CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD

REGIONAL BENCH - COURT NO.I

(E-Hearing)
Excise Appeal No.70789 of 2018

(Arising out of Order-in-Appeal No.22-27/Commr/Dehradun/2018 dated 15.03.2018 passed by Commissioner (Appeals) Central Excise & Service Tax, Dehradun)

M/s RK Industries, **.....Appellant**
(Dayal Vihar Sikhera Road, Modinagar, Ghaziabad)

VERSUS

Commissioner of Central Excise &

Service Tax, Meerut-I **....Respondent**

(Opposite CCS University,

Mangal Pandey Nagar, Meerut-250005)

WITH

I. **Excise Appeal No.70790 of 2018 (M/s Manglam Wires)**
II. **Excise Appeal No.70791 of 2018 (Shri Ashok Arora)**
III. **Excise Appeal No.70792 of 2018 (Shri Durvesh Kumar)**
IV. **Excise Appeal No.70793 of 2018 (Shri Shekhar Raghuvanshi)**
V. **Excise Appeal No.70794 of 2018 (Shri Shailendra Raghuvanshi)**

(Arising out of Order-in-Appeal No.22-27/Commr/Dehradun/2018 dated 15.03.2018 passed by Commissioner (Appeals) Central Excise & Service Tax, Dehradun)

APPEARANCE:

Shri Anurag Mishra, for the Appellants
Shri Tuleshwar Prasad &
Shri A.K. Choudhary, Authorised Representatives for the Respondent

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

FINAL ORDER NOs.70925-70930/2024

DATE OF HEARING : 26 September, 2024
DATE OF DECISION : 26 September, 2024

SANJIV SRIVASTAVA:

This appeal is directed against Order-in-Appeal No.22-27/Commr/Dehradun/2018 dated 15.03.2018 passed by Commissioner (Appeals) Central Excise & Service Tax, Dehradun. By the impugned order, the appeal filed by the appellants against Order-in-Original No.61/Addll.Commr./MRT/2017 dated 30/03/2017 holding as follows has been dismissed:-

"ORDER

1) I, hereby, disallow the benefit of SSI exemption to Mis R. K. Industries, the Noticee No. 2, M/s Manglam Wire, the Noticee No. 3, separately, in view of sub-para (v) of Para 2 of the Notification No. 8/2003-CE dated 01.03.2003;

2) I, hereby confirm the demand of Central Excise duty of Rs.8,48,544 [Including Edu. Cess: SHE Cess: [Rupees Eight Lakh Forty Eight Thousand Five Hundred And Forty Four Only), from M's Manglam Wire, an unit/ firm of M/s AEP, in terms of proviso to Section 11A(1) of the Central Excise Act, 1944;

3) I, hereby confirm the demand of Central Excise duty of Rs.6,97,879/[Including Edu. Cess & SHE Cess Rupees Sixr Lakh Ninty Seven Thousand Eight Hundred And Seventy Ninety Only], from M/s R. K. Industries, an unit/ firm of AEP, in terms of proviso to Section 11A(1) of the Central Excise Act, 1944;

4) I hereby confirm the demand of Interest, at appropriate rate, on above said amount of Central Excise duty of Rs. 15,46,422/-, in terms of Section 11AB (Now Section 11AA) of the Central Excise Act, 1944, from each of the Noticee(s) in proportion to their confirmed amount of demand;

5) I, hereby, impose a penalty of Rs.8,48,544 Rupees Eight Lakh Forty Eight Thousand Five Hundred And Forty Four Only), upon Mis Manglam Wire, an unit/ firm of M/s AEP, in terms of Rule 25 of Central Excise Rules, 2002 read with Section 11 AC of the Central Excise Act, 1944;

6) I, hereby, impose a penalty of Rs. 6,97,879/-[Rupees Sixr Lakh Ninty Seven Thousand Eight Hundred And Seventy Ninety Only), upon Mis R. K. Industries, an unit firm of M/s AEP, in terms of Rule 25 of Central Excise Rules, 2002 read with Section 11 AC of the Central Excise Act, 1944,

7) I, hereby, impose a penalty of Rs. 1,00,000/- [Rupees One Lakh only), on Shri Shailendra Raghuvanshi, the partner of M/s AEP, in terms of Rule 26 of Central Excise Rules, 2002,

8) I, hereby, impose a penalty of Rs. 1,00,000/- [Rupees One Lakh only), on Shri Shekhar Raghuvanshi, the partner of M/s AEP, in terms of Rule 26 of Central Excise Rules, 2002,

9) I, hereby, impose a penalty of Rs. 20,000/- only [Rupees Twenty Thousand only], on Shri Ashok Arora, the Accountant of the Noticee(s), in terms of Rule 26 of Central Excise Rules, 2002,

10) I, hereby, impose a penalty of Rs. 20,000/- only [Rupees Twenty Thousand only], on Shri Durvesh Kumar, the Accountant of the Noticee(s), in terms of Rule 26 of Central Excise Rules, 2002."

2.1 Facts leading to the present proceedings have been recorded in the Order-in-Original as follows:-

"These proceedings emanate from the CESTAT's Final Order bearing No. A/ 50378-50384/2015- EX [DB] dared 16.02.2015, passed in the case of Mis Associated Engineering Projects, situated at opposite Vishal Dharam Kanta, Near Modi Bagh Modinagar, District-Ghaziabad and six other co-noticee(s), a total of 07 Noticee(s), as listed below. The Hon'ble CESTAT after setting aside the OLA No GZB/EXCUS/000/APP/114-120/13-14 dated 12.08.2013 arising out of 010 No.14-16/ADC/GZB/2012-13 dated 18.12.2012 (here-in-afler referred to as the 010), passed w.r.t. the Show Cause Notices dated 22.07.2011, dated 25.01.2012 & dated 26.03.2012 (here-in-after referred to as the SCN.s), have remanded all the appeals for de-novo proceedings and adjudication of the liability of each assessee individually. The Noticee/ co-Noticee(s) / appellants are listed at under

i. *LM's Associated Engineering Projects, opposite Vishal Dharam Kanta, Near Modi Bagh Modinagar, Ghaziabad [here-in-afier referred to as the Mis AEP or the Noticee No. 1);*

ii. *M/s R.K Industries, Deyal Vihar Sikhera Road, Modinagar, Ghaziabad (here-in-after referred to as the Noticee No. 2];*

iii. *M/s Manglam Wire, opposite Abupur Road, Village Manota Muradnagar, Ghaziabad [here-in-after referred to as the Noticee No. 3,*

iv. *Shri Shailendra Raghuvanshi (Partner), M/s Associated Engineering Projects, Opposite Vishal Dharam Kanta, Near Modi Bagh, Modinagar, Ghaziabad [here-in-after referred to as the Noticee No. 4);*

v. *Shri Shekhar Raghuvanshi (Partner), M/s Associated Engineering Projects, opposite Vishal Dharam Kanta, Near Modi Bagh, Modinagar, Ghaziabad [here-in-after referred to as the Noticee No. 5).*

vi. Shri Ashok Arora (Accountant), Mis Associated Engineering Projects, opposite Vishal Dharam Kanta, Near Modi Bagh, Modinagar, Ghaziabad (here-in-affar referred to a Noticee No. 6), and

vii. Shri Durvesh Kumar (Accountant), Mis Associated Engineering Projects, opposite Vishal Dharam Kanta, Near Modi Bagh, Modinagar. Ghaziabad (here-in-after referred to as the Noticee No. 7

BRIEF FACTS OF THE CASE

2. M/s Associated Engineering Projects, Opposite Vishal Dharam Kants, Near Modi Bagh Modinagar, Ghaziabad, ie. Mis AEP or the Noticee No. 1, were engaged in the manufacture of wire drawing machines and parts thereof falling under Chapter No. 84 of the Central Excise Tariff Act, 1985 (here-in-after referred to as CETA, 1985). M/s AEP are registered with the Central Excise Department vide Registration No. AAZPR7005DXM001 and are also availing facility of Cenvat credit on inputs and capital goods in terms of Rule 3 of the Cenvat Credit Rules 2004 here-in-afier referred to as the CCR, 2004).

3. On the basis of specific intelligence, a search was conducted on 18.06.2010 by the officers of Central Excise Commissionerate, Ghaziabad, in the factory premises of M/s Associated Engineering Projects, Modinagar, Ghaziabad, M/s Manglam Wire (Prior to 01.04.2010 known as M/s Laxman Steels) and Mis R. K. Industries (Prior to 01.04.2010 known as Mis Aar key Ispat), under the Panchnama dated 18.06.2010 drawn in presence of two independent witnesses separately at the said three premises. During the course of search, various records maintained by the above units were checked and the records, which appeared relevant for further scrutiny, were resumed under proper Panchnama drawn on the spot at the premises of above units. The stock taking of finished goods as well as of raw materials was also conducted in the premises of M/s AEP and Mis R. K. Industries.

4 The following facts came to notice of the department during search and after investigation of the case-

- *i.* *Shri Ashok Arons is part time accountant of the aforesaid units and looking after the accounts.*
- *ii.* *M/s AEP is a partnership firm and Shri Shailendra Raghuvanshi and Shri Shekhar Raghuvanshi are partners of the said units. Smt. Pooja Raghuvanshi W/o Shri Shri Shailendra Raghuvanshi is proprietor of R.K.Industries and earlier was proprietor of Laxman Steels, Smt. Pooja Raghuvanshi wio of Shri Shekhar Raghuvanshi is proprietor of Manglam wire and earlier was proprietor of Aar Kay Ispat. Late Smt Meera Raghuvanshi, mother of Shri Shailendra Raghuvanshi and Shri Shekhar Raghuvanshi was proprietor of Bharat Engineering co. which is closed from 28/05/2010.*
- *iii.* *M/s ABP is manufacturing wire drawing machines and is registered with Central Excise Department & paying Central Excise Duty.*
- *iv.* *Shri Shailendra Raghuvanshi and Shri Shekhar Raghuvanshi look after all the work of M/s R. K. Industries, M/s Manglam wire and M/s Bharat Engg Co.*
- *v.* *Shri Ashoka Arora with help of Sari Durvesh Kumar, accountant maintain the records of all units in the office of Mis AEP and reports to Shri Shailendra Raghuvanshi and Shri Shekhar Raghuvanshi*

5. Accordingly, it appeared that Shri Shailendra Raghuvanshi and Shri Shekhar Raghuvanshi were actively involved in the business activities of all the units namely M/s AEP, M/s R. K. Industries, (earlier Mis Aar Kay Ispat,) Mis Manglam Wire, (earlier M/s Laxman Steel) and My Bharat Engineering Co. Shri Shailendra Raghuvanshi and Shri Shekhar Raghuvanshi have arranged their business in such a manner so that prima facit it would appear that all the said manufacturing units are separate legal entity. But, it appeared that the division among *the said units is artificial and superficial. In fact, the different units have been created to avail inadmissible SSI benefit only. Accordingly, it appeared that all the four units were created to avail inadmissible SSI benefits separately, in respect of each units, whereas as per provision of Notification No.8/2003-Ce dated 01.03.2003, as amended, they should have availed such SSI benefits at the best, on the first value of clearances of RS.1.50 Crore on the combined value of clearances of the four units.*

6. M/s R. K. Industries (carlier M/s Aar Kay Ispat), Dyal Vihar Sikhera Road Modinagar, M/s Manglam Wire (earlier M/s Laxman Steel), Opposite Abupur Road Muradnagar and M/s Bharat Engineering Co. Santpura Gali No. 3 Govindpuri, Modinagar have contravened the provisions of para 2(V) of the Notification No. 8/2003-CE dated 01.03.2003 in as much as they have separately availed the benefit of SSI exemption from payment of Central Excise duty up to first value of clearances of Rupees One Hundred and fifty lakh, whereas the benefit of Notification No. 8/2003-C.E. dated 01.03.2003 should have been availed by the said units jointly along with M/s AEP after clubbing the value of clearances of all the said four units in view of the provisions of 2(V) of the Notification No. 8/2003-CE dated 01.03.2003 as they appear to be related persons. It further appeared that all these units were created only to avail the benefit of SSI exemption and they appear to have evaded Central Excise duty.

7. Accordingly Show Cause Noticee dated 16.12.2010 for demand and recovery of Central Excise duty evaded by said parties to the tune of Rs. 1,01,02,232.00 (BED Rs. 1,00,28279.00 + Edu. Cess Rs. 2,00,566.00+ Edu. Cess Rs. 73.249.00) was issued to the said parties by the Commissioner, Central Excise Commissionerate, Ghaziabad, for the period up to June, 2010. The said SCN also demanded interest on the above amount and proposed for imposing penalty upon M/s AEP, M/s R.K industries, M/s Manglam & wire & others under the provision of Rule 25 of the Central

Excise Rules 2002 read with Section 11AC of the Central Excise Act, 1944 for the contravention of aforesaid provision and also proposed penalty upon Shailendra Raghuvanshi, Shri Shekhar Raghuvanshi, Shri Ashok Arora and Shri Durvesh Kumar under the provision of Rule 26 of the Central Excise Rules, 2002 for their active participation in an attempt to evade payment of Central Excise duty. Meanwhile case was adjudicated by the Commissioner, Central Excise, Ghaziabad vide 0-1-0 No. 07/Commr/GZB/2011 dated 31.01.2012 Party went in appeal before CESTAT, New Delhi which remanded the case back to the Commissioner. On remand the Commissioner, Central Excise, Meerut had adjudicated the SCN vide 0-1-0 No. 09/Commr./MRT/2015 dated 26.03.2015.

8. In view of the above for raising demand for the further subsequent period, letters for submission sale figures were issued from time to time to M/s R.K. Industries and Manglam Wire by the Superintendent, Central Excise Range-V, Modinagar. Based on sale figures provided by Mis R.K. Industries and Manglam wire, it was observed that said parties have evaded payment of Central Excise duty by way of wrong availment of benefit of Notification No.8/2003-CE dated 01.03.2003, as per details given below.

S.No	Date of SCN	Period	Duty
01	06/028/11-12 d1.22.07.20114 Corrigendum dated 04.10.2012	July-2010 to Dec-2010	Rs 3,32,956
02	48/JC/GZB/11-12 dr25.01.2012	Jan 2011 to March 2011	- Rs 5355954
03	66/ADC/11-12 d.26.03.2012	April-2011 to Nov.-2011	Rs. 6,76,871/-
Total			Rs. 15,46,422/-

CASE FOR THE DEPARTMENT:

9. Accordingly 03 Show Cause Notices as detailed in the table above were issued to Mis Associated Engg. Projects, M/s R.K Indutries, M/s Manglam Wire Shailendra Raghuvanshi, Shri Shekhar Raghuvanshi, Shri Ashoka Arora and Shri Durvesh kumar requiring them to show cause to the Addi/Joint Commissioner, Central Excise Ghaziabad, alleging thereby.-

i. Denial of the benefit of SSI exemption to M/s R. K. Industries, M/s Manglam Wire, separately, in view of the provisions of sub-para (v) of Para 2 of the Notification No. 8/2003-CE dated 01.03.2003;

II. Demand of Central Excise duty amounting to Rs 15,46,422/- (BED Rs. 15,01,380/-+ Edu. Cess Rs.30,027/+ S&H Edu. Cess Rs. 15,015) from them, under proviso to Section 11A (1) of the Central Excise Act, 1944.

iii Demand of Interest, at appropriate rate, from them in terms of Section 11AB of the Central Excise Act, 1944.

iv. Imposition of penalty upon M/s AEP, M/s R. K. Industries (earlier M/s Aar Kay Ispat), and M/s Manglam Wire (earlier M/s Laxman Steel) in terms of Rule 25 of the Central Excise Rules 2002 read with Section 11AC of the Central Excise Act, 1944 for contravention of the aforesaid provisions;

v. Imposition of penalty on Shri Shailendra Raghuvanshi, Shri Shekhar Raghuvanshi, Shri Ashok Arora and Shri Durvesh Kumar, in terms of Rule 26 of Central Excise Rules, 2002 for their active participation in an attempt to evade payment of duty by the party for aforesaid reasons;

Thereafter, above said 01 SCNs dated 22.07.2011, dated 25.01.2012 & dated 26.03.2012 adjudicated vide 010 bearing No. 14-16/ADC/GZB/2012-13 d 18.12.2012, passed by Additional commissioner, Central Excite Chalabed, where by he-

(i) disallowed the benefit of SSI exemption to MR.K. Industries, & M/s Manglam Wire, separately in siew of the provisions of Sub-Para V. of Pars 2 of the Notification No. 8/2003-CE dated 01.01.2003.

(ii) confirmed demand of duty amounting to Rs. 15,46,422/- (BED Rs. 15,01,380-ED Cess Rs. 30,027-+S&H Ed. Cess Rs. 15,015-) under Section 11A of the Central Excise Act, 1944 against Associated Engineering Projects, Mis R.K. Industries, & M/s Mangalam Wire.

(iii) confirmed demand of interest, at applicable rate on the above said demand (at para (ii) above) under the provisions of Section ILAB of the Central Excise Act, 1994.

(iv) imposed a penalty of Rs. 15,46,422/- (Fifteen lac forty six thousand four hundred & twenty two only) on Associated Engineering Projects, M/s R.K. Industries, & M/s Mangalam Wire under Rule 25 of the Central Excise Rules 2002 read with Section 11AC of the Central Excise Act, 1944.

(v) imposed a penalty of Rs: 1,00,000/- (Rs. One Lakhs only) each on Shri Shailendra Raghuvanshi and Shri Shekhar Raghuvanshi, and Rs.20,000/- (Rs. Twenty thousand only) cach on Shri Ashok Arora and Shri Durvesh Kumar under Rule 26 of Central Excise Rules, 2002.

10. Being aggrieved with the above said OIO dated 18.12.2012, the Noticee(s) preferred an appeal before the Commissioner Appeals) Central Excise Ghazaibed. The Commissioner Appeal) vide No.GZB/EXCUS/000/APP/114-120/13-14 dt. 12.08.2013 dismissed the appeals filed by the parties. Being aggrieved with order of the Commissioner (Appeals), the parties filed appeals before the Hon'ble CESTAT. Thereafter, Hon'ble CESTAT vide Final Order bearing No. A/ 50378-50384/2015-EX [DB] dated 16.02.2015413, set aside the OIO No. 14-16/ADC/GZB/2012-13 dated 18.12.2012 and remanded the case for de-novo adjudication. Subsequent to cadre restructuring of the department in October 2014 the party is now covered under Meerut Central Excise jurisdiction and on remand, SCNs to be decided by the Addl/Jt. Commissioner, Central Excise, Meerut."

2.2 Aggrieved by the appellants have filed appeal before Commissioner (Appeals) which has been dismissed as per the impugned order.

2.3 Aggrieved appellants have filed this appeal.

3.1 We have heard Shri Anurag Mishra learned Counsel appearing for the appellants and Shri Tuleshwar Prasad & Shri A.K. Choudhary learned Authorised Representatives appearing for the revenue.

3.2 Arguing for the appellant learned Counsel submits that the issue involved in the associated case for the past period has been finally decided by the Tribunal vide Final Order No72091-72098 of 2018 dated 24.07.2018 allowing the relief to the appellants. They prayed for the same relief in the present case also.

3.3 Learned Authorised Representative reiterates the findings recorded in the orders of the lower authorities.

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

4.2 Order-in-Original records following findings in the impugned order:-

> *"I have carefully gone through the contents of CESTAT'S Final Order bearing No. A/ 56325-56334/2013-EX [DB] dated 26.04.2013, by which OIO bearing No.7/Cmmr/GZB/2011 dated 31.01.2012 was remanding back to de-novo. It was observed there in that:*
>
> *Para 3. The short issue requireil to be decided in the present appeal is as to whether the adjudicating authority can confirm demands and impose penalties on all the assessee together, without segregating the liability on each and every assessee in accordance with the law or not.*
>
> *Para 4. stand held in all the above decisions, that duty labiality or penal liability cannot be assessed jointly and severely against various assessee and the adjudicating authority is required to assess the liability on each and every individual separately.*
>
> *Para 5. In view of the above, we set aside the impugned order and remand all the appeals to Commissioner for denovo proceedings and adjudicate the liability on each*

and every assesser individually, we male clear we have not gone to merits Revenue as also assesses are free to advance arguments in support of their claim.

While remanding the issue, with a condition to adjudicate the liability on each and every assessee individually, the Hon'ble CESTAT further observed "the Revenue as also assessee are free to advance arguments in support of their claim".

13 The Commissioner, Central Excise Meerut vide 010 No.09/Comm/Mrt/2015 dated 31.03.2015 decided the remand case whereby he:

a. *disallowed the benefit of SSI exemption to M/s R. K. Industries, M/s Aar Kay Ispat, M/s Manglam Wire, Mis Laxman Steel, and M/s Bharat Engineering Co., separately, in view of sub-para (v) of Para 2 of the Notification No. 8/2003-CE dated 01.03.2003;*
b. *Confirmed the demand of Central Excise duty of Rs.56,23,793.00 [BED: Rs.54,76,169.00; Edu. Cess: Rs.1,09,523.00; SHE Cess: Rs.38,101.00] [Rupees Fifty Six Lakh Twenty Three Thousand Seven Hundred And Ninety Three Only), M/s Laxman Steel (Now known as M/s Mangalam Wire), an unit firm of M/s AEP, in terms of proviso to Section 11A(1) of the Central Excise Act, 1944;*
c. *Confirmed the demand of Central Excise duty of Rs.34,42,596.00 (BED: Rs.33,50,495.00; Edu. Cess: Rs.67,010.00; SHE Cess: Rs.25,091.00] [Rupees Thirty Four Lakh Forty Two Thousand Five Hundred And Ninety Six Only], M/s Aar Kay Ispat (Now known as R. K. Industries), an unit/ firm of AEP, in terms of proviso to Section 11A(1) of the Central Excise Act, 1944;*
d. *Confirmed the demand of Central Excise duty of Rs.2,418.00 [BED: Rs.2,348.00; Edu. Cess: Rs.47.00; SHE Cess: Rs.23.00] [Rupees Two Thousand Four Hundred And Eighteen Only], from M/s Mangalam*

Wire (earlier known as Laxman Steel), an unit/ firm of AEP, in terms of proviso to Section 11A(1) of the Central Excise Act, 1944;

e. *Confirmed the demand of Central Excise duty of Rs.12,35,245.00 [BED: Rs.11,99,267.00; Edu. Cess: Rs.23,985.00; SHE Cess: Rs.11,992.00] [Rupees Twelve Lakh Thirty Five Thousand Two Hundred And Forty Five Only], M/s Bharat Engg. Co., an unit/ firm of AEP, in terms of proviso to Section 11A(1) of the Central Excise Act, 1944;*

f. *appropriated the amount of Rs. 20,00,000.00 [Rupees Twenty Lakh), deposited by the Noticee(s), vide GAR-7 Challan dated 01.09.2010, against the above confirmed demand of Rs.56,23,793.00 + Rs.34,42,596.00 + Rs.2,418.00 + Rs. 12,35,245.00 Rs.1,03,04,052.00 [BED: Rs.1,00,28,279.00; Edu Cess: Rs.2,00,565.00; SHE Cess: Rs.75,208.00], as confirmed above and orders for recovery of remaining amount of Central Excise duty;*

g. *confirmed the demand of Interest, at appropriate rate, on above said amount of Central Excise duty of Rs. 1,03,04,052.00, in terms of Section 11AB (Now Section 11AA) of the Central Excise Act, 1944, from each of the Noticee(s) in proportion to their confirmed amount of demand;*

h. *confiscated the finished excisable goods, ie. 1040 Kg of M.S Wire valued at Rs. 36400.00, seized at the premises of M/s R. K. Industries, in terms of Rule 25 of Central Excise Rules, 2002. However, I hereby allow to redeem these goods, on payment of a fine of Rs. 10,000.00 [Rupees Ten Thousand only), in terms of Section 34 of the Central Excise Act, 1944,*

imposed a penalty of Rs. 5,000.00 [Rupees Five Thousand only), upon M/s R. K. Industries, in terms of Rule 25 of Central Excise Rules, 2002, for the offence committed as mentioned above,

i. *imposed a penalty of Rs. 56,23,793.00 [Rupees Fifty Six Lakh Twenty Three Thousand Seven Hundred And Ninety Three Only], upon M/s Laxman Steel (Now known as Mis Mangalam Wire), an unit/ firm of M/s AEP, in terms of Rule 25 of Central Excise Rules, 2002 read with Section 11 AC of the Central Excise Act, 1944;*

j. *imposed a penalty of Rs. 34,42,596.00 (Rupees Thirty Four Lakh Forty Two Thousand Five Hundred And Ninety Six Only), upon Mis Aar Kay Ispat (Now known as R. K. Industries), an unit/ firm of M/s AEP, in terms of Rule 25 of Central Excise Rules, 2002 read with Section 11 AC of the Central Excise Act, 1944;*

k. *imposed a penalty of Rs. 2,418.00 Rupees Two Thousand Four Hundred And Eighteen Only], on M/s Mangalam Wire (carlier known as Laxman Steel), an unit/ firm of M/s AEP, in terms of Rule 25 of Central Excise Rules, 2002 read with Section 11 AC of the Central Excise Act, 1944;*

l. *imposed a penalty of Rs. 12,35,245.00 [Rupees Twelve Lakh Thirty Five Thousand Two Hundred And Forty Five Only], M/s Bharat Engg. Co., an unit/ firm of M/s AEP, in terms of Rule 25 of Central Excise Rules, 2002 read with Section 11 AC of the Central Excise Act, 1944;*

m. *imposed a penalty of Rs. 10,00,000.00 (Rupees Ten Lakh only], on Shri Shailendra Raghuvanshi, the partner of M/s AEP, in terms of Rule 26 of Central Excise Rules, 2002; imposed a penalty of Rs. 10,00,000.00 [Rupees Ten Lakh only), on Shri Shekhar Raghuvanshi, the partner of M/s AEP, in terms of Rule 26 of Central Excise Rules, 2002;*

n. *imposed a penalty of Rs. 1,00,000.00 only [Rupees One Lakh only), on Shri Ashok Arora, the Accountant of the Noticee(s), in terms of Rule 26 of Central Excise Rules, 2002;*

o. imposed a penalty of Rs. 1,00,000.00 only Rupees One Lakh only), on Shri Durvesh Kumar, the Accountant of the Noticee(s), in terms of Rule 26 of Central Excise Rules, 2002.

14. On the similar grounds, the Hon'ble CESTAT vide Final Order No. A/50378-50384/2015 EX(DB) dated 16.02.2015 has remanded the case for de-novo adjudication in rito 0-1-0 No. 14-16/ADC/GZ8/2012-13 dated 18.12.2012. CESTAT has observed that as under:

> *"We find the duty has been demanded jointly and severally which is not permissible and in appellant's own case for the earlier period vide order No. 56325-56334/2013 dated 26.04.13 this Tribumal has set aside the order and remanded the matter to the Adjudicating Authority for denovo adjudication to demand duty separately from all the appellants before us, if required. In these circumstances, we set aside the impugned order and remand back to the Adjudicating Authority for denove adjudicating as directed by this Tribunal vide order dated 26/4/13. Appeals are disposed of in the above terms alongwith the stay application."*

Further, I cannot accede to the request of noticee to keep subject 03 SCNs pending, as appeal for the previous period are pending before CESTAT, as appeal are filed by the party for the previous period and remand case in subsequent periods has to be decided separately. As the proceedings under remand start from the allegation raised in the SCNs, the issue(s) to be decided in this case are summarized as under:

i. Whether, M/s R. K. Industries, the Noticee No. 2, M/s Manglam Wire, the Noticee No. 3, are eligible to avail the benefit of SSI exemption, in terms of Notification No. 8/2003-CE dated 01.03.2003;

ii. Whether, the Central Excise duty amounting to Rs. 15,46,422/- [including Edu. Cess and SHE Cess), for *the period July, 2010 to Nov. 2011, is demandable and recoverable from M/s Associated Engineering Projects, the Noticee No. 1, M/s R. K. Industries, the Noticee No. 2. M/s Manglam Wire, the Noticee No. 3 duly quantified against each and every Noticee, individually, in terms of proviso to Section 11A(1) of the Central Excise Act, 1944;*

iii. Whether, the interest, at appropriate rate, is demandable and recoverable on above said respective amounts of Central Excise duty liability, from above said Noticee(s), in terms of Section 11 AB of the Central Excise Act, 1944;

iv. Whether, M/s AEP, the Noticee No. 1, M/s R. K. Industries (earlier M/s Aar Kay Ispat), the Noticee No. 2, M/s Manglam Wire (earlier M/s Laxman Steel), the Noticee No. 3, are liable for penalty in terms of Rule 25 of the Central Excise Rules 2002 read with Section 11AC of the Central Excise Act, 1944;

v. Whether, Shri Shailendra Raghuvanshi, the Noticee No. 4, Shri Shekhar Raghuvanshi, the Noticee No. 5, Shri Ashok Arora, the Noticee No. 6 and Shri Durvesh Kumar, the Noticee No.7., are liable for penalty, in terms of Rule 26 of Central Excise Rules, 2002;"

4.3 Undisputedly, the Tribunal while remanding the matter to the Original Authority has referred to the earlier order by which the matter was remanded for the previous period to the Adjudicating Authority. In the denovo proceedings the order was again passed against the concern parties-appellants by the adjudicating authority as noted in the order in original, in the present case. On appeal Tribunal vide final Order No 72091-72098/2018 dated 24.07.2018 allowed the appeal, recording the findings as follows:-

"5. We find in the present case that the individual manufacturing appellants have independent identities since the revenue could not establish that their books of accounts are common, that their bank accounts are

common, that their registration with Income Tax, Sales Tax are common and that there is common funding and that there is mutuality of interest and that there is financial flow back and that the units which were held to be dummy did not have any manufacturing facility. In the absence of any such evidence, we hold that the manufacturer units are independent units and therefore, their clearances could not be clubbed together. We, therefore, hold that denial of benefit of SSI Exemption to the manufacturer appellants is not sustainable and therefore, demands confirmed against them are not sustainable."

4.4 As the Tribunal has recorded the findings against the clubbing of clearances of Associated engineering projects with the appellant-I and appellant-II, we find that the issue is squarely covered by the said decision.

4.5 In para No.17 of the Order-in-Original following table has been produced showing the various units which are said to be the unit owning by Shri Shailendra Raghuvanshi and Shri Shekher Raghuvanshi. The said table is reproduced bellow:-

S. No.	Name of the unit	Item manufactured	Status of firm	Name of Partners / Proprietor
1	M/s Associated Engineering Projects,	Wire drawing machines & parts	Partner-ship	Sh. Shailendra Raghuvanshi and Shri Shekhar Raghuvanshi (both brother & partner of the unit)
2(i)	M/s R.K Industries, Dyal Vihar Sikhera Road Modinagar (w.e.f. 01.04.2010)	M. S. Wire	Proprietor-ship	Smt. Pooja Raghuvanshi w/o Shri Shekher Raghuvanshi
2(ii)	M/s Aar Kay Ispat (closed, w.e.f. 01.04.2010 proprietorship has changed, now known as M/s R. K. Industries)	M.S. Wire	Proprietor-ship	Smt. Pooja Raghuvanshi w/o Shri Shekher Raghuvanshi
3(i)	M/s Manglam Wire, Opposite Abupur Road Vill. Manota Muradnagar (w.e.f. 01.04.10)	M. S. Wire	Proprietor-ship	Smt. Pooja Raghuvanshi w/o Shri Shekher Raghuvanshi
3(ii)	M/s Laxman Steel (Closed, w.e.f. 01.04.2010 proprietorship has changed, now known as M/s Manglam Wire)	M. S. Wire	Proprietor-ship	Smt. Pooja Raghuvanshi w/o Shri Shailendra Raghuvanshi

4	M/s Bharat Engineering Co.	Parts of Wire drawing Machine	Proprietor-ship	Late Smt. Meera Raghuvanshi, Mother of Shri Shailendra Raghuvanshi & Shri Shekher Raghuvanshi
5.	M/s Aditya Trading Co.,	Trading of M.S. Wire	Proprietor-ship	Shri Shailendra Raghuvanshi

From perusal of the above table, it is observed that the units/appellants were involved in the said case and the present case are identical.

4.6 Following the above order, we do not find any merits in the impugned order and the same is set aside.

5.1 Appeals are allowed.

(Operative part of the order pronounced in open court)

(P.K. CHOUDHARY)
MEMBER (JUDICIAL)

(SANJIV SRIVASTAVA)
MEMBER (TECHNICAL)

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