CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
OLD RED BUILDING, 38,M.G.Marg,CIVIL LINES, ALLAHABAD

Dated: 16/5/2016

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. **A/ 70204-70205/2016 DB** dated 18/11/2015

I am directed to transmit herewith a certified copy of order passed by the Tribunal under section 35-C(1) of the **Central Excise and Salt Act, 1944.**

Asstt. Registrar

Application	Appeal	Name and Address of Appellant
	E/3856-3857/2006	GHAZIABAD ORGANICS LTD DELHI MEERUT ROAD GHAZIABAD(UP)
		ALCOCHEM ORGANICS P LTD DELHI MEERUT ROAD GHAZIABAD

Name and Address of Respondent	CCE, GHAZIABAD CGO COMPLEX-II, KAMLA NEHRU NAGAR, GHAZIABAD

Other Appellants and Respondents as per Annexure

Copy To

3Advocate(s) / Consultant(s SH R.K.RISHI,ADV
60, VILVESHWARPURI
BHANSALI GROUND, MEERUT

4 Bar Association, CESTAT, ALLAHABAD
5 Director Publications, Customs, Excise, I.P. Estate, Delhi
6 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, New Delhi-3

7 Company Law Institute of India Pvt. Ltd., No.2 (old no.36), Vaithyaram Street, T. Nagar, Chennai-17

8 Taxmann Allied Service Pvt. Ltd., 59/32, New Rohtak Road, New Delhi-110005

9 Easy Service Tax Online Dot Com Pvt. Ltd., 407A, Iscon Mall, Satellite Road, Ahmedabad-15

10 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-16, Faridabad 121003 (Haryana)
11 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi -- 110070
12 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad -- 38
13 The ICFAI society, 52, Nagarjuna Hill,Punjagutta Hyderabad.-500082
14 C.D.R. 15 Office Copy 16 Guard File.
17.M.S KNOWLEDGE PROCESSING PVT LTD(TAMMANAGEMENTINDIDA.COM)

Asstt. Registrar
Regional Bench, Allahabad

IN THE CUSTOMS, EXCISE AND SERVECE TAX APPELLATE TRIBUNAL,
REGIONAL BENCH AT ALLAHABAD

APPEAL NO. E/3856 & 3857/06

(Arising out of Order-in-Appeal No. 95&96-CE/GZB/2006 dated 14.07.2006 passed by the Commissioner of Customs & Central Excise (Appeals), Meerut-I)

For approval and signature:
Hon'ble Shri Anil Choudhary, Member (Judicial)
Hon'ble Shri C J Mathew, Member (Technical)

1.	Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	:	No
2.	Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	:	No
3.	Whether their Lordships wish to see the fair copy of the order?	:	Seen
4.	Whether order is to be circulated to the Departmental authorities?	:	Yes

M/s Ghaziabad Organics Ltd
M/s Alcochem Organics Pvt Ltd — Appellants

Vs.

Commissioner of Central Excise, Ghaziabad — Respondent

Appearance:
Shri R K Rishi, Advocate — for Appellant
Shri Ajay Kumar, Joint Commr (AR) — for Respondent

CORAM:

HON'BLE SHRI ANIL CHOUDHARY, MEMBER (JUDICIAL)
HON'BLE SHRI C J MATHEW, MEMBER (TECHNICAL)

Date of Hearing: 18.11.2015
Date of Decision: 18.11.2015

Final ORDER NO. 70204-70205/2016

Per: C J Mathew:

These appeals of M/s Ghaziabad Organics Ltd and M/s Alcochem Organics Pvt Ltd are directed against Order-in-Appeal No. 95&96-CE/GZB/2006 dated 14th July 2006 passed by the Commissioner of Customs & Central Excise (Appeals), Meerut-I. We take these up for disposal together as common issues are involved.

2. The two appellants have factories adjacent to each other and M/s Alcochem Organics Pvt Ltd relies on M/s Ghaziabad Organics Ltd for a sizable quantity of its input *viz.* 'acetic acid'. The primary output of former is 'ethyl acetate' which requires alcohol as a second input – 'spirit' that is under regulatory control of the laws enacted by the state government.

3. Based on consumption patterns of 1999-2000 and 2000-2001, proceedings were initiated against M/s Alcochem Organics Pvt Ltd for unaccounted production of 'ethyl acetate' for 1998-99 and 1999-2000 with duty liability of Rs. 23,22,813/-. The Central Excise authorities relied upon utilisation of raw materials and production of final goods to arrive at a normative yield of 69.35% for the year 1997 98 to 2001-02 and found that the yield for 1999-2000 and 2000-01 were 59.50% and 61.26% respectively.

4. In addition, it was alleged that two appellants are inter-connected through common directors who held shares in both companies, that the two had a common supervisory structure and that they have mutual financial interest in each other, that there is a

free flow of acetic acid from M/s Ghaziabad Organics Ltd which is piped into M/s Alcochem Organics Pvt Ltd. Based on these allegations of mutuality of interest in the business of each other, the two were issued with notices for clubbing their clearance, for denying them the benefit of exemption under notification no. 9/98-CE and 9/99-CE and for demand duty Rs. 10,20,000/- from M/s Alcochem Organics Pvt Ltd for 1998-99 and 1999-2000. Likewise duty of Rs. 545,000 for 1998-99 was demanded from M/s Ghaziabad Organics Ltd.

5. The adjudicating authority, the Joint Commissioner of Central Excise, Ghaziabad, confirmed the demands in the notice against M/s Ghaziabad Organics Ltd by order-in-original dated 31st March 2005. M/s Alcochem Organics Pvt Ltd was, *ex-parte*, held liable for illicit clearance and ineligibility for small scale exemption. The first appellate authority, by common order, upheld the findings relating to demand of small scale exemption but allowed the appeal of M/s Alcochem Organics Pvt Ltd in the matter of clandestine production.

6. Disputes relating to clubbing of clearance of units claiming the small scale exemption are galore and have travelled to this Tribunal, and beyond, on many occasions. Various decisions of the Tribunal were cited by Learned Counsel for appellants i.e. *Poly Printers Vs. Commissioner of Central Excise, Delhi-I – [2002 (139) ELT 295 (Tri.-Del.)], Special Machines Vs. Commissioner of Central Excise, Delhi – [2004 (169) ELT 215 (Tri.-Del.)], Unicure Remedies Pvt. Ltd. Vs. Commissioner of Central Excise, Vadodara-I – [2005 (185) ELT 257 (Tri.- Del.)]* and *Commissioner of Central Excise, Chandigarh Vs. Shiva*

Exim Enterprises – [2005 (185) ELT 169 (Tri.-Del.)]. He also drew attention to circular no. 6/92 dated 29th May 1992.

7. Learned Authorised Representative placed reliance on the decision of the Tribunal in *Ekbote Interiors Pvt. Ltd. Vs. Commissioner of Central Excise, Pune-I – [2001 (135) ELT 751 (Tri. - Mumbai)], Ruby Rubber Industries Ltd. Vs. Commissioner of Central Excise, Calcutta-II – [2002 (149) ELT 970 (Tri.-Kolkata)], Northern India Rubber Mills Vs. Collector of Central Excise, Chandigarh – [2000 (115) ELT 506 (Tribunal)]* and that of the Hon'ble Supreme Court in *Commissioner of Central Excise, New Delhi Vs. Modi Alkalies & Chemicals Ltd. – [2004 (171) ELT 155 (S.C.)]*.

8. Having heard both sides and perused the decisions produced before us, we deduce that none of these are relevant as a binding precedent. The only inference that can be drawn from them is that each set of circumstances needs to be examined on its own footing before it can be reasonably deduce that the clearances of two or more units are liable to be clubbed.

9. There is no ban on the existence of more than one unit in a compound. Likewise, commonality of directors with stake in these several units is again not conclusive proof of mutuality of interest. Supply of goods from one to another, and even occasional financial accommodation, are not unusual features of business activities. Nor can common supervisory system be designated as out of the ordinary.

10. Both the lower authorities have, while concurring that each of these is not sufficient evidence to enable clubbing, held that the totality of circumstances would justify denial of small scale exemption to both units.

11. One of the fundamental aspects that appear to have been brushed aside by both lower authorities is the factum of both appellants being limited companies. Such companies may have interest in each other through holding company pattern or group company structure. And such companies may have financial relationship with each other without bearing the stigma of subterfuge for deriving undue advantage of the benefits small scale exemption. This immunity has its origin in the accountability of a company to its shareholders and the status as an 'artificial person" which has neither greed nor the 'wherwithal to indulge in a greedy conduct.

12. The findings suffer from the frailty that charcteristics the show-cause notices themselves. The notices are ambivalent in crystalising the duty liability that arises. Computation of clearances is not apparent and there is nothing to support the duty computation or the inferences leading to it. The lower authorities have not elaborated upon the allegations that are sketchy in themselves and not appear to have made any attempt to elaborate upon the manner in which duty liability has been arrived at..

13. The proceedings themselves are, consequently, not bereft of the same frailty. Crucial in any proceedings for clubbing is the existence of a principal and a dummy or dummies. The purpose of clubbing is

to deny the independent existence of one or more entities on the ground that the subterfuge of physical segregation is intended to avail the benefit of small scale exemption. Consequently, only one of the entities proposed to be clubbed is to bear the burden of duties sought to be evaded thus. No evidence to fasten these roles on either of the two appellants has been brought put in the notices. The decision to issue two notices followed by two independent proceedings highlight the lack of any investigation in that direction. Furthermore, even after finding reasons to club clearances of the two units, duty liability arises on the clubbed value of clearances to the extent that it exceeds the threshold prescribed for small scale exemption. The failure to identify the principal entity has, therefore, led to denial of this threshold exemption.

14. It would, therefore, render the entire proceedings from issue of notice till the impugned order to be tainted by lack of application of mind.

15. For above reasons, we set aside the impugned order with consequential relief.

(Operative portion of the order pronounced in open Court)

Sd/-
(Anil Choudhary)
Member (Judicial)

Sd/-
(C J Mathew)
Member(Technical)

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