rs.4,77,826/ SHE Cess- Rs.2,38,913/-], which was not paid by them, separately as under, is rightly invocable. Further, interest as applicable in terms of the provisions of Section 11AA of the Act (erstwhile Section 11AB of the Act), is also liable to be charged and recovered."

4.3 From the facts, discussions in the impugned order and also made available, we find that undisputedly the person behind it was Shri Gangaram Sahu who was controlling the activities of all the four units. In the case of M/s TSM Plastice FINAL ORDER NOs.70076-70078/2024 dated 15.02.2024, this Tribunal has held as follows:-

"4.9 From perusal of the Partnership Deed, we observe that there were four persons who have blood relations namely S.K. Sharma, LT Col (Retd) H.C. Sharma, Sanjeev Sharma & Sonal Sharma. It is also evident that the associates in the said partnership are partners in ratio of 70% appellant-II, 10% for the father, appellant-III and the sister. There is remuneration shown between the partners which is Rs.4 lakhs for the appellant-II and Rs. 2 lakhs for appellant-III and

sister. On perusal of partnership it is evident that the partnership firm is comprised of partners belongs to the same family. Appellant III is the proprietor of M/s L S Plastics. Further the issue of

- (a) Control of Appellant-I and Appellant-II over the activities and operation of M/s L S Plastics;*
- (b) Commonality of infrastructure;*
- (c) Use of office premises and the common employees/accountants maintaining the records of both the units on same computer system;*
- (d) The valuation of sale of the manufactured goods of M/s L S plastics being done by Appellant-II,*

Have been discussed and brought out in the show cause notice, order in original and the impugned order. From the facts as narrated above there is no dispute that the beneficiary of all the activities undertaken by Appellant-I and M/s L S plastic is same family. Appellant 3 who is proprietor of M/s L S plastics is drawing remuneration of Rs 2,00,000/- and partnership interest to the extent of 10% in the partnership firm. It is also well established and not disputed appellant-II who enjoys partnership interest of 70% in the partnership firm and remuneration of Rs 4,00,000/- actually controls all the operation of M/s L S Plastic.

4.10 Appellant have heavily relied upon the decision in case of Thermotech, to argue that in absence of mutuality of interest the clearance of both the units though owned by the members of same family cannot be clubbed. The relevant excerpts from the said decision are reproduced below:

"15. We find no merits in the above reasoning of the adjudicating authority. Admittedly he has nowhere referred to any mutuality of interest between the units of husband and units owned by wife. He has observed that lack of mutuality of interest or financial flow back

can be only one of the important consideration but cannot be made sole basis for arriving at the decision. Merely because the two owners of the units were husband and wife and the profits earned by them came into same household, does not mean that clearances of all the units is required to be clubbed. We really fail to understand the above reasoning of the adjudicating authority. If the husband is helping his wife in running of any business activity and rendered assistance, the same cannot be made the basis for clubbing the clearances of all the units. For doing so, Revenue is expected to produce evidence to show that all the units were facad and were not complete units independently manufacturing the goods in question. If the reasoning adopted by Commissioner is accepted, the same would result in legal chaos in as much as the clearance of units being run by wife's, independent of their husbands units would lead to clubbing issues, irrespective of the fact that finances of wife and husband are being separately managed by them.

16. Apart from above, we note that all the units were separately registered with income tax as also sales tax authorities. Their locations of business were at separate places. In fact one of the unit was located in Delhi itself. There was no financial inter-twining and all the units were working with their own independent financial resources. There is no evidence on record to show that there was any mutuality of interest between the units except for the fact that Shri Pradeep Khanna was sometimes looking after the affairs of the units belonging to his wife which, as already discussed by us, cannot be made the basis for clubbing the clearances of the units owned by husband and wife.

17. We further note that identical case was made out against M/s Jass Kann International proposing the

clubbing of clearances of M/s Thermoking with their clearances. Such charges were dropped by Commissioner vide his order dtd. 30.09.02, who held that clearances of M/s Thermoking under the proprietorship of Shri Pradeep Khanna cannot be clubbed with the clearances of M/s Jass Kann, a unit owned by his wife. In such a scenario to restart the identical proceedings in respect of another unit of Ms. Neera Khanna, i.e., M/s Thermotech, proposing clubbing the clearance of M/s Thermoking cannot be appreciated.

18. We further note that the appellants have taken a strong objection to the fact that while show cause notice (SCN) proposed clubbing of clearances of M/s Thermoking, M/s Flevel International and M/s Jass Kann International with the clearances of M/s Thermotech, no SCN stands issued to the other units. The said objection of the appellants stands not accepted by the Commissioner by observing that as all the units are owned either by wife of Shri Pradeep Khanna or by Ms. Neera Khanna, issuance of separate notice to the other units was not required.

We find no merits in the above arguments. Admittedly all the units were working separately and the Revenue is proposing the clubbing of clearances with the clearances of M/s Thermotech. The minimum legal requirement is to put the other units on notice. Mere fact that the said other units were under the proprietorship of Ms. Neera Khanna or under the ownership of husband of Ms. Neera Khanna cannot absolve the Revenue from putting the other units to notice. It is well settled law that in case of clubbing of clearances of various units, the notices are required to be issued to all, in as much as the clearances of other units is sought to be clubbed with clearances of a

particular unit. To club the clearances of other units with M/s.Thermotech without even putting the other units on notice and without even letting them know about the same is against the settled principle of law.”

From the perusal of the above it is quite evident that the matter has been decided in favour of the appellant, as no show cause notice was issued to the units whose clearance was sought to be clubbed with the clearance of M/s Thermotech. In the present case the facts are not the same notice has been issued to Appellant-III who is proprietor of M/s L S Plastics and also partner in partnership firm (Appellant-I).

4.11 Appellant has also relied upon the following decisions:

- *Sharad Industries [2013 (294) ELT 0561 (Tri.-Del.)];*

Tribunal has held as follows:

*"6. We, after appreciating the submissions of both the sides find that there is not much dispute on factual position. It is not the Revenues case that two unit owned by Smt Kamlesh Gupta and her husband Shri Avdesh Kumar Gupta not complete units having all the necessary machines and infrastructure for manufacture of their final product. Both the units have separate Sale Tax Registration, Industries Registration, Income Tax Registration, Electricity Connection, Telephone Connection & ESI Registration etc. Merely because there is a door between the two units and power of attorney stand given to her husband to look after the job of her unit, by itself cannot be held to be a ground for holding both the units as one. Admittedly, husband and wife are entitled do their own business and if the husband is looking after the business of the wife that will not make the unit owned by the wife as a dummy unit. **The prime requirement, for clubbing the clearance of two units is not having complete independent***

machinery and infrastructure to manufacture the goods. If both the units are complete by itself, capable of manufacturing the goods without any help from the other unit, it has to be held that both the units are independent units. The various decision of the Tribunal referred to and relied upon by Commissioner (Appeals) in his impugned order are applicable to the facts of the present case. It stands held in precedent decision that financial flow back and financial intertwining between the two units is the main reason for reflecting upon the fact of their being independent or not. One such reference can be made to in decision of the Hon'ble High Court in the case *M/s. Renu Tandon Vs. Union of India*, 1993(66)ELT 375 (Raj.). Similarly in the case of *M/s. Electro Mechanical Engg. Corporation Vs. CCE, Jaipur* 2003(152) ELT 194(Tri.), *Gires Electrical Industries Vs. CCE, Mumbai*, 2004(167) ELT 209(Tri.) it was held evidence of common office premises, common staff and common maintenance of records etc. cannot be held to be sufficient to club the clearances of the units, who have different registration in all the department and in the absence of any financial flow back."

From the perusal of the above, it is quite evident that clearance cannot be clubbed in situation where the units are functioning as independent units with different sets of machinery and infrastructure to manufacture goods. However in the case in hand both the authorities have concluded with regards to commonality of infrastructure facilities and management and control, hence this decision is distinguishable.

- *Plasto Containers (India) P. Ltd.* [2011 (268) ELT 0509 (Tri.-Mumbai)];

Tribunal has concluded stating as follows:

"35. From the above discussion, we hold that both the units are having separate directors, separately

registered with the registrar of companies, separate sales tax registration, income tax, bank account and separate lease deed with MIDC and are having separate premises also. In that event the clearance of both the units cannot be clubbed...”

From the above it is evident that tribunal has recorded a finding of fact holding that clearance of both the units cannot be clubbed. In the facts of the case which are before us there is clear finding of fact recorded by both the authorities vis a vis the commonality of infrastructure, management and control of the unit. This decision is clearly distinguishable.

- *Poona Radiators and Oil Coolers [2017 (347) ELT 0320 (Tri.-Mumbai)];*

In this case tribunal has held as follows:

"It is the case of the Revenue that eight units indicated hereinabove are of the same family group; hence in effect all the units need to be clubbed together. The adjudicating authority has specifically recorded that the eight units are separately registered as small scale unit, whether as partnership concerns and each unit is registered under the Central Excise Act as well as with the various Government Department like Sales Tax Act, Income Tax Act, Factories Act, etc. As per the adjudicating authority each unit has acquired their own manufacturing raw materials and finished goods were sold directly to their respective customers. He has recorded that all the goods are as per order placed by the customers of each unit. The adjudicating authority has recorded a clear findings that the units are independent and hence clubbing of clearance of the units physically manufacturing cannot be accepted. These factual positions not controverted by department. We also find that there is nothing on record to show that manufacturing activity was distributed amongst of the manufacturing units to create a façade for evasion

of duty. There is nothing on record that this unit were created for benefit of individuals. There is no effective counter to such a finding of the adjudicating authority."

This decision is also upholding the finding of fact recorded by the adjudicating authority, to the effect that all the units were separately registered with Central Excise and other departments. It has upheld the finding recorded by the adjudicating authority in regards to control and management of the units which has not be controverted by the revenue in its appeal. This decision is clearly distinguishable.

- *Jindal Steel Fabricators [2005 (108) ELT 238 (Tri.-Kolkata)]*

Tribunal has held as follows:

"4. In the present case, Mr. Mahesh Kr. Jindal is a proprietor of M/s. Jindal Steel Fabricator and also a partner of the partnership firm, namely, M/s. Jindal Steel Products. As per the Company's Law/Partnership Act, there is a distinct identity of a proprietary firm and a partnership firm. the clearance made by a partner in his individual capacity from he proprietary unit cannot be clubbed with the clearance of a firm to which he is a partner. In the present case, Mr. Mahesh Kr. Jindal is a proprietor of M/s. Jindal Steel Fabricator and also a partner in another firm, namely, M/s. Jindal Steel Products. Both the firms, namely M/s. Jindal Steel Fabricators proprietary concern and M/s. Jindal Steel Products, Partnership concern, having separate identity are two separate manufactures. The two firms have Income Tax Files, Sales Tax Registration, separate Bank Accounts etc... Accordingly, they cannot be treated to be one manufacturers and consequently, the value of the clearances of the two firms cannot be clubbed together.

5. In order to club the turnover of two concerns, it has to be provided by adducing evidences that on firm is

dummy or camouflaging the others. In the present case, there is no such allegation in the show-cause notice and there is no iota of evidence in this regard. The same view was expressed in the case of Probhat Dyes & Chemicals Vs. Collector of Central Excise reported in 1992 (62) ELT 469. The same view has been expressed by the Hon'ble Supreme Court in the case of Assistant Collector of Central Excise & Customs, Surat & Others Vs. Shri J.C. Shah, M/s. Yayantilal Babubhai & Others reported in 1978 ELT J-317 (SC) = . The decisions submitted by the Id. JDR are not applicable in the present circumstances. In the case of Supreme Engineering Works Vs. Collector of Central Excise, Pune, the Tribunal held that the Collector's conclusion, based on ample evidence regarding common control of production and sales among the units, having special financial relations shown to be not on a principal to principal basis. In the case of Collector of Central Excise, Chandigarh Vs. Densons Pultrroteknik, the Tribunal held that one or more factories were controlled by the same manufacturer and it was held that the value of clearances of the two units clubbed together. the facts of the present cases are distinguishable and the ratio of the aforesaid cases are not applicable in the present case. In view of the above discussions, appeal deserves to be allowed. Cross Objection (CO) also gets disposed of."

From the perusal of the above it is quite evident that in this case issue was with regards to clubbing of clearance of the two units wherein one unit was proprietorship concern with the other unit in which the said proprietor was partner. However the above decision itself lays down that the clubbing can be done in case where one unit is dummy or camouflaging the others. The present case is squarely the case where the authorities have concluded that one unit was dummy unit.

- *Unity Industries [2006 (193) ELT 0314 (Tri.-Mumbai)];*
Tribunal has observed as follows:

"(a) It is an admitted position that the show cause notice has a reference to all the four units required to be termed as one unit and their values of clearances were required to be clubbed together and eligibility to SSI exemption notification was to be determined afresh, yet the notice demands duty separately from each of the units. The demands in the notice are in conflict with the charge. Such notices are required to be set aside. The order impugned is demanding duty of Rs. 1,45,29,754/- from M/s Sotex, the proprietary firm of Shri M M Majithia. The demand cannot be upheld, since the demand in the show Cause Notice proposed to be recovered from M/s Sotex was not a figure of Rs. 1,45,29,754/- but much less, the present proposal to confirm the duty demand beyond which was proposed in the Show Cause Notice at Rs. 35,806/- & Rs. 2884/- cannot be upheld.

(b) The finding that the three units are just dummy units cannot be upheld when the department is recognizing separate clearances and duty demands on these other units.

(c) Except for M/s Sotex, the independent existence of the other partnership concerns and proprietary concern cannot be doubted. It is another matter that they may be under the total control of Shri M M Majithia, that ipso facto cannot label them as dummy non existent units. They have independent SSI registration and Central Excise registration and declaration filed and have separate audited Balance Sheets & located geographically apart.

(d) The duty demands, as per annexure C are found to be based on:

- i. value of clearances as declared by the units;*
- ii. value of clandestine clearances as per seized records;*
- iii. Value of clearances as per estimation on the basis of production capacity per day as per company and statements of supervisors.*

The appellants submit that for the year 1994-95, value of clearances declared by the unit is Rs. 66,77,052/- and the value of clandestine clearances is shown as Rs 2,40,61,738/-. These figures when added should result in Rs. 3,07,39,590/-. However, the value taken for calculation of duty is Rs. 3,73,08,790/-. Such misapplication of mind, and upholding of demand thereafter, and reliance on assumed/presumed production on estimation of machines cannot be upheld per se.

(e) The matter of existence of these units and the activity were within the knowledge of the department vide proceedings initiated by Preventive Officers by Show Cause Notice dt 8.3.94 issued to each unit and which culminated in order in appeal by Commissioner dated 3.7.96. The Commissioner's finding in present order impugned on this issue in para 8 is:

"8... Moreover the statement of Shri Subhash Karia recorded at that time in connection with adjudicated by the then Assistant Commissioner of Central Excise & Customs, Bharuch vide Order-in-Original dated 24.10.94 confirms my findings in this order that it is only the sotex owned by Shri Mahendra M Majithia, which is the unit and all other units i.e. Sonic, Stelex and Unity are just dummy units fully under the control of Shri Mahendra M Majithia and transactions between them are not at all on principal to principal basis."

Which would lead to the only conclusion that the department was fully aware of the charges as found by the Ld Commissioner. There is nothing new in the findings, enquiries and the proceedings now initiated that was not before the departmental officers in 1993-94 when the first case was detected & notice was issued. However, no notice to propose clubbing was issued at that time. If nothing new is coming forth in 1998, to issue the present notice, demanding duties on issues well known in 1993, then the demand is to be held to be barred by limitation. The bar of limitation by alleging suppression should be held to be in favour of the appellants in the facts of this case. Facts were known to both sides, the allegation of suppression is untenable and reliance on the case of Prabhu Steel Industries Ltd 1997 (95) ELT 164 (SC) by the appellants is well founded. The reliance on the case of Nizam sugar Mills case by the Ld. Commissioner will not help the revenue in the facts herein. The entire proceedings of demands are therefore required to be quashed on ground of time bar."

From the perusal of the above it is evident that the department itself was recognizing the units whose clearance was sought to be clubbed as separate units and the demand was set aside on the grounds of limitation and not merits. We do not find this decision to be applicable in the facts of this case.

- *Superior Products & Ors. [2008 (230) ELT 0003 (SC)]; Hon'ble Supreme Court has refused to interfere with the finding of fact recorded by the tribunal. The finding of the fact in the case of Superior Products, is limited to the said decision and cannot be considered as binding precedent. Relevant para of the Hon'ble Apex Court decision is reproduced below:*

"5. Tribunal in its order has recorded a finding that accounts of both the units are managed separately. That they have separate capital, premises, machinery

and labour and carrying out separate operations. That they are separate units. These findings are findings of fact which cannot be interfered with and, therefore, the same are confirmed."

4.12 *In the case of M/s CALCUTTA CHROMOTYPE LTD. 1998 (99) ELT 202 (SC) wherein Hon'ble Supreme Court has observed as follows:-*

3. *The Assistant Collector, Central Excise found that both the appellant and its sole distributor were limited companies registered under the Companies Act, 1960. He found that the Board of Directors of both these companies were constituted :*

"Appellant

- 1. Shri Narendra Sharma, Managing Director*
- 2. Smt. Brahma Devi, Director*
- 3. Smt. Indu Sharma, Director*

M/s. Ganga Saran & Sons Co.

- 1. Shri Narendra Sharma, Managing Director*
- 2. Smt. Brahma Devi, Director*
- 3. Shri Brajendra Sharma, Director*
- 4. Shri Rajendra Sharma, Director".*

4. *Assistant Collector also found that shares of the appellant and its sole distributor were held by the members of the Sharma family, i.e., persons who were related to each other and that both the companies were having the common Managing Director and further that the appellant was selling the goods with the brand name of its distributor, namely, M/s. Ganga Saran & Sons Pvt. Ltd. It was contended before the Tribunal that both the companies were registered under the Companies Act and were separate legal entities and*

therefore, could not be considered as related persons. It was submitted that having the common Director was not the determining factor to hold that M/s. Ganga Saran & Sons Pvt. Ltd. was a related person and further that the fact that the manufacturer was printing the name of the buyer and was selling the entire product to the buyer also did not make the buyer a related person. It was also submitted that the authorities below had failed to establish that M/s. Ganga Saran & Sons Pvt. Ltd. had been accorded a favourable treatment and that, in fact, low price had been charged on that account. The appellant said that in the absence of any such evidence it was not correct to hold that the price at which M/s. Ganga Saran & Sons Pvt. Ltd. sold the product was the price for the purpose of determining the assessable value.

5. *The Appellate Tribunal was also of the view with reference to Section 4(4)(c) of the Act that if a person is so associated with the assessee that they have interest in the business of each other then the person was a related person of the other within the meaning of the Section. Appellate Tribunal noted that Collector (Appeals) had held that the appellant as well as M/s. Ganga Saran & Sons Pvt. Ltd. were started and established by G.S. Sharma and his family members and further that Assistant Collector had found that the shares of the appellant and the shares of the buyer company were held by the members of the same Sharma family and, thus, by the persons that who were related to each other. The Appellate Tribunal referred to the decision of this Court in Mohanlal Magan Lal Bhavsar (Deceased) through LRs. and Ors. v. Union of India and Ors. [1986 (23) E.L.T. 3] and also to its own decision in Diamond Clock Manufacturing Co. Ltd. v. C.C.E., Pune [1988 (34) E.L.T. 662] where it interpreted the definition of related person. Relying on these two decisions as applicable to the facts of this case, the Appellate Tribunal was of the view that there was identity of Interest and M/s. Ganga Saran & Sons Pvt. Ltd. was related person within the meaning of Section 4(4)(c) of the Act. The Appellate Tribunal disposed of the appeal with the directions aforesaid.*

6. *Mr. Dave, learned Counsel for the appellant, contended that the Appellate Tribunal erred in holding that the appellant and M/s. Ganga Saran & Sons Pvt. Ltd. were related persons or that there was an identity of interest between the two. He said the two judgments, one of Supreme Court and other of the Appellate Tribunal itself on which the Appellate Tribunal relied were not applicable inasmuch as facts in the said two cases were entirely different and decisions were clearly distinguishable. He said that in order to be a related person within the meaning of Section 4(4)(c) of the Act the person alleged to be related must have interest, direct or indirect, in the business of the assessee and that in the present case both the appellant and its buyer were private limited companies established much before the imposition of the excise duty on playing cards and had been dealing with each other at arm's length. He said there was no evidence before the Appellate Tribunal as to the shareholding in each of the two companies and to say that shareholdings were held by Sharma family was a misnomer and that such a fragile test could not be applied to test the identity or mutuality of interest. Mr. Dave said that the Appellate Tribunal came to a wrong conclusion on prima facie holding that Sharma family controlled both the companies. Sharma family is a vague term and did not reflect as to what was the exact shareholding of the members in both the companies and how they were related to each other. Lastly, Mr. Dave submitted that there was no allegation and no finding ever recorded that the dealings between the appellant and its distributor were not at arm's length or that prices at which the goods were sold to the distributor were exceptionally low, having been influenced by some extra commercial consideration. Mr. Dave said that the Appellate Tribunal did not examine the whole facts of the case and law applicable thereto in proper perspective and that led it to give directions which are incorrect and these were now being impugned.*

7.

12. *The principle that a company under the Companies Act, 1956 is a separate entity and, therefore, where the manufacturer and the buyer are two separate companies,*

they cannot, than anything more, be 'related persons' within the meaning of clause (c) of sub-section (4) of Section 4 of the Act is not of universal application. Law has traveled quite a bit after decision of the House of Lords in the case of Salomon v. Salomon [1897 AC 22]. This is how this Court noticed in Tata Engineering and Locomotive Company Ltd. v. State of Bihar & Ors. [(1964) 6 SCR 885] :

"The true legal position in regard to the character of a corporation or a company which owes its incorporation to a statutory authority, is not in doubt or dispute. The corporation in law is equal to a natural person and has a legal entity of its own. The entity of the corporation is entirely separate from that of its shareholders; it bears its own name and has a seal of its own; its assets are separate and distinct from those of its members; it can sue and be sued exclusively for its own purposes; its creditors cannot obtain satisfaction from the assets of its members; the liability of the members or shareholders is limited to the capital invested by them; similarly, the creditors of the members have no right to the assets of the corporation. This position has been well-established ever since the decision in the of Salomon v. Salomon & Co. [(1897) A.C. 22 H.L.] was pronounced in 1897; and indeed, it has always been the well recognised principle of common law. However, in the course of time, the doctrine that the corporation or a company has a legal and separate entity of its own has been subjected to certain exceptions by the application of the fiction that the veil of the corporation can be lifted and its face examined in substance. The doctrine of the lifting of the veil thus marks a change in the attitude that law had originally adopted towards the concept of the separate entity or personality of the corporation. As a result of the impact of the complexity of economic factors, judicial decisions have sometimes recognised exceptions to the rule about the juristic personality of the corporation. It may be that in course of time these exceptions may grow in

number and to meet the requirements of different economic problems, the theory about the personality of the corporation may be confined more and more."

13. *In Life Insurance Corporation of India v. Escorts Ltd. & Ors. [(1986) 1 SCC 264], this Court again considered this question and said :*

"While it is firmly established ever since Salomon v. A. Salomon & Co. Ltd. [(1897) AC 22 HL] was decided that a company has an independent and legal personality distinct from the individuals who are its members, it has since been held that the corporate veil may be lifted, the corporate personality may be ignored and the individual members recognised for who they are in certain exceptional circumstances. Pennington in his Company Law (4th Ed.) states :

Four inroads have been made by the law on the principle of separate legal personality of companies. By far the most extensive of these has been made by legislation imposing taxation. The Government, naturally enough, does not willingly suffer schemes for the avoidance of taxation which depend for their success on the employment of the principle of separate legal personality, and in fact legislation has gone so far that in certain circumstances taxation can be heavier if companies are employed by the taxpayer in an attempt to minimise his tax liability than if he uses other means to give effect to his wishes. Taxation of companies is a complex subject, and is outside the scope of this book. The reader who wishes to pursue the subject is referred to the many standard text books on Corporation Tax, Income Tax, Capital Gains Tax and Capital Transfer Tax.

The other inroads on the principle of separate corporate personality have been made by two sections of the Companies Act, 1948, by judicial disregard of the principle where the protection of public interests is of paramount importance, or where the company has

been formed to evade obligations imposed by the law, and by the Courts implying in certain cases that a company is an agent or trustee for its members.

In Palmer's Company Law (23rd Ed.), the present position in England is stated and the occasions when the corporate veil may be lifted have been enumerated and classified into fourteen categories. Similarly in Gower's Company Law (4th Ed.), a chapter is devoted to 'lifting the veil' and the various occasions when that may be done are discussed. In Tata Engineering and Locomotive Co. Ltd. [(1964) 6 SCR 885], the company wanted the corporate veil to be lifted so as to sustain the maintainability of the petition, filed by the company under Article 32 of the Constitution, by treating it as one filed by the shareholders of the company. The request of the company was turned down on the ground that it was not possible to treat the company as a citizen for the purposes of Article 19. In CIT v. Sri Meenakshi Mills Ltd. [AIR 1967 SC 819], the corporate veil was lifted and evasion of income tax prevented by paying regard to the economic realities behind the legal facade. In Workmen v. Associated Rubber Industry Ltd. [(1985) 4 SCC 114], resort was had to the principle of lifting the veil to prevent devices to avoid welfare legislation. It was emphasised that regard must be had to substance and not the form of a transaction. Generally and broadly speaking, we may say that the corporate veil may be lifted where a statute itself contemplates lifting the veil, or fraud or improper conduct is intended to be prevented, or a taxing statute or a beneficent statute is sought to be evaded or where associated companies are inextricably connected as to be, in reality, part of one concern. It is neither necessary nor desirable to enumerate the classes of cases where lifting the veil is permissible, since that must necessarily depend on the relevant statutory or other provisions, the object sought to be achieved, the impugned conduct, the involvement of the element of

the public interest, the effect on parties who may be affected etc."

14. *In M/s. McDowell and Company Ltd. v. Commercial Tax Officer [(1985) 3 SCC 230 = (1985) 154 ITR 148], this Court examined the concept of tax avoidance or rather the legitimacy of the art of dodging tax without breaking the law. This Court stressed upon the need to make a departure from the Westminster principle based upon the observations of Lord Tomlin in the case of IRC v. Duke of Westminster [(1936) AC 1] that every assessee is entitled to arrange his affairs as to not attract taxes. The Court said that tax planning may be legitimate provided it is within the framework of law. Colourable devices, however, cannot be part of tax planning. Dubious methods resorting to artifice or subterfuge to avoid payment of taxes on what really is income can today no longer be applauded and legitimised as a splendid work by a wise man but has to be condemned and punished with severest of penalties. If we examine the thrust of all the decisions, there is no bar on the authorities to lift the veil of a company, whether a manufacturer or a buyer, to see it was not wearing that mask of not being treated as related person when, in fact, both, the manufacturer and the buyer, are in fact the same persons. Under sub-section (1) of Section 4 of the Act, value of the excisable goods shall not be deemed to be normal price thereof, i.e., the price at which such goods are ordinarily sold by the assessee to a buyer in the course of wholesale trade for delivery at the time and place of removal, if the buyer is a related person and price is not the sole consideration for sale. As to who is a related person, we have to see its definition of Section 4(4)(c) of the Act. It is not only that both, the manufacturer and the buyer, are associated with each other for which corporate veil may be lifted to see who is behind it but also that they should have interest, directly or indirectly, in the business of each other. But once it is found that persons behind the manufacturer and the buyer are same, it is apparent that buyer is associated with the manufacturer, i.e., the assessee and then regard being had to the common course of natural events, human conduct and public and*

private business it can be presumed that they have interest, directly or indirectly, in the business of each other (refer Section 114 of the Evidence Act). It is, however, difficult to lay down any broad principle to hold as to when corporate veil should be lifted or if on doing that, could it be said that the assessee and the buyer are related persons. That will depend upon the facts and circumstances of each case and it will have to be seen who is calling the shots in both the assessee and the buyer. When it is the same person the authorities can certainly fall back on the third proviso to clause (a) of Section 4(1) of the Act, to arrive at the value of the excisable goods. It cannot be that when the same person incorporates two companies of which one is the manufacturer of excisable goods and other is the buyer of those goods, the two companies being separate legal entities, the Excise authorities are barred from probing anything further to find out who is the person behind these two companies. It is difficult to accept such a narrow interpretation. True that shareholdings in a company can change but that is the very purpose to lift the veil to find out if the two companies are associated with each other. Law is specific that when duty of excise is chargeable on the goods with reference to its value than the normal price on which the goods are sold shall be deemed to be the value provided (1) the buyer is not a related person and (2) the price is the sole consideration. It is a deeming provision and the two conditions have to be satisfied for the case is to fall under clause (a) of Section 4(1) keeping in view as to who is the related person within the meaning of clause (c) of Section 4(4) of the Act. Again if the price is not the sole consideration, then again clause (a) of Section 4(1) will not be applicable to arrive at the value of the excisable goods for the purpose of levy of duty of excise.”

4.13 By following the above decision Delhi Bench has in the case of *M/s Amar Enterprises [2017 (347) ELT 548 (Tri.-Del)]* held as follows:-

11.1.1 *In respect of this issue, the Commissioner (Adjudication) in the impugned order inter alia observes as under :*

96. *It is observed that all the firms, namely, (i)) M/s. Atlantic Chemicals, (ii) M/s. Foamsil Chemicals and (iii) M/s. Arun Chemicals, (iv) Amar Enterprises and (v) Arvind Rubber Mills were operating from A 1/11-B, Pahwa Mansion, Asaf Ali Road, New Delhi (hereinafter referred as Pahwa Mansion Office) which was declared registered office of Atlantic Chemicals. Shri J.S. Jain in his statement dated 20-4-93 admitted that the sale and purchase work of Atlantic Chemicals, Amar Enterprises and Arvind Rubber Mills was being carried on from the said premises; that the rent of the said office and electricity bills were paid by Amar Enterprises; that payment of bills 2 & telephone installed in the said office was made by Atlantic Chemicals and sometimes by Arvind Rubber Mills. The correspondence in File No. 4 of Foamsil Chemicals pertaining to sundry debtors for the year 1992-93 recovered from their Pahwa Mansion Office, contained several letters addressed by different customers to Foamsil Chemicals in which the address of Foamsil Chemicals is of their Pahwa Mansion office. SCN fists out names of a few of the firms who had mailed their letters on the said address for Foamsil Chemicals, also recovered file containing vouchers in course of the search of the office premises on 20-4-93 which pertained to Arun Chemicals and which showed the Pahwa Mansion office as the address of Regd. Office of the firm. Further, in course of search of the residential premises of Shri J.S. Jain, situated at E-10, Preet Vihar, Delhi on 20-4-93, the records of Atlantic Chemicals and Foamsil Chemical and Arvind Rubber Mills Pvt. Ltd. were also recovered from the ground floor of the said house. The Central Excise records and also other records pertaining to Atlantic Chemicals and Foamsil Chemicals were recovered from the room at 1st Floor of the said house. All the records were kept*

together and there was no segregation of records pertaining to different units.

From the records, it appears that "SCN states that records of all the units i.e. Atlantic Chemicals, Amar Enterprises and Arvind Rubber Mills as well as that of Arun Chemicals and Foamsil Chemicals were recovered from the same premises. Further, a cheque book of Foamsil Chemicals signed by Shri Naveen Kumar was also found in the in the Almirah kept in Shri J.S. Jain's room. Besides above, a file containing trade mark registration papers of 'Foamsil' and accident claim papers pertaining to truck, which was in the ownership of Foamsil Chemicals, were also recovered from the said office premises. A common letterbox showing the name of Foamsil Chemicals was also found affixed in the Pahwa Mansion office building. The above facts are not disputed by the Noticees. Their contention, however is that sharing of office premises & telephoney the noticees firms and no-demand of rent does not constitute evidence that Shri J.S. Jain was owner of Arun Chemicals and Foamsil Chemicals. It is observed that in the reply dated 9-1-95 of Atlantic Chemicals was admitted that Shri J.S. Jain, being MD of Arvind Rubber Mills remained stationed at this office premises and being the head of the family, he was respected by the customers who used to place orders with him which he passed on to the respective companies who executed the orders. Further, it was also stated that J.S. Jain being head of the family and by virtue of his senior position he was rendering advice to the various proprietors of the firms which obviously belong to the same group. The admitted position about the above facts and the role played by Shri J.S. Jain lend support to the allegations made in the SCN in respect of clubbing proposition".

11.1.2 *Further, the Commissioner (Adjudication) in the impugned order, inter alia in Paras 103 and 124 observes as under :*

"103. The SCN refers to specific instances and entries in the financial accounts of Atlantic Chemicals and Foamsil Chemicals which indicate that the said firms also had a common financial management. These cases include transactions under which money was transferred through cheque by Foamsil Chemicals to Atlantic Chemicals; payment made to UPSEB on behalf of one another, etc. However, no records were found indicating payment of interest by Atlantic Chemicals to Foamsil Chemicals or Arun Chemicals for keeping and utilizing their amounts in their business. Similar instances of fund transfers from Arun Chemicals to Atlantic Chemicals, Arvind Rubber Mills (P) Ltd. to Atlantic Chemicals and by Amar Enterprises to Foamsil Chemicals have been pointed out in the SCN. These monetary transactions from one firm to another and outstanding huge sums as credit balance with no interest liability indicate amply that the firms were freely utilizing the money or other firms in their business and without payment of any interest. The above facts including use of funds of one unit by other without payment of interest is not denied by the noticees.

124. In this case, there are certain outstanding facts. The 3 units, all proprietary concerns, are owned by three members of one family i.e. Sh. Parveen Kumar Jain (brother), Sh. Naveen Kumar Jain (brother) and Ms. Babita Jain (wife of Shri Naveen Kumar Jain). The goods manufactured are the same, that is RBA. There is use of one common brand names, i.e., 'Foamsil' and 'foamtax' which are owned by Shri Amar Kumar Jain who is brother of Sh. Parveen Kumar Jain and Sh. Naveen Kumar Jain, modus operandi adopted for disposal of manufactured goods and is also same, that is, all the three units claim to be manufacture and also dealer in RBA and soda bi carb and their customers including those of Kerala and Maharashtra States concerned in this case are common. In procuring raw materials, such as, soda bi carb for manufacture of

RBA and disposal of RBA, Shri Amar Kumar Jain (brother) and Sh. J.S. Jain (father) continued to play active and decisive role. Apart from claimed manufacture and sale of goods from these units Arvind Rubber Mills (owned by father Shri J.S. Jain and another brother Shri Amar Kumar Jain) and Amar Enterprises (owned by mother Ms. Kiran Bala Jain) play active role in the disposal of the goods manufactured by the three units. These units, that is, Atlantic Chemicals, Foamsil Chemicals and Arun Chemicals were situated in a piece of land purchased from the brother of Shri J.S. Jain at a nominal price; they were under the common management and financial control of only one family living in one house, and the business of all the firms was conducted jointly from one and the same office premises. On record, the firms were under the proprietorship of different person, but the whole show was being managed by Shri J.S. Jain and Shri Amar Kumar Jain. As per the noticees submissions, Foamsil Chemicals came into existence in June, 1987, and Arun Chemicals in April, 1988 or Jan., 1989 (about inconsistency regarding precise period of Arun Chemicals being in operation refer Para 110 supra). There was no distinction in the management of the firms and these firms were artificially fragmented only for the sake of availing exemption under the Notification No. 175/86-C.E. (later 1/93-C.E.). Thus, the clearances of all the units were required to be clubbed for computing the value of clearances for the applicability of Notification No. 175/86-C.E. (later 1/93-C.E.). When this is done, the value of clearances of RBA from the said 3 units exceeded the eligibility limit in a financial year and hence the benefit of Notification No. 175/86-C.E. was not available to any of the said units. They were, therefore, required to clear the RBA manufactured by them on payment of full rate of duty. This was not done. It is therefore, held that Atlantic Chemicals and Foamsil Chemicals have contravened the provisions of

Rules 9(1), 173B, 173F, 173G of CER and cleared RBA manufactured in their factories without payment of appropriate duty amounting to Rs. 38,45,363.59 and Rs. 31,39,143.16 respectively during the period from 1989-90 to 1993-94. Similarly, Arun Chemicals are also held to have manufactured and cleared RBA without payment of duty amounting to Rs. 1,21,360/- in violation of Rule 9(1), 173B, 173G of the CER. As this short/non-payment of duty was done by suppression of facts, such as, not disclosing true nature of the ownership, control and management of firms and their activities, misdeclaration of facts, such as, the brand names not owned by them in the classification lists and availment of exemption on the branded goods, etc. the same is held recoverable from them under proviso to Section 11A(1) of the Act read with Rules 9(2) of the CER. For the aforesaid violation, they are also held liable to penalty under Rule 9(2) and 173Q of the CER.

11.1.3 *After having gone through the facts on record and the submissions of both sides, we are of the considered view that manufacture and clearances made by the respective noticees/appellants - M/s. Atlantic Chemical Industries, M/s. Foamsil Chemicals (not appellant here) and M/s. Arun Chemicals for the item namely RBA availing the benefit of Notification No. 175/86-C.E. (1/93-C.E. later) have to be clubbed together as we hold that these units are one and the same, when their operations are under common management and financial control and have mutuality of financial interest with each other. When it is so, then we agree with the findings of the impugned order.*

11.1.4 *Hon'ble Supreme Court's decision in the case of Calcutta Chromotype Ltd. v. C.C.E., Calcutta - 1998 (99) E.L.T. 202 (S.C.) had observed that depending upon the facts and circumstances of the case, veil of the company has to be lifted to find the real facts. In the present case also, three units namely, M/s. Atlantic Chemical Industries, M/s. Foamsil Chemicals and M/s. Arun Chemicals, whatever is*

their constitution, (these are proprietary concerns), are under common management and closely controlled by only one person Shri J.S. Jain, who is one of the appellants here. The facts and circumstances have warranted to examine the reality of these units; and after going behind the mask of these entities, it has been revealed that activities of these units i.e. manufacture, clearance, etc. has to be clubbed together. In this regard, we take support from the Hon'ble Supreme Court's observations in the above case of Calcutta Chromotype Ltd. (supra) which are given below :

14.

(emphasis supplied)

11.1.5 *We do not agree with the appellants' contentions that impugned order has fixed liabilities of Central Excise duty separately on the noticee/ appellant, namely, M/s. Atlantic Chemical Industries, M/s. Foamsil Chemicals (who is not the appellant) here and M/s. Arun Chemicals and have held that their clearances are to be clubbed whereas the impugned order concludes that M/s. Arun Chemicals had no manufacturing facilities and if it is so, how liability could be fixed against M/s. Arun Chemicals.*

11.1.6 *In the peculiar facts and circumstances of the case, we agree with the conclusion of the impugned order that these three firms are one and the same; their clearances are to be clubbed, as discussed earlier. Regarding the submission that M/s. Arun Chemicals had got no manufacturing activity, it may be mentioned that both M/s. Foamsil Chemicals and M/s. Arun Chemicals have been actively involved in the operations of wrongly availing exemption under Notification No. 175/86-C.E. by 'artificial fragmentation when there was no distinction in management of the firms'. Therefore, M/s. Arun Chemicals (who is one of the appellants) deserves to be penalized under Rules 9(2) and 173Q of Central Excise Rules. We are giving no specific findings on M/s. Foamsil Chemicals as they are not the appellant here.*

11.1.7 From the facts (impugned order Para 99), it is clear that noticee appellants M/s. Atlantic Chemicals played a major role in the manufacturing of the item RBA. Many of the machinery items and facilities for manufacturing are available only with M/s. Atlantic Chemicals. Therefore, after clubbing of clearances of the subject three units, liabilities for payment of duty of Central Excise is hereby fixed on M/s. Atlantic Chemicals. Consequently, the appellant M/s. Atlantic Chemicals is to pay total duty of Central Excise of Rs. 71,06,066/- (i.e. Rs. 38,45,363/- + Rs. 31,39,343/- + Rs. 1,21,360/-) for the RBA manufactured and cleared during 1989-90 to 1993-94. In this regard, corresponding penalty of Rs. 70,20,000/- is also imposed on M/s. Atlantic Chemicals under Rules 2(2) and 173Q of C. Excise Rules. Further M/s. Arun Chemicals have been involved in continuing this operation of wrongly claiming exemption Notification No. 175/86-C.E.; therefore, the penalty of Rs. 1,20,000/- imposed on them is hereby sustained."

This decision of the Tribunal has been affirmed by the Hon'ble Supreme Court as reported at 2018 (361) ELT A70 (SC).

4.14 In case of M/s R.K. Chaddha 2016 (332) ELT 650 (All.) Hon'ble Allahabad High Court has been held as follows:-

"14. Having heard the learned counsel for the parties, the Court finds that the submission of the learned counsel for the State appears to be attractive in the first flush but, on a closer scrutiny, the Court finds that the doctrine of lifting the corporate veil is not applicable in the present facts and circumstances of the case.

15. The company, in law has a separate legal entity of its own. Once incorporated, the entity of the company is entirely separate from that of its shareholders. The company has its own name, has its own seal, has its own assets and it can be sued or can sue for its own purposes. On the other hand, the liability of the shareholders is limited to the extent of its own shares, namely, to the extent of the capital invested by the

shareholder. The creditors of the company cannot obtain satisfaction from the assets of the shareholders of the company and similarly, the shareholders have no right to the assets of the company. This position was recognized in Salomon v. Salomon & Company Ltd., 1897 A.C. 22 HL and, since then, this principle has been consistently being followed till date.

16. *In due course of time, certain exceptions were carved out in the doctrine of separate juristic personality of the company. The doctrine of lifting the corporate veil was carved out to be used whenever and wherever the situation so warranted. Lord Denning in Littlewoods Stores v. I.R.C., 1969 (1) WLR 1241 held :-*

"The doctrine laid down in Salomon's case has to be watched very carefully. It has often been supposed to cast a veil over the personality of a limited company through which the Courts cannot see. But that is not true. The Courts can, and often do, draw aside the veil. They can, and often do, pull off the mask. They look to see what really lies behind. The legislature has shown the way with group accounts and the rest. And the Courts should follow suit....."

17. *Since then, the doctrine of lifting of the corporate veil has been firmly established in a series of cases. The corporate veil could be lifted when it is found that the corporate personality was used as a mask for evasion of tax where transactions were found to be a sham or collusive or where the corporate personality was employed to circumvent statutory liability or to evade the tax liability. In such a situation, the veil could be lifted to find out the real culprits hiding behind it. It was held that even though there are no statutory provisions, the circumstances so existing in the particular case*

warrants the lifting of the corporate veil to realize the tax from the Directors or partners as the case may be as has been held in *Telco & Ors. v. State of Bihar* - AIR 1965 SC 40 (paras 24 & 27); *CIT v. Shree Minakshi Mills Ltd., Madurai* - AIR 1967 SC 819 (para 8); *New Horizon Ltd. & Another v. Union of India and Others* (1995) 1 SCC 478; *Delhi Development Authority v. Skipper Construction Co. P. Ltd.* (1996) 4 SCC 622 (paras 24 to 28); *Calcutta Chromotype Ltd. v. Collector of Central Excise, Kolkata* - AIR 1998 SC 1631 = 1998 (99) E.L.T. 202 (S.C.) (paras 12, 14); *Shubhra Mukharjee & Another v. Bharat Cooking Coal Ltd. & Another* - (2003) 3 SCC 312; *Kapila Hingorani v. State of Bihar* - JT 2003 (5) SC 1 (paras 25, 26, 27); *Vodafone International Holding B.V. v. Union of India and Others* - JT 2012 (1) SC 410 (paras 167 & 168).

18. In *Shri Ram Shyam Shukla and Others v. Asstt. Collector, Collection, Trade Tax, 2004 NTN (25) 768* this Court held that where circumstances so warranted, persons responsible for illegal acts and who were found to evade tax, the corporate veil could be lifted to recover the dues from the persons responsible for such illegal acts. The Court held :-

"4. We do not agree. The legal principle that a company is a distinct legal entity separate from its directors and shareholders (vide *Soloman v. Soloman & Co. Ltd.*, 1897 A.C. 22 H.L.) was evolved to encourage business and industry since many businessmen feared to start a new business or venture because if the said business/venture failed (due to competition, recession, etc.) even their personal assets could be attached and sold for the recovery in respect of the dues against the company. Hence this principle was created so as to encourage businessmen to take risks and set up

industries and businesses and it has played a historical role in helping industrialization. This principle was not made to help tax evaders. As held by the Supreme Court in Delhi Development Authority v. Skipper Co. (P) Ltd. - AIR 1996 SC 2005 (vide para 28) :-

The concept of corporate entity was evolved to encourage and promote trade and commerce, but not to commit illegalities or to defraud people. Where, therefore, the corporate character is employed for the purpose of committing illegality or for defrauding others, the Court would ignore the corporate character and will look at the reality behind the corporate veil.

5. The principle of lifting the veil of corporate personality has been upheld in Subhra Mukharjee & Another v. Bharat Cooking Coal Ltd. & Another (2003) 3 SCC 312; Calcutta Chromotype Ltd. v. Collector of Central Excise, Kolkata - AIR 1998 SC 1631; New Horizon Ltd. & Another v. Union of India and Others - 1995 (1) SCC 478; C.I.T. v. Meenakshi Mills Ltd., Madurai - AIR 1967 SC 819; Telco & Ors. v. State of Bihar - AIR 1965 SC 40; Juggilal Kamlatpat v. CIT, AIR 1969 SC 932."

4.15 *In case of British Scaffolding India Pvt. Ltd. [2014 (313) ELT 87 (Tri.-Del.)] Delhi Bench has held as follows:-*

7. *SSI Exemption is subject to conditions specified in it. One condition for this exemption notification is that where a manufacturer clears specified goods from one or more factories, the Exemption in his case shall apply for the total value of clearances mentioned against each of the serial numbers in the said table and not separately for each factory. Another condition of the*

Notification is that the aggregate value of clearances of all excisable goods for home consumption by a manufacturer from one or more factories during the preceding financial year does not exceed a particular threshold limit, as mentioned in the Notification. Thus, when a manufacturer has four factories located at different locations, and the SSI Exemption Notification prescribes nil rate of duty for first clearances of specified goods worth Rs. 50 lakhs in a financial year, each of these factories would not be separately eligible for full duty exemption in respect of its first clearances worth Rs. 50 lakhs in a financial year and for the purpose of this exemption, it is aggregate value of clearance of all the factories put together which would be considered. Similarly, eligibility for SSI Exemption during a particular financial year, shall be determined on the basis of aggregate value of clearances of all excisable goods for home consumption during the preceding financial year made from all the factories of the manufacturer and if the aggregate value exceeds the threshold limit, none of the units would be eligible for SSI Exemption even if the value of clearances for home consumption of all excisable goods made by each individual unit during the preceding financial year is well within the threshold limit for SSI exemption. It may happen that a manufacture may have several factories located in different states falling under the jurisdiction of different Commissioners of Central Excise. If each of these factories was availing the SSI Exemption separately and if it is found that for a particular financial year, the aggregate value of their clearances of all excisable goods during the preceding financial year had exceeded the threshold limit for SSI Exemption, none of these units would be eligible for SSI Exemption during that year. In such a situation, duty can be demanded by the Jurisdictional Central Excise Authorities separately

from each unit and the question of identifying the main unit and dummy units and demanding duty only from main unit does not arise, as in the scheme of collection of Central Excise duty, as laid down in the Central Excise Act, 1944 and the rules made thereunder, the collection of duty is manufacturing unit wise and if a manufacturer has two or more factories located at separate locations, each unit is required to obtain separate Central Excise registration and is assessed to duty separately by the jurisdictional central excise officers. If there is short payment of duty by different units of a manufacturer on account of wrong availment of SSI Exemption, separate duty demands would have to be confirmed by the respective central excise officers having jurisdiction over the unit. If, however, the C.B.E. & C. appoints a common adjudicating authority, that common adjudicating authority can pass an adjudication order demanding duty from the units located in different commissionerates. The question of identifying the main unit and the dummy unit and demanding duty only from the main unit arises only in that situation when on investigation, only one unit is found to be actually functioning and other units are found to be just non-functional fake units established just to show bogus production and clearances in their name.

7.1 *However in most of the cases, the fact of common ownership of different units by a person is not so obvious and may be carefully camouflaged. For example - if there is a manufacturing unit of a proprietorship concern of a person 'X', there is a second manufacturing unit owned by a partnership concern 'A' with 'X' and his wife 'Y' as partners, there is a third manufacturing unit owned by a private limited company 'B' with shareholding by 'X', his son 'Z' and the partnership*

concern 'A' and there is a fourth manufacturing unit owned by another private limited company 'C' with shareholding by 'A', 'B' and another son Z₂ of 'X' and if these four units owned by 'X', 'A', 'B' and 'C' are each availing of SSI Exemption, a question arises as to whether they are to be treated as separate entities or units owned by the same person, for the purpose of SSI Exemption.

7.1.1 While a company is a legal person entirely distinct from its shareholders, in terms of Apex Court's Judgment in case of *Income Tax Commissioner, Madras v. Meenakshi Mills, Madurai*, reported in AIR 1967 Supreme Court 819, in certain exceptional cases, the court is entitled to lift the veil of corporate entity and to pay regard to the economic realities behind the legal facade and that the court has powers to disregard the corporate entity if it is used for tax evasion or to circumvent the tax obligation. Same view has been taken by the Apex Court in cases of :-

(a) *Calcutta Chromotype v. Collector of Central Excise*, reported in 1998 (99) E.L.T. 202 (S.C.) = (1998) 3, SCC-681;

(b) *Subra Mikharjee & another v. Bharat Cooking Coal Ltd.*, reported in (2000) 3 SCC-312; and

(c) *Delhi Development Authority v. Skipp Construction Co. (P) Ltd.*, reported in (1996) 4 SCC-622.

The Apex Court in the case of *Associated Rubber Industry Ltd.*, reported in 1986 (157) ITR-77 (S.C.), relying upon its earlier judgment in case of *Medowell & Co. Ltd. v. CTO*, reported in 1985 154 ITR-148, 161 (S.C.) has held that even if companies are distinct legal

entities having separate existence, this is not the end of the matter and it is the duty of the Court in every case, where ingenuity is expended, to get behind the smokescreen and discover the true state of affairs. Thus, the principle of lifting the corporate veil for discovering the true state of affairs behind the veil of the corporate entity is a well settled legal principle. It is this principle which has to be applied for determining as to whether two or more manufacturing units owned by separate partnership firms, private limited companies and/or public limited companies are to be treated as the units of the same manufacture. On this point, the Apex Court in case of CCE, Delhi v. Modi Alkalies & Chemicals Ltd., reported in 2004 (171) E.L.T. 155 (S.C.), has held that when on lifting the corporate veil it is found that only one person/company has extraordinary interest and pervasive control over the financial matters and management of other companies, irrespective of the latter having separate sales tax, income tax and central excise registration, their clearances have to be clubbed for determining their eligibility for the SSI Exemption Notification No. 1/93-C.E. In this regard, Para 87 of the judgment is reproduced below :-

"Whether there is inter-dependence and whether another unit is, in fact, a dummy has to be adjudicated on the facts of each case. There cannot be any generalization or rule of universal application. Two basic features which prima facie show interdependence are pervasive financial control and management control. In the present case facts clearly show financial control. Undisputedly, the share capital of each of the three companies was Rs. 200/-. Though it was claimed that financial assistance was availed from the financial companies, it is on record that the

unsecured loans advanced by MACL to the three companies were substantially heavy amounts as on 1-4-1998. NGCPL received an amount of Rs. 1.55 crores. About 14 lakhs appeared to have been paid after the issue of show cause notice. Loans advanced to NGCPL was about Rs. 52 lakhs while to SCGCPL it was about Rs. 65 lakhs. The finding of the Commissioner that the financial assistance from the financial institutions were availed with the aid and assistance of MACL has not been seriously disputed. Apart from that, the cylinders were brought on lease by MACL from another concern and were sub-leased to the three companies. The cylinders bore the name of MACL. If the three companies had separate standing as contended it could not be explained why they could not get the cylinders directly from the lessors on lease basis and the need for introducing MACL as the lessee and then the three companies becoming sub-lessees. As noted by the Commissioner, entire receipts were paid as lease amount to MACL. Here again, the under-valuation aspect assumes importance. While the supply by MACL to three companies was Rs. 0.50 per unit, the sale price by the three companies was Rs. 5 per unit. It is on record that accounts were kept by common staff and marketing was done under the supervision of a person who belongs to the same group of concerns. The amounts have been collected by an employee of MACL. The so-called Directors of the companies were undisputedly employees of MACL. Almost the entire financial resources were made by MACL. The financial position clearly shows that MACL had more than ordinary interest in the financial arrangements for companies. The statements of the

employees/Directors show that the whole show was controlled, both on financial and management aspects by MACL. If these are not sufficient to show inter-dependence probably nothing better would show the same. The factors which have weighed with CEGAT like registration of three companies under the sales tax and income tax authorities have to be considered in the background of factual position noted above. When the corporate veil is lifted what comes into focus is only the shadow and not any substance about the existence of the three companies independently. The Circular No. 6/92, dated 29-5-1992 has no relevance because it related to Notification No. 175/86-C.E., dated 1-3-1986 and did not relate to Notification No. 1/93. The extended period of limitation was clearly applicable on the facts of the case, as suppression of material features and factors has been clearly established. If in reality the three companies are front companies then the price per unit to be assessed in the hands of MACL is Rs. 5 and not Rs. 0.50 as disclosed. The question whether there was manufacture or not was not in issue before the Commissioner. The plea that there was no manufacture has also to be rejected in view of the fact that exemption was claimed by the three companies as manufacturers to avail the benefit of Central Excise Notification No. 1/93.

Same view has been expressed by the Apex Court in its judgment in case of Supreme Washers Pvt. Ltd. (Supra).

7.1.2 *The Board's Circular No. 6/92, dated 29-5-1992 clarifying that limited companies, whether public limited or private limited are separate entities and each such*

limited company is a manufacturer by itself and would be entitled for SSI Exemption separately, has not considered the principle of lifting of corporate veil in the cases where different corporate entities appear to be just colorable devices for tax evasion, and hence this circular is not in accordance with the provisions of law. In accordance with Apex Court's Judgment in case of CCE v. Ratan Melting & Wire Industries, reported in 2008 (231) E.L.T. 22 (S.C.) = 2008 (12) S.T.R. 416 (S.C.), a circular which is contrary to the statutory provisions, has no existence in law. Though in case of Supreme Washers Pvt. Ltd. (supra), after upholding the principle of lifting of corporate veil the Apex Court taking note of the Board's Circular No. 6/92, dated 29-5-1992, had remanded the matter to the Tribunal for examining the applicability of this circular, since this circular being contrary to the law laid down by the Apex Court in the case of Income Tax Commissioner, Madras v. Meenakshi Mills, Madurai (supra), M/s. Calcutta Chromotype v. CCE (supra), Delhi Development Authority v. Skippe Construction Co. (P) Ltd. (supra), Associated Rubber Industry Ltd. (supra) and CCE v. Modi Alkalies & Chemicals Ltd. (supra), has no existence in law, the Appellant's plea for decision of this matter on the basis of Board's Circular No. 6/92-C.E. is not acceptable.

7.1.3 *Thus, if there is evidence on record to prove that a particular person, whether natural or juristic, has comprehensive financial and management control over several entities and is the actual beneficiary of their activities, the clearances of the factories owned by these entities are to be clubbed for the purpose of determining their eligibility for SSI Exemption by treating them as the units of only one manufacturer, even if those units are owned by different public limited*

companies, private limited companies or partnership firms. If on clubbing their clearances during the preceding financial year, the aggregate value of the clearances is found to be exceeding the threshold limit for SSI Exemption, the SSI Exemption would have to be denied to each of them and if each of them is a functioning unit and not a non-functional dummy unit, the duty can be demanded separately from each unit.

7.1.4 *However, if there is only one unit which is functioning unit and other units are just dummy units, not actually engaged in manufacturing activities, duty would have to be demanded only from the existing unit by treating the other units as dummy units, and clubbing the clearances made in the name of those dummy units with the clearances of the main unit and for this purpose, there is no need to invoke the provision regarding clubbing in the SSI Exemption Notification.”*

This decision has been affirmed by Hon’ble supreme Court reported as 2016 (335) ELT A163 SC).

4.16 *In the case of Global Yarn Spinners [2007 (214) ELT 401 (Tri-Chennai)] following has been held:-*

7. *On the basis of ‘relationship’ found between M/s. Goodwill and M/s. RRT under Section 4(4)(c)/4(3)(b), there is a demand of duty of over Rs. 24.70 lakhs on the former for the period of dispute. Learned counsel for the appellants argued that there was no evidence of mutuality of business interest between M/s. Goodwill and M/s. RRT and therefore the latter was not to be held to be ‘related’ to the former in terms of Section 4(4)(c)/Section 4(3)(b). Learned SDR countered by reiterating the relevant findings of the Commissioner (Appeals). She also referred to the relevant provisions of Companies Act to show that M/s. RRT were related to M/s. Goodwill in terms of Section 4(3)(b)(ii) of the Central Excise Act. She argued that, on the facts of the case,*

the corporate veil required to be lifted to expose the relation between the two companies. In this connection, reliance was placed on the Supreme Court's judgment in Calcutta Chromotype Ltd. v. Collector - 1998 (99) E.L.T. 202 (S.C.) and Commissioner v. ITEC (P) Ltd. - 2002 (145) E.L.T. 280 (S.C.). After considering the rival arguments, we agree with learned SDR that the constitution of M/s. Goodwill and that of M/s. RRT indicated that S/Shri R. Rajendran, R. Balakrishnan, R. Thiruvassagam (all sons of the Chairman of M/s. Goodwill) and Smt. Leelavathi (wife of the Managing Director of M/s. Goodwill) together held all the shares in M/s. RRT and about 45% of the shares in M/s. Goodwill. They were Directors of both the companies. The Managing Director of M/s. Goodwill is the brother of the Chairman of the company. The Chairman's wife, three sons and three daughters-in-law and the Managing Director's wife are the other Directors of the company. As rightly held by learned Commissioner (Appeals), on these facts, one would be justified in lifting the corporate veil to see the ground realities. This exercise was neatly done by the lower appellate authority in the light of the Apex Court's ruling in Calcutta Chromotype (supra) and it was held that M/s. RRT were related to M/s. Goodwill in terms of Section 4(4)(c)/Section 4(3)(b) of the Central Excise Act. We are in full agreement with this decision of the Commissioner (Appeals). We also note that M/s. Global have conceded similar 'relation' between them and M/s. RRT."

This decision of the Tribunal has been affirmed by the Hon'ble Supreme Court as reported at 2016 (338) ELT A291 (SC).

4.17 In view of the discussions as above we do not find any merits in the submissions of the appellant in respect of the clubbing of the clearances. The impugned order holding that the clearances for the period 2014-15 are to be clubbed as appellants has clearly and being aware that their value of clearance has crossed the exemption limit as provided by the notification no 8/2003-CE had crossed the exemption limit created the dummy unit to continue operating within the

exemption limit. Appellants have cleverly made a scheme for suppressing the value of clearances with intent to evade payment of duty for which they are also liable for penal action. Accordingly, penalty imposed on Appellant-I under rule 25 (1) of the central Excise Rules, 2002 read Section 11AC is justified in view of the decision of the Hon'ble Supreme Court in the case of Rajasthan Spinning & Weaving Mills [2009 (238) ELT 3 (SC)].

4.17 In our view as the demand of duty is upheld the demand for interest follows as natural corollary. In the case of Padmashri V.V. Patil SSK Ltd. [2007 (215) ELT 23 (Bom)] Hon'ble Bombay High Court has held as follows:-

10. So far as interest Under Section 11AB is concerned, on reference to text of Section 11AB, it is evident that there is no discretion regarding the rate of interest. Language of Section 11AB(1) is clear. The interest has to be at the rate not below 10% and not exceeding 36% p.a. The actual rate of interest applicable from time to time by fluctuations between 10% to 36% is as determined by the Central Government by notification in the official gazette from time to time. There would be discretion, if at all the same is incorporated in such notification in the gazette by which rates of interest chargeable Under Section 11AB are declared.

The second aspect would be whether there is any discretion not to charge the interest Under Section 11AB at all and we are afraid, language of Section 11AB is unambiguous. The person, who is liable to pay duty short levied / short paid / non levied / unpaid etc., is liable to pay interest at the rate as may be determined by the Central Government from time to time. This is evident from the opening part of Sub-section (1) of Section 11, which runs thus:

Where any duty of excise has not been levied or paid or has been short levied or short paid or erroneously refunded, the person, who is liable to pay duty as

determined under Sub-section (2) or has paid the duty Excise under Sub-section (2B) of Section 11A, shall in addition to the duty be liable to pay interest at such rate....

The terminal part in the quotation above, which is couched with the words "shall" and "be liable" clearly indicates that there is no option. As discussed earlier, this is a civil liability of the assessee, who has retained the amount of public exchequer with himself and which ought to have gone in the Page 1612 pockets of the Central Government much earlier. Upon reading Section 11AB together with Sections 11A and 11AA, we are of firm view that interest on the duty evaded is payable and the same is compulsory and even though the evasion of duty is not mala fide or intentional."

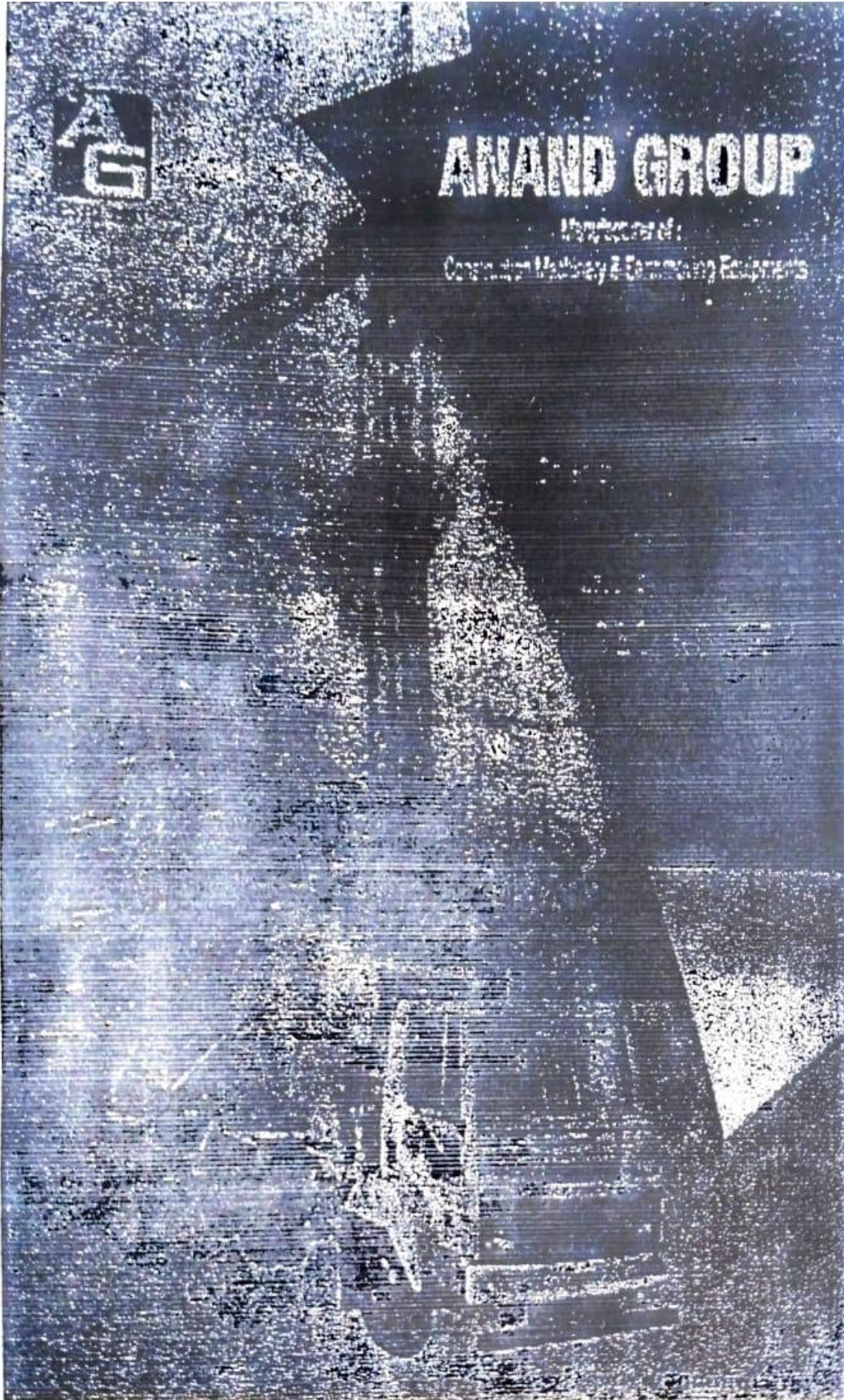
4.18 As appellant-II and appellant-III were the persons responsible for planning for evasion of duty, penalties imposable under Rule 26 of the Central Excise Rules 2002. We take note of the fact that penalty equivalent to the duty evaded has been imposed on the partnership firm in which appellant-II and appellant-III are partners. In our view, penalty on appellant-II may be reduced to Rs.50,000/- only and on appellant-III it reduced to Rs.75,000/-. With above modification impugned order is upheld."

4.4 In the present case we find all the evidences recovered during investigation clearly suggest that the person behind each of the manufacturing unit i.e. Shri Gangaram Sahu, it is a fact which has been acknowledged and admitted by him in his statement dated 2.5.2013 (para 44) of the impugned order. Further, evidences of common use of funds, transfer of all material among the units etc. have also been noticed. The said evidences suggesting the nature of interest and working of one unit with other are undisputed and have been discussed in the improve order.

4.5 The submission that there is nothing like M/s Anand Group goes contrary to the brochure and other evidences recovered

during the investigation. The front and back side of brochure is reproduced below:-

Front side picture of the brochure



Back Side Picture of the brochure



4.6 In the case of M/s GAJANAN FABRICS DISTRIBUTORS 1997 (92) ELT 451 (SC) Hon'ble Supreme Court has held as follows:-

“2. We find, after having heard learned counsel, that it is necessary to remand the matters to the Collector to consider the entire case afresh. The principal factor that leads us to this conclusion is the finding of the Collector,

upheld by the Tribunal, that the seven units which are the appellants before us "are only a corporate facade although registered with the various authorities with a view to camouflage their actual identity and thereby avail of the exemption which, otherwise, would be inadmissible to them". The Tribunal failed to give due attention to the fact that the Collector had confirmed, in the sum of Rs. 11,84,708.51, the demand made in the show cause notices upon all seven units and their partners or Directors. Having regard to his conclusion that all units other than Gajanan Weaving Mills were fictitious units, the sequitur, one would have assumed could only be that it was Gajanan Weaving Mills which was the assessee and liable to satisfy the demand. By confirming the demand upon all the seven units the Collector appears, however, to have treated them all as assessees and, implicitly recognised their independent existence.

4.7 In the case of M/s Xenon 2013 (296) ELT 26 Hon'ble Jharkhand High Court after following the above decision of Hon'ble Supreme Court has held as follows:-

"8. *We have considered the submissions of the learned counsel for the parties and perused the reasons given in the Reference in the said case as well as the reasons given in the order dated 3-8-2000 and the reasons given in Gajanan Fabrics Distributors' case. So far as the contention of the learned counsel for the Revenue is concerned, that the dubious company does not mean that it was never existed is concerned, we are of the considered opinion that in the facts of this case, it may be held that the declared dubious company M/s. Xenon in fact existed and obtained the Exemption Certificate under the Rules. The question is not that whether the said dubious company existed or not, but the question is that who did the transactions and incurred the liability of the duty and in case of the violation of the Rules, was liable to pay the penalty. Once it is held*

that one was the original company and another was the dubious company, further finding is recorded in this case that the other company in fact did not indulge in the manufacture and the clearance of the goods, and therefore, the Revenue gave show cause notice to both the companies giving them opportunity so that they can show that they separately did the transactions under consideration. The Revenue itself fully satisfied that they did not do the manufacture and clearances separately, but it was the total transactions done by the M/s. SECO in terms of the provisions of the Notification No. 175/86-C.E., dated 1-3-1986 and 1/93. Therefore, all the transactions and the exemptions sought were treated to be the transactions undertaken by the M/s. SECO, and therefore, after recording such finding, the liability of duty has been found to be of M/s. SECO.

9. *If the arguments of the learned counsel for the Revenue is accepted that mere because of the existence of the dubious company, the said dubious company be treated to have undertaken the dealings, then in that situation, the finding of the dubious company could not have been recorded. At the cost of the repetition, we may observe that the existence of one company cannot create liability under the provisions of the Central Excise Act or the Rules of 1944 and the liability is created only on account of the actual transaction. Once it has been held that the company which was in existence in fact did not do the transactions and the transactions shown by the dubious company was done by the original company, then only this finding can be recorded that the transactions were done in the name of the dubious company by the original company resulting it into the clubbing of the transactions shown in the name of the dubious company as of the original company, and thereafter, only the full duty of entire transactions done in the name of the original*

company and the dubious company falls upon the original company. So has been done in the order by the adjudicating authority - the Commissioner, Central Excise, Jamshedpur in its order dated 24-10-1997. The transactions, which have been done by the M/s. SECO, the original company, cannot make liable M/s. Xenon for the penalty, who in the opinion of the adjudicating authority itself did not do any of the transaction, then, in that situation, in our opinion, no penalty can be imposed upon the company who did not do any transaction.

10. *The judgment of Gajanan Fabrics Distributors clearly indicates the above position. In the Gajanan Fabrics Distributors' case, the Hon'ble Supreme Court has questioned the two findings recorded by the Collector vis-a-vis finding recorded by the Tribunal. The Collector held that the seven units are only a corporate for facade, both have registered with the various authorities with a view to camouflage with the actual identity and thereby availed the exemption which, otherwise, cannot be inadmissible to them. This finding was upheld by the Tribunal. This finding also clearly indicate that in this case also seven companies/firms were in existence and they obtained the exemption certificate, but, for the purpose of benefit of M/s. Gajanan Fabrics Distributors, and therefore, they were declared to be fictitious company/firms. The Hon'ble Supreme Court observed that, at one place this finding is there which attained the finality and at other side, the tribunal failed to give the attention to the fact that the Collector had confirmed, in the sum of Rs. 11,84,708.51 paise, the demand made in the show cause notices upon all the seven units and their partners or Directors. The Supreme Court observed that having regard to his conclusion that all units other than Gajanan Weaving Mills were fictitious units, the sequitur one would have assumed could only be that it was the Gajanan Weaving Mills which*

was the assessee and liable to satisfy the demand. Therefore, in the Gajanan Fabrics Distributors' case also the Hon'ble Supreme Court by implication held that there cannot be two contradictory findings, one holding that the fictitious company is liable to pay the duty and another is that they are fictitious company of any other company. It has been made clear by the Hon'ble Supreme Court in the same paragraph of the Gajanan Fabrics Distributors' case, by observing - "by confirming the demand upon all the seven units, the Collector appears, however, to have treated them as assesseees, and implicitly, recognized their independent existence". This word "independent existence" in the last of the line does not denote the physical existence of the fictitious company, but, it denotes the existence of independent transaction by the company, which cannot be accepted in a case when it is found by the Revenue that the said company is a fictitious company of other original company who did the transactions.

4.8 During the course of argument learned Counsel for appellants has specifically submitted that the appellants were also undertaking trading activities. As per the counsel, trading turnover should have been excluded for determining the total turnover of the appellants for the purpose of levy of duty. Table containing the details are reproduced below:-

MGEPL Total Excess Trading	12526699 1134192	15010639 2262202	14915634 1489991	15360375 692660	11962453	5003901
MGE Total Excess trading	939294 1038696	14350029 1582199	14576676 1704422	15859925 1572523	90520391	8223655
AMC Total Excess trading	13320151 1557617	16430980 2023040	14712141 1230989	16419258 1415125	12139036	7108180
AM Total Excess Trading	00.00	4112156 600086	17420275 242025 1607610	16639505 1639505 2218642	10168318	3956735

4.9 Undisputedly, the trading turnover needs to be excluded for demanding the value for computation of duty liability. However, the details of trading was not made available to the Original Authority for consideration for determining the duty liability. Thus for computation of duty payable after giving benefit of trading turnover needs to be remanded back to the Original Authority. The quantum of penalty would be determined in the remand proceeding.

5.1 Appeal is allowed matter is remanded back to the original authority.

5.2 Since the matter is considerably old and is being remanded only for re-computation, Original Authority should decide the matter in de novo proceedings within three months from the date of receipt of this order.

(Order pronounced in open court on- 31 January, 2025)

(P.K. CHOUDHARY)
MEMBER (JUDICIAL)

(SANJIV SRIVASTAVA)
MEMBER (TECHNICAL)

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